

PROPOSED AGENDA
PERSONNEL BOARD OF JEFFERSON COUNTY MEETING AGENDA

November 10, 2009

I. OPENING REMARKS BY BUDDY SMITH

II. OPERATIONAL UPDATES

Personnel Director's comments
Business Office – Cynthia Holiness
HR Information and Technology Services – Roger McCullough
Workforce Development & Applicant Services – Guy Dewees
Performance Measurement – Jeff Crenshaw

III. ACTION ITEMS

- a) Board minutes for meeting held on October 13, 2009.
- b) Legal Services for Fiscal Year 2010
 - I. Lloyd, Gray & Whitehead P.C.
 - II. Balch & Bingham LLP
 - III. Benton & Centeno LLP
- c) Appeal of Eligibility from Disqualification from Recruitment
- d) Birmingham Fire & Rescue vs. Joshua Davis (DA-2009-1727)
- e) Birmingham Police Department vs. Dexter Cunningham (DA-2009-1737)
- f) Jefferson County Health Department vs. Janis L. Adams (DA-2009-1744)
- g) City of Bessemer Utilities vs. Lee Turner, Jr. (DA-2009-1726)
- h) P. Rene Lister vs. Birmingham Fire & Rescue (GR-2008-10-0191)
- i) Derry Johnson vs. Jefferson Rehabilitation & Health Center (GR-2009-08-0206)
- j) Rowena Gadson-Jones vs. Birmingham Police Department (DA-2009-1755)
- k) Rowena Gadson-Jones vs. Birmingham Police Department (IWP-2009-1749)

IV. INFORMATION AND DISCUSSION ITEMS

- a) October Board Bi-Monthly Expenditure Reports

V. SHOW CAUSE HEARINGS - 2:00 PM

- a. The City of Bessemer and Malcolm Pirnie, Inc.
- b. The City of Birmingham and Malcolm Pirnie, Inc.

VI. EXECUTIVE SESSION



THE MERIT SYSTEM

Personnel Board of Jefferson County

MINUTES OF THE MEETING OF THE PERSONNEL BOARD OF JEFFERSON COUNTY

October 13, 2009

The Personnel Board of Jefferson County met on Tuesday October 13, 2009. Present at the meeting were Alfred "Buddy" Smith, Chair; Ken Moore, Associate Member; Ann Florie, Associate Member; Lorren Oliver, Personnel Director; LaVette Lyas, PBJC General Counsel (absent); Roger McCullough, PBJC Manager of Human Resources Information and Technology Services; Cynthia Holiness, PBJC Business Officer; Guy Dewees, PBJC Manager of Workforce Development and Applicant Services and Jeff Crenshaw, PBJC Manager of Performance Measurement. Also in attendance were: Nancy Eckberg (League of Women Voters) Erin Stock (Birmingham News) (absent), Kenny Clemons, (Executive Director, Jefferson County Mayor's Association) and members of the public.

The Chair called the meeting to order at 1:38 PM.

I. OPENING REMARKS BY BUDDY SMITH

Chair Smith extended a welcome to staff and other persons who were present at the meeting.

II. OPERATIONAL UPDATES

Chair Smith invited the Personnel Director and managers from the departments within the Personnel Board to provide operational updates.

Personnel Director- Director Oliver stated that last month 144 Merit System employees received training in various courses ranging from business software to supervisory skills. For the month of September Workforce Development conducted recruitments for 42 different job classes and received 1,830 applications. Year to date the Board has received 16,844 applications.

In September the Board placed 1,113 individuals on registers. Fourteen new registers were released with a total of 960 qualified individuals for employment consideration within jurisdictions. The Board also placed an additional 153 qualified applicants on registers for 21 difficult to recruit job classes. The PBJC conducts open continuous recruiting for these difficult to recruit job classes. The Workforce Development staff received 45 new requests to fill a total of 68 vacancies in the Merit System. Thirty-eight of these requests (84.4%) were processed immediately. The remaining seven requests (15.6%) were sent to the Performance Measurement Department and are at varied stages of the register development process. The 47 certificates issued in September provided qualified personnel to fill vacancies in 34 different merit system job classes. Year-to-date the Board has issued 768 certificates to fill 1,309 vacancies in 436 different job classes. This has been consistently accomplished within the now well established less than one day turn around on certificates issued.

Director Oliver also informed the Board that on October 13, 2009 the entire staff of the Personnel Board joined together to provide a day of community service to multiple organizations within Jefferson County. The Personnel Board employees provided over two hundred hours of community service to organizations like the New Rising Star Community Group, The Literacy Council, Pathways Women Shelter, Ronald McDonald House and The Birmingham Zoo. It was a wonderful opportunity for the staff to work together to serve the community in this manner.

Business Office- Cynthia Holiness reported that the financial report as of the end of September indicated that the Board has expended approximately \$8.9 million dollars and has \$350 thousand dollars in open purchase orders. Of the \$8.9 million dollars that has been expended, \$5.5 million dollars were expended in salaries and fringe benefits; \$336 thousand dollars were expended for annual maintenance support agreements related to the IT Systems and Testing equipment as well as \$356 thousand dollars for the hosting of the Lawson Data System; \$661 thousand dollars for legal and hearing officer expenses; \$450 thousand dollars for the payment related to the Cravath, Swaine & Moore legal fees ordered by the Federal Court as part of the Board's termination of its consent decree.

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The \$450,000 payment was the first payment of five scheduled payments ordered by the Federal Court and is an obligation which is outside the Board's control. However, huge reductions have been made in other areas to cover this expense to ensure that the Board does not exceed its budget. Year to date the Board has spent \$212 thousand dollars for advertising of Merit System positions; \$123 thousand dollars for the modular furniture initiative; \$147 thousand dollars for the rental of hotel rooms for volunteer testing assessors, \$110 thousand dollars in Other Professional and Consulting Services; \$35 thousand dollars for Public Employment Liability and Business Liability Insurance; \$635 thousand dollars for lease payments to Jefferson County for the rental of office space in the 2121 Building; and \$318 thousand dollars in other items such as assessor meals and travel, recruitment travel to career events, office supplies, copier machine rentals, and publications. The Board has committed approximately 90% of its \$10.2 million budget and is under budget for the year by approximately \$1 million dollars. However, please note that end-of-year vacation accruals and adjustments have not yet been calculated by Jefferson County and we will receive the final expenditure information from the County in early 2010.

Human Resources Information and Technology Services – Roger McCullough gave the three-member board an overview of the updated PBJC Internet website, the new Business Center, and the PBJC Intranet site. He explained that Web technology was being used as a primary communications tool with the jurisdiction and the public as a means of increasing the Board's transparency with its constituents and is being used to push out jurisdiction specific management reports and data to decision makers. He further explained that the PBJC Intranet site was being used as a repository for agency policies and procedures, as a means of accessing business forms, for intra-agency communications, and for departmental reporting of activities, projects, accomplishments, and progress toward achievement of goals.

Workforce Development and Applicant Services - Guy Dewees noted that 53 registered nurses were added to registers during the month of September. This would bring the total to 403 registered nurses added to registers for the year.

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The firefighter campaign is currently underway using television, radio billboard advertising. The PBJC is approximately half way through the campaign and have just over 1,600 applicants as of October 13, 2009. Workforce Development Services are on track to approximately 3,000 applicants which would be the most the department has had in at least five years.

Career Events: Workforce Development staff has attended events at UAB, Auburn, University of South Alabama, University of Alabama and the Latin American Youth Conference Mi Futuro at the Redstone Arsenal in Huntsville.

Workforce Development has registered to attend events at University of North Alabama, Troy University, and Jefferson State Community College

Performance Measurement- Jeffery Crenshaw reported that during the month of September, the Performance Measurement Division administered assessment centers for the following Police promotional jobs:

- Police/Sheriff Sergeant was administered over two days. Candidates completed 4 hours of testing for the position; 313 candidates completed both days of administration.
- Police/Sheriff Lieutenant was administered over two days. Candidates completed four and one-half hours of testing for the position; 141 candidates completed both days of administration.
- Police/Sheriff Captain was administered on one day. Candidates completed almost six hours of testing for the position; 41 candidates completed the administration.

Jeff Crenshaw reported that during the month of October, the assessment of candidate performance on the Police promotional jobs was being evaluated by volunteer law enforcement assessors from around the country. Police personnel at ranks above the level tested served as assessors and completed (or will complete) over 40 hours of work at the PBJC. The dates of the assessment were/are:

- Police/Sheriff Sergeant was assessed the week of October 5, 2009.
- Police/Sheriff Lieutenant is being assessed the week of October 12, 2009
- Police/Sheriff Captain will be assessed the week of October 26, 2009

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Job analyses for the Fire series jobs (i.e., Firefighter, Fire Apparatus Operator, Fire Lieutenant, and Fire Captain) are nearly complete. The job analysis questionnaires are currently being administered and response rates thus far have been very favorable. The test development processes for the Fire Apparatus Operator, Fire Lieutenant, and Fire Captain jobs will be conducted with volunteer fire service personnel from around the country the first few weeks of November. The administrative series job analyses are in the job analysis questionnaire administration phase. Data are being collected and will be analyzed afterwards for job analysis and classification purposes. Performance Measurement staff members Marty Alber and Libby Miller presented a research study entitled, Live Versus Video-based Assessment at the 2009 International Public Management Association – Human Resources (IPMA-HR) Annual Conference. In this study they investigated the comparability of interview ratings made by live interviewers and those made by assessors who viewed a video recording of candidate's responses. The conference was held in Nashville.

III. ACTION ITEMS

- a). After a correction was made by Ann Florie changing the date of the September Board Minutes from September 13, 2009 to September 8, 2009, the Board approved the minutes for its meeting held on September 8, 2009.
(Motion made-Moore, Seconded-Florie)

- b). The Board approved the recommendation of the contract between the Personnel Board and Technical Innovations. The current maintenance agreement expired on October 4, 2009. The Personnel Board is in the process of evaluating our system to update our capabilities. However, due to the economic conditions, the implementation of the equipment update has been postponed to a later date. The purpose of this contract is to secure the professional services of Technical Innovations for the continued maintenance of the audio, video, and computer equipment located within the PBJC Test Administration Facility and the Hearing Room.

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The services are to include on-site labor to perform prescheduled routine cleaning, adjustments, alignment and labor to replace consumable parts (cost of consumables parts not covered) per manufacturer's published schedule. Technical Innovations will work with the Personnel Board to schedule two (2) visits per six-month period in order to provide preventative maintenance performed by qualified field service technicians to the aforementioned equipment. In addition to the scheduled preventative maintenance visits, Technical Innovations will provide response for maintenance in emergency situations within one (1) hour by telephone support and four (4) hours on site support. This is based on a Monday through Friday 8:00 AM to 5:00 PM work schedule. Loaner equipment to replace malfunctioning equipment is subject to availability and will be similar in fit, form, and function to restore the system to optimum performance. The service terms in this contract are similar to the previous contract approved by the Three-Member Board in 2006 (except for the service period which has changed from a one year agreement with the option to renew two additional years to a six-month agreement). The cost for the services over the six-month period covering October 1, 2009 through March 31, 2010 is \$15,331. (Motion made- Moore, Seconded- Florie)

- c). The Board acknowledged the contractual agreement between Jefferson County Health Department (Health officer: Adm-HD) and Storm Water Management Authority (SWMA) in the amount of \$644,000. SWMA is a public corporation established in 1975 pursuant to the Storm Water Act. The Health Department will assume certain services that are being provided by SWMA including the current merit system employees performing these duties. The services include wet weather monitoring, MS4 outfall screening, field inspections, complaint investigations and reporting, household hazardous waste disposal, erosion and sediment control, public education, storm drain marking, water quality inventory, impaired waters mapping and any other services being performed by the employees transferring from SWMA to the Health Department. The contract period is October 1, 2009 through September 30, 2010. Lorren made the

recommendation to acknowledge the contract and the Board approved. (Motion made-Moore, Seconded-Florie)

- d.) The Board approved the recommendation of the contractual agreement between Jefferson County (Environmental Services; Barton Lab) and Laboratory Resources & Solutions, Inc. in the amount of \$13,000 (\$3,250 per quarter) Contractor to provide low level mercury sampling and analysis quarterly at four waste water treatment plants in order to monitor and maintain compliance with state and federal water quality regulations/permits. Due to the nature and scope of this project as well as the sporadic, limited and specialized duties, it is recommended that the contract be approved. The contract period is December 28, 2009 through December 31, 2010. (Motion made-Moore, Seconded-Florie)
- e.) The Board approved the recommendation of the contractual renewal agreement between Jefferson County (Environmental Services: Barton Lab) and U.S. Department of Interior-Geological Survey in the amount of \$172,770. Contractor is a federal water quality monitoring agency that provides Certified Hydrologist Technicians and water quality assessment and reporting services to counties throughout the United States. Contractor collects information on water quality in Alabama streams and provides data to participating counties for use in their compliance with federal, state, and local water quality initiatives and mandates. Jefferson County does not have the staff or facilities to perform these tests currently and any such tests performed by a county would not carry the USGS certification. This contract was originally approved at the March 6, 2007 Board Meeting. The contract renewal period is October 1, 2009 through September 30, 2010. (Motion made-Moore, Seconded-Florie)
- f). Jefferson County Roads & Transportation v. Johnny R. Crowe (ADM-LV-WOP-2009-0010) and Phillip Blanding (ADM-LV-WOP-2009-0015) - The Board vacated the Report & Recommendation of the hearing officer and remanded the cases to the respective Hearing Officer. (Motion made-Moore, Seconded-Florie)

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- g). Jefferson County Roads & Transportation v. Walter Malone (ADM LV WOP-2009-0011) - The Board vacated the Report & Recommendation of the hearing officer and remanded the cases to the respective Hearing Officer. (Motion made-Moore, Seconded-Florie)
- h). Jefferson County Department of Information Technology v. Allen Franklin (ADM-LV WOP-2009-0013) - The Board vacated the Report & Recommendation of the hearing officer and remanded the cases to the respective Hearing Officer. (Motion made-Moore, Seconded-Florie)
- i). Jefferson County Finance Department v. Dorothea Pruitt (ADM LV WOP-2009-0014) - The Board vacated the Report & Recommendation of the hearing officer and remanded the cases to the respective Hearing Officer. (Motion made-Moore, Seconded-Florie)
- j). City of Bessemer Utilities v. Lee Turner, Jr. (DA-2009-1726) - The Board vacated the Hearing Officer's Report and Recommendation and ordered the parties to either a) affirm the Settlement Agreement or b) set forth the full terms of the agreement before the board so they may review the settlement at its next regular monthly meeting. (Motion made-Moore, Seconded-Florie)
- k). Michael Kidd v. Jefferson County Sheriff's Office (GR-2009-05-0200) - The Board denied the Respondents Motion To Dismiss and remanded the matter to the hearing officer for further proceedings. (Motion made-Moore, Seconded-Florie)
- l). Rena McWilliams v. Director of Foods Services (GR-200710-0170) - The Board approved the Director's decision to extend the Administrative Leave With Pay for Ms. McWilliam. (Motion made-Moore, Seconded-Florie)

IV. INFORMATION AND DISCUSSION ITEMS

- a. The Director provided information to the Board regarding a contract between Security Engineers, Inc and the Birmingham Museum of Art. It was noted that private funds are used to pay the salaries of approximately 50% of Birmingham Museum employees that these funds are controlled by a separate Museum Board, and the funds are not co-mingled with City funds. The contract in question was executed by the Museum, not by the City of Birmingham. Since the Enabling Act concerns itself with positions funded by "public dollars" the Director advanced that these positions are then not subject to Merit System Rules and Regulations. While the position in question, Director of Museum Security, has been a Merit System position paid from public monies, the temporary incumbent is being paid from the Museum's budget, not from the City's budget; consequently, this is not a matter for the Personnel Board to decide. The 3-Member Board agreed that Mr. Othello Giles would have to take up any grievance that he may have concerning the hiring process with the City of Birmingham and the Museum as this is not a Personnel Board issue.
- b. City of Fultondale Resolution No. 1403 granting three (3%) percent Cost of Living Allowance for employees of the City of Fultondale, effective the pay period beginning September 23, 2009 was acknowledged by the Board.
- c. City of Vestavia Resolution No. 4013 to grant a one (1%) cost of living increase and resolution No. 4012 to forego merit increases for all employees for FY2009-2010 was acknowledged by the Board. David Martin and Roger Wyatt, representatives of the Vestavia Fire Department, addressed the Board challenging the City's right to forego merit increases. Mr. Martin and Mr. Wyatt cited Section 12 of the Enabling Act in making their argument. The Board did not agree with their interpretation that the Act mandates merit increases each year and cited the language in the Rules and Regulations and in the 2009-2010 Salary Administration and Classification Plan that states that merit increases are awarded at the "discretion of the appointing authority."
- d. September Board Bi-Monthly Expenditure Reports.
- e. Other Business

V. EXECUTIVE SESSION

The Board met in Executive Session with counsel to receive an update on issues with the City of Birmingham.

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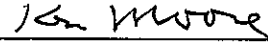
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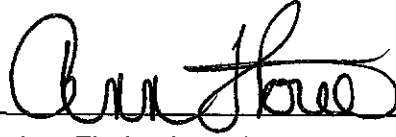
There was no further business and the meeting adjourned at 3:40 p.m.



Alfred "Buddy" Smith, Chair
Personnel Board of Jefferson County



Ken Moore, Associate Member
Personnel Board of Jefferson County



Ann Florie, Associate Member
Personnel Board of Jefferson County

Attested By:



Lorren Oliver, Director



THE MERIT SYSTEM

Personnel Board of Jefferson County

BOARD ITEM – APPROVAL OF LEGAL SERVICES FROM LAW FIRMS

DATE OF

REQUEST: November 10, 2009

SUBJECT:

Authorization for the Personnel Board of Jefferson County to engage professional legal services from the law firms of Lloyd, Gray and Whitehead P.C., Balch & Bingham LLP and Benton and Centeno LLP.

RATIONALE:

The purpose of this contract is to secure the professional legal services of the law firms Lloyd, Gray and Whitehead P.C., Balch and Bingham LLP and Benton and Centeno LLP for the year 2009-2010. The cost of services from the respective law firms is identified in the attached engagement letters.

RECOMMENDATION: The Personnel Board of Jefferson County is authorized to engage the law firms of Lloyd, Gray and Whitehead P.C., Balch and Bingham LLP, and Benton and Centeno LLP to provide legal services for 2009-2010.

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2121 8th Avenue North, Suite 100, Birmingham, Alabama 35203-2387, Tel 205-279-3500, Fax 205-279-3501, Internet <http://www.Personnel Boardal.org>

LLOYD, GRAY & WHITEHEAD, P.C.

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September 4, 2009

LETTER AGREEMENT

Lorren Oliver
**THE PERSONNEL BOARD
OF JEFFERSON COUNTY**
2121 Eighth Avenue North, Suite 100
Birmingham, AL 35203-2387

Re: Representation of the Jefferson County Personnel Board

Dear Lorren:

The following letter will set forth our agreement with respect to my firm's representation of the Jefferson County Personnel Board for the calendar year 2009-2010. All matters submitted to Lloyd, Gray & Whitehead for representation by the Personnel Board will be handled by one or more of the following individuals: Laura C. Nettles, (Partner), Rachel VanNortwick, (Associate), Bryan A. Grayson, (Associate), and Christopher Stabile, (Paralegal).

Our current billable rates for the Jefferson County Personnel Board are as follows: \$155.00 for partners, \$140.00 for associates and \$80.00 for paralegals.

After you have had an opportunity to review this letter, if you have any comments or questions, please do not hesitate to contact me.

Very truly yours,

LLOYD, GRAY & WHITEHEAD, P.C.



Laura C. Nettles

LCN/map

cc: Stephen E. Whitehead, Esq.
LaVette Lyas, Esq.



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, DC

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September 15, 2009

Mr. Lorren O. Oliver
Personnel Director
Jefferson County Personnel Board
2121 8th Avenue North
Suite 100
Birmingham, AL 35203-2387

Re: Engagement Letter

Dear Lorren:

Since 2002, our firm has appreciated its relationship with the Personnel Board of Jefferson County. We are proud and count it a privilege to have played a part in its many achievements.

This letter will confirm our continuing engagement to provide legal services to the Personnel Board of Jefferson County through the fiscal year ending on September 30, 2010. In consideration of our longstanding relationship and the need for fiscal restraint at the Personnel Board, we will invoice the Board at the significantly discounted hourly rates of \$265 for me, \$300 for Leslie Coyne, and similar rates for other lawyers of similar experience levels. We will also invoice for the actual expenses incurred in our representation of the Board (excluding regular overhead).

We greatly value our relationship with PBJC and look forward to continuing to serve you.

Very truly yours,

Aaron L. Dettling

ALD:sc

Benton and Centeno, LLP

*Lee R. Benton**
Douglas J. Centeno*
Brenton K. Morris
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**Also admitted in Florida
**Also admitted in Tennessee*

September 21, 2009

HAND DELIVERY

Personnel Board of Jefferson County
ATTN: Lorren O. Oliver
2121 8th Avenue North, Suite 100
Birmingham, Alabama 35203-2387

Re: Jefferson County
Our File No. 2850-001

Dear Mr. Oliver:

This letter shall set forth our agreement with respect to my Firm's representation of the Personnel Board of Jefferson County for fiscal year 2009 - 2010. All matters submitted to Benton & Centeno, LLP for representation by the Personnel Board will be handled by one or more of the following individuals: Lee R. Benton (Partner), Brenton Morris (Partner), Amy Hazelton (Associate). Our billable rates for the Personnel Board of Jefferson County are as follows: \$295 per hour for Partners; \$185 per hour for Associates.

Thank you for allowing us the opportunity of undertaking this representation.

Sincerely,



Lee R. Benton

LRB/krm
cc: Aaron Dettling, Esquire

RECEIVED
PERSONNEL BOARD
2009 SEP 21 P 1:32
ADMINISTRATION

IN THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

CITY OF BIRMINGHAM)	
(FIRE & RESCUE SERVICE)	
DEPARTMENT))	
)	
Complainant)	
)	
)	
v.)	CASE NO. DA-2009-1727
)	
JOSHUA R. DAVIS)	
Respondent.)	

ORDER

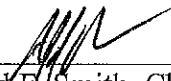
This cause comes before the Personnel Board of Jefferson County (hereinafter referred to as the "Board") on November 10, 2009 on the Hearing Officer's Report and Recommendation dated October 27, 2009, to uphold the termination of Respondent Joshua R. Davis. Respondent is charged with violating Personnel Board Rules 12.2: (c) Conduct unbecoming a Classified Employee; 12.2 (l) Violation of any rule or regulation of the Appointing Authority, or failure to comply with instructions made and given by a superior officer or supervisor; (m) Violation of any of the provisions of the Act or of these Rules; and (p) Any other legitimate and nondiscriminatory reason that constitutes good cause for disciplinary action, is reasonably specific, is consistent with the Act and these Rules, and is not motivated by any non-work-related preference or animus for or against any person.

After a review of the Hearing Officer's Report and Recommendation, Respondent's objections to the Hearing Officer's Report and Recommendation, audio-recording of the Hearing, exhibits and based on consideration of all of the evidence


presented, it is the opinion and decision of the Board that the City of Birmingham's Fire and Rescue Service Department's decision to terminate Respondent Jason Davis is due to be AFFIRMED. Accordingly, the Board ADOPTS the Hearing Officer's Findings of Fact and Recommended Decision which is attached hereto and marked as Exhibit A.

In accordance with Rule 12.12, the Complainant, City of Birmingham Fire and Rescue Service Department, shall provide written confirmation and compliance of this Order to the Personnel Board of Jefferson County, within ten (10) calendar days from the date of the Decision.

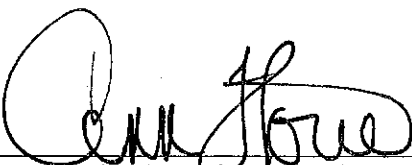
Done this the 10th day of November, 2009



Alfred F. Smith, Chair
Personnel Board of Jefferson County

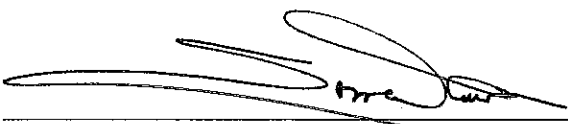


L. Kenneth Moore, Associate Member
Personnel Board of Jefferson County



Ann Florie, Associate Member
Personnel Board of Jefferson County

Attested by:



Lorren Oliver, Director
Personnel Board of Jefferson County

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this cause by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 10th day of November 2009.

The Honorable Michael A. Anderson **(E-mail)**
Shaw & Anderson, LLC
2924 Crescent Avenue
Birmingham, AL 35209-2522
Michael@shawanderson.com

(Certified Mail)
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Of Counsel

“EXHIBIT A”

PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

CITY OF BIRMINGHAM
(FIRE AND RESCUE SERVICE DEPARTMENT

COMPLAINANT,

v.

JOSHUA R. DAVIS,

RESPONDENT.

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)

CASE NO. DA-2009-1727

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PBUC
EMPLOYEE RELATIONS

HEARING OFFICER'S FINDING OF FACT, LAW
AND RECOMMENDED DECISION

THIS CAUSE, coming on to be heard based on the timely appeal of Respondent, Joshua R. Davis, hereinafter "Davis", was called for hearing on the 14th day of October, 2009. Present in open court was the Honorable Ted Smith and Michael Fliegel for the City of Birmingham with Assistant Fire Chief Carl Harper in attendance as the City's representative, and the Honorable Gary Brown with his client, Joshua R. Davis, Respondent.

Finding of Fact:

The parties stipulated that Davis was terminated from the City of Birmingham Fire and Rescue Service on or about May 1, 2009 and that Davis was properly served "Notice" and afforded an opportunity to respond to the charges in accordance with Personnel Board Rules and Regulations. Davis' appeal was timely .

During the trial in this cause, the Hearing Officer benefitted from hearing credible testimony from various witnesses, to wit: Joshua Davis, Respondent; Terry Payton of Absolute Detection Drug Services; Ivor J. Brooks, Fire Chief; Barbara Harrison, Employee Assistance Service; Barbara White, City Personnel Department Director; Carl Harper, Assistant Fire Chief; William Brown, Battalion Chief; Frank Anderson, Former Fire Fighter; Don Baker, Lt. with Birmingham Fire; and Floyd Wilkes, Jr. Safety Officer; in addition, the Hearing Officer was afforded the opportunity to review and consider approximately fifteen (15) exhibits entered as evidence by counsel for both parties.

The evidence indicated that Davis began his employ as a fire fighter with the City of Birmingham in about July of 2000. In the latter part of 2008, Davis was promoted to "Apparatus Operator" which allows more responsibility to Davis in terms of leadership, crew safety and operation of the fire truck. Davis' shift was a 24 hours on and 48 hours off schedule.

On direct examination, Davis conceded that he had been struggling with alcoholism for months and that he began to drink heavily 5 years in to his career. He indicated that he liked beer, vodka and whiskey and that he would typically drink substantial amounts of alcohol during his 48 hour off time. There were occasions that Davis consumed an entire fifth of whiskey and additional beer during his 48 hour off time. Typically, Davis would drink alcohol up until midnight, the day before he began his 24 hours shift beginning at 8:00 a.m. Concurrently, Davis was taking prescription medication to assist him with sleep, as well as, an anti-depressant. Such medications were properly prescribed by a physician. In or about August of 2008, Davis began treatment as suggested by Dr. Roberto Norniella, whom Davis had sought treatment due to his problem with alcohol. Davis entered an Employee Assistant Program (EAP) as provided by the City. In December of 2008, Davis went to "limited duty" status with the Fire Department which reduced his normal 200 hours per month pay, to 160 hours per month. Davis conceded that while on "limited duty" he continued his habit of consuming alcohol in substantial amounts during his off time.

On April 22, 2009, Charles Carter forwarded a Memorandum to Chief Brooks indicating that as a result of a medical evaluation, Davis was eligible to return to work full time, without any restrictions, provided he completes a drug urine test and breath alcohol test. Davis testified that he needed to resume his normal works hours (and pay) due to his personal financial struggles. Davis testified that he was aware of this communication from Carter to Brooks and he was directed to appear at the office of Assistant Chief Harper on April 28. Prior to Davis' appearance at Assistant Chief Harper's office, Davis continued drinking substantial amounts of alcohol and testified that he actually consumed a case of beer and 1 gallon of Vodka in a 2-3 day period. Upon appearing at Assistant Chief Harper's office, Davis was instructed to immediately visit Absolute Drug Detection for a breath test for alcohol. Because he forgot his driver's license on this day, Davis had to first visit his home to retrieve a driver's license that would be required during testing. Ultimately, Davis arrived at the facility and tested positive for alcohol while submitting a reading of .118 which is in excess of Alabama's legal limit. Davis was not allowed to leave the testing facility on his own accord and was picked up by another employee some time later. Davis testified that he believed it reasonable to be tested and that he has been an alcoholic his whole life. Evidence was presented in an apparent challenge to the breath test results, however there is no indication that the testing was inaccurate or improper as finalized. The machine is calibrated each month and the testing administrator testified to smelling alcohol on the breath of Davis, in addition to formal testing.

Davis was terminated from his employ based upon the failed drug test. The City contends that Davis was in a safety sensitive position and that Davis was in clear violation of the Substance Abuse Policy. It was especially bothersome to Chief Brooks that Davis would fail a drug test that Davis himself knew he would called upon to participate on April 28.

Davis asserted several arguments in support of his position that termination was not proper. Among other things, Davis argues that his condition with alcohol is an illness for which he must address each day and that at least one previous employee of the City had been tested positive for alcohol and was not terminated. Davis further asserts that if the City had

followed its own guidelines contained in Section II. C. of the Substance Abuse Policy, then Davis would have been allowed to enter into a 2 year contract of sobriety and treatment in order to cure any violations in conduct.

Applicable Law:

That the Respondent was terminated for violations of the following Rules and Regulations of the Personnel Board of Jefferson County:

Rule 12.2 (c) Conduct unbecoming a Classified Employee;

- (l) Violation of any rule or regulation of the Appointing Authority, or failure to comply with instructions made and given by a superior officer or supervisor;
- (m) Violation of any of the provisions of the Act or of these Rules; and
- (p) Any other legitimate and non discriminatory reason that constitutes good cause for disciplinary action, is reasonable specific, is consistent with the Act and these Rules and is not motivated by any non-work-related preference or animus for or against any person; and Mayor's Executive Order 66-91 (Substance Abuse Policy) as amended January 16, 1995.

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Recommended Decision:

Based upon the extensive testimony and tangible exhibits offered and considered during the trial of this cause, it is clear that Davis has present problems with alcohol. Davis himself admits that the problem has been continuous and even worsened with time. At the time of the hearing, Davis asserted that he had been free of alcohol for months, however he would always remain an alcoholic. The evidence does not indicate that the termination of Davis was unfair or discriminatory based upon, among other things, the following:

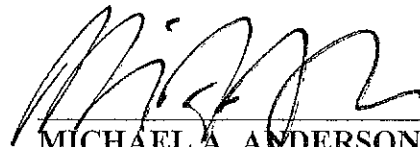
First, Davis was clearly in a "safety sensitive position" as potential driver of the fire truck during emergency circumstances. The City's Substance Abuse Policy, section II. G. clearly conveys the City's intent to perform alcohol/drug testing upon persons in safety-sensitive services, persons who operate motor vehicles and the like. As recited above, even Davis knew he would be subjected to testing on the day he entered the office of Assistant Chief, as an apparatus operator. While the City might extend every opportunity for an employee to correct their personal problems, such opportunities must yield to the safety of fellow employees and general public. The fact that Davis might have been allowed to operate a Fire Truck carrying additional fire men, through the crowded streets of Birmingham, while legally intoxicated, is simply unthinkable. Notwithstanding the safety concerns of the innocent persons in this scenario, the City's liability would be enormous.

As stated above, Davis relied heavily on provision II. C. of the Substance Abuse Policy arguing that he was not given the opportunity to cure or properly address his alcoholism while maintaining his employ with the City. Davis believed he had a right to participate in the 2 year program outlined in the provision of the policy. However, the

provision clearly indicates that "*Participation in the EAP does not automatically exempt an employee from disciplinary action for violating the City's substance abuse policy.*" In addition, the provision further provides that upon an employee seeking assistance through the EAP or other source, they must refrain from violating the City's substance abuse policy. Davis failed to satisfy these terms and in fact, conceded that he began drinking alcohol in greater volumes after seeking treatment.

The testimony of the former employee that tested positive for alcohol and not terminated was not indicative of any discriminatory practices. The former employee was not in a "safety sensitive position" as was Davis, nor was there testimony that would serve to equate the two circumstances as being reasonably parallel in this instance.

The decision to terminate Joshua R. Davis is hereby AFFIRMED.



MICHAEL A. ANDERSON
Hearing Officer

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PBJC
EMPLOYEE RELATIONS

Attested by:

A handwritten signature in black ink, appearing to read "Lorren Oliver", is written over a horizontal line.

Lorren Oliver, Director
Personnel Board of Jefferson County

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this cause by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 10th day of November 2009.

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Of Counsel

BEFORE THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

**JEFFERSON COUNTY DEPARTMENT)
OF HEALTH)
)
Complainant)
)
v.) **CASE NO. DA-2009-1744**
)
JANIS L. ADAMS)
)
Respondent.)**

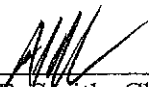
ORDER

This cause comes before the Personnel Board of Jefferson County (hereinafter referred to as the "Board") on November 10, 2009 on the Joint Stipulation to Dismiss Appeal as Resolved between the Complainant, Jefferson County Department of Health and Respondent Janis L. Adams filed on October 1, 2009.

After a review and consideration of the terms of the Settlement Agreement, it is the opinion and decision of the Board that the Settlement Agreement between the Jefferson County Department of Health and Janis L. Adams. is due to be granted. Accordingly, the Board AFFIRMS the Settlement Agreement between the parties, which is attached hereto and marked as Exhibit A.

In accordance with Rule 12.12, the Complainant, Jefferson County Department of Health, shall provide written confirmation and compliance of this Order to the Personnel Board of Jefferson County, within ten (10) calendar days from the date of the Decision.

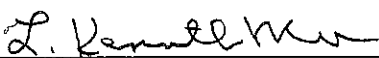
Done this the 10th day of November 2009.



Alfred F. Smith, Chair
Personnel Board of Jefferson County

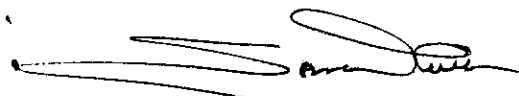


Ann Florie, Associate Member
Personnel Board of Jefferson County



L. Kenneth Moore, Associate Member
Personnel Board of Jefferson County

Attested by:



Lorren Oliver, Director
Personnel Board of Jefferson County

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this cause by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 10th day of November 2009.

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Of Counsel

“EXHIBIT A”

PERSONNEL BOARD
OF JEFFERSON COUNTY

PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

2009 OCT - 1 P 2:00
PERSONNEL BOARD
OF JEFFERSON COUNTY

JEFFERSON COUNTY)
DEPARTMENT OF HEALTH,)
)
Complainant,)
)
VS.)
)
JANIS L. ADAMS)
)
Respondent.)

Case No. DA 2009-1744

JOINT STIPULATION TO DISMISS APPEAL AS RESOLVED

COME NOW the Complainant, the Jefferson County Department of Health ("Complainant"), and the Respondent, Janis L. Adams ("Respondent") and hereby jointly move the Personnel Board of Jefferson County to dismiss the appeal upon acceptance of the below-listed principal terms of the resolution reached and entered into by Complainant and Respondent conditioned upon the Board's approval hereof.

1. The Respondent Adams filed this appeal of a ten day suspension. It has not yet been set for hearing by the Honorable William R. Myers, the Hearing Officer appointed by the Personnel Board.

2. Respondent agrees to accept, and Complainant agrees to implement, reduction of the suspension from ten days to seven days in resolution of this appeal.

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EMPLOYEE RELATIONS

3. Respondent agrees to not pursue any claims for damages for herself arising out of this matter, and the Complainant agrees to provide additional consideration to Respondent, all as set forth more specifically in a confidential settlement agreement between the parties.

4. The Respondent accepts the terms of this settlement; the Complainant accepts the terms of this settlement.

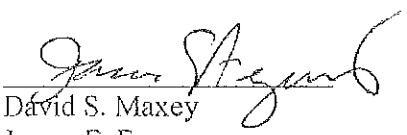
5. Upon receipt of acceptance by the Personnel Board of Jefferson County, Complainant will enter amended Personnel Action information into the Lawson system reflecting the suspension as a seven day suspension.

6. The aforementioned settlement is made pursuant to Personnel Board Rules and Regulations and does not conflict therewith.

WHEREFORE, premises considered, the parties make this joint request that the Board approve their settlement of this case and dismiss this appeal.

Respectfully submitted,


Janis L. Adams, Respondent


David S. Maxey
James E. Ferguson
Counsel of Record for Complainant,
Jefferson County Department of Health

PSJC
EMPLOYEE RELATIONS

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OF COUNSEL:

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EMPLOYEE RELATIONS

BEFORE THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

CITY OF BESSEMER UTILITIES)	
)	
Complainant)	
)	
v.)	CASE NO. DA-2009-1726
)	
LEE TURNER JR.)	
)	
Respondent.)	


ORDER

This cause comes before the Personnel Board of Jefferson County (hereinafter referred to as the "Board") on November 10, 2009 on the Settlement Agreement between the Complainant, City of Bessemer Utilities and Respondent Lee Turner Jr. In light of the Board's Order dated October 13, 2009, the parties, through counsel, filed a Joint Statement on October 21, 2009, which affirmed that the Settlement Agreement previously submitted on September 23, 2009 for the Board's review, contained all terms of the settlement and was the final agreement between the parties.

After a review and consideration of the terms of the Settlement Agreement, it is the opinion and decision of the Board that the Settlement Agreement between the City of Bessemer Utilities and Lee Turner Jr. is due to be granted. Accordingly, the Board **AFFIRMS** the Settlement Agreement between the parties, which is attached hereto and marked as Exhibit A.

In accordance with Rule 12.12, the Complainant, City of Bessemer Utilities, shall provide written confirmation and compliance of this Order to the Personnel Board of Jefferson County, within ten (10) calendar days from the date of the Decision.

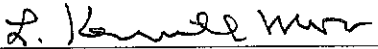
Done this the 10th day of November 2009.



Alfred F. Smith, Chair
Personnel Board of Jefferson County




Ann Florie, Associate Member
Personnel Board of Jefferson County



L. Kenneth Moore, Associate Member
Personnel Board of Jefferson County

Attested by:



Lorren Oliver, Director
Personnel Board of Jefferson County

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this cause by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 10th day of November 2009.

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Certified Mail

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Personnel Board of Jefferson County
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Birmingham, AL 35203

Of Counsel

“EXHIBIT A”

PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

IN RE:

CITY OF BESSEMER)
(BESSEMER UTILITIES),)
Complainant)
vs.)
LEE G. TURNER, JR.,)
Respondent.)

CASE NUMBER DA-2009-1726

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OF JEFFERSON COUNTY
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SETTLEMENT AGREEMENT AND RELEASE

COME NOW, the City of Bessemer, Alabama and Bessemer Utilities (hereinafter referred to as "Complainant"), and Lee G. Turner, Jr. (hereinafter referred to as "Respondent"), and enter into this Settlement Agreement in order to resolve the pending appeal before the Jefferson County Personnel Board in the above-styled proceeding as follows:

1. For and in consideration of the Respondent's decision to dismiss this appeal before the Personnel Board of Jefferson County in Case Number DA 2009-1726 and the payment of back pay, and the receipt of good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, I, Lee G. Turner, Jr., do for myself, and for all those who might claim through me, hereby release and forever discharge the City of Bessemer, Alabama, a municipal corporation, Bessemer Utilities, its Agents, employees, Mayor and Council Members from any and all liability, claims, damages or suits of any kind whether or not such is/are known, or which may hereinafter arise flowing from, arising out of, or in any way whatsoever connected, directly or indirectly with termination from Bessemer Utilities and Case No. DA-2009-1726.

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OF JEFFERSON COUNTY
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PERSONNEL BOARD
OF JEFFERSON COUNTY

2. This Settlement Agreement and Release shall apply mutually to the Complainant and the Respondent as to all possible claims, including damages regarding employment or termination of employment, including any action for the declaratory or injunctive relief as well as any other possible claim or cause of action relating to employment or termination of employment of the Respondent.

3. The Complainant will pay the Respondent Ten Thousand Dollars and (\$10,000.00). This amount represents a settlement of back pay that the Respondent may be due, all damages, including compensatory damages, punitive damages, injunctive relief and attorney fees which the Respondent may have incurred with respect to this matter. The Respondent agrees and understands that no deduction from the \$10,000.00 payment cited above will be made for taxes payable to the Federal, State or local government as a result of this settlement and the Respondent understands that it will be reported as income. Respondent agrees to hold the Complainant harmless for all taxes, fees, penalties, and interest that may be owed from the settlement amount.

4. That the Respondent's pending appeal before the Jefferson County Personnel Board in the above-styled matter will be dismissed with prejudice.

5. That the Parties to this appeal (Respondent and Complainant) do hereby request the Jefferson County Personnel Board to enter an Order pursuant to this Settlement Agreement and Release.

6. In exchange for the promises made by the Parties, the Respondent, Lee G. Turner, Jr., hereby agrees not to institute a lawsuit under Title VII of the Civil Rights Acts of 1964, as amended, the Age Discrimination and Employment Act of 1967, as amended,

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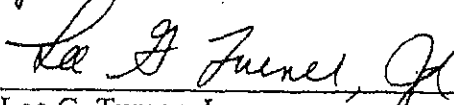
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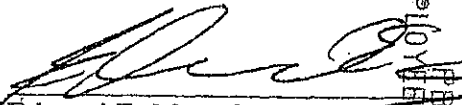
or the American for Disabilities Act of 1990, as amended, based on Case No. DA-2009-1726 or any other matters related to his termination.

7. That the Respondent has entered into this Settlement Agreement and Release of his own free will, after consultation with his counsel, and affirms that this Settlement Agreement and Release is not the product of duress or other improper influence. Respondent agrees not to seek further remedy or employment from Bessemer Utilities/City of Bessemer, Alabama once this Settlement Agreement and Release is executed. This Settlement Agreement and Release is fully understood by the Respondent and Respondent agrees that, in construing this instrument, the doctrine of construction against the drafter shall not apply, but that any Court shall construe it in a manner, which most nearly expresses the intent of the Parties.

Dated this the 24th day of September, 2009.



Lee G. Turner, Jr.
Complainant

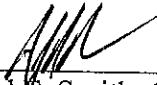


Edward E. May, Superintendent
Bessemer Utilities

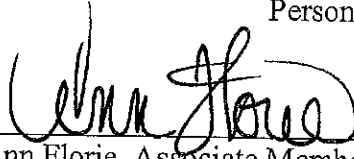
I, the Honorable Richard Izzi, Hearing Officer, having reviewed the terms and conditions of this Settlement Agreement and Release and having heard the agreement of the Parties at the hearing held on August 21, 2009 at the Jefferson County Personnel Board, do hereby approve of said Settlement Agreement and Release and recommend that the Director of the Jefferson County Personnel Board approve this settlement and dismiss the appeal with the stipulations as set out herein.



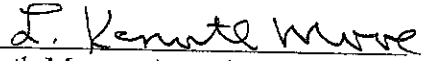
Richard Izzi, Hearing Officer



Alfred F. Smith, Chair
Personnel Board of Jefferson County




Ann Florie, Associate Member
Personnel Board of Jefferson County



L. Kenneth Moore, Associate Member
Personnel Board of Jefferson County

Attested by:



Lorren Oliver, Director

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this cause by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 10th day of November 2009.

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Attorney Ted I. Smith (E-mail)
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Ms. Eva Bray (E-mail)
Birmingham Personnel Department
Room 800
Birmingham City Hall
Birmingham, AL 35203
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Deputy Chief Richard Brasfield (E-mail)
Birmingham Fire & Rescue Service Dept.
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Room 600
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Birmingham, AL 35216-5138
heather@heatherleonardpc.com

Ms. Barbara White (E-mail)
Birmingham Director of Personnel
Room 800
Birmingham City Hall
Birmingham, AL 35203
barbara.white@birminghamal.gov

Mr. Roger McCullough (E-mail)
Personnel Board of Jefferson County
2121 8th Avenue North Suite 100
Birmingham, AL 35203
mcculloughr@pbjcal.org

Of Counsel

“EXHIBIT A”

IN THE PERSONNEL BOARD OF
JEFFERSON COUNTY, ALABAMA

P. RENEE LISTER,)

Complainant,)

v.)

CITY OF BIRMINGHAM)
(FIRE & RESCUE SERVICE DEPARTMENT),)

Respondent.)

CASE NO. 10-019
GR-2008-10-019

EMPLOYEE RELATIONS
PBJC

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FINDINGS OF FACT AND LAW
AND RECOMMENDED DECISION

FINDINGS OF FACT

1. This hearing follows the filing of a grievance from P. Renee Lister.
2. During the hearing of this grievance, testimony was given by David Russell (Battalion Relief Chief), Maurice Miller (Lieutenant), Quinton Payne (Firefighter), Brian Gargus (Assistant Chief) and P. Renee Lister.
3. On October 8, 2008, Ms. Lister filed a grievance alleging that Chief Russell had subjected her to “constant bantering, disrespect, slander and harassment.”
4. In her grievance, Ms. Lister specifically complained that, on October 1, 2008, Chief Russell yelled at her and cursed her in the presence of Lieutenant

Miller and Lieutenant Shedric Powell. Ms. Lister also alleged that Chief Russell visited the station at various times, which Ms. Lister seemed to consider to be harassment.

5. Lieutenant Miller admitted that Chief Russell had cursed during the October 1 meeting, but Lieutenant Miller believed that Chief Russell's comments and actions were directed at Lieutenants Miller and Powell as well.

6. Ms. Lister was not disciplined as a result of this incident with Chief Russell.

7. Chief Russell asked for a transfer before Ms. Lister filed her grievance, and he was transferred approximately a month after she filed her grievance. They longer work around each other.

8. Ms. Lister testified that, although she does not work around Chief Russell anymore, he has caused problems for her with other supervisors and also at another place of employment.

9. Chief Russell testified that he visited the station only a couple of times a month as part of his duties as Relief Chief.

FINDINGS OF LAW

Ms. Lister has not met her burden of demonstrating that Chief Russell harassed her or acted in a manner that adversely affected a substantial term or condition of her employment, in violation of the Rules and Regulations of the

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CHIEF
PBB
EMPLOYEE RELATIONS

Personnel Board of Jefferson County, Alabama. Ms. Lister claimed that Chief Russell subjected her to “constant bantering, disrespect, slander and harassment,” but most of her evidence related to an incident on October 1.¹ With respect to that incident, Ms. Lister described comments and actions that, even if somewhat inappropriate, were not solely directed at her and do not rise to the level of actionable harassment.

Moreover, there is no evidence that Chief Russell adversely affected Ms. Lister’s employment. She did not receive any disciplinary action as a result of the incident on October 1. Ms. Lister claimed that Chief Russell has caused problems for her with other supervisors and also at another place of employment, but she presented no evidence substantiating these claims.

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PEJ/C
EMPLOYEE RELATIONS

RECOMMENDED DECISION

This hearing officer recommends that the Personnel Board of Jefferson County deny this grievance.

¹ Ms. Lister complained about Chief Russell visiting the station, but she has not shown that his visits were designed to harass her. In fact, Chief Russell testified that he visited the station only a few times a month as part of his duties. Ms. Lister did not dispute this testimony.

Done this 28th day of October, 2009.

s/ Tamula R. Yelling

Tamula R. Yelling
tyelling@constangy.com
CONSTANGY, BROOKS & SMITH, LLP
1819 Fifth Avenue North
One Federal Place, Suite 900
Birmingham, Alabama 35203
Telephone: (205) 226-5471
Facsimile: (205) 323-7674

HEARING OFFICER

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PBJC
EMPLOYEE RELATIONS

BEFORE THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

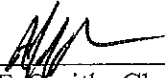
DERRY JOHNSON)
)
 Grievant,)
)
 v.) **CASE NO. GR-2009-08-0206**
)
 JEFFERSON REHABILITATION)
 AND HEALTH CENTER)
 Respondent.)

ORDER

This cause comes before the Personnel Board of Jefferson County (hereinafter referred to as the "Board") on November 10, 2009 with respect to the grievance filed by employee Derry Johnson. On September 1, 2009, Grievant Johnson alleges that she is subjected to a hostile work environment from her supervisor at the Jefferson Rehabilitation and Health Center.

On September 11, 2009, the Personnel Director found that this grievance was not subject to the grievance procedure under Rule 15 of the Personnel Board Rules and Regulations. On September 22, 2009, Grievant Johnson filed an appeal to the Director's determination of the grievance. After a review and consideration of the record, the Board AFFIRMS the Personnel Director's determination that the grievance is not adjustable under Rule 15 of the Personnel Board Rules and Regulations.

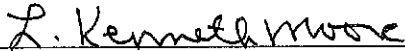
Done this the 10th day of November, 2009.



Alfred F. Smith, Chair
Personnel Board of Jefferson County




Ann Florie, Associate Member
Personnel Board of Jefferson County



L. Kenneth Moore, Associate Member
Personnel Board of Jefferson County

Attested by:



Lorren Oliver, Director

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this cause by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 10th day of November 2009.

(Interoffice Mail)

Commissioner William Bell
Jefferson County Commission
716 North Richard Arrington, Jr. Blvd.
Suite 220
Birmingham, AL 35203

Certified Mail

Ms. Derry R. Johnson
578 Overlook Road
Fultondale, AL 35068

(E-mail)

Attorney Theo Lawson
Jefferson County Attorney's Office
Suite 280
716 Richard Arrington, Jr. Blvd
Birmingham, AL 35203
lawsont@jccal.org

(E-mail)

Mr. Derrick Williams, NHA
Jefferson Rehabilitation & Health Center
200 North Pinehill Road
Birmingham, AL 35217
williamsder@jccal.org

(E-mail)

Ms. Diane Redrick
Jefferson County Courthouse
Room A610 North Annex
Birmingham, AL 35203
redrickd@jccal.org

Of Counsel

BEFORE THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA


ROWENA GADSON-JONES)	
)	
Complainant)	
)	
v.)	CASE NO. DA-2009-1755
)	IWP-2009-1749
CITY OF BIRMINGHAM)	
)	
Respondent.)	

ORDER

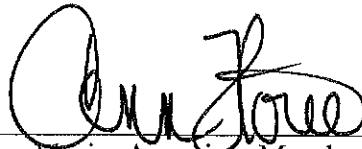
This cause comes before the Personnel Board of Jefferson County (hereinafter referred to as the "Board") on November 10, 2009 on the Motion to Stay Proceedings filed on October 28, 2009 pending the resolution of her criminal charges.

It is the opinion and decision of the Board that the Motion to Stay is due to be GRANTED. Complainant must notify the Personnel Board within (10) days after the criminal cases have concluded about her intention to pursue the above-referenced cases.

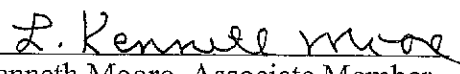
Done this the 10th day of November 2009.



Alfred F. Smith, Chair
Personnel Board of Jefferson County

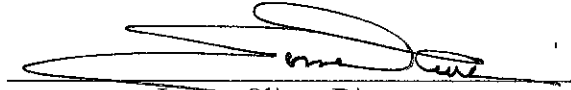


Ann Florie, Associate Member
Personnel Board of Jefferson County



L. Kenneth Moore, Associate Member
Personnel Board of Jefferson County

Attested by:

A handwritten signature in black ink, appearing to read "Lorren Oliver", is written over a horizontal line.

Lorren Oliver, Director
Personnel Board of Jefferson County

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order upon all parties and counsel of record in this case by electronic mail or placing a copy of same in the United States mail, postage prepaid, addressed as follows on this 10th day of November 2009.

(E-mail)

The Honorable Tamula R. Yelling
Constangy, Brooks & Smith, LLC
One Federal Place
1819 5th Avenue North Suite 900
Birmingham, AL 35203-2120
tyelling@constangy.com

(Certified Mail)

Ms. Rowena Gadson-Jones
4702 Thornhill Road
Gardendale, AL 35071

(Interoffice Mail)

Acting Mayor Carole Smitherman
Birmingham City Hall
3rd Floor
Birmingham, AL 35203

(E-mail)

Chief A. C. Roper
Birmingham Police Department
1710 First Avenue North
Birmingham, AL 35203
acroper@ci.birmingham.al.us

(E-mail)

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(E-mail)

Mr. Roger McCullough
Personnel Board of Jefferson County
2121 8th Avenue North Suite 100
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mcculloughr@pbjcal.org

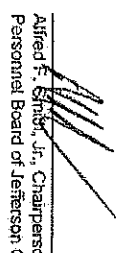
Of Counsel

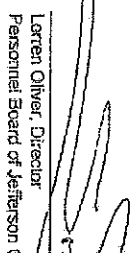
**PERSONNEL BOARD
OCTOBER BI-MONTHLY
EXPENDITURE REPORTS**

PERSONNEL BOARD OF JEFFERSON COUNTY
 BI-WEEKLY EXPENDITURE REPORT FOR THE CHAIRMAN OF THE BOARD
 OCTOBER 3, 2009 THROUGH OCTOBER 16, 2009

BRIEF DESCRIPTION
 OF SERVICES/PRODUCT PROVIDED

YENDOR	BRIEF DESCRIPTION	AMOUNT OF INVOICE	WEEK SUBMITTED FOR PAYMENT
1 BSHRM	Leadership development for PBJC Training Advisor - December 2009	75.00	October 9, 2009
2 Hoda Latina, LLC	Marketing services to attract bilingual and Hispanic applicants to the Merit System - August 2009	2,024.00	October 9, 2009
3 Impact Group	PBJC employee tuition reimbursement - employee pursuing Masters in Business Science - summer 2009	600.00	October 9, 2009
4 Lloyd, Gray & Whitehead, PC	Legal services related to J. Haynes vs. Personnel Board - July 2009	186.00	October 9, 2009
5 Lloyd, Gray & Whitehead, PC	Legal services related to H. Shepard vs. Personnel Board - July 2009	77.50	October 9, 2009
6 Crystal Springs of Alabama	Twenty bottles of drinking water for PBJC staff and visitors - September 2009	120.00	October 9, 2009
7 AON Consulting, Inc.	Practicing services, profile scoring and reporting for 125 candidates - August 2009	2,750.00	October 9, 2009
8 Cox Radio, Inc.	Radio advertising for Board's Firefighter recruiting campaign - early September 2009	1,030.00	October 16, 2009
9 Citadel Broadcasting Company	Radio advertising for Board's Firefighter recruiting campaign - September 2009	2,650.00	October 16, 2009
10 Balch & Bingham	Legal services provided to the Personnel Board - September 2009	18,862.66	October 16, 2009
12 Balch & Bingham	Legal services related to M. Stratt - September 2009	136.00	October 16, 2009
13 American Psychological Association	Annual membership for Personnel Director - Fiscal Year 2010	455.00	October 16, 2009
14 Cox Radio, Inc.	Radio advertising for Board's Firefighter recruiting campaign - late September 2009	518.00	October 16, 2009
15 Lloyd, Gray & Whitehead, PC	Legal services related to C. Green vs. City of Ironton and Mayor Truck - September 2009	914.94	October 16, 2009
16 Ken Moore	Legislative allowance for Ken Moore, PBJC Board Member - board meetings for August, September & October 2009	225.00	October 16, 2009
17 Ann Florie	Legislative allowance for Ann Florie, PBJC Board Member - board meetings for August, September & October 2009	225.00	October 16, 2009
18 Adventure Travel	Volunteer assessor travel to assist the Personnel Board with testing assessments - September 28, 2009 through October 4, 2009	422.40	October 16, 2009
19 Red Diamond	Coffee, creamer and coffee cups for board training participants - September 2009	232.59	October 16, 2009
20 Implementation Services Group, Inc.	Lawson Software Consulting services - September 2009	1,450.00	October 16, 2009
21 Citrus Document Management	Document destruction services for sensitive Board documents - July 2009	82.30	October 16, 2009
22 Citrus Document Management	Document destruction services for sensitive Board documents - August 2009	115.50	October 16, 2009
23 Citrus Document Management	Document destruction services for sensitive Board documents - September 2009	49.50	October 16, 2009
24 The Birmingham Times	Newspaper advertising of Merit System position (Planner) - October 2009	63.84	October 16, 2009
25 The Birmingham News	Newspaper advertising of Merit System positions (Deputy Director of General Services, Jobsassistant) - September 2009	1,448.21	October 16, 2009
	TOTAL	34,410.64	

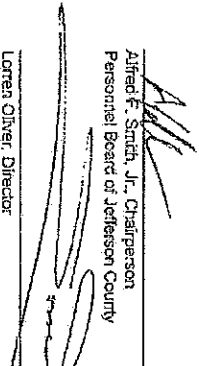

 Alfred F. Stratt, Jr., Chairperson
 Personnel Board of Jefferson County

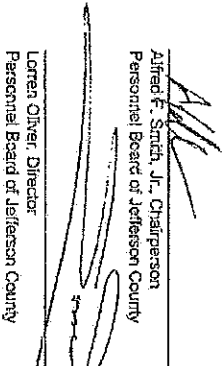

 Larren Oliver, Director
 Personnel Board of Jefferson County

Date 11-3-09
 Date 10-22-09

PERSONNEL BOARD OF JEFFERSON COUNTY
 BI-WEEKLY EXPENDITURE REPORT FOR THE CHAIRMAN OF THE BOARD
 OCTOBER 17, 2009 THROUGH OCTOBER 30, 2009

VENDOR	BRIEF DESCRIPTION	AMOUNT OF INVOICE	WEEK SUBMITTED FOR PAYMENT
1. Iron Mountain	Storage of PB/C documents - August 2009	252.03	October 23, 2009
2. Iron Mountain	Storage of PB/C documents - September 2009	252.03	October 23, 2009
3. Lloyd, Gray & Wilkhead	Legal services related to J. Heyres vs. PB/C - August 2009	15.50	October 30, 2009
4. Lloyd, Gray & Wilkhead	Legal services related to R. Martin vs. PB/C - August 2009	1,534.70	October 30, 2009
5. Thomson West	Monthly online legal subscription for Board's General Counsel - September 2009	516.80	October 30, 2009
6. Assessor Reimbursement Expenses	Eighteen volunteer testing assessors for September 2009 Role Play	2,873.65	October 30, 2009
7. Assessor Reimbursement Expenses	Thirty-nine volunteer Testing assessors for October 2009 Police Sergeant Assessment	5,926.43	October 30, 2009
8. Cravath, Swaine & Moore	Legal expenses related to the termination of the Board's consent decree - second payment due by December 14, 2009	450,000.00	October 30, 2009
9. CVR Computer Supplies	Quarterly copier rental for Board printers - September 2009	1,048.69	October 30, 2009
10. Berney Office Solutions	Quarterly copier rental for PB/C (Training Department) - through September 30, 2009	132.00	October 30, 2009
11. Berney Office Solutions	Quarterly copier rental for PB/C (Recruitment Department) - through September 30, 2009	132.00	October 30, 2009
12. Dell	Printer Card for PB/C employees' computer - August 2009	75.95	October 30, 2009
13. Association of Government Accountants	Six month membership renewal for PB/C's Business Officer - October 1, 2009 through March 31, 2010	50.00	October 30, 2009
14. Affiliated Computer Services	Monthly hosting service of Lawson data - October 2009	28,800.00	October 30, 2009
15. Lanar	Monthly broadband advertising and billboard storage fees - October 2009	4,245.00	October 30, 2009
16. Shaw-Anderson, LLC	Hearing Officer expenses related to City of Birmingham Fire & Rescue vs. J. Davis - October 2009	750.00	October 30, 2009
17. Raymond Goodby	PB/C employee mileage reimbursement - travel to Career Event in Troy, Alabama (no County vehicles available for rental) - October 2009	129.29	October 30, 2009
18. Rance Aliman II	PB/C employee mileage reimbursement for site observation related to Promotional Police assessment - April 2009	14.16	October 30, 2009
19. Torva Dawson	PB/C employee mileage reimbursement for Testings Focus Group meetings (Leeds, Trussville, JCOH, Pleasant Grove) - July 2009	35.71	October 30, 2009
20. Libby Miller	PB/C employee mileage reimbursement and parking fee for one-day travel to PAC conference (Nashville, TN) - September 2009	161.53	October 30, 2009
21. Society for Industrial and Organizational Psychology	New book published in SIOP Organizational Frontiers Series ("Advise Impact") for Personnel Director - October 2009	63.96	October 30, 2009
22. Birmingham Society of Human Resources Management	2009 Total Compensation Survey for the Birmingham Metro Area for the Board's Classification & Compensation Department - October 2009	195.00	October 30, 2009
23. Charter Media	Advertising of Merit System positions - September 2009	3,010.60	October 30, 2009
24. Iron Mountain	Monthly storage fee of PB/C documents - October 2009	252.03	October 30, 2009
25. Critas	First aid supplies for the Personnel Board staff - October 2009	30.61	October 30, 2009
	TOTAL	503,538.94	


 Alfred F. Smith, Jr., Chairperson
 Personnel Board of Jefferson County


 Loren Oliver, Director
 Personnel Board of Jefferson County

11-3-09
 Date

11-2-09
 Date

THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

IN RE: THE CITY OF BESSEMER; and)
 MALCOLM PIRNIE, INC.)

ORDER

On October 13, 2009, the Personnel Board issued an Order to Show Cause to the City of Bessemer and Malcolm Pirnie Inc. to appear for a hearing held on November 10, 2009 at 2:00 p.m. in the Hearing Room at 2121 Eighth Avenue North, Second Floor, Birmingham, AL 35203, pursuant to Section 2 of Ala. Acts 1945-248, as amended.

On November 9, 2009, the City of Bessemer filed a Motion to Continue. After a review of said pleading, the Board hereby GRANTS the Motion to Continue and the Show Cause Hearing will be set for December 8, 2009 its next regular scheduled meeting at 3:00 p.m. in the Hearing Room at 2121 Eighth Avenue North, Second Floor, Birmingham, AL 35203.

A true and correct copy of Section 2 of Ala. Acts 1945-248, as amended, shall be attached to and incorporated within this Order, and copies of this Order and such Section together shall be served by certified mail upon the following;

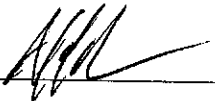
The City of Bessemer, Alabama
Ed May, Mayor
1800 3rd Avenue North
Bessemer, Alabama 35020

Malcolm Pirnie, Inc.
2170 Highland Avenue South, Ste. 250
Birmingham, Alabama 35205

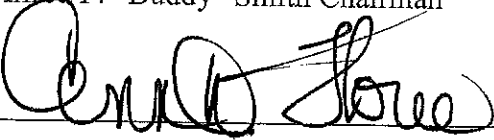
Malcolm Pirnie, Inc.
104 Corporate Park Drive, Box 751
White Plains, NY 10602

SO ORDERED on this the 10th day of November, 2009.

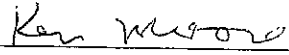
BY:



Alfred F. "Buddy" Smith Chairman




Ann D. Florie, Associate Member



L. Kenneth Moore, Associate Member

ATTEST:



Lorren O. Oliver, Director of Personnel

THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

IN RE: THE CITY OF BESSEMER; and)
 MALCOLM PIRNIE, INC.)

ORDER TO SHOW CAUSE

WHEREAS, Section 2 of Ala. Acts 1945-248, as amended (“the Act”), provides that “the board shall have the power to control, in the manner hereinafter specified, the use of independent contractors for performance of work for an appointing authority” and that “[t]he board shall exercise constant vigilance to see that the policy of this Act be not evaded by the use of independent contractors”;

WHEREAS, on or about October 1, 2007, the City of Bessemer entered into an “Agreement” with Malcolm Pirnie, Inc., for certain work to be performed that has heretofore, been performed in the Classified Service; and

WHEREAS, the City of Bessemer has not provided the Personnel Board of Jefferson County with information sought on July 11, 2008, on September 10, 2008, and on September 10, 2009, relative to the use of independent contractors pursuant to the contract;

NOW, THEREFORE, the Personnel Board of Jefferson County finds reason to believe that work is to be, or is being done, continued or completed by an independent contractor for an appointing authority, and that such work is such as to be, or, at the time of commencement thereof, to have been, performable as well, practically, expeditiously and economically by one or more employees appointed or appointable, under the Act as by an independent contractor.

Accordingly, in accordance with Section 2 and other powers vested in the Board under the Act, the Board hereby ORDERS the City of Bessemer, Alabama, and Malcolm Pirnie, Inc., to appear and show cause, if any there be, why such work should not be done, continued or completed by one or more employees appointed, or appointable, under the Act. Specifically, but without limitation, the Board seeks information pertaining to the performance of duties involving construction site monitoring; dry and wet weather monitoring; water sampling; representative monitoring; public education; data collection and compilation; and investigations of complaints and alleged violations, as to the manner in which said duties are performed and by whom said duties are performed.

A hearing in this matter shall be held on November 10, 2009 at 2:00 o'clock P.m., in the Personnel Board of Jefferson County Hearing Room, 2121 Eighth Avenue North, Second Floor, Birmingham, Alabama 35203.

A true and correct copy of Section 2 of Ala. Acts 1945-248, as amended, shall be attached to and incorporated within this Order, and copies of this Order and such Section together shall be served by certified mail upon the following;


The City of Bessemer, Alabama
Ed May, Mayor
1800 3rd Avenue North
Bessemer, Alabama 35020

Malcolm Pirnie, Inc.
2170 Highland Avenue South, Ste. 250
Birmingham, Alabama 35205

Malcolm Pirnie, Inc.
104 Corporate Park Drive, Box 751
White Plains, NY 10602

SO ORDERED on this the 13th day of ~~September~~ ^{October}, 2009.

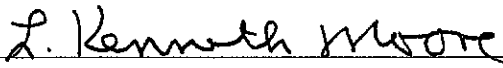
BY:



Alfred F. "Buddy" Smith Chairman

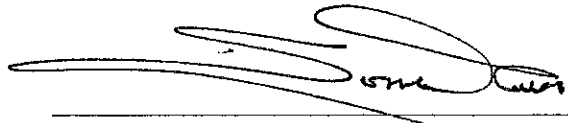


Ann D. Florie, Associate Member



L. Kenneth Moore, Associate Member

ATTEST:



Lorren O. Oliver, Director of Personnel



THE MERIT SYSTEM

Personnel Board of Jefferson County

July 11, 2008

Mayor Ed May
City of Bessemer
1800 3rd Avenue North
Bessemer, Alabama 35020

Dear Mayor May:

As you are aware, the Personnel Board is charged with the responsibility of reviewing the use of Independent Contractors by member jurisdictions to assure that work performed pursuant to any contract should not more appropriately be performed by Merit System employees. The Board has reviewed the contract between the City of Bessemer and Malcolm Pernie, Inc. (MPI) that you provided to us on December 3, 2007. There are several issues on which we need clarification.

It is the understanding of the Board that MPI is contracted to develop the NPDES monitoring plan, develop the storm water management plan, develop and submit the NPDES permit application, and implement the NPDES program.

Given that the City of Bessemer has discontinued using the services of the Storm Water Management Authority (SWMA) to comply with ADEM and EPA regulations and given that the MPI contract does not address the actual provision of the work required for compliance, the Board has an interest in determining which positions in the City have been assigned and/or are being trained by MPI, Inc. to perform the following:

- Construction Site Monitoring – reviewing site plans, inspecting sites, issuing permits, issuing final certifications, and maintaining sureties.
- Dry and Wet Weather Monitoring – Mapping and observing outfalls, and documenting findings.
- Water Sampling – Collecting samples, sending samples to the lab, and reading and analyzing returned sample data.
- Representative Monitoring – Identification of land use types, locating outfalls, and calculating seasonal outflow pollutant loading.
- Public Education
- Collection and Compilation of Data for Annual Reports
- Investigations – Receipt of complaints, requests for information, conducting physical investigations of suspect sites, and coordination of investigations with other municipalities and with oversight agencies.

Raising the Standard Since 1935

Service: Jefferson County • Jefferson County Department of Health • Jefferson County Emergency Management Agency
The Cities of Bessemer • Birmingham • Center Point • Fairfield • Foltendale • Gardendale • Graysville • Homewood • Hueytown • Irondale • Leeds • Midfield
Mountain Brook • Phenix • Genoa • Tarrant • Trussville • Vestavia Hills • Warbler

2121 8th Avenue North, Suite 100, Birmingham, Alabama 35203-2387, Tel 205-279-3500, Toll Free (866) 241-9001, Fax 205-279-3407, Internet <http://www.pbjeol.org>

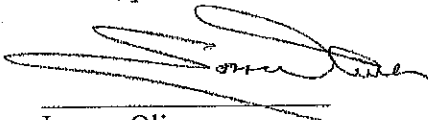
Letter to Mayor Ed May
July 11, 2008
Page 2

In addition to identifying the positions responsible for the activities referenced above, the question arises as to who will functionally serve as the City's storm water program manager - who will coordinate the compliance activities internally and serve as the liaison with ADEM, EPA, and MPI, Inc.?

It would appear that there is little economic benefit to the City in year one of the contract since the difference in the City's previous SWMA dues and the amount of the MPI contract are negligible. Will MPI have a continuing role in the City's NPDES compliance? If so, what is the nature of that continuing role and what is the estimated amount of future contracts? What is the net estimated economic benefit to the City in year two and beyond?

With the City assuming the responsibility for performing the work necessary to meet its NPDES obligations, it would be prudent for the Board to review the job classes of the employees affected to assure they are properly classified. The Board will be in a better position to advance this recommendation, after we have had the opportunity to review your responses to the above questions.

We look forward to your reply. If I can provide any further information to you concerning this matter, please do not hesitate to contact me.



Lorren Oliver
Personnel Director

CC: LaVette Lyas, General Counsel



THE MERIT SYSTEM

Personnel Board of Jefferson County

September 10, 2008

Mayor Ed May
City of Bessemer
1800 3rd Avenue North
Bessemer, Alabama 35020

Dear Mayor May:

On July 11, 2008, the Personnel Board requested information relative to the contract between Malcolm Pernie, Inc. (MPI) and the City of Bessemer. The information solicited is necessary for the Board to determine whether the contract provides services that raise questions under §2 of the *Enabling Act* of the State of Alabama. To date, the City has not responded. I am enclosing a copy of the letter and we will look forward to a response by close of business September 19, 2008.

Lorren Oliver
Personnel Director

Cc: Lavette Lyas, General Counsel

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THE PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA

IN RE: THE CITY OF BIRMINGHAM; and)
 MALCOLM PIRNIE, INC.)

ORDER TO SHOW CAUSE

WHEREAS, Section 2 of Ala. Acts 1945-248, as amended (“the Act”), provides that “the board shall have the power to control, in the manner hereinafter specified, the use of independent contractors for performance of work for an appointing authority” and that “[t]he board shall exercise constant vigilance to see that the policy of this Act be not evaded by the use of independent contractors”;

WHEREAS, on or about September 30, 2008, the City of Birmingham entered into an “Agreement” with Malcolm Pirnie, Inc., for certain work to be performed that has heretofore, been performed in the Classified Service; and

WHEREAS, the City of Birmingham has not provided the Personnel Board of Jefferson County with information sought on September 10, 2008, October 31, 2008 and on January 2, 2009, relative to the use of independent contractors pursuant to the contract;

NOW, THEREFORE, the Personnel Board of Jefferson County finds reason to believe that work is to be, or is being done, continued or completed by an independent contractor for an appointing authority, and that such work is such as to be, or, at the time of commencement thereof, to have been, performable as well, practically, expeditiously and economically by one or more employees appointed or appointable, under the Act as by an independent contractor.

Accordingly, in accordance with Section 2 and other powers vested in the Board under the Act, the Board hereby ORDERS the City of Birmingham, Alabama, and Malcolm Pirnie, Inc., to appear and show cause, if any there be, why such work should not be done, continued or completed by one or more employees appointed, or appointable, under the Act. Specifically, but without limitation, the Board seeks information pertaining to the performance of duties involving construction site monitoring; dry and wet weather monitoring; water sampling; representative monitoring; public education; data collection and compilation; and investigations of complaints and alleged violations, as to the manner in which said duties are performed and by whom said duties are performed.

A hearing in this matter shall be held on November 10, 2009 at 2:00 o'clock P.m., in the Personnel Board of Jefferson County Hearing Room, 2121 Eighth Avenue North, Second Floor, Birmingham, Alabama 35203.

A true and correct copy of Section 2 of Ala. Acts 1945-248, as amended, shall be attached to and incorporated within this Order, and copies of this Order and such Section together shall be served by certified mail upon the following;

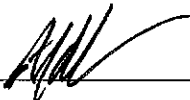
The City of Birmingham, Alabama
Larry P. Langford, Mayor
710 20th Street North
Birmingham, Alabama 35203

Malcolm Pirnie, Inc.
2170 Highland Avenue South, Ste. 250
Birmingham, Alabama 35205

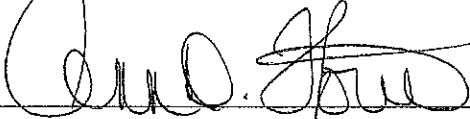
Malcolm Pirnie, Inc.
104 Corporate Park Drive, Box 751
White Plains, NY 10602

SO ORDERED on this the 13th day of ~~September~~ ^{October}, 2009.

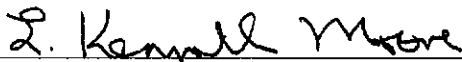
BY:



Alfred F. "Buddy" Smith Chairman

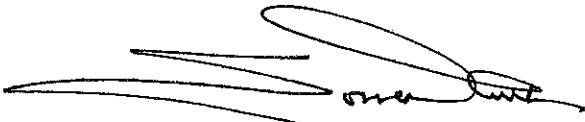


Ann D. Florie, Associate Member



L. Kenneth Moore, Associate Member

ATTEST:



Lorren O. Oliver, Director of Personnel



THE MERIT SYSTEM

Personnel Board of Jefferson County

February 8, 2008

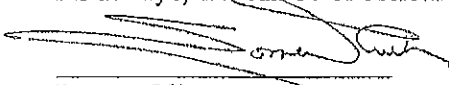
Mayor Larry Langford
City of Birmingham
710 20th Street North
Birmingham, Alabama 35203

Dear Mayor Langford:

It has been called to our attention that in the January 8th Birmingham City Council meeting, the Council voted to end the City's relationship with the Storm Water Management Authority. While it is not the role of the Board to interject itself into the debate as to whether or under what circumstances member jurisdictions can opt out of SWMA, §2 of the *Enabling Act* clearly speaks to the circumstances under which Merit System jurisdictions may utilize non-merit appointees or contractors to perform jobs that can or reasonably should be performed by civil service employees.

Since the Board has not as yet been engaged in any conversations regarding the City's plans to perform the services previously performed by SWMA, we cannot address at this time whether there may be §2 considerations. This being said, given that the Merit System has classifications that encompass duties related to storm water management, the Board has a statutory interest in assuring that Merit System employees are properly classified and that no jobs are being contracted or otherwise performed by non-merit appointees or contractors that would not be consistent with the *Act*. Consequently, as the City begins its storm water compliance planning, we invite you and the Council to solicit input from the Board regarding any §2 obligations that might be raised by the Council's decision.

As always, if I can be of assistance to you, please do not hesitate to contact me.



Lorren Oliver
Personnel Director

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THE MERIT SYSTEM

Personnel Board of Jefferson County

September 10, 2008

Mayor Larry Langford
City of Birmingham
710 20th Street North
Birmingham, Alabama 35203

Dear Mayor Langford:

As you are aware, pursuant to §2 of the *Enabling Act*, the Personnel Board is charged with the responsibility of reviewing the use of Independent Contractors by member jurisdictions to assure that work performed pursuant to any contract should not more appropriately be performed by Merit System employees. This morning's Birmingham News reported that the City had contracted with Malcolm Pernie, Inc. (MPI) to perform the services previously performed by SWMA. The potential for §2 concerns was raised with you in a February 8th letter in which we invited you and the Council to solicit input from the Board before proceeding. Now that the City has engaged the services of MPI, please forward a copy of the contract to the Board for review. We will look forward to receiving the contract by close of business on September 19, 2008.

There are now several issues on which we need clarification. Given that the City of Birmingham has discontinued using the services of the Storm Water Management Authority (SWMA) to comply with ADEM and EPA regulations, the Board has an interest in determining what duties and responsibilities will now be performed by MPI that may have previously been performed by Merit System employees. More specifically, the Board has an interest in knowing how and by whom the following responsibilities will be performed.

- Construction Site Monitoring – reviewing site plans, inspecting sites, issuing permits, issuing final certifications, and maintaining sureties.
- Dry and Wet Weather Monitoring – Mapping and observing outfalls, and documenting findings.
- Water Sampling – Collecting samples, sending samples to the lab, and reading and analyzing returned sample data.
- Representative Monitoring – Identification of land use types, locating outfalls, and calculating seasonal outflow pollutant loading.
- Public Education
- Collection and Compilation of Data for Annual Reports
- Investigations – Receipt of complaints, requests for information, conducting physical investigations of suspect sites, and coordination of investigations with other municipalities and with oversight agencies.

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Letter to Mayor Larry Langford
September 10, 2008
Page 2

With the City assuming the responsibility for performing the work necessary to meet its NPDES obligations, it would be prudent for the Board to review the job classes of the employees affected to assure they are properly classified. The Board will be in a better position to advance this recommendation, after we have had the opportunity to review your responses to the above questions.

We await your reply. If I can provide any further information to you concerning this matter, please do not hesitate to contact me.



Lorren Oliver
Personnel Director

CC: LaVette Lyas, General Counsel



THE MERIT SYSTEM

Personnel Board of Jefferson County


October 31, 2008

Mayor Larry Langford
City of Birmingham
710 20th Street North
Birmingham, Alabama 35203

Dear Mayor Langford:

On September 10th and on October 8th, The Personnel Board requested information from the City of Birmingham regarding its use of independent contractors. Specifically, in correspondence dated September 10, 2008, the Board sought information regarding the City's contract with Malcolm Pirnie, Inc. In correspondence dated October 8, 2008, the Board requested that the City provide information relative to its contract with Judicial Correction Services, Inc. To date, the City has not complied with these requests.

Section 2 of the *Enabling Act* of the State of Alabama charges the Personnel Board of Jefferson County with the responsibility to assure that the purposes of the *Act* are not evaded by the use of independent contractors. It further provides the Personnel Board with the authority to investigate the use of such independent contractors and to "control...the use of independent contractors for performance of work for an Appointing Authority..." Pursuant to §2 of the *Act*, the Board is once again requesting that the City provide the information specified in the aforementioned memoranda. Please provide the information by the close of business November 7, 2008.



Lorren Oliver
Personnel Director

CC: LaVette Lyas
Deborah Vance
Barbara White

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THE MERIT SYSTEM

Personnel Board of Jefferson County

January 2, 2009

Mayor Larry Langford
City of Birmingham
710 20th Street North
Birmingham, Alabama 35203

Dear Mayor Langford:

As you are aware, the Birmingham News ran an article in its December 16th edition reporting that the Personnel Board has questions regarding the City's practice of hiring Mayor's Assistants and it again raised the issues surrounding Mr. Kennedy's appointment. I want to clarify these issues in advance of the meeting we have requested with City officials.

With respect to the hiring of Mayor's Assistants, the question is whether there is some statutory authority that allows a mayor to make appointments outside of civil service, other than those allowable under §2 and §30 of the *Enabling Act*. The Board became aware of the practice somewhat late in the Kincaid administration, but at that time, as you might expect, the Board was focused on extricating itself from its consent decree. The Board is not aware of the circumstances under which the practice began, nor is it aware of how long the practice has been in place; consequently, the Board is not assigning responsibility to any particular City administration. By raising the issue now, the Board is simply wishing to begin identifying a reasonable process for handling such appointments in a manner more consistent with civil service procedure.

Regarding Mr. Kennedy's appointment, while articles in the press have focused on his lack of a college degree, I would like to point out that neither the job description for the Assistant Director nor for the Director of Public Works has a college degree requirement. The job descriptions do, in fact, allow for experience equivalency. However, neither the application nor the resume that Mr. Kennedy has filed with the Board reflect sufficient experience to meet the minimum qualifications established by the City and agreed to by the Board when the position was created in the Exempt Executive Service. If Mr. Kennedy has relevant experience that has not been disclosed to us, please let us know, so that we might bring the matter to closure.

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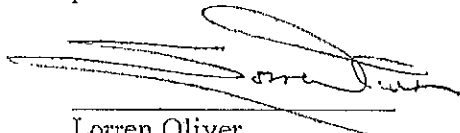
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Letter to Mayor Larry Langford
January 2, 2009
Page 2

While the article also referenced the backlog of personnel actions, we do not believe there is any need for further dialog outside of what is already occurring between City and Board staff and being monitored by the court. The City appears to be making significant efforts to resolve this issue.

There is one other outstanding matter, that having to do with the City's use of Independent Contractors. There have been several pieces of correspondence regarding the City's use of Malcolm Pirnie, Inc. and Judicial Court Services (JCS) to which your office has not responded. As you are aware, the use of contractors to perform work in the Merit System is specifically addressed in the *Enabling Act* and the Board has a statutory obligation to assure that civil service is not being circumvented by the use of such contractors. Based on the information the Board has in its possession, it is unable to determine whether the use of either of these contractors is problematic under the *Act*. Specifically with respect to the use of JCS, the Board is responding to allegations and a request for investigation by City employees. If you recall, you established a contract review protocol in the County that has proven to be useful. We are asking that a similar protocol be established in the City.

Again, the intent of our request to discuss these issues with the City is to assure that the City understands the perspective of the Board, to hear the City's positions on these matters and to hopefully arrive at a mutually satisfactory resolution. We strongly believe that civil service, while it can be procedurally restrictive, provides a reasonable framework within which jurisdictions can accomplish their business goals and the interests of employees and taxpayers can be protected. The Board is committed to working with the City to identify and explore practical and statutorily-prudent solutions to these and other concerns it might have.



Lorren Oliver
Personnel Director

CC: Deborah Vance
Barbara White