

PERSONNEL BOARD

March 21, 2013

MEETING

Meeting was held Thursday, March 21, 2013, City Council Chambers, County-City Building, Lincoln, Nebraska.

Members present: Maggie Stine, Ruth Jones, Ed Wimes. Member absent: Pat Borer. Personnel Department resource staff attending: Karen Eurich.

The meeting was opened at 1:35 p.m. by Chair Ruth Jones.

It was moved by Maggie Stine and seconded by Ed Wimes to approve the minutes from the February 21, 2013 meeting. Motion unanimously carried by roll call vote.

Agenda Item 1 was the request to change the pay range of the classification 1481-Systems Software Integrator from A15 to A17. Nicole Gross of the Personnel Department explained this request came from the department. This classification has more responsibilities than the Systems Analyst Programmer I and II classifications, however, is in the same pay range as the Systems Analyst Programmer II. It is the department's desire to have the Systems Software Integrator paid more than the Systems Analyst Programmer II. There are currently two employees in this classification that will receive an increase in pay upon the approval of this change. Following discussion, it was moved by Maggie Stine and seconded by Ed Wimes to approve the pay range change as presented. Motion unanimously carried by roll call vote.

Agenda Item 3 was miscellaneous discussion. Karen Eurich of the Personnel Department read into the record board member Amy Ostermeyer's letter of resignation from the board effective February 3, 2013.

A break was taken at this time due to the absence of the attorneys for Item 2.

Agenda Item 2 was the request for appeal hearing from Neal Reblin–Public Works/Street Maintenance Operations. Don Taute of the City Attorney's office represented Public Works. Sean Brennan of Brennan & Nielsen Law Offices represented Neal Reblin. The proceedings were recorded by Sondra Petersen of J.S. Wurm and Associates and are on file in that office. There were 19 exhibits offered and accepted by the Board. Sean Brennan objected to Exhibits #8 and #9. The Board noted his objection. Witnesses called: Miki Esposito, Neal Reblin. Following discussion, it was moved by Ed Wimes and seconded by Maggie Stine to uphold the termination. Following discussion, Ed Wimes withdrew his motion. It was moved by Maggie Stine and seconded by Ed Wimes to reduce the discipline to the maximum number of days a suspension is allowed. Motion unanimously carried by roll call vote.

There being no further business, the meeting adjourned at 4:20 p.m.

The next scheduled meeting is tentatively set for Thursday, April 18, 2013.

Karen Eurich
Personnel Operations Specialist

pc: Joan Ross, City Clerk
Miki Esposito
Neal Reblin
Sean Brennan
Don Taute
Steve Hubka

BEFORE THE CITY OF LINCOLN PERSONNEL BOARD

IN THE MATTER OF THE APPEAL
HEARING OF NEAL REBLIN

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DECISION

NOW, on this 21st day of March, 2013, this matter came before the City of Lincoln Personnel Board on the request for an appeal hearing of Neal Reblin regarding the termination of his employment as a Public Works Equipment Operator II for the City of Lincoln Public Works and Utilities Department, Street Maintenance and Traffic Operations Division. Neal Reblin was represented by Sean Brennan, Attorney at Law, and the City of Lincoln Public Works and Utilities Department was represented by Assistant City Attorney Don W. Taute.

Evidence was introduced, testimony offered by the City and the Appellant, exhibits were submitted, oral arguments were heard, and the matter was submitted to the Board.

Board member Maggie Stine moved to reduce the discipline of termination to the maximum suspension allowable pursuant to the terms of the Personnel Code. Board member Ed Wimes seconded the motion and upon a vote of 3-0, the Board determined just cause to impose discipline existed but granted the appeal to the extent that the discipline be reduced from termination to a 15 working day disciplinary suspension.

In support of its decision, the Board makes the following findings and conclusions:

1. The Appellant worked as a Public Works Equipment Operator II in the Northeast District Shop of the Street Maintenance and Operations Division of the Public

Works and Utilities Department. The Appellant was assigned to the Concrete Removal Crew at the Northeast District location. Appellant's duties regularly included the use of a backhoe and dump truck to remove concrete curb and gutter from various locations in the northern half of the City. The Board accepted Exhibit 1, a Stipulation of Facts, (attached hereto as Attachment A and incorporated herein by reference) regarding the conduct of the Appellant which led to the termination of his employment.

2. It is undisputed that Appellant used a City dump truck and backhoe to remove pieces of concrete from his personal residence at 330 NW 19th Street, Lincoln, Nebraska in February/March 2012. It is further undisputed that Appellant received permission from the Northeast District Supervisor, Leroy Uglow, to use the City backhoe and dump truck to remove the concrete from his property. Exhibit 4, accepted by the Board, is the Division Rules and Regulations for the Street Maintenance and Traffic Operations Division. That Exhibit contains language which prohibits the use of City equipment and tools by employees for personal use. Despite the existence of the Division Rules and Regulations and the prohibition against the use of City equipment for personal purposes, the practice of employees and supervisors alike at the Northeast District Shop was to allow the use of hand tools and other small equipment on a regular basis. The evidence established that such personal use of City tools was pervasive and that the provisions of Exhibit 4 were not enforced by Management.

3. On a second occasion, in August, 2012, the Appellant used the City backhoe and dump truck to remove concrete, rubble and debris from his property which had accumulated as a result of his installation of a new driveway approach to his property.

As a part of his regular duties, he broke out the curb and gutter in front of the driveway approach and removed it. The use of the City's dump truck and backhoe to remove the concrete rubble which had accumulated as a result of his driveway construction project in addition to the removal of the curb and gutter was inappropriate; however, the evidence established that the Appellant had at least implicit permission from his District Supervisor Leroy Uglow to use the backhoe and dump truck to remove the excess rubble on the August occasion. It is undisputed that the Appellant's use of the City's dump truck and backhoe on both occasions was done on City time.

4. After considerable discussion (a Transcript of which is attached hereto as Attachment B and incorporated by reference), the Board determined that just cause for discipline exists in this matter; however, the proposed discipline of termination was deemed too severe in light of the evidence that the Appellant had permission from the District Supervisor to use the City's backhoe and dump truck on both occasions. The Board also concluded that due to the Northeast District Shop Management's failure to enforce the Division Rules and Regulations regarding the use of City equipment by employees for personal purposes contributed to an atmosphere of employees assuming that the rule could be violated without any negative consequence. Because the Appellant had permission of his District Supervisor, who was also terminated but chose to retire, the Supervisor was the party ultimately responsible for permitting the conduct in this matter and that the Appellant should not be made to suffer termination as a result of his acts after having received permission from the District Supervisor to use the City's equipment.

5. The Board recognizes and commends the efforts of Public Works and Utilities Director Esposito to stop the behavior which occurred in the Northeast District Shop. However, the Board also concludes that Appellant should not be terminated as a result of the District Supervisor's conduct.

6. Based upon this evidence, the Board concludes that the maximum suspension of 15 working days is the appropriate level of discipline to be imposed in this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Appeal of the termination of the employment of Neal Reblin be and the same is hereby granted in part and denied in part. The appeal is granted to the extent that the proposed discipline of termination is reduced to a 15 working day suspension and denied with respect to whether just cause existed for the imposition of such discipline.

Dated this 8th day of April, 2013.

CITY PERSONNEL BOARD

By: 
Personnel Board Chair