

CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent Via U.S. Mail

March 27, 2014

NOTICE OF CIVIL SERVICE COMMISSION MEETING

SCOTT R. HELDFOND
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

KATE FAVETTI
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

Pat Karinen
Senior Field Representative
Pile Drivers Local Union No. 34
55 Hegenberger Place
Oakland, CA 94621

SUBJECT: REQUEST FOR HEARING BY PAT KARINEN ON BEHALF OF JIM MEISENBACH ON HIS FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Pat Karinen:

IFER C. JOHNSTON
EXECUTIVE OFFICER

The above matter will be considered by the Civil Service Commission at a meeting to be held on **April 7, 2014** at 2:00 p.m. in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meeting Information" no later than end of day on Wednesday, April 2, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco. If, however, you would like an electronic copy of the staff report, you may email your request to CivilService@sfgov.org.

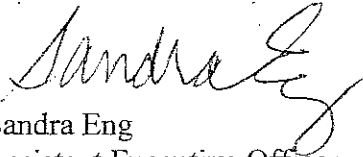
In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, April 1, 2014** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Again, please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

Attendance by you or an authorized representative is recommended. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

THIS IS A CIVIL SERVICE SUPPORTS
CALENDAR ITEM 12

Should you have any questions regarding the proceedings you may contact me at (415) 252-3247 or email Sandra.Eng@sfgov.org.

CIVIL SERVICE COMMISSION



Sandra Eng
Assistant Executive Officer

Attachment

Cc: Donna Kotake, Department of Human Resources
Lavena Holmes, Port of San Francisco
Tyler Paetkau, Attorney
Commission File
Commissioners' Binder
Chron

**ORIGINAL APPEAL
SUBMITTED BY
APPELLANT**



LOCAL UNION NUMBER 34
PILE DRIVERS
DIVERS, CARPENTERS, BRIDGE, WHARF & DOCK BUILDERS

55 Hegenberger Place
Oakland, California 94621-1301
Tel. (510) 635-4227 • Fax (510) 635-1234

CIVIL SERVICE COMMISSION
REGISTER
NUMBER 0350 11 7

X M. CALLAHAN
D. KOTAKE
L. HOLMES
M. DEVERA

December 21, 2011

Executive Officer
Civil Service Commission
25 Van Ness Ave., Suite 720
San Francisco, CA 94111

CERTIFIED MAIL
7010 1870 0001 7082 2031

Re: Jim Meisenbach-9332, Pile Worker Supervisor I Maintenance Division
Port of San Francisco

Dear Executive Officer:

The purpose of this letter is to notify the Civil Service Commission that Pile Drivers Local Union No.34 represents James Meisenbach with respect to the Port of San Francisco's decision to terminate his employment. The Union has begun the process of arbitration as described in the Memorandum of Understanding between the City and County of San Francisco and Local No.34. Therefore we reserve the right to an appeal hearing concerning Mr. Meisenbach's rehire rights at the Port of San Francisco.

If you have any questions I can be contacted at the above phone number.

Respectfully,

Pat Karinen
Senior Field Representative
Pile Drivers Local Union No.34

PK/sh
opeiu:29/afl-cio

CC: Steward Weinberg, Sandy Benson, Jim Meisenbach

RECEIVED
EXECUTIVE DIVISION
CIVIL SERVICE COMMISSION
2011 DEC 23 PM 12:43



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

NOTICE OF RECEIPT OF APPEAL ON FUTURE EMPLOYMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO

E. DENNIS NORMANDY
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

MARY Y. JUNG
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

DATE: December 27, 2011

REGISTER NO.: 0350-11-7

APPELLANT: JIM MEISENBACH

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103


Dear Ms. Callahan:

The Civil Service Commission has received the attached letter from Pat Karinen, Senior Field Representative, Pile Drivers Local Union No. 34 on behalf of Jim Meisenbach requesting a hearing on his future employment restrictions as a 9332 Pile Worker Supervisor I with the Port of San Francisco, which is transmitted to you for review and action as is appropriate.

This matter has been tentatively scheduled for hearing by the Civil Service Commission at 2:00 p.m. on March 7, 2011 in Room 400, 4th Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. If you are unable to proceed on this date or if for any reason the appeal is not timely or appropriate, please notify me by use of the "Action Request on Pending Appeal/Request" (CSC Form Number 13).

Sincerely,

CIVIL SERVICE COMMISSION


ANITA SANCHEZ
Executive Officer

Attachment

c: Donna Kotake, Department of Human Resources
Marie De Vera, Department of Human Resources
Lavena Holmes, Port of San Francisco



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

DATE: December 27, 2011
REGISTER NO.: 0350-11-7
APPELLANT: JIM MEISENBACH

E. DENNIS NORMANDY
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

MARY Y. JUNG
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

Pat Karinen
Senior Field Representative
Pile Drivers Local Union No. 34
55 Hegenberger Place
Oakland, CA 94621

Dear Pat Karinen:

The Civil Service Commission received your letter on behalf of Jim Meisenbach requesting a hearing on his future employability as a Pile Worker Supervisor I (Job Code 9332) with the Port of San Francisco.


Your request has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If timely and appropriate, this matter will be scheduled for hearing by the Civil Service Commission in the near future. You will be notified approximately one week in advance of the hearing date. If you are unable to attend the scheduled hearing, please notify us immediately in writing.

The Civil Service Commission meets on the 1st and 3rd Mondays of each month. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date.

Sincerely,

CIVIL SERVICE COMMISSION


ANITA SANCHEZ
Executive Officer

c: Micki Callahan, Department of Human Resources
Donna Kotake, Department of Human Resources
Marie De Vera, Department of Human Resources
Lavena Holmes, Port of San Francisco

STAFF REPORT

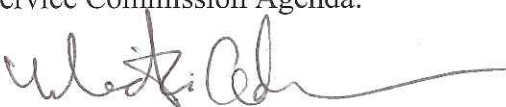


CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0350 - 11 - 7
2. For Civil Service Commission Meeting of: April 7, 2014
3. Check One: Ratification Agenda
 Consent Agenda
 Regular Agenda X
 Human Resources Director's Report
4. Subject: Appeal of James Meisenbach on Future Employment Restrictions with the City & County of San Francisco
5. Recommendation: Deny the appeal and adopt the report
6. Report prepared by: Lavena Holmes, Port HR Managers Telephone number: 415 274-0305
7. Notifications: **(Attach a list of the person(s) to be notified in the format described in IV. Commission Report Format -A).**
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: 
Date: 3/25/14
9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

**Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102**

10. Receipt-stamp this form in the ACSC RECEIPT STAMP box to the right using the time-stamp in the CSC Office.

<u>CSC RECEIPT STAMP</u>

Attachment

Notification List
James Meisenbach Appeal

James Meisenbach

Pat Karinen
Senior Field Representative
Financial Secretary-Treasurer
Pile Drivers Local Union No. 34
55 Hegenberger Place
Oakland, CA 94621-1301

Tyler Paetkau
Harnett, Smith and Paetkau
Attorneys at Law
777 Marshall Street
Redwood City, CA 94063

Lavena Holmes
HR Manager
Port of San Francisco
Pier 1
San Francisco, CA 94111

Donna Kotake
Workforce Development Director
Department of Human Resources
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

PORT of San Francisco

Human Resources * Pier 1, San Francisco, CA 94111 * Tel. 415-274-0422 * Fax 415-274-0583 * TTY 415-274-0587



MEMORANDUM

DATE: March 11, 2014

TO: The Honorable Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

FROM: Lavena Holmes, Port Human Resources Manager

SUBJECT: Appeal by James Meisenbach on his Future Employment Restrictions with the City and County of San Francisco

Authority

City and County of San Francisco Charter Appendix A8.341 REMOVAL OR DISCHARGE OF PERMANENT, NON-PROBATIONARY EMPLOYEES

- A. Any person employed under the civil service provisions of the charter,...in a position defined by the commission as “permanent” may be removed or discharged by the appointing officer for just cause, after being provided with written notice of the charges, copies of all documentation upon which the charges are based and after an opportunity to respond to the charges before the appointing officer or his or her designee.

Civil Service Commission Rule 122.1.4 states: The notice of termination must include the following information:

1) The employee has the right to a hearing before the Civil Service Commission provided that a request for hearing is made in writing and is received by the Executive Officer within twenty (20) calendar days from the date of termination of appointment or from the date of mailing of the Notice of Termination whichever is later. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business of the first (1st) business day following the 20th day.

2) The decision of the Civil Service Commission may affect any future employment with the City and County of San Francisco.

Summary

On December 14, 2011, the Port of San Francisco (hereinafter referred to as the “Department” or the “Port”) notified James Meisenbach (hereinafter referred to as “Appellant”) of the decision to dismiss him from employment. The dismissal of Appellant was based on the November 3, 2011 and November 10, 2011 Skelly notifications and the Hearing Officer’s recommendations that Appellant be dismissed from his permanent appointment as Class 9332 Pile Driver Supervisor I with the Maintenance Division of the Port. Based on the foregoing the Appointing Officer upheld the recommendation and terminated Appellant. (Attachment A) The Department also notified Appellant that it was seeking restrictions on his future employment with the Department and the City and County of San Francisco (“City”). (Attachment A)

Appellant was dismissed from employment based on the following charges:

1. Intimidating, unprofessional and inappropriate behavior and conduct in the workplace (including but not limited to: using profanity toward, yelling at, and insulting subordinates)
2. Violation of the City’s and the Port’s Harassment Free Workplace policies (harassment and discrimination)
3. Violation of the City’s and the Port’s Violence in the Workplace policies
4. Insubordination/Violation of a direct order
5. Retaliation
6. Dishonesty
7. Misappropriation of Port Property
8. Violation of the City’s and the Port’s Property Use Policies

The charges leading to Appellant’s dismissal stem from his subordinate’s protected category complaint and ensuing EEO investigation into the complaint. The Department of Human Resources (“DHR”) initiated an investigation into Appellant’s conduct based on a complaint of discrimination filed against him by [REDACTED]. DHR issued its determination letter in June 2011, notifying the Port of its findings that Appellant discriminated against [REDACTED] based on her gender and race in violation of federal and state law. DHR also found Appellant violated the City’s Harassment Free Workplace Policy; having engaged in intimidating, unprofessional and inappropriate behavior toward Ms. Walker and other subordinates.

Just prior to receiving the City’s determination, the Department became aware of related allegations that Appellant continued to violate the City’s Harassment Free Policy by harassing and retaliating against [REDACTED] for filing her complaint. Appellant also violated the Department’s directive prohibiting interaction with [REDACTED] during the course of DHR’s investigation. As a result and in consultation with DHR, Port Human Resources initiated an extended investigation into Appellant’s misconduct and alleged ongoing violations of the City’s Harassment Free Workplace Policy. Port Human Resources concluded its investigation in late September 2011, finding the Appellant did in fact violate the Port’s directive and retaliated against [REDACTED] for filing a discrimination complaint.

On November 3, 2011, the Department issued Appellant a Notice of Proposed Dismissal (Attachment B) and on November 14, 2011 the Department issued an amended notice along with a directive to Return Port Property (Attachment C). The Appellant was advised a Skelly Meeting would be held November 18, 2011. Appellant attended the meeting, along with his Union representative, Pat Karinen, Piledrivers, Local 34. On December 14, 2011, Monique Moyer, Executive Director, Port of San Francisco upheld the proposed termination and the Department requested restrictions on Appellant's future employment. (Attachment A)

The Union filed a grievance on Appellant's behalf pursuant to the Memorandum of Understanding between the Crafts Coalition including the Piledrivers, Local 34 and the City and County of San Francisco. Arbitration proceedings were conducted over three (3) days, October 16, 17 and 23, 2013 by Arbitrator Alan Elnick. On November 15, 2013, Arbitrator Elnick upheld the Department's action, finding there was sufficient just cause to discharge the Appellant. (Attachment D) Arbitrator Elnick noted the appellant's actions were a "continued pattern of inappropriate resistance to management involvement and direction, and insubordination as well" indicating Appellant violated a direct order on more than one occasion. (Attachment C)

Issue on Appeal to the Civil Service Commission

On December 21, 2011, Appellant through his Union representative notified the Civil Service Commission of the Port's decision to terminate his employment. (Attachment D) In the letter, the Union notifies the Executive Officer, Civil Service Commission that they had initiated the arbitration process and wanted to reserve their right to appeal the employment restrictions, before the Commission. (Attachment E)

Findings and Analysis

The Department urges the Civil Service Commission to uphold its recommendation to restrict Appellant's future employment with the Department and the City. All of the documents including: the Department's Notice of Proposed Disciplinary Action, Amended Notice of Disciplinary Action and Notice of Dismissal demonstrate in detail the procedure and rationale utilized by the Department in terminating the Appellant's employment. Additionally, each of the charges sustained supports the discharge of the Appellant and the restrictions on his future employment with the Port and the City. Furthermore, the Arbitrator agreed with such action by sustaining the Department's decision to terminate Appellant.

A. The Department's termination of Appellant's Employment and Imposition of Future Employment Restrictions was justified.

- 1. Appellant displayed intimidating, unprofessional and inappropriate behavior/conduct in the workplace (including but not limited to: using profanity toward, yelling at, and insulting subordinates)**

The City's and the Department's investigations leading up to Appellant's dismissal established that Appellant routinely used profanity in the workplace. The investigation

further established that Appellant had a pattern of yelling and ranting at crew members. Appellant admitted he uses profanity even after he was personally admonished by his Superintendent and issued policies and warnings prohibiting its use. Both the Hearing Officer and the Arbitrator in this case found the Appellant was responsible for conducting himself at a higher standard as a supervisor. He was expected to perform his duties with the utmost professionalism. They also noted the Appellant was charged with monitoring and preventing the use of profanity and other such behavior in the workplace certainly not contributing to it.

2. Appellant displayed insubordinate behavior including but not limited to violation of a direct order and retaliation

In July 2010 Appellant was informed by his Superintendent that [REDACTED] filed a discrimination complaint against him. His Superintendent also directed him not to have contact with nor supervise [REDACTED]. The Port's investigation established that the Appellant voluntarily offered and drove to the DHR offices on May 10, 2011 in his Port vehicle to pick up [REDACTED] following an investigatory meeting she attended regarding her complaint. This incident was in direct violation of the stay away order the Superintendent issued to Appellant. Both the Hearing Officer and Arbitrator in this case found the Appellant's conduct in this incident retaliatory, intimidating and harassing toward [REDACTED] and a clear violation of a direct order, therefore insubordinate, as well.

3. Appellant was dishonest

On November 3, 2011, Appellant was called to a meeting with Port Deputy Directors Elaine Forbes and Tom Carter and Human Resources Senior Labor Relations Analyst Bill Keast where he was subsequently placed on administrative leave with pay. At the conclusion of the meeting Appellant was directed to turn over Port property including: employee badge, Port keys, radio and Port issued cell phone [(415) 850-6710]. Appellant turned over the property with the exception of the cell phone explaining that he left the cell phone in the Superintendent's office where he was when he was called to the meeting.

Appellant gave conflicting testimony when questioned about the cell phone. On November 3, 2011, Appellant maintained his Port cell phone was in his Superintendent's Office. He later claimed that he subsequently discovered the cell phone in his jacket pocket lining while walking from Pier 1 to Pier 45 to retrieve his personal belongings. He continued to change his testimony as to what happened once he discovered he still had the cell phone. During the pre-disciplinary Skelly meeting, Appellant maintained that upon discovering the cell phone in his jacket he removed the SIM Card and placed the SIM card in a different Port cell found at Pier 45 and left his Port cell there. At the Arbitration, Appellant maintained his Port cell was broken and at home, however; he received a different Port phone to use from another supervisor. Regardless of which scenario or testimony is factual, the truth is Appellant continued to use a Port issued cell phone containing the SIM card from the

cell phone issued to him. He also used to make calls to Port staff in direct violation of the order he received at the meeting, not to contact Port staff. He continued to use the phone over the 48 hours following the meeting rather than returning it as directed.

Following the issuance of the amended proposed disciplinary action notice and directive the return Port property, a union representative returned the cell phone and SIM card to the Port offices.

B. Appellant's Arguments Against Future Employment Restrictions are not Persuasive

Appellant presented a number of arguments at the pre-disciplinary Skelly Meeting and Arbitration.

Appellant argued that the culture at the construction site is one that is laced with profanity, that if he used profanity in his interactions with [REDACTED] it was not used more toward her than with anyone else on his crew. However, the Arbitrator found that even if the construction culture is one laced with salty language that is not a reason to be contributory to it particularly when the Appellant's use of such language was a directive and policy violation.

Appellant claimed he did not harass nor intimidate [REDACTED] when he picked her up from DHR despite having an order to refrain from contact with her. However, the Arbitrator found that whatever his motivation for volunteering to pick up [REDACTED] was, in doing so, it was clear that a perception to intimidate and harass her can be inferred from his conduct. The Arbitrator also maintained Appellant was insubordinate and violated a direct order by picking up [REDACTED].

Appellant contends the charges issued against him for not returning his Port cell phone when requested were frivolous. However, the Arbitrator found by not returning the phone as directed Appellant continued a pattern of inappropriate resistance to management direction and insubordination that he had been disciplined for before.

Appellant's arguments fail to mitigate his serious and willful misconduct. The facts in this case support the charges for which he was ultimately terminated and the termination was upheld by the Arbitrator making it is clear that future employment restrictions are necessary and justified in this case.

Conclusion

As an employee of the Port of San Francisco and the City and County of San Francisco the Appellant had the privilege and the duty to perform the duties of his position in a manner deemed appropriate of a public servant. As a public employee, Appellant's behavior is governed by Federal law and the Government Code (SECTION 81000-81016) known as The Political Reform Act of 1974. As a City and Port employee, Appellant is held accountable to City rules,

the Department’s Statement of Incompatible Activities; and Port Personnel Policies and Procedures. His conduct, as described in the Skelly and Dismissal notices is contrary to conduct that is in the Public’s best interest. Appellant violated the public trust commensurate with his position as an employee of the City and County of San Francisco and should therefore be restricted from future employment with the Port and the City.

Recommendation

For all of the reasons set forth above, the Department recommends that the Civil Service Commission approve the recommendation of the Executive Director, Port of San Francisco and restrict the future employment of James Meisenbach with the Port of San Francisco and the City and County of San Francisco as follows:

Cancel any current examination and eligibility status; No future employment with the Port of San Francisco; No future employment with the City and County of San Francisco.

Notifications

See CSC Form 22.

Attachments

- Attachment A: December 14, 2011 Notice of Dismissal w/attachments
- Attachment B: November 3, 2011 Skelly Notice w/attachments
- Attachment C: November 10, 2011 Amended Skelly Notice w/attachments
- Attachment D: November 15, 2013 Arbitration Opinion and Award
- Attachment E: December 21, 2011 Union’s appeal to the Civil Service Commission

Attachment A



Sent Certified Mail with Return Receipt and U. S. Mail

December 14, 2011

James Meisenbach

SUBJECT: NOTICE OF TERMINATION

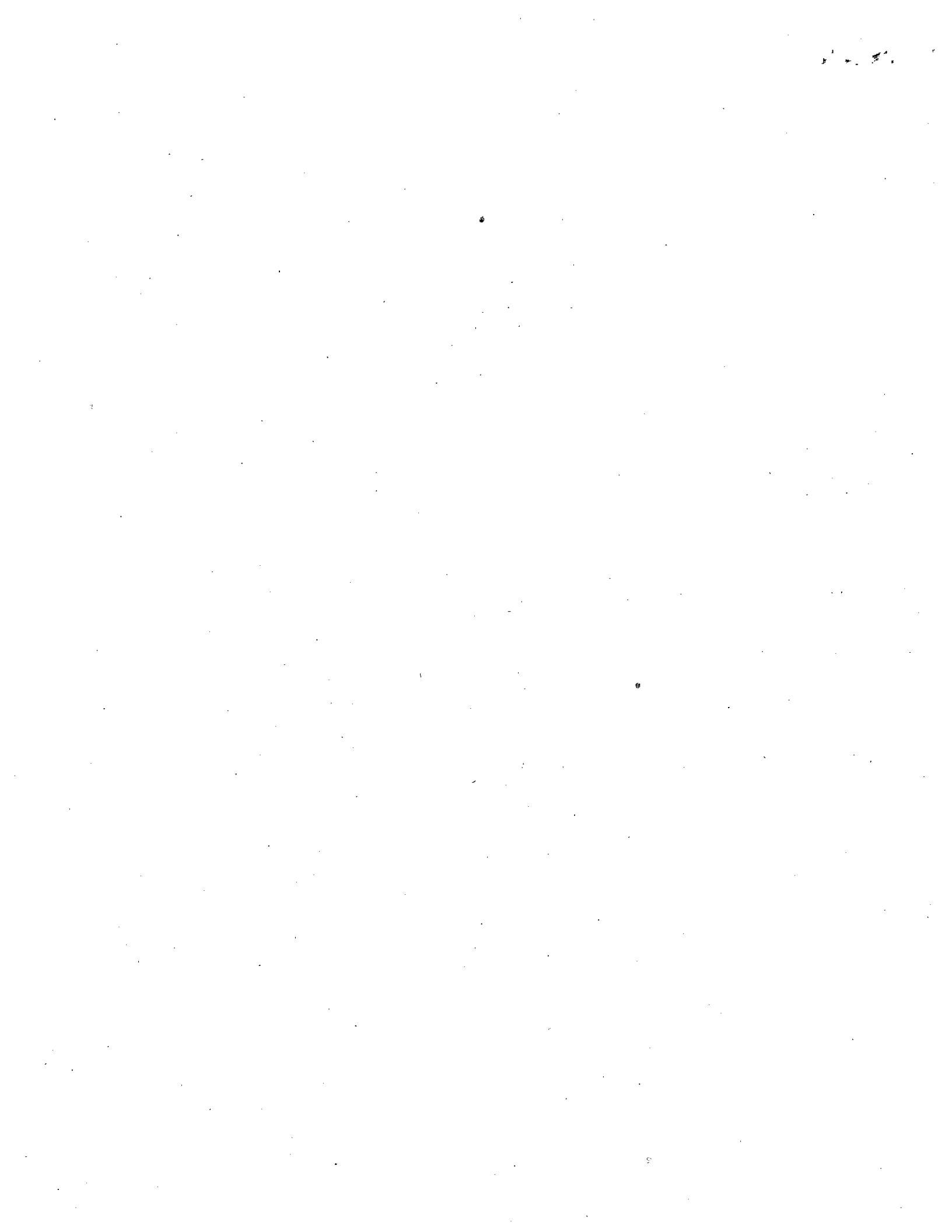
Dear Mr. Meisenbach,

On November 3, 2011, you received notice of the Port of San Francisco's ("Port") intent to terminate you from your permanent civil service employment in class 9332 Pile Driver Supervisor I. On November 14, 2011 you received an amended "*Skelly*" notice that included additional charges in support of the Port's intent to terminate your employment effective close of business December 14, 2011. This termination is based on the following charges:

1. Intimidating, unprofessional and inappropriate behavior and conduct in the workplace
2. Violation of the City's and the Port's Harassment Free Workplace Policies
3. Violation of the City's and the Port's Violence in the Workplace Policies
4. Insubordination – violation of a direct order
5. Retaliation
6. Dishonesty
7. Misappropriation of Port of San Francisco property
8. Violation of the City's and the Port's Property Use Policies

The City convened a *Skelly* hearing on November 18, 2011 to provide you an opportunity to respond to the charges and to submit any additional relevant information you wished the Port to consider in making its final decision. Present at the meeting were yourself; Pat Karinen, Pile Drivers Local Union No. 34 Representative; Lavena Holmes, Port Human Resources Director; Bill Keast, Port Senior Personnel Analyst; Elaine Forbes, Port Deputy Director, Finance and Administration; Tom Carter, Deputy Director, Port Maintenance; and Paul Greene, Department of Human Resources Client Services Manager, as the hearing officer.

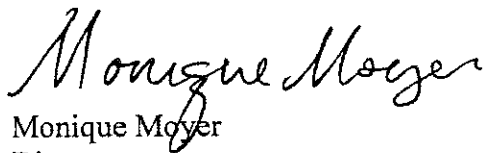
Mr. Greene sustained all of the above charges and found that there are sufficient grounds to terminate you from your employment with the Port. His analysis and recommendation is attached for your review. I have carefully reviewed Mr. Greene's determination letter



and concur with his findings that there are sufficient grounds to terminate you from your employment with the Port. Accordingly, you will be terminated from your position in class 9332 Pile Driver Supervisor I with the Port, effective close of business today, December 14, 2011.

Should you have any questions about your rights or benefits, please contact Lavena Holmes, Human Resources Director, at (415) 274-0305.

Sincerely,


Monique Moyer
Director

cc: Pat, Karinen, Pile Drivers Local Union No. 34
Tom Carter, Port Maintenance Director
Lavena Holmes, Port Human Resource Director
Personnel File

Attachments:

Hearing Officer Recommendation
Separation Report
Notice of Future Employment Restrictions



City and County of San Francisco

Edwin M. Lee
Mayor



Department of Human Resources

Micki Callahan
Human Resources Director

CONFIDENTIAL

DATE: December 6, 2011
TO: Monique Moyer, Director, Port of San Francisco
FROM: Paul Greene, Client Services Manager, Department of Human Resources
SUBJECT: Recommendation Regarding Proposed Termination of James Meisenbach

The Port of San Francisco ("Port") has proposed that James Meisenbach be terminated from his employment from Class 9332 Piledriver Supervisor I based on the following charges:

1. Intimidating, unprofessional and inappropriate behavior and conduct in the workplace
2. Violation of the City's and Port's Harassment Free Workplace Policies (harassment and discrimination)
3. Violation of the City's and the Port's Violence in the Workplace Policies
4. Insubordination/Violation of a Direct Order
5. Retaliation
6. Dishonesty
7. Misappropriation of Port Property
8. Violation of the City's and the Port's Property Use Policies
9. Insubordination/Violation of a Direct Order

On November 3, 2011, the Port informed Mr. Meisenbach via a hand delivered letter of its intent to terminate his employment ("*Skelly* Notice"). On November 14, 2011, the *Skelly* Notice was amended to include additional charges in support of the Port's intent to terminate Mr. Meisenbach's employment ("*Amended Skelly* Notice"). A *Skelly* meeting was held on November 18, 2011 to give Mr. Meisenbach an opportunity to respond to the charges. Present at the *Skelly* Hearing were: Mr. Meisenbach, Mr. Meisenbach's Local 34 Union Representative Pat Karinen, Port Human Resource Director Lavena Holmes, Port Senior Personnel Analyst Bill Keast, Port Deputy Director of Finance and Administration Elaine Forbes, Port Maintenance Deputy Director Tom Carter and me as the *Skelly* Officer.

After careful consideration of the information provided by the Department in support of the proposed discipline as well as Mr. Meisenbach's verbal responses, I concur with all charge and find that the proposed termination is appropriate for the reasons discussed below.

BACKGROUND

Mr. Meisenbach has been employed by the Port in various classes since 1979 and as a 9332 Piledriver Supervisor since April 23, 2001. On June 24, 2010, The Department of Human Resources (DHR) received a complaint of discrimination against Mr. Meisenbach (EEO File No. 1569) filed by Mr.

Meisenbach's subordinate, [REDACTED] DHR issued its determination on June 13, 2011, in which it found that Mr. Meisenbach had discriminated against Ms. [REDACTED] based on her age and gender, and that he had engaged in intimidating, unprofessional and inappropriate behavior towards Ms. [REDACTED]. After becoming aware of new allegations of discrimination, harassment and retaliation, the Port, in consultation with DHR, conducted an additional investigation. This investigation was concluded on October 14, 2011. The Port found that Mr. Meisenbach had retaliated against Ms. [REDACTED] for filing a discrimination complaint against him. The findings of these investigations form the basis for the charges against Mr. Meisenbach.

REVIEW OF CHARGES AND MR. MEISENBACH' RESPONSES

Charge: Intimidating, Unprofessional and Inappropriate Behavior/Conduct in the Workplace (including but not limited to: using profanity toward, yelling at, and insulting subordinates)

The DHR and Port investigations established that Mr. Meisenbach routinely uses profanity in the workplace. The investigations further established that Mr. Meisenbach has a pattern of yelling and ranting at crew members. Mr. Meisenbach also admitted that he uses profanity, stating that is how everyone speaks on the worksite. When questioned about an incident where Ms. [REDACTED] claimed that Mr. Meisenbach yelled at her multiple times to "move her fucking truck," he stated that he politely asked her to move her truck a half dozen times. Mr. Meisenbach stated that his father was in the hospital, and he needed to be able to leave the worksite immediately if he was summoned to the hospital. Mr. Meisenbach claims he only used profanity once after asking Ms. [REDACTED] six times to move her truck.

The *Skelly* notice and DHR's investigation contained details of findings in regards to additional incidents of unprofessional behavior. Mr. Meisenbach denied the occurrence of each.

The record has established that Mr. Meisenbach, along with all other Port supervisors, has received multiple warnings regarding the use of profanity at the workplace. Mr. Meisenbach also admitted receiving the Port's Harassment Prevention Policy. By Mr. Meisenbach's own admission, he regularly uses profanity and specifically admitted to yelling at Ms. [REDACTED] to move her "fucking truck." Additionally, Mr. Meisenbach has been personally admonished by his supervisor, Sue Grenci, to mind his language. As a supervisor, Mr. Meisenbach is held to a higher standard and is expected to perform his duties with the utmost professionalism. Despite repeated warnings from the Port, Mr. Meisenbach continued to use abusive language. Based on the overwhelming evidence presented in the investigations by DHR and the Port with regard to the incident involving Ms. [REDACTED] as well as the other incidents outlined in the *Skelly* notice, coupled with Mr. Meisenbach's own admissions, this charge is sustained.

Charge: Violation of Harassment Free Workplace Policies

Harassment Based on Race

DHR's investigation established that Mr. Meisenbach made at least two inappropriate racial comments in the workplace. The first incident occurred on March 17, 2010, when he allegedly asked Ms. [REDACTED]

where her harness was and then told her, "I should slap the black off you." The second incident occurred on April 25, 2010. The crew was lowering the ramps at AT&T Park when Mr. Meisenbach was alleged to have told a racist joke to Ms. [REDACTED], referred to as the "Black and Decker" joke.

Mr. Meisenbach claims he never tells racial jokes and denied the incident on March 17 ever occurred. Mr. Karinen also questioned the accuracy of this report because he claims the ramps at AT&T Park are lowered in March so this incident could not have occurred in April. Mr. Meisenbach also took issue with DHR's investigation where it stated that he repeats jokes that he heard at night clubs or from comedians such as Cris Rock. He claims it was Ms. [REDACTED] and not him, that repeated jokes heard from comedians or at night clubs.

DHR's investigation of this issue established that the incidents described above took place, and Mr. Meisenbach was unable to present any evidence refuting the investigation's findings. Additionally, the investigation findings did not support Mr. Meisenbach's claim that Ms. [REDACTED] repeated inappropriate jokes. The fact that Mr. Meisenbach's conduct was clearly unwelcomed is evidenced by Ms. [REDACTED]'s filing a discrimination complaint, and that four witnesses testified that Ms. [REDACTED] was upset after hearing the racial comments. I find that evidence supports the finding that Mr. Meisenbach made these statements. Such racially charged comments have no place in the workplace. When such comments come from a Caucasian male supervisor to a female African-American subordinate, it creates an intimidating workplace. Based on the above, I find that the evidence supports the charge of harassment based on race.

Harassment Based on Gender

DHR's investigation found that Mr. Meisenbach discriminated against Ms. [REDACTED] because of her gender. This charge is supported by the fact that Ms. [REDACTED] a female, was never appointed as a lead on the worksite while the other male workers did receive the lead assignment. DHR's investigation found that there was no business reason for not assigning Ms. [REDACTED] as a lead, and she suffered disparate treatment solely because of her gender. If sustained, this treatment would constitute an adverse employment action as Ms. [REDACTED] was denied the economic benefit of lead pay that other male co-workers were allowed to receive.

When asked why Ms. [REDACTED] was never assigned the lead, Mr. Meisenbach stated that Ms. [REDACTED] could not do the job and did not know the work. When asked why Ms. [REDACTED] received high scores on her performance evaluations if she could not do the job, Mr. Meisenbach denied ever writing an evaluation for Ms. [REDACTED]. Personnel records, however, demonstrate that Mr. Meisenbach did sign off on performance evaluations for Ms. [REDACTED]. These evaluations contain only positive remarks and said her performance was competent and effective. Mr. Meisenbach was unable to provide any documentation to sustain his allegation that Ms. [REDACTED] had performance issues, and in fact the evidence presented contradicted his assertion.

Mr. Meisenbach also claimed that Ms. [REDACTED] was not ready to be the lead. Ms. [REDACTED] has been employed by the City for three years as a journey level Pile Worker. Mr. Meisenbach stated that he assigns the same person as the lead for every project because this employee is the most qualified, having been a pile driver for over twenty years. He also stated that none of his other direct reports have

complained about not being assigned the lead. However, DHR's investigation found that all three of the other male employees had been assigned the lead by Mr. Meisenbach at some point.

DHR's investigation found that Mr. Meisenbach discriminated against Ms. [REDACTED] because of her gender, and he has not been able to present any credible evidence to refute this finding. Despite claiming Ms. [REDACTED] performance was defective, Mr. Meisenbach signed off on her positive performance evaluation. As a journey level Pile worker, Ms. [REDACTED] possessed all of the skills necessary to act as a lead, and Mr. Meisenbach provided no valid business justification for not appointing her as such. Therefore, this charge is sustained.

Charge: Violation of the Violence in the Workplace Policies

The basis for this charge was the nature of the racial comments discussed above. The record has established that Mr. Meisenbach made two inappropriate remarks to Ms. [REDACTED]. The first remark was "I should slap the black off you" and the "Black and Decker joke" where the punch line involved an African American woman being punched.

As the DHR investigation concluded, a reasonable person would perceive these comments as threatening and intimidating. This is especially true when the comments are from a large Caucasian male who regularly speaks in an aggressive tone and the comments are directed toward an African-American female who is his direct report. DHR's investigation established that Ms. [REDACTED] was intimidated and felt threatened by these remarks. Such threats of violence are a violation of the City and Ports policy against violence in the workplace and this charge is sustained.

Charge: Insubordination/Violation of a Direct Order

In July 2010, the Port informed Mr. Meisenbach that Ms. [REDACTED] had filed a discrimination complaint against him. Mr. Meisenbach was informed by his supervisor, Sue Greci that he was not to have any interaction or contact with Ms. [REDACTED] unless he was informed otherwise. At no time was Mr. Meisenbach informed that the no contact order had been lifted. Ms. [REDACTED] was also assigned to a different supervisor in order to prevent Mr. Meisenbach from having any contact with Ms. [REDACTED]. The Port's investigation established that Mr. Meisenbach picked up Ms. [REDACTED] on May 10, 2011 from DHR's offices in his Port vehicle. At the time, Ms. [REDACTED] was participating in a DHR investigatory interview regarding her complaint against Mr. Meisenbach. The Port's investigation also established that Mr. Meisenbach repeatedly attempt to engage Ms. [REDACTED] in conversation despite a direct order not to talk to her.

Mr. Meisenbach claimed he was asked by Brent McLain to pick up Ms. [REDACTED] from DHR because no one else was available and that the other crew members did not know where DHR's offices were located. He also stated he no longer thought he was prohibited from having contact with Ms. [REDACTED] because they both had been working at the same job site for the past month. Mr. Meisenbach also stated that he never attempted to have any conversations with Ms. [REDACTED].

Based on the evidence submitted and Mr. Meisenbach's response, I find that Mr. Meisenbach violated a direct order to have no contact with Ms. [REDACTED]. The record establishes that Sue Greci specifically told

Mr. Meisenbach that he was to have no contact with Ms. [REDACTED] unless told otherwise. The record also established that this order had never been lifted. Mr. Meisenbach directly violated this order when he picked up Ms. [REDACTED] from DHR. His testimony that the other staff did not know where DHR was located is not credible as these employees had previously been to DHR in connection to the investigation of Ms. [REDACTED] complaint. When Mr. Meisenbach picked up Ms. [REDACTED] from DHR, he demonstrated his complete disregard of his superior's directives. This charge is sustained.

Charge: Retaliation

Mr. Meisenbach was informed that he was prohibited from retaliating against Ms. [REDACTED] for filing a discrimination complaint. Mr. Meisenbach was also aware of the City's and Port's Harassment Free Workplace policies which prohibit retaliation against any employee who has filed a discrimination complaint.

Despite being directed by the Port to have no further contact with Ms. [REDACTED], Mr. Meisenbach voluntarily decided to pick up her from DHR. Mr. Meisenbach had no reason to believe that he had permission to have contact with Ms. [REDACTED]. The Port's investigation established that Mr. Meisenbach knew Ms. [REDACTED] was meeting at DHR to discuss her discrimination complaint. Mr. Meisenbach's actions were a clear form of retaliation. By picking Ms. [REDACTED] up at DHR, Mr. Meisenbach was sending an intimidating message to Ms. [REDACTED]. He was demonstrating that he was aware that Ms. [REDACTED] was going forward with her discrimination and harassment complaint, and despite the Port's efforts, the Port would be unable to keep Mr. Meisenbach away from Ms. [REDACTED]. For these reasons, the charge of retaliation is sustained.

Charge: Dishonesty

On November 3, 2011, Mr. Meisenbach met with Elaine Forbes, Deputy Director for Finance and Administration, Bill Keast, Senior Personnel Analyst, and Tom Carter, Port Maintenance Deputy Director. At this meeting, Mr. Meisenbach was informed of the Port's intent to terminate him. At the conclusion of the meeting at approximately 11:00 AM, Mr. Meisenbach was directed to turn over his employee badge, Port keys, radio and a Port-issued cell phone. Mr. Meisenbach denied he had the cell phone and stated that it was left in Sue Grecni's office. While being accompanied out to his port vehicle to retrieve his personal belongings, Mr. Meisenbach again stated that he did not have the cell phone. Mr. Meisenbach then proceeded to Pier 45 to retrieve some other personal belongings. At Pier 45, Mr. Meisenbach told Bill Keast that the cell phone was located in Sue Grecni's office.

During the *Skelly* Hearing, Mr. Meisenbach stated that during his initial meeting with the Port on November 3, 2011, he thought the phone was in Sue Grecni's office. He then stated it was not until he was walking to Pier 45 that he discovered that the phone was in his jacket. Mr. Meisenbach stated that he removed the SIM card from the phone in order to retrieve personal phone numbers. The SIM card, as an integral part of the Port issued phone, was also Port property. Mr. Meisenbach did not inform anyone that he had removed the SIM card, and that he kept it in his possession. Mr. Meisenbach stated that when he arrived at Pier 45, he told Mr. Keast that he had the phone and then he proceeded to leave the phone on the desk. Mr. Keast denied that this ever took place. A search of the offices at Pier 45 and Sue Grecni's office failed to turn up any cell phone.

Phone records indicate that Mr. Meisenbach made two phone calls from the Port issued cell phone between 11:00 AM and 12:25 PM. Between 12:25 PM and 7:47 PM on November 3, 2011, eleven more phone calls were attributed to Mr. Meisenbach's port issued cell phone. Mr. Meisenbach claims that he installed the SIM card that he removed into an older phone he had at his house. He claims that any phone calls made after he left the Port were used on this second phone.

Mr. Meisenbach's testimony that he left the phone at Pier 45 and that he told Mr. Keast of this fact is not credible. A search of Pier 45 did not uncover the phone and Mr. Keast denied that Mr. Meisenbach ever told him that the phone was there. Mr. Keast testified that Mr. Meisenbach told him the phone was at Sue Greci's office. An additional search of Ms. Greci's office failed to turn up the phone. Further, phone records indicate that Mr. Meisenbach made and received multiple phone calls from his Port issued phone after he claimed that he no longer had the phone.

Mr. Meisenbach testimony that the phone calls were made after he installed the SIM card from the Port issued phone into a second phone is not credible. A thorough search of the Port offices failed to turn up the phone. Mr. Meisenbach left the Port around 12:30 PM. He claims he installed the SIM card into a second phone at his house in [REDACTED]. However, phone records indicate that approximately 5 phone calls were made between 12:30 PM and 2:00 PM. It is not believable that Mr. Meisenbach was able to travel from the Port to his home in [REDACTED] install the SIM card into a second phone and proceed to make these phone calls by 12:30 PM. For these reasons, the charge of dishonesty is sustained.

Charge: Misappropriation of Port Property

The Port's investigation, along with testimony at the *Skelly* hearing, sustain the contention that Mr. Meisenbach failed to return his Port issued cell phone as directed. Even if Mr. Meisenbach's testimony that he returned the phone to the offices at Pier 45 is to be believed, he still removed and retained the Port issued SIM card without permission and failed to notify any Port officials of this fact. For these reasons, the charge of misappropriation of Port Property is sustained.

Charge: Violation of the Property Use Policies

The Port's policies make clear that Port and City property may only be used for City/Port business. Phone records demonstrate that that Mr. Meisenbach used a Port issued cell phone for personal reasons. Therefore, this charge is sustained.

Charge: Insubordination/Violation of a Direct Order

Mr. Meisenbach was directly ordered to return all Port issued property during a meeting on November 10, 2011. Despite his claims that he had done so, Mr. Meisenbach failed to return his cell phone and SIM card until a much later date. Mr. Meisenbach purposefully ignored a direct order from his superiors. Therefore, this charge is sustained.

CONCLUSION

After reviewing the Port's basis for the proposed termination and considering Mr. Meisenbach's responses to each charge, I am able to sustain all of the charges. The Department of Human Resources and the Port's thorough investigations concluded that Mr. Meisenbach regularly engaged in a pattern of discriminatory and disturbing behavior that is entirely unsuitable for a supervisor.

As a supervisor, Mr. Meisenbach is held to a higher standard in his conduct and work performance. Not only is he expected to direct the technical work of his subordinates, he must also be a role model to his staff in upholding the policies and standards of the City and the Port. Mr. Meisenbach, however, failed in his role as a supervisor when he regularly used profanity, yelled and unfairly criticize his subordinates.

Even more troubling are Mr. Meisenbach's illegal racial harassment and gender discrimination of a subordinate, his threat of violence in the workplace directed at her, and his retaliation against that subordinate for filing a complaint against him. As a supervisor, he is to direct and lead his subordinates, and not harass, intimidate and retaliate against them. His behavior toward Ms. [REDACTED] in this regard violates local, state and federal anti-discrimination laws.

Not only has Mr. Meisenbach failed in his role as supervisor, he also failed in his role as a subordinate by failing to obey a direct order by his supervisor, Sue Greci. Mr. Meisenbach demonstrated contempt for his superiors by regularly disobeying direct orders. In particular, he was ordered to have no contact with Ms. [REDACTED] but violated this order by picking her up from DHR where she was meeting regarding her complaint against Mr. Meisenbach.

Mr. Meisenbach's dishonesty also causes grave concern. He was ordered to turn over all Port property issued to him, but he failed to do so and then subsequently lied about it. His blatant lie breaches any trust the Port is able to have in him as a supervisor.

Mr. Meisenbach's egregious behavior cannot be tolerated, and I therefore agree that the proposed termination is appropriate.

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF HUMAN RESOURCES

SEPARATION REPORT (SR)

NAME (LAST, FIRST, M.I.) Meisenbach, James		DATE OF BIRTH	SOCIAL SECURITY NO.	DHR USE ONLY SR-	
CLASS NO. 9332	TITLE Pile Driver Supervisor I	RANK 2	LIST 051080	CERTIFICATION OR START WORK DATE 4/23/01	DHR RQ NUMBER 1054861
HOME ADDRESS (REQUIRED)			DATE ISSUED 12/14/11	DATE EFFECTIVE cob 12/14/11	DEPT. RQ NO. P0074
HOME TELEPHONE NUMBER:					
TYPE OF APPOINTMENT		WORK SCHEDULE		IS THE EMPLOYEE SERVING A PROBATIONARY PERIOD AT THE TIME OF SEPARATION?	
<input checked="" type="checkbox"/> PERMANENT (PCS) <input type="checkbox"/> EXEMPT-PERM. (PEX)		<input checked="" type="checkbox"/> FULL-TIME		<input type="checkbox"/> YES IF YES, SPECIFY TYPE: <input type="checkbox"/> ENTRANCE	
<input type="checkbox"/> TEMPORARY (TCS) <input type="checkbox"/> EXEMPT-TEMP. (TEX)		<input type="checkbox"/> PART-TIME		<input type="checkbox"/> NO	
<input type="checkbox"/> PROVISIONAL (TPV) <input type="checkbox"/> RETIREE (REX)		<input type="checkbox"/> SCHOOL TERM/FULL-TIME			
<input type="checkbox"/> LIMITED TENURE (TLT)		<input type="checkbox"/> SCHOOL TERM/PART-TIME			
<input type="checkbox"/> NON-CIVIL SERVICE (NCS)		<input type="checkbox"/> AS NEEDED (Irregular)			
IS THIS A COMPLETE SEPARATION FROM CITY & COUNTY SERVICE?			IF ACCEPTING OTHER EMPLOYMENT: (Check One Below)		
IF NO, RETURNING TO PCS POSITION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO DEPT: CLASS:			<input type="checkbox"/> PROMOTIVE NEW DEPT: STATUS:		
			<input type="checkbox"/> STATUS GRANT CLASS: STATUS:		

1 REASSIGNMENT

NEW REQUISITION	DEPT REQ NBR	DHR REQ NBR	DEPT	CLASS	WORK SCHED
-----------------	--------------	-------------	------	-------	------------

5 TERMINATION

RELEASE FR APPOINTMENT

REACHED LEGAL LIMIT (LLT)

SETTLEMENT AGREEMENT (RZA)

RELEASE OF NCS, TPV, EX (RLS)

RELEASE FROM PROBATION

DISCIPLINARY (RFC)

NON-DISCIPLINARY (RFP)

DISMISSAL OF A PCS (DPE)

DISMISSAL OF A TLT (TLT)

TERMINATED FOR CAUSE (TFC) (TPV, NCS, & EXEMPTS ONLY)

DEATH OF AN EMPLOYEE (DEA)

AUTOMATIC RESIGNATION (ARS)

NEVER REPORTED TO WORK (DSH)

OTHER (Specify)

2 LEAVE/SUSPENSION OVER 5 DAYS

MILITARY LEAVE (ATTACH ORDERS) SUSPENSION

LESS THAN 180 DAYS OTHER-SPECIFY

MORE THAN 180 DAYS

UNPAID ADMINISTRATIVE LEAVE

APPROVED DURATION START DATE: _____

END DATE: _____

6 TRANSFER

ADMIN (ADM) LIMITED TERM (LTT)

EER REQUEST (EER) FUNCTION (TOF)

3 RESIGNATION

SATISFACTORY SERVICES (TER: RSS)

UNSATISFACTORY SERVICES (TER: RUS)

BY THE APPOINTEE, I HEREBY FREELY AND VOLUNTARILY RESIGN FROM THE ABOVE POSITION. I REQUEST APPROVAL OF THIS RESIGNATION AS OF THE EFFECTIVE DATE WITH THE FULL UNDERSTANDING THAT ONCE APPROVED, I MAY ACQUIRE ANOTHER POSITION IN THIS CLASS ONLY AS PROVIDED IN THE RULES OF THE CIVIL SERVICE COMMISSION (SEE EMPLOYEE COPY AND CSC RULES 114 & 119)

SIGNATURE: _____ DATE: _____

7 RETIREMENT

NORMAL-RMT DISABILITY-RTD ERP-ERT

4 LAY-OFF

INVOLUNTARY LEAVE (PCS_LIL)

INVOLUNTARY LAY OFF (PCS_LIO)

VOLUNTARY LAY-OFF (PCS_LVO)

ELECTIVE INVOLUNTARY LVE (PCS_EIL)

PVLEX ONLY INVOL (NH) VOL (NHV)

REASON

LACK OF WORK

LACK OF FUNDS

A S O OTHER

DISPLACED RETRENCHMENT

BY ELIG BY HOLDOVER

METHOD

HAND DELIVERED

CERTIFIED MAIL

BY THE APPOINTEE: I ACKNOWLEDGE RECEIPT OF THE DHR INFORMATION LEAFLET

SIGNATURE: _____ DATE: _____

APPOINTING OFFICER SIGNATURE: *Lavina Holmes*

TELEPHONE NUMBER: **415-274-0305**

NAME/TITLE: **Lavina Holmes, Human Resources Manager**

DEPARTMENT NO 39PRT	DEPARTMENT NAME Port of San Francisco	PERSONNEL FILE FORWARDED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FORWARDED TO DEPT CONTACT
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DHR USE

ACTION PENDING: YES NO

ANALYST: _____ DATE: _____

RQ STATUS

CANCEL RQ: YES NO

DOC # _____ Date _____

SR POSTED _____ Date _____

CN POSTED _____ Date _____

Holdover Canvass _____

**CITY AND COUNTY OF SAN FRANCISCO
NOTICE OF FUTURE EMPLOYMENT RESTRICTIONS**

Via Certified Mail

Status of Action:
 Pending
 Final

James Meisenbach
 Name of Employee

 Street Address

 City State Zip

December 14, 2011
 Mailing Date
Port of San Francisco / Maintenance
 Department/Division
PCS
 Type of Appointment

This notice is to inform you that a future employment restriction is being imposed along with your separation action, or with the action of automatic resignation, reported to the Department of Human Resources separating you from your position in Class 9332, Title Pile Driver Supervisor I, effective(*) cob December 14, 2011, for the reasons outlined in the attached document(s).

You may request a hearing before the Civil Service Commission on your future employability with the civil service system of the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability.

You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission within 20 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, by Tuesday, January 3, 2012. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action to confirm the restriction(s) in effect on the date of separation(*).

The items checked below are the restrictions made by the department on your future employability for positions covered by the San Francisco civil service system:

	No restrictions on future employability.	<input checked="" type="checkbox"/>	Cancel any current examination and eligibility status.
<input checked="" type="checkbox"/>	No future employment with this department.	<input checked="" type="checkbox"/>	No future employment with the City and County of San Francisco.
	Future employment subject to the review and approval of the Human Resources Director after satisfactory completion of _____ year(s) work experience outside the City and County service.		
	Other (specify):		

(*) Note: Future Employment Restriction(s) effective immediately.

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6.

SEE REVERSE SIDE

MUST BE COMPLETED BY DEPARTMENT:

Rank: 2 List# 051080
 SSN: _____
 Employee Organization Pile Drivers Local#34
 METHOD OF SERVICE: US Mail
 Certified Mail Hand Delivered
 Certified Mail # 7008 2810 0001 8967 9091

Monique Moyer
 SIGNATURE OF APPOINTING OFFICER
Monique Moyer
 NAME
Executive Director
 TITLE

Attachment(s)

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INFORMATION FOR THE FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as an official notice of future employment restrictions to the former employee, the Civil Service Commission, and the Department of Human Resources.
2. If there are no restrictions imposed with the separation, the box indicating "no restrictions on future employability," would be checked.
3. A separated employee may request a hearing before the Civil Service Commission only for review of any restrictions on their future employability with the City and County of San Francisco.
4. Such appeals or requests for hearing must be in writing and received from the employee or the employee's representative within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
5. An employee who requests a hearing within the time limits is entitled to:
 - a. Representation by an attorney or authorized representative of her/his own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee's attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the restrictions on future employability.
6. Any interested party may request that the hearing be continued (postponed).
7. The decision of the Civil Service Commission is final and not subject to reconsideration.
8. In the absence of a timely request for a hearing as provided above no later request for a hearing will be considered

Attachment B





Via Hand Delivery

November 3, 2011

James Meisenbach

Subject: Notice of Proposed Dismissal and *Skelly* Hearing

Dear Mr. Meisenbach:

I write to inform you that the Port of San Francisco ("Port") intends to terminate your employment as a Class 9332 Pile Worker Supervisor I, Maintenance Division. The proposed dismissal is based on the following charges:

- Intimidating, unprofessional and inappropriate behavior and conduct in the workplace (including but not limited to: using profanity toward, yelling at, and insulting subordinates)
- Violation of the City's and the Port's Harassment Free Workplace Policies (harassment and discrimination)
- Violation of the City's and the Port's Violence in the Workplace Policies
- Insubordination/Violation of a direct order
- Retaliation

The facts underlying the charges are summarized below.

BACKGROUND

As you are aware, the Department of Human Resources ("DHR") initiated an investigation into your conduct based on a complaint of discrimination filed against you by [REDACTED]. DHR issued its determination letter in June 2011, notifying the Port of its findings that you discriminated against Ms. [REDACTED] based on her gender and race in violation of federal and state law and the City's Harassment Free Workplace Policy; and that you have engaged in intimidating, unprofessional and inappropriate behavior toward Ms. [REDACTED] and your other subordinates. DHR's investigative findings are incorporated in this notice.

Just prior to receiving DHR's determination letter, the Port became aware of new related allegations that you continued to violate the City's Harassment Free Policy by harassing and

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PORT OF SAN FRANCISCO

TEL 415 274 0400

TTY 415 274 0587

ADDRESS Pier 1

retaliating against Ms. [REDACTED] for filing her complaint, and that you violated the Port's directive prohibiting you from having any contact or interaction with Ms. [REDACTED] during the course of DHR's investigation. As a result, in consultation with DHR, Port Human Resources initiated an extended investigation into your misconduct and alleged ongoing violations of the City's Harassment Free Workplace Policy. Port Human Resources concluded its investigation on October 14, 2011, finding that you did in fact violate the Port's directive and that you retaliated against Ms. [REDACTED] for filing her discrimination complaint against you; the Port's investigative findings are also incorporated into this notice.

BASES FOR THE CHARGES

Charge: Intimidating, unprofessional and inappropriate behavior and conduct in the workplace (including but not limited to: using profanity toward, yelling at, and insulting subordinates)

Both the investigation by DHR and the investigation by Port Human Resources established that you have yelled expletives at your crew members and have engaged in intimidating, insulting, unprofessional and inappropriate conduct in the workplace.

DHR confirmed that on June 24, 2010, you yelled at Ms. [REDACTED] several times to move her "fucking" truck in the presence of crew members. According to Ms. [REDACTED], on May 17, 2010, you yelled at her and questioned her about her start work time in front of others, and witnesses confirmed that you "chew out" and yell at employees who are late to work. On April 24, 2010, you yelled at Ms. [REDACTED] that she had "fucked up" on a deck assignment in front of others, despite the fact that she was not the Lead on the job. During your *Skelly* Hearing on September 15, 2011, during which you responded to the Port's notice of intent to suspend you for ten workdays for other issues involving your inappropriate conduct towards others, you conceded that your supervisor, Superintendent Sue Greci, had counseled you for yelling at "a woman on your crew," who you have been "trying to get rid of for a long time," to get her "ass off the phone." (See the attached *Skelly* Officer report dated October 4, 2011.) As Ms. [REDACTED] was the only female on your crew, you were clearly referring to her. Your conduct toward Ms. [REDACTED] was not only unprofessional and inappropriate, it was clearly intended to intimidate and humiliate her in front of the other crew members.

According to DHR's determination letter, "Witnesses confirmed Mr. Meisenbach uses profanity and the 'F' word. Witnesses testified Mr. Meisenbach uses the 'F' word a lot, that his vocabulary is laced with profanity, and that profanity is part of his normal conversation." You yourself confirmed during your investigative interview with DHR that you use the "F" word frequently, and explained that the word just "comes out" while you are working. Further, DHR's investigation established that, "Mr. Meisenbach has a practice of yelling, insulting and criticizing crew members, whether sharpening a chain saw, moving a crane or performing other aspects of the Pile Worker duties." Likewise, Port Human Resources' investigation established that you often swear, yell and rant at your subordinates.

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The Port has issued several warnings to you and other staff regarding the prohibition against the use of inappropriate language (including the use of profanity), yelling at subordinates and intimidating others. (See for example the attached email from Lavena Holmes, Assistant Deputy Director, Port Human Resources to all Maintenance Division staff dated March 9, 2007, written in follow-up to a meeting the previous month with all staff regarding the Port's policies.) Further, Tom Carter, Deputy Director, Port Maintenance has issued reminders to Maintenance Division supervisors of their specific responsibility to monitor the workplace and to take immediate action to correct any prohibited conduct. (See for example the attached memorandum from Mr. Carter to all Maintenance superintendent and supervisors dated May 15, 2007.) Ms. Greci also testified during the DHR investigation that she has tried to curb your use of profanity in the workplace and has told you to "keep it zipped;" and as indicated above, you acknowledged that Ms. Greci has attempted to counsel you on your abusive conduct. Despite these numerous warnings, you have continued to engage in intimidating, unprofessional and inappropriate conduct in the workplace.

You explained during your investigative interview with DHR that you use the "F" word no more than your crew members and that, "It's part of the language of the crew." However, your response is unprofessional and inappropriate, and demonstrates your continued failure to understand your responsibilities as a supervisor. First, you are specifically responsible for monitoring the workplace and for taking immediate corrective action in response to inappropriate language or conduct (again, see the attached memorandum). Further, as a supervisor, you are expected and required to set a good example for your crew, not encourage and foster a working environment where profanity and abusive conduct is viewed to be acceptable.

Your continued disregard for Port policy prohibiting the mistreatment of employees, use of profanity and inappropriate conduct in the workplace is inappropriate, unprofessional and cannot and will not be tolerated.

Charge: Violation of City's and the Port's Harassment Free Workplace Policies

Both the City's and the Port's Harassment Free Workplace Policies provide that harassment (including unwelcome verbal or physical conduct) of City employees on the basis of membership in a protected category (e.g., race and gender) is unlawful and strictly prohibited. (See the attached policies.) They are also clear that City employees who are found to engage in harassment may be subject to disciplinary action, up to and including termination.

Further, both policies are likewise clear that supervisory employees have the additional responsibility of reporting and taking corrective action if employees are subjected to prohibited harassment or discrimination, and that failure to do so could result in disciplinary action.

You not only received copies of the Harassment Free Workplace Policy in September 2006 (see the attached form signed by you confirming your receipt of the Port's Personnel

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Policy and Procedures Manual), but you also received reminder communications about the prohibition of harassment in the workplace (again, see the attached email from Ms. Holmes in March 2007 and the memorandum from Mr. Carter dated May 15, 2007), and PeopleSoft records confirm that you received the City's harassment prevention training program for supervisors on December 10, 2007 and again on December 12, 2010. However, despite the training you received and your knowledge of these very clear policies, DHR's investigation confirmed that you engaged in conduct that constituted workplace harassment and discrimination (disparate treatment).

Harassment based on Race (Black)

According to DHR's determination letter, the evidence supports a finding that you made the following two racially inappropriate comments in the workplace:

- On March 17, 2010, you approached Ms. [REDACTED] and asked her where the harness was. You then told Ms. [REDACTED] "I should slap the black off you."
- On April 25, 2010, while the crew was lowering the ramps at AT&T Park, you told the following inappropriate and racist joke to Ms. [REDACTED] a man took his daughter to a hardware store. His daughter ended up in jail. The daughter called her mom and told her she was in jail. The mom asked her what happened. The daughter said that her dad told her to get a Black and Decker, so she looked for a Black person and decked her.

While you denied making these inappropriate comments, DHR deemed your credibility questionable, since you admitted to having shared ethnic and racial jokes at other times and in other venues. Further, four witnesses confirmed that Ms. [REDACTED] had complained to them about your inappropriate comments.

DHR also determined that your conduct was clearly unwelcome. As indicated, Ms. [REDACTED] complained about your behavior to four coworkers and filed a complaint against you in part for those comments. DHR also determined that your conduct was severe and pervasive, and that as a result, Ms. [REDACTED] asked to be reassigned to another crew and reported that she dreaded going to work.

Accordingly, DHR found that you subjected Ms. [REDACTED] to unlawful harassment based on her race.

Discrimination (Disparate Treatment) based on Gender (Female)

DHR's investigation established that, although you have given all of the other four male Pile Workers Lead assignments, you have never assigned or asked Ms. [REDACTED] to be a Lead.

You responded during your investigative interview with DHR that you did not assign Ms. [REDACTED] to be Lead because of your purported concerns about her performance. Specifically, you asserted that Ms. [REDACTED] does not have the knowledge to be Lead because she is constantly on the phone, she is not safety conscious, cannot set-up the

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crane and is unable to give hand signals to the crane operator. However, DHR found no documentation to support your assertions. On the contrary, Ms. [REDACTED] performance appraisal for the review period 7/1/08-7/1/09, signed by both you and Ms. Greci, states that Ms. [REDACTED] "consistently performed the duties required of a pile man and crew member, consistently performs extremely well and is very knowledgeable, attentive to her job functions and is very safety conscious." Ms. [REDACTED]'s performance appraisal for the review period 7/1/09-6/30/10, signed by her new supervisor (Mike Wetzel) and Ms. Greci, states, "It is a pleasure having you on my crew because you are a hard worker and knowledgeable in your trade. I can see you someday being promoted to Pile Driver Supervisor." In fact, Ms. [REDACTED] received an overall performance rating of 9 (Exceeds Expectations) on both performance evaluations. As such, DHR concluded that Ms. [REDACTED] can and was performing the essential duties of her position as a Pile Worker; that she was and remains eligible to be a Lead; and that there was no legitimate business reason for not assigning Ms. [REDACTED] as Lead, so it is more likely than not that you did not assign her as Lead because she is female.

In sum, DHR found that you subjected Ms. [REDACTED] to disparate treatment based on her gender (female) when you denied her work assignments as a Lead Pile Worker and that such conduct constituted an adverse employment action.

It was also established through DHR's investigation that you treated Ms. [REDACTED] differently than the male members of your crew and subjected her to unwelcome conduct when you singled her out and yelled at her that she had "fucked up" on the deck assignment on April 24, 2010. The evidence showed that, although [REDACTED] were the Leads on the job, you did not yell at them or even address the issue with them. Although DHR found that this onetime incident was not sufficiently severe to alter Ms. [REDACTED] condition of employment and create an abusive working environment, the City's policy is clear that an employee may be subject to discipline for engaging in harassing conduct that does not meet the definition of harassment under federal and state law, but that, if repeated or allowed to continue, might meet that definition (which, as indicated, DHR found that your conduct could meet that definition if repeated).

You have not only failed to meet your obligation as a supervisor to prevent harassment and discrimination in the workplace, you have been found to have knowingly and actively engaged in conduct that violated the City's and the Port's Harassment Free Workplace policies, exposing the City and the Port to significant liability.

Charge: Violation of the City's and the Port's Violence in the Workplace Policies

You are also well aware of the City's and the Port's policies prohibiting violence in the workplace (see the attached policies). Again, see the attached form signed by you on September 5, 2006 confirming your receipt of the Port's Personnel Policy and Procedures Manual (which includes the City's and the Port's policies prohibiting workplace violence). Further, you were suspended for eight weeks in 2006 in part for failing to adhere to those policies (see the attached excerpt from the 2006 arbitration award).

Both policies are very clear that assaults, batteries or threats or acts of violence of any kind in the workplace will not be tolerated. Additionally, supervisors and managers have the additional responsibility for responding to, and taking appropriate action on any reported threats or acts of violence. Both policies also clearly provide that failure to adhere to the policies may result in discipline, including termination.

The DHR investigation also established that the inappropriate comments you made to Ms. [REDACTED] on March 17, 2010 ("I should slap the black off you") and April 25, 2010 (the "Black and Decker Joke") violated the City's and the Port's policies prohibiting violence in the workplace.

The Port's policy identifies examples of prohibited conduct, including, but not limited to threatening violent behavior against coworkers under any circumstances and verbally intimidating another employee. There is no doubt that a reasonable person would perceive the comments referencing being slapped and decked as intimidating and threatening. DHR found this to be particularly true since, "[T]he comments came from a large Caucasian male who has been described by his employees and management as being loud, aggressive, a loose cannon and has been previously reprimanded for being disrespectful and unprofessional." This was further compounded by the fact that you made the comments to a female employee who reported to you, and who had complained of your abusive conduct. Accordingly, your comments also constitute a violation of the City's and the Port's policies prohibiting violence in the workplace.

As a supervisor at the Port, you are responsible for ensuring the safety of your employees and for protecting your employees from threats or acts of violence in the workplace. Instead, you have done the opposite. Such misconduct and blatant disregard for important Port and City policies cannot and will not be tolerated.

Charge: Insubordination/Violation of a Direct Order

In early July 2010, once the Port was notified of Ms. [REDACTED]'s complaint against you, your supervisor, Ms. Greci very clearly and specifically directed you not to talk to Ms. [REDACTED] or have any interaction or contact whatsoever with her unless and until notified otherwise. She also ordered you to refrain from retaliating against Ms. [REDACTED] in any way. You confirmed this during your conversation with Mr. Carter on May 26, 2011 (see the attached memorandum from Mr. Carter confirming his conversation with you). Ms. Holmes also confirmed this with Ms. Greci directly in August 2011 in the course of Port Human Resources' investigation, and Ms. Greci specifically confirmed that she did not at any time tell you that the cease and desist order was lifted. The Port also reassigned Ms. [REDACTED] to a different team (under the supervision of Brent McLain, Pile Driver Supervisor and as of June 20, 2011, under the supervision of Mike Wetzel, Pile Driver Supervisor) so that she would no longer be under your supervision or be required to have any interaction with you.

However, Port Human Resources' investigation confirmed that you knowingly and intentionally disobeyed Ms. Grecni's direct order. Specifically, you personally picked up Ms. [REDACTED] from DHR offices in your Port vehicle on May 10, 2011. Port Human Resources' investigation also established that you did so voluntarily and without authorization.

Further, according to Ms. [REDACTED] this was not the only incident that you violated the Port's directive prohibiting you from having any contact with her. Ms. [REDACTED] also stated that, shortly after Mother's Day in May 2011, you approached her at Pier 9 and suggested taking her out to lunch; that at Pier 9 during March Madness 2011, you approached Ms. [REDACTED] and told her that you had tried phoning her about the women's basketball team playoffs in Tennessee; and that you also approached Ms. [REDACTED] at Pier 9 about a movie she had lent you (the Bee movie).

You were insubordinate and violated a direct order when you knowingly and intentionally violated the Port's clear directive that you not have any contact or interactions with Ms. [REDACTED].

Charge: Retaliation (Violation of Harassment Free Workplace Policies)

The City's and the Port's policies are clear that retaliation against an individual who files a complaint of harassment is also prohibited (see the excerpts of the City's and Port's Harassment Free Workplace Policies). Again, supervisory employees have the additional responsibility to report and take corrective action if employees are subjected to retaliation for participating in a discrimination complaint. The policies also provide that acts of retaliation may result in discipline, up to and including termination.

The Port Human Resources' investigation established that you knew that Ms. [REDACTED] had been in a meeting at DHR regarding her harassment complaint against you and that you volunteered to go pick up Ms. [REDACTED] personally, in knowing violation of the Port's directive that you not have any interaction with her whatsoever. While you did not specifically mention Ms. [REDACTED]'s complaint to her for the duration of the ride back to the Port, your insistence in picking her up after her DHR interview was a clear attempt to both intimidate and retaliate against Ms. [REDACTED] for her filing a claim against you. Your showing up to pick up Ms. [REDACTED] not only communicated your determination not to be controlled by Port management, it communicated to Ms. [REDACTED] and others your ability to surmount any protections management can offer her, including co-opting or circumventing another manager (Mr. McLain).

As previously indicated, you are well aware of the City's and the Port's Harassment Free Workplace Policies. Despite your knowledge of the Port's and the City's policies prohibiting retaliation, you specifically violated the Port's order to avoid contact with Ms. [REDACTED] and deliberately interjected yourself into the situation and chose to pick her up. There is no doubt that your intent was to intimidate and harass Ms. [REDACTED] particularly in light of the fact that you picked her up at the close of her interview with DHR regarding her complaint against you.

Each of the above charges supports the recommendation that you be dismissed from your position in Class 9332 Pile Worker Supervisor I. Your continued egregious and unlawful misconduct, and flagrant disregard for numerous important City and Port policies and directives cannot be tolerated. You have knowingly and intentionally exposed the Port to significant liability and have failed to demonstrate or even acknowledge the level of responsibility and accountability that is required of you as a supervisor at the Port.

RIGHT TO RESPOND

A *Skelly* Hearing has been scheduled on **Monday, November 14, 2011 at 9:00 a.m.**, in the Embarcadero Conference Room at Port of San Francisco Pier 1, in order to provide you with a full opportunity to respond to the charges underlying your proposed dismissal and to present any objections or concerns you may have about the proposed dismissal.

You are not required to attend the *Skelly* Hearing; however, if you choose to attend, you are entitled to bring a representative of your choice. You may also submit a written response and any relevant written materials for the Port to consider before making a final decision in lieu of or in addition to attending the *Skelly* Hearing. If you choose to submit a written response or additional documents for the Port's consideration, you must submit them to Lavena Holmes, Port Human Resources, Port of San Francisco, Pier 1, San Francisco 94111 by 5:00 p.m. on **Monday, November 14, 2011**. If you do not attend the *Skelly* Hearing or submit a written response by that date, the Port will make its decision on your proposed dismissal based on the available information and materials.

Please contact Ms. Holmes at 415-274-0305 or Lavena.Holmes@sfgov.org if you have any questions about the *Skelly* Hearing, and to confirm whether you will attend the *Skelly* Hearing by **Thursday, November 10, 2011**.

Sincerely,



Elaine Forbes

Deputy Director, Finance and Administration

cc: Hearing Officer
Lavena Holmes

Attachments:

1. *Skelly* Officer finding on the Ten-Day Suspension, dated October 4, 2011
2. March 9, 2007 email from Lavena Holmes reminding employees about the Port's policies regarding unprofessional conduct, prohibition of violence in the workplace and prohibition of workplace harassment

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3. May 15, 2007 Memorandum to all Maintenance superintendent and supervisors titled, "Supervision and Providing a Workplace Free of Harassment and Unprofessional Conduct"
4. City's and the Port's Harassment Free Workplace Policies
5. Confirmation Form confirming receipt of the Port's Personnel Policy and Procedures Manual, signed September 5, 2006
6. Port's and City's Policies Prohibiting Violence in the Workplace
7. Excerpt from the 2006 arbitration award
8. May 26, 2011 memorandum from Mr. Carter confirming Ms. Grenco's directive

Edwin M. Lee
Mayor



Micki Callahan
Human Resources Director

CONFIDENTIAL MEMORANDUM

DATE: October 4, 2011

TO: Monique Moyer, Executive Director, Port of San Francisco

FROM: Jennifer Johnston, Chief of Policy, Department of Human Resources

SUBJECT: Recommendation Regarding the Proposed Ten-Day Suspension of James Meisenbach, 9332 Pile Worker Supervisor I

The Port of San Francisco ("Port") has proposed to suspend James Meisenbach from his Permanent Civil Service 9332 Pile Worker Supervisor I position for ten (10) workdays based on the following four (4) charges:

1. Creating a hostile working environment;
2. Engaging in unprofessional and inappropriate conduct in the workplace;
3. Insubordination; and
4. Violation of the Port's Safety Program

After careful consideration of the information provided by the Port in support of the above charges, and Mr. Meisenbach's responses thereto, I am only able to concur with the second and fourth charges (to wit, engaging in unprofessional and inappropriate conduct in the workplace, and violation of the Port's Safety Program). In light of the two sustained charges, I believe that a five (5) day suspension is absolutely warranted and recommend that it be imposed for the reasons discussed below.

BACKGROUND

The facts underlying the four above charges and the reasons for the proposed discipline are outlined in the Port's Notice of Proposed Ten (10) Suspension and Skelly Meeting, dated August 30, 2011 ("Skelly Notice"). For your convenience, they are briefly summarized below.

Incident in June 2011: Mr. Meisenbach informed Tom Carter, Deputy Director, Port Maintenance, that if Mr. Carter wanted to know something about the work at Wharf J-4, he would have to speak to Mr. Meisenbach exclusively; and Mr. Meisenbach further threatened that if Mr. Carter continued talking to his crew about their work, Mr. Meisenbach would direct them to stop working. The Port has charged Mr. Meisenbach with being insubordinate, unprofessional and inappropriate.

Incident on August 1, 2011: According to the Skelly Notice, Mr. Meisenbach attempted to conceal from Mr. Carter a heated altercation between a supervisor and an operator who were arguing over safety concerns at a job site at Port 9. Mr. Meisenbach made no attempt to resolve the altercation while his crew sat idle, watching the heated dispute. Instead, he ignored the Machinists' safety concerns over walking across planks to get to the gangway and directed them to do so anyway just as the Pile Workers do. This forced Mr. Carter to resolve the issue after assessing the situation by requesting that a tenant open the roll-up

door to grant Mr. Meisenbach's crew access to the gangway. The Port has charged Mr. Meisenbach with being unprofessional and inappropriate for failing to intervene during the heated discussion, and with creating a hostile work environment by not engaging the employees in non-confrontational problem solving while other crewmembers watched the heated confrontation. He has also been charged with violation of the Port's Illness and Injury Prevention Program for not initiating appropriate hazard abatement and for not appropriately addressing employees' safety concerns. The Skelly Notice included the applicable excerpt from the Port's Safety Program.

Incident on August 5, 2011: Mr. Meisenbach phoned Mr. Carter to request approval to work overtime so that Mr. Meisenbach and his crew could reset the boom at Pier 49 to contain grease flowing into the Bay from a sewer line. Mr. Carter initially authorized the overtime but phoned Mr. Meisenbach back a few minutes later to get additional information, since Mr. Carter had concerns about where the crew intended to place the boom and wanted to ensure that they were taking into account tidal conditions to maintain the grease at all tide levels and to confirm that they were positioning the boom so that the Laborers could access it to skim the grease. As Mr. Carter attempted to discuss it with him, Mr. Meisenbach continually interrupted Mr. Carter and spoke over him in a loud voice. When Mr. Carter requested that Mr. Meisenbach stop and listen to his questions, Mr. Meisenbach threatened to pull his crew off the job, implying that the boom would not get reset. The Port has charged Mr. Meisenbach with being insubordinate, unprofessional and inappropriate.

*Incident on August 11, 2011:*¹ According to the Skelly Notice, Mr. Meisenbach phoned Mr. Carter and, when Mr. Carter answered, immediately began yelling, "Who's the supervisor on this job?!! They go to lunch when I say they go to lunch. I'm running this job they do what I tell them?" Mr. Meisenbach explained that one of his workers had gone to lunch while they were still working, and in an aggressive tone ordered Mr. Carter to "write him up." Mr. Carter explained that it was Mr. Meisenbach's responsibility as the supervisor to address the situation in a professional and appropriate manner, which includes not yelling or swearing, communicating in a non-confrontational manner and documenting any concerns. The Port has charged him with being insubordinate, unprofessional and inappropriate.

Incident on August 25, 2011: Mr. Meisenbach refused to cooperate with Dive Supervisor Mike Wetzel's request that Mr. Meisenbach direct his crew to cease the use of loud equipment to ensure there was no interruption to safe radio communication between the Dive Shop Supervisor and the Diver underwater who was working in close adjacency to their worksite. Mr. Wetzel was forced to call Daniel Lazzari, Acting Superintendent, to resolve the issue. When Mr. Lazzari phoned Mr. Meisenbach to relay the order directly so that both crews could perform their respective jobs, Mr. Meisenbach raised his voice and became argumentative, insisting that he was not going to shut down the use of high-decibel equipment during the diving operation as requested because, in Mr. Meisenbach's opinion, there was no need to do so. Mr. Lazzari then had to firmly restate that it was a direct order with which Mr. Meisenbach was required to comply. The Port has charged him with being insubordinate, unprofessional and inappropriate, and with violating the Port's Safety Program. Two emails from Mr. Lazzari dated that day, August 25th, documenting the incident were included in the Port's Skelly Notice, along with an excerpt from the Port's Safety Program.

The Port cited another instance in which Mr. Meisenbach was inappropriate and unprofessional towards Port management. On August 24, 2011 Mr. Meisenbach and his crew arrived late to a mandatory meeting conducted by Mr. Carter and Lavena Holmes, the Port Human Resources Manager. The purpose of the

¹ The Port's Skelly Notice originally incorrectly identified the date as August 14, 2011.

meeting was to inform all Port Pile Worker Crews of the reassignment of two Pile Worker Supervisors. Mr. Meisenbach did not apologize for his tardiness or for disrupting the meeting, and interrupted Mr. Carter with questions using an aggressive tone and body language. When Mr. Carter and Ms. Holmes explained that they could not answer his specific questions about the reassignment because the details were a confidential personnel-related matter, Mr. Meisenbach inappropriately and disrespectfully persisted in asking for the specific reasons for the reassignment and declared in front of his subordinates that if Mr. Carter and Ms. Holmes could not reveal the specifics, then they were wasting his time. The Port issued a written reprimand to Mr. Meisenbach a few days later, warning that such behavior would not be tolerated. The reprimand was included in the Port's Skelly Notice.

In addition, to the above interactions with Mr. Carter, Mr. Lazzari and other supervisors, Mr. Meisenbach's direct supervisor, Harbor Superintendent Sue Grencl, reported that she has spoken with Mr. Meisenbach several times regarding his unprofessional and inappropriate behavior and that she has admonished him for swearing and yelling at his staff.

The Port scheduled a meeting on September 8, 2011 in order to provide Mr. Meisenbach an opportunity to respond to the charges ("Skelly Hearing"); however, the meeting was ultimately convened on September 15, 2011. Present during the Skelly Hearing were: Mr. Meisenbach; Mr. Meisenbach's union representative, Pat Karinen, Local 34 Senior Field Representative; Bill Keast, Port Senior Personnel Analyst; Lorcell Barganza, Port Personnel Analyst; Ms. Holmes; Mr. Carter; and me as the Skelly Officer. Mr. Karinen also submitted a written response on Mr. Meisenbach's behalf in advance of the meeting (see Attachment A), and Mr. Meisenbach submitted three witness statements in response to two of the above-alleged incidents (see Attachment B).²

REVIEW OF THE CHARGES AND MR. MEISENBACH'S RESPONSES

Charge #1: Creating a Hostile Work Environment

This charge is based solely on the incident that occurred on August 1, 2011, during which Mr. Meisenbach allegedly failed to intercede and resolve a heated dispute between two employees while his crew sat idly by, watching the exchange.

Mr. Meisenbach responded during the Skelly hearing that Mr. Carter misunderstood the situation. That is, the two employees were not actually arguing at the time of the incident. Instead, Mr. Meisenbach maintained that they were not yelling at each other, but rather speaking loudly due to the noisy large machinery. In support of his assertion, Mr. Meisenbach submitted two copies of the Skelly Notice, on which the two employees who participated in the alleged dispute (██████████) included a signed notation indicating that they disagreed with the portion of the Skelly Notice that stated that they were in a heated discussion at the time (see Attachment B).

Irrespective of whether the two employees were in a heated dispute or not, in order to sustain a charge of creating a Hostile Working Environment under the City's policy, the Port would have to demonstrate that Mr. Meisenbach

² Mr. Karinen requested that the three witnesses be allowed to testify during the Skelly Hearing on Mr. Meisenbach's behalf. However, the Port, at my direction, declined his request. As I explained to both Mr. Karinen and Mr. Meisenbach, the purpose of the Skelly Hearing is to allow Mr. Meisenbach the opportunity to respond to the charges; it is not a formal trial proceeding during which there is witness testimony, cross-examination, evidentiary objections, etc. However, I offered to extend the deadline to submit written rebuttal documents by an additional day and encouraged Mr. Meisenbach to submit any additional witness statements he wanted me to consider in making my determination in this matter. Further, Mr. Meisenbach confirmed that any testimony by the witnesses would have been duplicative to the written statements they submitted (that is, they would not have had anything else to add that would have been germane to the charges). He did not submit any additional rebuttal documents or witness statements after the Skelly Hearing.

engaged in, or allowed another Port employee to engage in, unwelcome conduct based on membership in a legally protected category and that the conduct was sufficiently severe or pervasive as to alter the condition of employment and create an abusive working environment. To support a charge of Violation of the City's Policy Prohibiting Workplace Violence, the Port would have to demonstrate that Mr. Meisenbach failed to act in response to an actual act or threat of violence. Therefore, even if it were true that the two employees were involved a heated argument at the time, the facts do not suggest that the conduct violated either policy.

Therefore, I cannot concur with this charge.

Charge #2: Engaging in Unprofessional and Inappropriate Conduct in the Workplace

The Port cites a number of instances in which Mr. Meisenbach engaged in unprofessional, disrespectful, rude and inappropriate conduct in the workplace.

- 1) Mr. Meisenbach did not dispute during the Skelly Hearing that in June 2011, he told Mr. Carter that he could not directly speak to Mr. Meisenbach's crew, but rather that he could only communicate to them through Mr. Meisenbach exclusively. Apparently, Mr. Meisenbach was responding to a misunderstanding that one of his crewmembers had with Mr. Carter during a brief conversation they had at the worksite shortly before. Mr. Carter also explained during the Skelly Meeting that at the time, Mr. Meisenbach's supervisor had been out on leave for a few weeks and that Mr. Carter was attempting to fill in during her absence.

I agree that it was rude, unprofessional, inappropriate and disrespectful for Mr. Meisenbach to tell the Deputy Director that he could not speak directly with his crew. Mr. Meisenbach went on to say during the Skelly Hearing, "if [Mr. Carter] wants to talk to [one of my crewmembers], [he can] talk to me. And if he as something to say to me, he can say it to my supervisor (the Superintendent)." As the Port's Deputy Director of Maintenance, Mr. Carter not only has the authority and the right to speak with Port employees about work issues, he has an obligation to ensure the efficiency of Port operations, regardless of Mr. Meisenbach's sense of territorialism towards his crew or his notion of the appropriate chain-of-command.

- 2) I concur with the Port that Mr. Meisenbach was unprofessional and inappropriate on August 1, 2011, when Mr. Meisenbach failed to adequately address the Machinists' safety concerns and failed to respond to Mr. Carter's attempt to engage in non-confrontational problem solving to find an alternate, safer means for the Machinists to access the gangway. Mr. Meisenbach ignored the Machinists' concerns and was resistant to all of Mr. Carter's suggestions, requiring Mr. Carter to finally take the initiative to ask permission of one of the tenants to allow the Machinists use of the leasehold so that the Machinists could access the gangway safely.
- 3) I also concur with the Port that Mr. Meisenbach was again unprofessional, rude and inappropriate toward Mr. Carter during their phone conversation on August 5, 2011 when Mr. Carter attempted to seek additional information regarding Mr. Meisenbach's crew's attempt to reset the boom at Pier 49. Mr. Carter explained during the Skelly Hearing that he phoned Mr. Meisenbach back because he was particularly concerned with ensuring that the Port's Environmental Specialist was aware of the spill and had input into the situation to ensure that it was properly contained by Mr. Meisenbach's crew and cleaned by the Laborers.

Mr. Meisenbach conceded during the Skelly Hearing that he was curt with Mr. Carter and interrupted him throughout the phone call to shout orders at his crew. He also confirmed that he told Mr. Carter that it was one or the other—either he could answer Mr. Carter's questions or he could reset the boom, but he could not do both; and as he wrote in his written rebuttal submission, "We had to get the job done or pull out." Mr.

Meisenbach explained further during the Skelly Hearing that time was of the essence, so he did not have time to answer Mr. Carter's questions; and that he had to interrupt Mr. Meisenbach to shout orders to his crew in order to ensure that the job was completed before the next tide. I asked Mr. Meisenbach how much time it would have required to answer Mr. Carter's questions and he responded that he did not know because, he did not have the time to listen to what Mr. Carter's questions were. However, it was sometime between 2 p.m. and 3 p.m., which means that Mr. Meisenbach could have certainly spent a minute or two to listen to Mr. Carter's and the Environmental Specialist's concerns to ensure that the spill could be properly contained and addressed before the tide came in.

Mr. Meisenbach did not even spare a minute to listen to Mr. Carter's concerns and address his questions, and it is clear that Mr. Meisenbach did not care what Mr. Carter's questions were. It was particularly clear from Mr. Meisenbach's comments throughout the Skelly Hearing that, as far as Mr. Meisenbach is concerned, he knows what he was doing and does not have to answer to Mr. Carter (or Port management, for that matter). For example, regarding this particular incident, Mr. Meisenbach stated, "Could it float and hold the grease in? Yes. That's what I do. I knew how long it would take. I knew what had to happen; if [Mr. Carter] didn't, well, it didn't matter at that point."

Again, when the Deputy Director has important questions regarding the containment of grease flowing into the bay from a sewer line, Mr. Meisenbach has an obligation to take his concerns into consideration and address his questions, regardless of whether Mr. Meisenbach views it as meddling in his affairs or a waste of time.

- 4) The Port also cited Mr. Meisenbach's phone call to Mr. Carter on August 14, 2011, during which Mr. Meisenbach yelled at Mr. Carter about an employee who had left early for lunch and demanded that Mr. Carter reprimand the employee. Mr. Meisenbach explained during the Skelly Hearing that Mr. Carter had misunderstood the situation—that he was yelling at the employee, not Mr. Carter. However, Mr. Meisenbach conceded that he directed Mr. Carter to reprimand the employee, but explained that he did not know how to do so because the Superintendent (who was on leave at the time), usually handles disciplinary matters.

Regardless of whether Mr. Meisenbach was yelling at the employee or Mr. Carter when Mr. Carter first answered the phone, the fact remains that it was inappropriate and unprofessional of him to phone Mr. Carter and direct him to discipline one of his crew members. I concur with the Port that it is Mr. Meisenbach's responsibility as the supervisor to address the situation in a professional and appropriate manner, which includes not yelling or swearing, communicating in a non-confrontational manner and documenting disciplinary issues. I also find it disconcerting that Mr. Meisenbach, as a supervisor for over 10 years, does not know how to—or refuses to take the responsibility to—document a discipline issue with a member of his crew. I also find it ironic that Mr. Meisenbach directed Mr. Carter, the Deputy Director, to intercede into an issue involving his crew, yet also demanded that Mr. Carter not speak to his crew directly.

- 5) On August 25, 2011, Mr. Meisenbach refused to cooperate with Mr. Wetzel's request that he direct his crew to cease the use of loud equipment to ensure there was no interruption to safe radio communication between the Dive Shop Supervisor and the Diver underwater who was working in close adjacency to their worksite. Mr. Wetzel called Daniel Lazzari, Acting Superintendent, to resolve the issue.³ When Mr. Lazzari phoned Mr.

³ Mr. Meisenbach submitted a copy of the Skelly Notice with a signed notation from Mr. Wetzel indicating that he did not agree with the way that his exchange with Mr. Meisenbach was stated in the Skelly Notice (see Attachment B). Although it is unclear exactly with what portion Mr. Wetzel disagrees, it is frankly immaterial to the fact that Mr. Lazzari had to get involved in the matter. Further, Mr.

Meisenbach to relay the order directly, Mr. Meisenbach became argumentative, insisting that there was no need to shut down the use of high-decibel equipment during the diving operation as requested. This necessitated Mr. Lazzari to restate, with emphasis, that he was specifically and directly ordering Mr. Meisenbach to comply with the order so that Mr. Meisenbach was clear that it was not an option.

During the Skelly Hearing, Mr. Meisenbach asserted that he was not being argumentative with Mr. Lazzari. Mr. Meisenbach explained that in his discussion with Mr. Lazzari he told Mr. Lazzari that he disagreed with him and insisted that the loud machinery did not need to be shut down because the dive operation was sufficiently far away enough and they could use their hand radios. Mr. Meisenbach stated, "I don't think its argumentative to tell someone that it does not need to be shut down. He sits in meetings. I'm on the job site, I'm in the real world and I make sure my men are safe." Mr. Meisenbach then became hostile and argumentative with me when I pointed out that, by his own account of his conversation with Mr. Lazzari, he was being argumentative.

According to the Skelly Notice, Mr. Meisenbach's supervisor, Superintendent Sue Greci, has also counseled Mr. Meisenbach on his unprofessional and inappropriate behavior. Mr. Meisenbach denied during the Skelly Hearing that that was true, but did concede that Ms. Greci has counseled him for yelling at a woman on his crew who "he has been trying to get rid of for a long time" to "get her ass off the phone" because she was using her cell phone. He also maintained that he could not remember if she counseled him on how to act toward superiors or subordinates.

Mr. Meisenbach also asserted during the Skelly Hearing that he has never been disciplined for inappropriate conduct toward his crew members. However, Ms. Holmes indicated that Mr. Meisenbach served a two-month suspension in 2006 in part for "mistreatment of a subordinate" and "violation of the policy regarding prevention of workplace violence." At both my and Mr. Karinen's request, Ms. Holmes provided us with an electronic copy of the arbitration award to which she was referring (see Attachment C). Indeed, the arbitrator found that Mr. Meisenbach failed to fully observe the Port's policy against violence in the workplace, that he failed to withdraw from a confrontation with one of his subordinates and that he made physical contact with his subordinate, and on those and other bases imposed a two-month suspension (however, the arbitrator found there were mitigating factors such that the circumstances did not meet the just cause standard for termination).

The Port also formally reprimanded Mr. Meisenbach for his rude, disrespectful, inappropriate and unprofessional conduct during the mandatory meeting on August 24, 2011 conducted by Mr. Carter and Ms. Holmes regarding the reassignment of two Pile Worker Supervisors. According to the letter of reprimand, not only did Mr. Meisenbach and his crew disrupt the meeting during their late arrival, Mr. Meisenbach also proceeded to interrupt Mr. Carter with inappropriate questions using an aggressive tone and body language, and announced in front of his subordinates that the meeting was a waste of his time. It was clear from Mr. Meisenbach's statements during the Skelly Hearing that the Port's description of his conduct was accurate. Mr. Meisenbach conceded that he made sarcastic comments and gestures in front of the other crewmen. Mr. Meisenbach stated during the Skelly Meeting, "I'm the lead supervisor and everyone looks to me... and I was like 'Psshht! Why are we even here!' And my crew was asking me 'why are we even here.'" Mr. Meisenbach tried to deflect some of his culpability by pointing out during the Skelly Hearing that one of the other crewmembers walked out of the meeting. However, he fails to recognize that his conduct had an impact on the group because, as he recognized, he is their lead supervisor, and as their supervisor, he is expected to act professionally and set an example for his subordinates. The Port was very clear in the written reprimand to Mr. Meisenbach that such behavior would not be tolerated.

Meisenbach conceded during the Skelly Hearing that he told Mr. Wetzel that he would only shut down his crew with direct orders from Mr. Lazzari (the Acting Superintendent at the time).

Charge #3: Insubordination

As indicated above, this charge is based on Mr. Meisenbach's conduct during incidents that occurred in June 2011 and August 5, 11 and 25, 2011. In order to sustain a charge of insubordination, the Port would need to demonstrate that: 1) one of Mr. Meisenbach's superiors gave him a direct order; 2) that they told him what the consequences would be if he failed to obey the direct order; 3) and that he did in fact disobey the direct order.

However, although Mr. Meisenbach was argumentative, rude and disrespectful toward his superiors (see further discussion below), and threatened to disobey his superiors, he did not actually disobey a direct order in any of the above incidents. Therefore, I cannot concur with this charge.

Charge #4: Violation of the Port's Safety Program

The Port's Safety Program provides that supervisors are required to initiate hazard abatement for identified potential hazards as soon as possible. They are also required to use interim control measures if permanent control measures cannot be instituted in a timely manner, which may include removing employees from the worksite or discontinuing unsafe work practices.

As indicated, the Port has charged Mr. Meisenbach for violating this policy on the following instances:

- 1) First, the Port cited the incident on August 1, 2011 during which Mr. Meisenbach ignored the Machinists' expressed safety concerns over walking across the planks to get to the gangway. Instead of finding suitable and safer alternatives, he directed them to do so anyway just as the Pile Workers do.

Mr. Meisenbach explained in his written submission and during the Skelly Hearing that there is only one person on his team who due to a fear of heights has a problem walking across the 6 x 12 inch planks over an area from which jagged wooden pieces protrude out of the water to access the rig. As an accommodation, Mr. Meisenbach gave the employee a ladder,⁴ which, Mr. Meisenbach asserted during the Skelly Hearing (but not include in his written submission), was approved by the Health and Safety Officer, Karen Taylor. However, Mr. Carter indicated during the Skelly Hearing that Ms. Taylor had inspected the worksite the week prior and did not approve of the crew using a ladder to access the rig, nor did she agree that it was safe for the Machinists to use the planks to access the gangway.

When Mr. Carter attempted to engage Mr. Meisenbach in problem solving at the time to identify other means for the Machinists to access the gangway, Mr. Meisenbach said that there were not and showed no indication of the need to resolve the situation by other means. Mr. Carter was ultimately able to implement a safer alternative (asking one of the tenants permission to access the gangway through the leasehold).

It is clear that Mr. Meisenbach did not take sufficient effort to find other safer alternatives for the Machinists, nor did he take seriously the issue of their safety. Mr. Meisenbach stated in his written rebuttal submission, "I would never force anybody to cross the planks if the [sic] felt uncomfortable doing so." However, his concern should strictly be the crewmen's safety; he should not be deferring to them on whether they were amenable to engaging in potentially unsafe acts.

⁴ I also note that Ms. Holmes indicated during the Skelly Hearing that Port Human Resources had not been aware of the situation and expressed concern during over learning that Mr. Meisenbach had failed to follow the Port's formal accommodation procedures in responding to an employee's request for accommodation as all supervisors are required to do.

- 2) The Port also cited Mr. Meisenbach's refusal to cease his crew's operation of high-decibel equipment during the diving operation to ensure that there was no interruption to safe radio communications between the Dive Shop Supervisor and the Diver.

Mr. Meisenbach explained during the *Skelly* Hearing that, in his professional opinion, the dive was sufficiently far away and therefore that loud machinery would not substantially impact the radio communications. However, Mr. Wetzel—the Dive Shop Supervisor—did, and so did Mr. Lazzari. As such, there was a reasonable basis to believe that the communications could have and would have been impacted. Moreover, according to Mr. Meisenbach's own statement during the *Skelly* Hearing, the dive operation was only about 50 feet away and the crewmen had to shout over the sound of the noisy equipment. According to Mr. Meisenbach, there were other non-noisy (though less important, in Mr. Meisenbach's view) tasks that the crew could perform during the operation. Therefore, Mr. Meisenbach should have erred on the side of caution and directed his crew to cease noisy operations during the dive operations as Mr. Wetzel initially requested.

Mr. Meisenbach also asserted during the *Skelly* Hearing that he did not have the authority to direct his staff to shut down operations. However, when asked, he conceded that he did have the authority to shut down operations if there were a possible safety hazard.

Although Mr. Meisenbach asserted in his written submission and during the *Skelly* Hearing that the safety of his crew is of the utmost concern to him, his conduct suggests otherwise. The Port's Safety Program requires supervisors to take immediate and appropriate action in response to any potential safety hazards, and Mr. Meisenbach clearly failed to do so in both circumstances.

Therefore, I concur with this charge for all of the instances cited by the Port.

RECOMMENDATION

As indicated, I concur with two of the four charges. Further, I find that each sustained charge independently supports a five (5) day suspension.

The record is replete with numerous instances in which Mr. Meisenbach was rude, inappropriate and unprofessional toward Mr. Carter and other Port employees. This was despite having been warned about such conduct both verbally and in writing. Further, although Mr. Meisenbach asserts that safety is of paramount importance to him, he ignored potential hazards and dangers in two cited instances and disregarded the Port's safety procedures and expectations for its supervisors and employees.

Mr. Karinen argued that Mr. Meisenbach is a long-term employee who has worked for the Port for decades, and as a supervisor for the past ten years has been a near-model employee. However, Ms. Holmes responded during the *Skelly* Hearing that his tenure with the Port has been riddled with complaints and fraught with misconduct, and the Port later submitted an arbitration award confirming that he had engaged in inappropriate conduct towards another Port employee in the past. Mr. Meisenbach asserted that the Port was "hunting for something against him;" however, he frequently engaged in obviously rude and inappropriate conduct toward Mr. Carter and others. Most disconcerting, Mr. Meisenbach fails to recognize that his conduct is in fact inappropriate and unprofessional.

Accordingly, I recommend that the Port impose upon Mr. Meisenbach a five day suspension.



Maintenance Division - Please Post
Lavena Holmes to: Lavena Holmes

10/18/2011 11:49 AM

--- Forwarded by Lavena Holmes/SFPORT/SFGOV on 10/18/2011 11:49 AM ---

From: Lavena Holmes-Williams/SFPORT/SFGOV
To: Tom Carter/SFPORT/SFGOV@SFGOV, Sue Grencl/SFPORT/SFGOV@SFGOV, Thomas Meisenbach/SFPORT/SFGOV@SFGOV, David Deasy/SFPORT/SFGOV@SFGOV, Karen L Taylor/SFPORT/SFGOV@SFGOV, Ellen Dehr/SFPORT/SFGOV@SFGOV, Tim Felton/SFPORT/SFGOV@SFGOV, Chris Kiesselbach/SFPORT/SFGOV@SFGOV, Daniel Lazzari/SFPORT/SFGOV@SFGOV, John Scully/SFPORT/SFGOV@SFGOV, Kevin Johnson/SFPORT/SFGOV@SFGOV, Gene Sheets/SFPORT/SFGOV@SFGOV, Scott Riley/SFPORT/SFGOV@SFGOV, William Schiavo/SFPORT/SFGOV@SFGOV, Carl Baker/SFPORT/SFGOV@SFGOV, Alex Chong/SFPORT/SFGOV@SFGOV, Kevin Patterson/SFPORT/SFGOV@SFGOV, Michael Stez/SFPORT/SFGOV@SFGOV, Lawrence Iorio/SFPORT/SFGOV@SFGOV, Earl Cater/SFPORT/SFGOV@SFGOV, Michael Wetzel/SFPORT/SFGOV@SFGOV, James Meisenbach/SFPORT/SFGOV@SFGOV, Brent McLain/SFPORT/SFGOV@SFGOV, Dave Rauenbuehler/SFPORT/SFGOV@SFGOV, Henry Navarro/SFPORT/SFGOV@SFGOV, Ozzie Caamano/SFPORT/SFGOV@SFGOV, Lorenza Racklin/SFPORT/SFGOV@SFGOV
Date: 03/09/2007 08:58 AM
Subject: Maintenance Division - Please Post

March 9, 2007

To: All Maintenance Division Staff
From: Lavena Holmes-Williams, HR Manager
Subject: On-going work environment issues

On Friday, February 16, 2007, I met with all staff at Pier 50 and discussed with everyone in attendance at that meeting the organizational concerns relating to interpersonal relationships within the workplace. I want to remind you all of the findings of the inquiry made into those concerns. The following were identified as issues at Pier 50:

- low morale
- mistrust
- unprofessional conduct
- power struggle
- challenging workplace

Staff was also reminded at that meeting of the Port's and the City's policies concerning a harassment free workplace and the prohibition of workplace violence. Sadly, it has come to my attention that the behavior [meaning: the actions taken by employee(s) in a particular manner] that leads to these issues (as noted above) continues at Pier 50.

I am requesting that all managers and supervisors in the Maintenance Division advise me of any reports you receive or incidents you observe that may be categorized as a violation of Port and/or City policy. Please do not attempt to remedy the problem yourself without first seeking the advice of your Deputy Director and/or Human Resources Manager. There is a Management Response Team in place that has been specifically tasked to address these behavioral issues as they arise.

Examples of behaviors that have been brought to my attention that would violate Port and City policies include: yelling at subordinates, intimidating others, delivering or posting caricatures or cartoons or other derogatory materials, advising or coaching staff to take action against supervisors or other staff members. Not only are these behaviors in violation of policy they are also counter-productive to our organizational

goals.

If you are aware of, subject to, or have any knowledge of these types of behavioral occurrences at Pier 50 or other Port locations I implore you to bring them to my attention so that the appropriate action can be taken. Any employee found to be in violation of Port and/or City Policy may be subject to disciplinary action up to and including termination.

Maintenance Managers and Supervisors please share this memo with subordinate staff that do not have access to e-mail.

Lavena Holmes Williams
Assistant Deputy Director
Port Human Resources
Pier 1, San Francisco 94111
415-274-0421 office
415-274-0583 fax

PORT OF SAN FRANCISCO

Directive: 2007-01



DATE: May 15, 2007

TO: Maintenance Superintendents and Supervisors

FROM: Tom Carter, Deputy Director of Port Maintenance Division *T. Carter*

SUBJECT: Supervision and Providing a Workplace Free of Harassment and Unprofessional Conduct

The City and County of San Francisco and the Port of San Francisco are committed to providing a work environment that is free of discrimination, harassment, and unprofessional conduct. Port Policy 2.11, Harassment Free Workplace, states that the policy applies to all employees and agents of the City and County of San Francisco, including supervisory and non-supervisory employees. This directive is in support of this commitment.

Effective immediately all Maintenance Supervisors and Superintendents shall monitor closely all staff, and particularly those individuals that are under your direct supervision.

Monitor closely includes, but is not limited to:

- observing behavior, conduct, listening for the use of inappropriate language (including: profanity, slurs, slang, etc.);
- managing behavior during working hours at all locations that staff may be assigned to or have access to.

In order for Maintenance Supervisors to monitor staff closely you are required to:

- visit assigned field and office work locations on at least a daily basis;
- document the date and time of field and office visits on a daily basis;
- note relevant observations regarding behavior, conduct, and language observed.

When a Supervisor is unable to monitor staff closely on a particular day (and for a specific reason) the Supervisor shall document the reason why he/she was unable to so.

When inappropriate behavior, conduct, and/or use of language are observed the Supervisor shall:

- take immediate appropriate action to correct the inappropriate behavior, conduct, and/or use of language;
- document by date, time, and description the inappropriate behavior, conduct, and/or use of language observations;
- document corrective action(s) taken and/or required to be taken at a later date;

- take appropriate action where the conduct requires immediate intervention, and then contact one of the following persons, as appropriate: their Supervisor, a Superintendent, the Deputy Director, or the Human Resources Manager.

Superintendents are required to:

- review at least weekly, or more often as required, daily log books to verify Supervisors' compliance to this directive and to determine if appropriate corrective actions are being taken;
- report weekly, or more often as required, to the Deputy Director all incidents of inappropriate behavior, conduct and/or use of language observations and what corrective actions were taken;
- contact immediately, as appropriate, the Deputy Director or the Human Resources Manager, when a Supervisor has had to intervene to address conduct requiring immediate attention.

Performance Evaluations and Reviews:

All supervisory personnel must include, in each staff member's performance evaluation, objectives that require the employee to be accountable for inappropriate workplace behavior and inappropriate verbal interactions. If an employee has received documented corrective action/discipline during the reporting appraisal period that corrective action/disciplinary action as it relates to performance standards is to be documented in the performance appraisal.

cc: M. Moyer
L. Holmes-Williams
Maintenance Division Staff

HARASSMENT FREE WORKPLACE

The following policy was adopted by the City's Human Resources Director on October 16, 2000 and applies to all City and County employees.

The purpose of this policy is to reaffirm that the City and County of San Francisco is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the City and County of San Francisco strictly prohibits all forms of unlawful harassment, including sexual harassment and harassment based on race, color, religion, creed, sex, national origin, ethnicity, age, disability or medical condition, political affiliation, sexual orientation, ancestry, marital or domestic partner status, gender identity, parental status, or any other characteristic protected by state or federal employment discrimination laws or by the San Francisco Charter or local ordinance.

Harassment is (1) unwelcome, offensive conduct (2) on account of an individual's (or group of individuals) membership in a protected category (3) that is sufficiently severe or pervasive as to alter the condition of the individual's employment and create an abusive working environment.

Retaliation against an individual who files a complaint of harassment or who assists in an investigation of a complaint is also prohibited.

Unlawful harassment may take many forms including, but not limited to:

VERBAL CONDUCT, such as epithets, derogatory comments, unwelcome jokes or stories, slurs, unwelcome advances or invitation, requests for sexual favors, or harassing phone calls, which are directed at an individual (or group of individuals) because of his or her membership in a protected category.

VISUAL CONDUCT, such as derogatory or offensive posters, cartoons, bulletins or drawings, or electronic mail transmissions, which are directed at an individual (or group of individuals) because of his or her membership in a protected category.

PHYSICAL CONDUCT, such as assault, blocking normal movement, leering or lewd gestures, or physical interference with work, which are directed at an individual (or group of individuals) because of his or her membership in a protected category.

RESPONSIBILITIES

This policy applies to all employees and agents of the City and County of San Francisco, including supervisory and non-supervisory employees.

Departments are responsible for ensuring that all employees have knowledge of and periodic training regarding this policy.

REPORTING PROCEDURES

Any employee who believes he or she has been harassed in violation of this policy should promptly report the facts of the incident and the individuals involved. To file a complaint of harassment, the employee should promptly contact any of the following:

- the employee's supervisor or other superior; or,
- the department's equal employment opportunity officer or personnel officer; or,
- the Department of Human Resources Equal Employment Opportunity Division.

If a complaint of harassment is made to a supervisor, the supervisor shall immediately report it to the department's equal employment opportunity officer or personnel officer who shall report the complaint to the Department of Human Resources Equal Employment Opportunity Division. Any supervisor who receives a complaint of harassment and fails to report it may be subject to disciplinary action. The Director of Human Resources is responsible for the investigation and resolution of all harassment complaints.

DISCIPLINE

Any employee, supervisor or agent of the City and County of San Francisco found to have engaged in unlawful harassment or retaliation may be subject to disciplinary action, up to and including termination. An employee may be subject to discipline for engaging in harassing conduct that does not meet the definition of harassment under federal and state law, but that, if repeated or allowed to continue, might meet that definition.

RIGHT TO FILE OTHER COMPLAINTS

This policy shall not alter or affect the right of any person to file a charge of discrimination with the United States Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing or to consult with a private attorney or union representative.

Note: Copies of the current procedure for filing sexual harassment complaints are available in the Port's Human Resources Office.

medical documentation, meeting with specialists, and identifying restrictions and possible accommodations.

Language Diversity

A department may limit the use of languages other than English only when necessary. In such cases, employees will be informed of the rule, including where and when it applies and the consequences for violating it.

Policy Prohibiting Harassment

Harassment of City employees on the basis of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, or other protected category is prohibited and unlawful. Harassment consists of unwelcome visual, verbal, or physical conduct engaged in on account of a person's actual or perceived membership in a protected category. City employees who are found to engage in harassment are subject to disciplinary action, up to and including termination. Harassment of employees, applicants, or persons providing services to the City by contract, whether by employees or non-employees, is prohibited.

Sexual Harassment

Federal law defines sexual harassment as unsolicited and unwelcome sexual advances, requests for sexual favors and other verbal, physical, visual or written conduct of a sexual nature directed to persons of the same or opposite sex when:

- submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
- submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee; or
- such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or otherwise offensive working environment.

State law defines sexual harassment as unwanted sexual advances or verbal, visual, or physical conduct of a sexual nature. These are some examples of sexual harassment:

- requests for sexual favors or unwanted sexual advances;
- offering employment benefits in exchange for sexual favors;
- making or threatening reprisals after a negative response to sexual advances;
- verbal harassment (e.g., graphic verbal commentary, derogatory comments, suggestive or obscene letters or telephone calls);
- physical harassment (e.g., assault, impeding or blocking movement, gestures or any physical interference with normal work or movements);

- visual forms of harassment (e.g., leering, derogatory or sexually explicit posters, letters, poems, graffiti, cartoons, computer screen savers or drawings).

How to Get Help

If you feel you are being discriminated against or harassed by anyone on the basis of any protected category, or because you complained or assisted another employee in complaining about discrimination or harassment, you should inform your supervisor or other responsible officer immediately. If you do not want to tell your supervisor, contact your departmental personnel office, or the Department of Human Resources Equal Employment Opportunity Office.

DHR's EEO Office works to ensure equal employment opportunities of all individuals within the City service administers EEO programs, provides assistance to departments, and investigates complaints of employment discrimination. If the EEO staff determines that discrimination or harassment has occurred, the City will take appropriate remedial action. You may call the Equal Employment Opportunity Office for information and assistance at (415) 557-4832 or at (415) 775-9484 (TDD) if you have a hearing impairment.

For information and assistance on the complaint procedure, you may call the DHR Harassment Helpline at (415) 557-4900.

The Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH") also investigate and prosecute complaints of harassment and discrimination in employment. Employees who believe that they have been harassed or discriminated against may file a complaint with either of these agencies. Both the EEOC and the DFEH serve as neutral fact finders and attempt to help the parties voluntarily resolve disputes. The DFEH office may be reached by calling (510) 622-2973. The San Francisco office of the EEOC may be reached by calling (415) 625-5600.

Responsibility for responding to and reporting discrimination, retaliation, and harassment

All employees are encouraged to report harassing, retaliatory, or discriminatory behavior, whether directed at themselves or co-workers. Supervisory employees are required to take corrective action if employees are being subjected to retaliation, discrimination or harassment on the basis of a protected category, and must report any such incidents to the department's personnel officer or EEO unit. Supervisors who fail to report such incidents are subject to discipline.

Departments are required to report all complaints of discrimination, retaliation, and harassment to the Human Resources Director within five days of becoming aware of such complaints.

Port of San Francisco

Attachment 5



MEMORANDUM

DATE: September 5, 2006

TO: James Meisenbach
9332 Piledriver Supervisor

FROM: Lavena Holmes-Williams
Human Resources Manager

SUBJECT: Port Personnel Policy and Procedures Manual

Attached is a copy of the Port's Personnel Policy and Procedures Manual for your information and reference. The manual is a written codification of existing City and Port policies and practices. Please keep it in a place where you can refer to it as needed.

The manual will be updated from time to time as the need arises.

Please sign below acknowledging your receipt of the manual.

.....

I acknowledge that I have received a copy of the Port's Personnel Policy and Procedures Manual dated November 30, 1998, updated 12/1/99, 9/10/01, 11/15/02 and 6/6/05.

James D Meisenbach
Signature

9/5/06
Date

WORKPLACE VIOLENCE PROHIBITED

This section of the Port Personnel Policy and Procedures Manual Covers the following topics:

- **City and County of San Francisco Policy Prohibiting Violence in the Workplace**
- **Port Policy Prohibiting Violence in the Workplace**
- **Guidelines for Implementing the Port's Policy on Prohibiting Violence in the Workplace**

City and County of San Francisco Policy Prohibiting Violence in the Workplace

I Policy

It is the policy of the City and County of San Francisco to require employees to treat co-workers and members of the public with courtesy and respect. The City and County of San Francisco will not tolerate any assaults, battery or threats or acts of violence by employees in the workplace.

Employees are also prohibited from bringing weapons to the job, unless required by the City and County department in the performance of the employee's official duties. Weapons include, but are not limited to, firearms, knives or weapons defined in California Penal Code Section 12020.

Failure to comply with this policy may result in employee discipline up to and including discharge from employment.

II Reporting

Employees have the responsibility to report any threats or acts of violence to their respective supervisors. When notified by a health care provider of a threat against any employee ("Tarasoff Warning"), the department head, Human Resources official, personnel official, or designee shall notify the affected employee as soon as possible.

III Investigation

Supervisors and managers through the department head, Human Resources official, personnel official, or designee have the responsibility to investigate any reported incidents of threats or acts of violence by any employees and to take appropriate action.

IV Remedial Action

Appropriate action taken by the department head, Human Resources official, personnel official, or designee may include, but is not limited to, one or more of the following depending on the nature of the threat or act of violence:

- Calling Emergency Response 9-1-1 if the threat is immediate and life threatening;
- Placing the employee on administrative leave in accordance with Charter Section 8.341 or suspension in accordance with Charter Section 8.342;
- Referring the matter to the City Attorney to determine if a restraining order is appropriate;
- Requesting the (City's) Human Resources Director to schedule a medical examination to determine fitness for duty;
- Imposing disciplinary action up to and including dismissal or termination;
- Admonishing the employee(s) that such behavior is unacceptable and will not be tolerated;
- Referring the employee to the Employee Assistance Program or to a health care/medical provider;
- Any employees who are a target of an act or threat of violence may be referred to the Employee Assistance Program or other support services;
- Other measures may be taken as appropriate under the circumstances.

(Adopted by the Civil Service Commission effective April 3, 1995)

Port Policy Regarding Workplace Violence

Port management is committed to ensuring the safety of Port employees and protecting employees from threats or acts of violence by members of the public and co-workers.

Every effort will be made to provide a safe work environment. Whenever an employee feels threatened by a member of the public or a co-worker, it is important that the employee withdraws from the situation and seeks assistance immediately. As soon as possible, employees who witness or are the victims of any threats or acts of violence during the course of employment must inform their immediate supervisor or a member of the Port's Management Response Team. The Management Response team includes

- Tom Carter, Director, Maintenance Division (597-7904)
- Kathy Mallegni, Human Resources Manager (274-0421)
- Karen Taylor, Safety Officer (274-0579)

If the threat is immediate and life-endangering, call or have someone nearby call 9-1-1 immediately. If a member of the public or an employee threatens violence over the telephone or makes statements to indicate that he or she intends to commit a violent act at some future time, report these incidents immediately to any member of the Management Response Team or your supervisor.

The Management Response Team will investigate any reported incidents, threats or acts of violence by the public or employees, and will take appropriate action, which includes contacting the Police and the Port's Human Resources Office. Supervisors and managers who are notified of threats or acts of violence must immediately contact a member of the Management Response Team immediately or call 9-1-1 if they feel the threat is imminent. In addition, employees and/or supervisors may be required to file a written report of the circumstances of the violent threats or actions with the Port's Human Resources Office.

The following actions by employees are prohibited during the course of employment:

- Threatening violent behavior against co-workers or the public under any circumstances;
- Bringing weapons including, but not limited to, knives and firearms to the workplace;
- Engaging in fighting or challenging another person to fight;
- Striking, punching, slapping or assaulting in any way another person;
- Physically or verbally intimidating another employee or member of the public.

Whenever an incident occurs in which an employee threatens to or does not adhere to the above-listed prohibitions, appropriate action may include, but is not limited to, contacting the Police, filing criminal charges, referring the employee to the Employee Assistance Program, imposing administrative leave while an investigation is pending, and/or disciplinary action up to and including discharge.

Guidelines for Implementing the Port's Policy on Prohibiting Violence in the Workplace

Definitions

- **Workplace violence** is violence that impacts the workplace or work site, as those terms are defined below.
- **Workplace** or **work site** refers to all Port facilities or areas where Port business is conducted, either on or off the premises where employees perform duties in the scope of their employment for the Port.
- **Violence** refers to both acts and threats of violence. It includes any conduct, verbal or physical, which tends to cause another to reasonably fear for his or her own personal safety or that of his or her family, friends, associates or property. Threats of violence include direct

or indirect, intentional or unintentional, words or actions targeted at oneself or another individual.

- **Weapon** includes, but is not limited to, firearms, knives, weapons as defined in California Penal Code Section 12020, or other instruments used to injure, threaten or intimidate.
- **Management Response Team** refers to the individuals who are assigned to investigate and respond to incidents of workplace violence. The team includes Port employees (the Deputy Director for Facilities and Operations; the Assistant Deputy Director, Maintenance Department; the Safety Officer; and the Human Resources Manager) personnel from other City departments or contractors who will be able to consider the interests of the City and its employees. When needed, additional Port staff may be assigned to assist the Management Response Team.

General Guidelines

- If you are in danger, call 9-1-1.
- For non-emergency situations which require Police assistance, phone the San Francisco Police Officer located at the Port at 274-0353 or page him at 560-8701, or page the Port security office at 560-5979, or call the Police Department non-emergency number, 553-0123.
- Employees are prohibited from bringing weapons to the workplace unless they are required to do so by the City and County of San Francisco in order to perform their official duties. At the present time, no Port employees are required to use weapons to perform their official duties.
- Immediately report all incidents of workplace violence to your supervisor or to a member of the Port's Management Response Team. Supervisors who are notified of a threat or incident of workplace violence are responsible for notifying the Management Response Team and, if they feel there is imminent danger to the employee, calling the police.
- Any person who engages in workplace violence will, as appropriate, be removed from the premises as quickly as safety permits and remain off the work site pending the outcome of an investigation into the incident.
- The investigation of incidents of workplace violence will be conducted by the Management Response Team or its designee(s).
- If the investigation substantiates a violation of the policy prohibiting violence in the workplace, the Port will take appropriate action which may include, but is not limited to, referral to the City's Employee Assistance Program, counseling, written warning, suspension, reassignment of duties, termination of employment, and/or legal action. If a person who is not employed by the Port violates the policy, appropriate action may include, but is not limited to, seeking arrest and prosecution and/or other legal action.
- To the extent practical, disclosures made to members of the Port's Management Response Team or the Port Director concerning any threatening or violent situation, or any potentially threatening or violent situation, will be treated as confidential.

Responsibilities – All Employees

All employees are responsible for reporting incidents of workplace violence to a supervisor or to a member of the Management Response Team. Failure to comply with this provision may result in discipline. An employee's duty to report arises in, but is not limited to, the following situations:

- Employees must report all threats or acts of violence which occur at the workplace that they experience, witness, or of which they otherwise become aware.
- Employees must report all threats or acts of violence they experience while acting in the scope of their employment on or off the work site.
- Employees must report any threats or acts of violence occurring off the Port premises of which they are a target, if there is a reasonable basis to believe that the violence will follow them to the workplace. This may apply to notification by a third party of threats against them (Where the third party is a physician or psychologist, the notification is commonly referred to as a "Tarasoff" warning).
- Employees must report any conduct, verbal or physical, which indicates that a person may intentionally harm her/himself at the workplace.
- Employees must report threats or acts of violence regardless of the relationship between them, the individual making the threat and the person threatened.
- Employees who apply for or obtain a protective or restraining order which lists themselves or any City employee, or which identifies any City workplace as a protected area, are encouraged to notify her/his supervisor or a member of the Management Response Team by providing a copy of any such order and supporting documentation used to seek the order.
- Employees who receive notification of threats against them by a third party, such as a physician or psychologist (commonly referred to as a "Tarasoff" warning) are encouraged to notify their supervisor or a member of the Management Response Team.

Responsibilities – Management and Supervisory Employees

- In an emergency, call the police. If there is a possibility for serious injury, alert others to leave the area or take cover.
- Document and immediately report to a member of the Management Response Team all incidents of workplace violence and/or threats of workplace violence.
- Comply with all civil protection and restraining orders by calling the police if it appears that a violation of a protection order is occurring in the workplace. If both parties to a civil protection order are employees of the City, contact a member of the Management Response Team and/or the Office of the City Attorney for instructions on how to comply with the order.

- In response to incidents of workplace violence and after consultation with the Management Response Team, take corrective action consistent with the Port's and the City's policies prohibiting violence in the workplace. Such action may include, but is not limited to:
 - Filing a Police Report.
 - Removing from the workplace as quickly as safety permits any person who makes a substantial threat, exhibits threatening behavior, or engages in violence. Such person may, if an employee of the Port, be placed on unpaid administrative leave and should remain off the work site pending the outcome of an investigation into the incident.
 - Relocating the employee (either the employee committing the violent conduct or the employee who is the target of the conduct) if it would improve workplace safety. In these instances, management should work with the Port's Human Resources Manager to determine whether relocation of the employee(s) is feasible and appropriate.
 - If allowed by the collective bargaining agreement that pertains to the employee, facilitating a change in work schedule or allowing the employee to use paid time off credits in order to facilitate workplace safety.
 - Obtaining an evaluation from a threat assessment specialist.
 - Initiating and following through with appropriate disciplinary action against employees who engage in workplace violence, up to and including termination.
 - In the event the employee is separated from the Port, recommending restrictions on future employment with the City.
 - Providing written directives to the employee regarding his or her workplace conduct.
- Demonstrate commitment to providing a safe workplace and protecting employees from threats to their safety.

The above guidelines are not intended to create an obligation on the part of the City to take any action beyond those required by law.

FILED 5-25-06 15:32/RT. 15:32/NO. 4861716510 P 2

ARBITRATION PURSUANT TO COLLECTIVE BARGAINING AGREEMENT

Excerpts

In an Arbitration Between:)
)
 Pile Drivers, Divers, Carpenters, Bridge, Wharf)
 and Dock Builders, Local 34,)
 Union)
 and)
 City and County of San Francisco,)
 Employer)
 Involving the discharge of James Meisenbach.)

Opinion and Award

Dated: July 28, 2006

APPEARANCES:

On Behalf of the Union:
 Stewart Weinberg
 Weinberg, Rieger & Rosenfeld
 1001 Marina Village Parkway, Suite 200
 Alameda, CA 94501

On Behalf of the Employer:
 Thornton C. Bunch, Jr.
 Deputy City Attorney
 P. O. Box 8097
 San Francisco, CA 94128

PRELIMINARY STATEMENT

David C Nevins, Arbitrator: This proceeding involves a dispute between the captioned parties pursuant to their collective bargaining agreement (the "Agreement"). The particular agency represented by the Employer in this proceeding is the Port of San Francisco. A hearing was held on March 7 and March 10, 2006, where both parties participated and presented evidence. Post-hearing arguments were submitted on or about June 1, 2006. A stenographic transcript of the hearing was taken.

The stipulated question to be resolved in this proceeding is as follows:

ISSUE

Was the termination of the Grievant, James Meisenbach, for just cause and, if not what is the appropriate remedy?

FACTUAL BACKGROUND

Effective August 19, 2005, the Grievant was discharged from his employment as a Piledriver Supervisor I, a job he had held since April 18, 2001.¹ Both the Grievant's father and grandfather had

¹ Unless otherwise noted, all dates herein refer to 2005.

telephone conversation Thomas had with Mr. Keith, who he identified in response to the Grievant's question. The Grievant heard Thomas say over the phone, "If you work, you get paid for it." The Grievant asked whom he was talking with and, after Thomas named Keith, the Grievant says he told Thomas that he just made the Grievant sound like a liar. The Grievant recalls that Keith then called him at home that evening, about 7 or 8 p.m.

III. The Matter Involving Mistreatment Of A Subordinate.

Early on Monday, April 25, events began which immediately led to the next factual charge against the Grievant--namely, that he mistreated a subordinate (Robert Keith). Superintendent Thomas says that Mr. Keith came to his office very early. To understand Keith's office visit one must note his testimony concerning Friday, April 22. He describes having spoken to Mr. Thomas that Friday morning about the work on April 21. (Mr. Thomas says nothing in his testimony about this conversation and, in fact, indicates he first heard of an overtime issue between Keith and the Grievant the morning of April 25.) According to Keith, he first told the Grievant on Friday that something was fishy about the overtime situation the previous day and he intended to talk to Thomas about it; the Grievant indicated Keith could do what he wanted. Mr. Keith says that when he spoke to Thomas that Friday and asked if he had talked to the Grievant the previous day about the crew's overtime, Thomas told him he had and had told the Grievant that day to "pay them and let them finish the day." Keith says Thomas told him he had instructed the Grievant to let the crew finish the day (at overtime). (In Mr. Keith's written statement of April 25 a similar description of his conversation with Thomas is found.)⁷

Returning to the morning of April 25, according to Thomas, Keith asked questions regarding the overtime for last Thursday, April 21. Thomas testifies that he told Keith he had informed the Grievant that Thursday that he had the discretion "to work the overtime or to pay the overtime that they had worked over the noon hour." Thomas says at this point Keith became agitated, saying the Grievant had told him Thomas had not authorized overtime and so what Thomas was saying conflicted with what the Grievant had told him. Reiterating that he had told the Grievant he had discretion to work overtime if there was work, Thomas told Keith he had instructed the Grievant that if there was no work he was to let his crew go. Thomas testifies that he asked Keith what time he had ended work that Thursday, and Keith said 2:20

⁷ That same Friday, after work, Keith called the Grievant at home. He acknowledges that in this conversation he yelled and screamed at the Grievant, called him a liar and cheater, and directed a lot of profanity at him (e.g., calling him a motherfucker and cocksucker). The Grievant hung up. Keith indicates he sought to gain nothing from the telephone call, but was angry, believing--based on what Thomas had told him--that the Grievant had lied when he had told the crew that Superintendent Thomas had rejected the crew working overtime on April 21.

p.m., which would have involved twenty minutes of overtime.⁸ (Mr. Thomas says that created a question for him, since he had previously authorized two hours of overtime for Keith.) Thomas testified on direct that Keith was "pretty upset," saying he could not work for a person (the Grievant) who had lied to him and was stealing from him; Thomas says he tried to calm him down and told him he needed to work in a calm and professional manner. (Mr. Keith does not recall Thomas saying anything to him about dealings Keith might later have with the Grievant.) Thomas acknowledges in later testimony that Keith was "very angry," "very boisterous" during their meeting, and he used profanity aimed at the Grievant several times.⁹ Mr. Thomas says he understood Keith was upset because he believed he had earned overtime but was not going to be paid for it. Thomas did not tell Keith that the Grievant had put him in for two hours of overtime for April 21 (even though Keith was saying he had only worked twenty minutes of overtime, until 2:20 p.m.).

Mr. Thomas then describes a meeting with the Grievant, who came to his office shortly after Keith left. Thomas describes the Grievant telling him that Keith had telephoned him over the weekend at home and had used foul language with regard to the payment of overtime, and saying he would not take it from a subordinate at his home. Thomas indicates he did not see the Grievant as angry, but resolute and upset in

⁸ In a written statement dated April 25, Mr. Thomas rendered his conversation with Mr. Keith somewhat differently. He wrote not that he told Keith he had authorized the Grievant to have the crew work overtime, but that he had instructed him to have overtime paid for work that had earned it. His statement went on to say that when he asked Keith when he left work on April 21, in order for him to verify the time, Keith said "that he and Mr. Willie Johnson had left at 2:00 PM", as the Grievant instructed them to stop work and leave. This statement regarding the crew's quitting time is similar to what is seen in the May 25 Carter Memo. The Carter Memo indicates that both Keith and Johnson "have stated that they did not work overtime on April 21, 2005." In view of these two writings, it is difficult to understand how Mr. Thomas testified that it was only "a couple of days later," after April 25, that he learned that Keith and Johnson had not worked any overtime on April 21 (i.e. they quit work at 2 p.m.). And, it is also difficult to understand Thomas's testimony that Keith told him he quit work at 2:20 p.m. (contrary to Thomas's written statement) and Johnson later told him they left at 2 p.m., without working any overtime. And, in view of all this, it seems a bit odd that the Skelly Report indicates the two crew members "left work around 2:30 PM," which, of course, is even different from Thomas's testimony at the arbitration.

Subsequent to the events of April 25, Mr. Thomas had the payroll records of Keith and Johnson revised for April 21. Their two hours of overtime were reduced to 30 minutes of overtime. He indicates he "elected to give them overtime until 2:30 to ensure that I covered the time disparity between . . . what was reported by Mr. Johnson and what was reported by Mr. Keith . . ." Of course, in view of the Thomas's own April 25 statement, the Carter Memo, and the testimony of Mr. Keith and Mr. Johnson, it simply must be concluded that neither of these employees ever claimed (similarly or differently) that they had worked beyond 2 p.m. on April 21.

⁹ Mr. Thomas had know for some three to four years that the Grievant and Mr. Keith had a bad relationship, that Keith had made numerous complaints about the nepotism and unfair treatment he got from the Grievant's family, including complaints regarding the Grievant, his brother, and his father. He acknowledges that the Grievant had complained about Keith's behavior and making statements toward him, but Thomas did nothing because the Grievant did not document in writing his complaints.

his complaint about Keith calling him at home over the weekend. Thomas testifies he told the Grievant to go back to Keith and Johnson to determine just what time they left work on April 21 because Thomas wanted to make corrections on the time sheets. Knowing he was talking to someone "very angry and upset," Mr. Thomas describes telling the Grievant to talk to the employees with another supervisor present, to have Ricky Bettiga present with him. Thomas says he told the Grievant to be supervisorial, professional and "you know, quiet."¹⁰ About 45 minutes after the Grievant left their conversation, Thomas got a telephone call from another supervisor, Ricky Bettiga, telling him that an altercation had taken place and that Thomas needed to come to Picr 45. (As later noted, this was Bettiga's second call to Thomas that morning.)

The Grievant's view of his meeting with Thomas the morning of April 25 is quite different. Before that meeting, however, the Grievant got the telephone call from Mr. Keith on Friday evening (see note 7). He was, he says, upset from it (Keith had called him a number of names and accused him of being a liar, and the Grievant says he did not know what Keith was referring to, and he finally hung up). He says he called Superintendent Thomas's cell phone number and left a message for him: the message recounted Keith's call to his home, mentioned that Keith was now not just confining his yelling and screaming to the work environment, and said that Thomas needed to have a talk with him. Although the Grievant requested Thomas to call him back, he heard nothing back from him. The Grievant recalls that he had complained to Thomas on previous occasions about how Keith acted toward him at work, and Thomas generally indicated he would speak to Keith about it.

The Grievant came in first thing on Monday to talk with Thomas about Keith's behavior. He mentioned to Thomas he had called him over the weekend and had wanted to hear from Thomas. He then

¹⁰ In several significant respects with respect to what he discussed with the Grievant that morning, Mr. Thomas's testimony differs from what can be seen in some of the written documents. Thus, his own written statement of April 25 does not claim the Grievant was angry; rather, that "Jim was pretty much 'matter of fact', not angry, but very stern in his attitude . . ." This lack of any claim that the Grievant had manifested anger toward Keith in front of Thomas is also consistent with the Carter Memo, where no such claim of anger is ascribed to Mr. Thomas's description of his meeting with the Grievant. Second, there is no assertion in Thomas's own statement that he instructed the Grievant to have another supervisor present when talking with Keith and Johnson. And third, absent from Thomas's testimonial description of his conversation with the Grievant, the Carter Memo claims that Thomas said the following: "that [the Grievant] speak to both of the employees together or, alternatively that he (Mr. Thomas) could speak to them for [the Grievant]. [The Grievant] replied that they were his crew and that he would speak to them." This Carter Memo claim about what Thomas told the Grievant is repeated in the Skelly Report and in the Grievant's ultimate dismissal notice. The Grievant's version of his conversation with Thomas on April 25, it should be noted, is quite at odds with Thomas having told him that either he should have another supervisor present when talking with Keith and Johnson or that Thomas would willingly speak to them instead.

went on to say Keith called him at home, yelled, screamed, and threatened him, that Thomas was supposed to take care of this but nothing has been done, and that Thomas had to do something about it. The Grievant testifies that Thomas then told him that Keith had been in earlier. Thomas said, according to the Grievant, that Keith had called him names and a liar, and the Grievant asked what he was supposed to have lied to Keith about. The Grievant says Thomas said he did not know, but Keith had said the Grievant was screwing him. The Grievant says he told Thomas he had to talk with Keith, that he was out of line, out of control, and there was nothing the Grievant could do about it. The Grievant says he told Thomas he was the one who got the whole thing started and that he needed to go down to talk with Keith. Instead, the Grievant says Thomas instructed him to go down to talk with Keith.

The Grievant then goes on to describe a discussion with Thomas about what had happened on April 21. The Grievant testifies that Thomas told him that Keith had indicated to him that the crew had not worked past 2 p.m., that they had gone home. The Grievant said it did not surprise him, as he had told them to leave because Thomas had so instructed him. When Thomas disagreed that was what he had instructed the Grievant, the Grievant mentioned Thomas's first telephone call with him on Thursday, before he called back to say that the crew could work overtime. The Grievant told Thomas he had already told the crew to leave and it would have been counterproductive to ask them to stay, that it would have involved call-back and a four-hour minimum. According to the Grievant, Thomas then told him he needed to go down and get the crew's time that they had left on Thursday, get their correct time so the overtime papers could be adjusted. The Grievant claims he told Thomas he needed to talk with Keith, that the Grievant could not do anything about this, the guy was out of control. The Grievant says he had no desire to talk with Keith, that he was actually afraid Keith might get violent. Nonetheless, he says, he followed his instructions and went to talk with Keith and Johnson at Pier 45.¹¹ He acknowledges that Thomas told him to deal with Keith in a calm and professional manner.

How the altercation began is fairly clear, though the versions of its onset differ a bit. Willie Johnson recalls talking briefly with the Grievant at Pier 45 about the overtime sheet for April 21, when Keith appeared and interjected something like "How does it feel to be a damn liar, with the whole crew knowing." Johnson says Keith continued to call the Grievant a liar, they pretty much came face to face, and the accusations from Keith continued, with profanity. Johnson turned away to leave, to avoid the confrontation (hoping it would go away), and then he heard Keith's hardhat hitting the ground, turned and

¹¹ Kevin Patterson, a laborers' supervisor, a Port employee for 25 years, and a close associate of the Grievant, agrees with the Grievant that the Grievant telephoned him Monday morning, at about 6:30 a.m., on his way to Pier 45, and complained he was being sent to Pier 45, without a superintendent present, with Bobby Keith threatening him the previous Friday night. Both agree that the Grievant said something to the effect that he felt like a guppy being thrown into a shark tank.

saw Keith's glasses on the ground as well, with the Grievant just standing there.

Mr. Keith portrays the encounter a bit more graphically. He describes not a conversation with the Grievant but "more my attacking the fact that he lied and the fact that he wanted to cheat me out of money and that he's a no-good, lying, cocksucking, motherfucker." Keith says that both he and the Grievant got into each other's face and were yelling. He testifies the Grievant had paperwork in his hand (a folder or binder) and he struck Keith with his right hand with the material in it. Keith says they were about three feet from one another when the Grievant swung the binder up at him. (Keith says his head is about the height of the Grievant's shoulders.) Keith testifies that the swing did not knock him down, or knock him anywhere, it just knocked off his glasses and hard hat. He noticed a minute or so later that his cheek was bleeding, when he looked in a mirror.¹² The encounter with the Grievant, Keith says, lasted about 30 seconds. Mr. Keith acknowledges that in October, 2004, he had another swearing altercation, on that occasion with the iron door shop supervisor, who had honked at Keith backing up in front of his vehicle with a forklift truck. Keith apologized to the supervisor for his conduct, and when later discussing it with Superintendent Thomas, the superintendent told him, "Forget about it. It never happened."

Jason Dodson, a pile worker, observed the interaction between the Grievant and Mr. Keith on April 25. Dodson, some 28 feet from Keith and the Grievant, was on a barge, next to the pier Keith and the Grievant were on. Dodson says he heard some arguing, which was face to face, and belly-bumping. He then saw, when things came to "kind of a stop," the Grievant turn and stuff a binder in Keith's face, at which point Keith's hardhat and glasses were knocked off and he went down, reaching for the ground. After that exchange, Keith's left cheek had some abrasions on it, and surface bleeding could be seen.

The Grievant's version of what happened at Pier 45 is the following. He arrived and first went to speak with Mr. Johnson. Kneeling, he told Johnson he had put the crew in for overtime on Thursday but that Thomas wanted him to adjust the timecards, to find out what time they had left work. The Grievant says that Johnson said they had not worked past 2 p.m., that after his discussion with the Grievant they had changed and left from the rig area. At that point, the Grievant recalls Keith coming up. He began screaming as he was walking up a gangway, yelling that the Grievant was a lying, cheating, no-good, rotten . . . and that he was a lying thief. The Grievant says he tried to ignore Keith, directing himself again to Johnson, but Keith got in his face and he stood up. The Grievant says he began walking away from the

¹² In August, about the same time that the Grievant was finally terminated (but 3 months after the Grievant was informed of the intent to dismiss him), Mr. Keith was advised he was being disciplined for discourteous treatment toward others. He was given a 3-day suspension, which was then held in abeyance for two years. Keith says he undertook an anger management class and so advised management of that undertaking. It appears that at the time of the Grievant's Skelly hearing, and for a time after that, Mr. Keith had not been advised of any proposed discipline.

side of the dock, to avoid getting knocked off the dock. At some point (it is unclear precisely when), the Grievant says he told Keith to back off and not argue with him. The Grievant, after Keith continued screaming at him, asked, "what is your fucking problem?" He asked what he was supposed to have lied to Keith about. When Keith continued yelling at him, the Grievant said he decided to leave and, with Keith about a foot away and his binder in his right hand, he indicated "fuck it. I'm out of here. I don't need this shit," threw up his hands and turned away to leave. After he turned, Keith began claiming the Grievant had hit him. The Grievant says if he hit Keith with the binder it was an accident. (The Grievant's binder was not new and was jagged and rough on its edges.) Mr. Keith then began yelling that Supervisor Bettiga should call the police, that the Grievant had hit him.

III. The Inattention To Duty Matter,

The Employer's charge that the Grievant failed to properly attend to his duties relates to the fishing gear that was removed from the James A. and placed in the rear of the Grievant's Port pick-up truck on April 21. That this fishing equipment had been moved to the pick-up was reported to Superintendent Thomas, apparently on April 28, and he in turn reported it to Deputy Director Carter. It was decided that same day, in connection with a supervisors' meeting that the Grievant would attend, that Mr. Thomas would check the Grievant's pick-up truck to see if the fishing equipment was still there. Because the Grievant had not driven to the meeting, however, Thomas instead arranged for another supervisor, Ricky Bettiga, to check the pick-up at Pier 17 to see if the fishing gear was still in it.¹³ Bettiga was told to check the pick-up "discreetly" before "an accusation" was made against the Grievant. Bettiga subsequently reported to Thomas that he had checked the Grievant's pick-up and the fishing gear was not in it.¹⁴

The Grievant recalls that he spoke to Pat Albin about the fishing gear, probably on April 26, a Tuesday. The fishing gear was still on his truck. The Grievant testifies that he asked Albin where he

¹³ Although the Grievant was given a Port pick-up truck for driving while working, he was not allowed to take it home. When not working it was generally parked at Pier 17, where the Grievant's office was maintained.

¹⁴ The arbitration testimony indicates (through hearsay) that the Grievant had had a conversation regarding the fishing equipment with Pat Albin, the assistant to Hedley Prince. Mr. Prince recalls that one day, when he and Albin were eating breakfast, the Grievant drove up, Albin went out to talk with him, and when Albin returned he said something about the Grievant having some fishing gear from the James A. and, expressing what appears only to have been his opinion ("he [Albin] had the impression at least that he [the Grievant] was looking perhaps to sell them") that the Grievant was looking to sell it. Obviously, this evidence cannot be relied on to make a factual finding adverse to the Grievant about his trying to sell the fishing equipment.

The James A., by the way, being birthed at Fisherman's Wharf, was where Prince and Albin worked.

should put the gear, but Albin said he had no room for it, but he would get ahold of the vessel's owner and contact the Grievant. (Our record shows that on April 26 a theft had taken place on the Grievant's rig at Pier 80, and a number of things had been taken. The Grievant notes that thefts have also taken place at Piers 45 and 50.)¹⁵ The Grievant says that Albin never got back to him about locating the James A's owner, though the Grievant says he received a garbled telephone call on Wednesday, April 27, on his work voice mail. The Grievant says the message was something about his having some fishing equipment of the caller's, from his boat, and he understood the Grievant to be at (Pier) 15 and he would come down and get it. According to the Grievant, the fishing equipment was removed from his truck while it was parked at Pier 15/17, where his office was and where he parked his truck at night. He says the area was locked at night. He does not know who took the fishing equipment.¹⁶

IV. The Grievant's Past Discipline.

As earlier indicated, the Grievant began his work as a pile driver supervisor in April of 2001, though it appears he had worked for many years as a pile driver. On October 11, 2001, the Grievant was given a letter of reprimand by Superintendent Thomas, which was due to "some irregularities regarding [his] personal time sheets" for the past 11 months or so. The Grievant had been during that period receiving "premium dive pay" even though he was on "non-dive status." Thomas's reprimand indicates the Grievant was faulted for "sloppy timekeeping," indicating, however, that he did "not intend to fraud . . ." Due to what he believed to be "an unusual circumstance warranting immediate action," Mr. Thomas proposed extending the Grievant's then-probationary period for an additional six months, which took place. In a written explanation, the Grievant offered that he used the designation "D20" on his payroll information to advise his supervisor that a dive had taken place on the designated day, but not the designation "20D", which was the pay code for the dive premium. His explanation indicates that since his dive papers had been pulled, which was known to his superiors, he assumed no one would think he was claiming the dive pay premium.

On August 7, 2003, the Grievant was suspended for 30 days (which tracked the period he had been placed on administrative leave, November through December 19, 2001). Originally, it had been

¹⁵ When questioned about why he did not just return the fishing equipment to the James A, now that it had been placed in the secure area of Pier 80, the Grievant maintained that he was waiting for Pat Albin to tell him where to put it and he was afraid the equipment would be stolen. Further questioning elicited from the Grievant that the James A was broken into after it was placed in the secure area and things had been stolen from it, which he says he advised, and documented for, Guadalupe Thomas at the time.

¹⁶ From the record it appears that the Grievant was advised of the Employer's intent to terminate him around the end of May. It was also at that time that he went out on a disability leave.

against someone and following through with a handful of papers in that blow. For another thing, despite some suggestion that Mr. Keith was knocked almost over by the Grievant, that does not appear to have been the case. As Mr. Keith testified, "He didn't really knock me anywhere. He knocked my hat and my glasses off."²⁶ For another thing, the Arbitrator must respectfully disagree with the notion, asserted in the Grievant's termination notice, that the photo of Mr. Keith's injury is consistent with an overhand or aggressive blow from the Grievant. As the Union argues, Mr. Keith's bruise indicates the force of the blow was most likely upward, not downward or straight ahead, proceeding upward from his cheek toward his nose (though starting below Mr. Keith's cheekbone area). This marking is certainly consistent with the Grievant's claim that, exacerbated and swearing about not taking any more of the encounter, he threw up his hand or hands, and turned away (resulting in his binder hitting Mr. Keith in the cheek). Even Mr. Dodson indicates in his recollection that the Grievant "turned and stuffed a binder in" Keith's face. Moreover, after Keith's glasses and hat were knocked off, the confrontation immediately ended, strongly suggesting that the Grievant was not attempting to attack, fight, or harm Mr. Keith. And, without much dispute about it, even a glancing blow with a binder of papers, rough on its edges, would have been sufficient to leave a nasty scrape mark, as is seen in the photo of the bruise, and knock off Mr. Keith's glasses and hard hat.

The foregoing considerations leave the matter at hand in much more of a gray area than the view relied upon by the Employer when discharging the Grievant. Management was complicit in putting him in a difficult and threatening situation. The aggressor in the confrontation was not the Grievant but Mr. Keith. Keith's behavior toward the Grievant was extremely provocative. The Grievant responded with somewhat similar behavior, yelling and swearing. The Grievant then engaged in a physical move which resulted in a small injury to Mr. Keith, though the evidence is not compelling that his move was intentionally aimed to strike Keith or do him any harm. The Grievant did not act as he should have, but neither did Mr. Keith nor Mr. Thomas. The Grievant, however, was terminated, and nothing much happened to Mr. Keith and nothing at all happened to Mr. Thomas.

IV. Conclusions And Remedy.

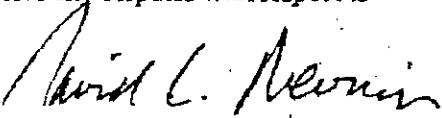
From the extensive review of the evidence presented in support of the Employer's disciplinary charges against the Grievant the following emerges. First, the Grievant was appropriately faulted for his lack of appropriate attention to duty in connection with his unreported placement of fishing gear from the

²⁶ Thus, as with most perceptions of sudden events, some error seems to touch Mr. Dodson's claim that the Grievant "stuffed a binder in his [Keith's] face and shoved him down." "[H]e went down . . . reaching for the ground."

James A on his pick-up, the failure to maintain adequate security over it, and the failure to inform supervisors when it was found to be missing. This conduct, however, was not shown to be serious misconduct. Second, the evidence fails to support the charge that the Grievant fraudulently or dishonestly claimed overtime for his crew and himself for April 21, or that he inappropriately worked overtime that day without supervisory approval. Because of the failure of evidence the Grievant cannot be appropriately faulted in respect to the overtime matter. Third, while the Grievant can be faulted for failing to fully observe the Employer's policy against violence in the workplace, by failing to withdraw from the confrontation with Mr. Keith and by making physical contact with Mr. Keith, he cannot be appropriately faulted so as to satisfy his termination under the just cause standard. Significant mitigating and limiting considerations undercut the basis of termination. His supervisor, Mr. Thomas, bears meaningful responsibility for failing to take steps to protect against what was a readily foreseeable encounter that threatened to break out in violence, Mr. Keith was the instigator and aggressor in fomenting the encounter and received minimal, almost nonexistent discipline for his misconduct, and the evidence does not convincingly show that the Grievant's physical contact with Mr. Keith was an aggressive, affirmative, or intentional effort to do violence to, or harm, Mr. Keith. On the other hand, the Grievant did not act in a manner that his supervisory position called for, to extricate himself, without physical or verbal confrontation, from Mr. Keith. In view of the Grievant's prior record of discipline, which shows some relatively serious deficiencies in supervisory behavior, the misconduct evidenced in this record appropriately warranted some meaningful discipline, though given the mitigating circumstances and significant disparate treatment it is far less than termination. A seemingly reasonable, possibly excessive, discipline would amount to an eight-week suspension.

AWARD

The grievance is sustained. The evidence does not support a conclusion that the Grievant's discharge was for just cause. The Grievant is to be reinstated to his former job, without loss of seniority, with an eight-week suspension. He is to be reimbursed by the Employer for his lost wages and benefits, less interim earnings and less the eight weeks of suspension. The period of time to be covered for his reimbursement should commence from the date at or following his termination when he was physically or medically able to perform his job, lessened then by the eight weeks of suspension, after which any of his interim earnings should be subtracted, and end when he is reinstated or refuses such reinstatement. The Arbitrator will retain jurisdiction to resolve any disputes with respect to the remedy.


David C. Nevins, Arbitrator

PORT OF SAN FRANCISCO



Hand Delivered

DATE: May 26, 2011
TO: James Meisenbach, 9332 Pile Worker Supervisor I
FROM: Tom Carter, Deputy Director of Maintenance *T. Carter*
SUBJECT: [REDACTED]

Thank you for meeting with me today. At our meeting you acknowledged that you were directed by Sue Grecni, Manager III, in early July 2010 regarding prohibited interaction with [REDACTED]. Sue's direction to you at that time was, due to a pending City and County of San Francisco, Department of Human Resources, Equal Employment Opportunity (EEO) investigation you were not to supervise or have contact with [REDACTED]. She also informed you that you should not retaliate against [REDACTED].

Today's meeting was to inform you that the direction previously communicated by Sue in early July 2010 continues to apply and that you are not to supervise, have contact with, or retaliate against [REDACTED]. This will remain in effect until written notice is given to you to conduct yourself otherwise. Violations of this directive will lead to progressive disciplinary action.

During our meeting I also directed you to contact your manager and/or me to discuss alternatives before going to a jobsite requiring you to be on the same job/jobsite as [REDACTED].

Cc: Sue Grecni
Dan Lazzari
Employee File

Attachment C



Via Certified and regular U.S. mail

November 14, 2011

James Meisenbach

Subject: Amended Skelly Notice and Directive to Return Port Property

Dear Mr. Meisenbach:

As you will find in the attached letter, the Port of San Francisco ("Port") is amending the Notice of Proposed Dismissal and *Skelly* Hearing ("Skelly Notice") issued to you on November 3, 2011 to include additional charges in further support of its intent to terminate your employment as a Class 9332 Pile Worker Supervisor I, Maintenance Division. Also included with the amended Notice are the Port Human Resources' investigative report, the Department of Human Resources' ("DHR") EEO determination letter and DHR's EEO investigative report.

Additionally, please be advised that you are directed to immediately return by overnight mail the cellular telephone that was provided to you by Port Maintenance (415-850-6710). The cellular phone package should be postmarked within 24 hours of receipt of this notification and no later than Wednesday, November 16, 2011, and should be sent to the attention of Lavena Holmes, Deputy Director, Port Human Resources, at Port of San Francisco, Pier 1, The Embarcadero, San Francisco, CA 94111.

As a reminder, you are not to return to the workplace until this matter is resolved. You also may not retaliate against anyone because of the Port's intention to terminate your employment, or because of an individual's actual or perceived cooperation with the investigation and factual basis referenced in the Skelly Notice. This is a confidential proceeding and as such you are advised to use the enclosed materials or discuss the matter for the purpose of preparing your response or any defense. For example, you may provide the materials and discuss them only with your representative. Failure to comply with the above directives will result in disciplinary action.

Sincerely,

Elaine Forbes

Deputy Director, Finance and Administration

65

cc: Hearing Officer
Lavena Holmes
Tom Carter
Pat Karinen

66

November 10, 2011

James Meisenbach



Re: Amended Skelly Notice and Directive to Return Your Port-Issued Cellular Phone

Dear Mr. Meisenbach:

I write to inform you that the Port of San Francisco ("Port") is amending the Notice of Proposed Dismissal and *Skelly* Hearing ("Original Skelly Notice") issued to you on November 3, 2011 to include the following additional charges:

- Dishonesty
- Misappropriation of Port Property
- Violation of the City's and the Port's Property Use Policies
- Insubordination/Violation of a Direct Order

The bases for those additional charges are provided below. The Original Skelly Notice, and the charges set forth therein, are incorporated by reference in this Amended Skelly Notice

Further, we are providing you this Amended Skelly Notice which includes the attached Port Human Resources' investigative report, the Department of Human Resources' ("DHR") EEO determination letter and DHR's EEO investigative report in additional support of the charges outlined in the Original Skelly Notice. These reports have been redacted as appropriate to protect privacy interests, and to exclude material that is not being used as a basis for discipline against you.

BACKGROUND

At approximately 10:30 a.m. on the morning of Thursday, November 3, 2011, you attended a meeting with Elaine Forbes, Deputy Director for Finance and Administration, Bill Keast, Senior Personnel Analyst, and Tom Carter, Port Maintenance Deputy Director, during which time you were notified of the Port's intent to terminate you and that you were being placed on administrative leave effective immediately. You were directed not to return to Port property until further notice, and to treat this matter as confidential and to refrain from discussing the allegations against you with any potential witnesses to the matter.

At the conclusion of the meeting at approximately 11:00 a.m., you were directed to turn over your employee badge, your Port keys, your Port-issued radio and your Port-issued cellular telephone (415-850-6710). You denied that you had your Port cellular phone and stated that you may have left it in Maintenance Superintendent Sue Grecni's office. You were then accompanied out to your Port Vehicle to retrieve your personal belongings, during which time you were again asked if you had your cellular telephone. You firmly asserted that your cellular phone was in Sue Grecni's office.

After you removed your personal belongings from your Port vehicle, you proceeded to Pier 45 to retrieve your personal items from your trailer office (you refused the ride offered to you to Pier 45 and insisted on walking instead). Mr. Keast and San Francisco Police Officer Matt Balzarini also proceeded to Pier 45 and were there when you arrived. Upon your arrival, you gathered and removed your personal effects from the Pile Driver Trailer located in Pier 45 Shed A. Prior to your departure at approximately 12:25 p.m., you returned your key to the trailer to Mr. Keast. Mr. Keast again asked for your cellular phone, and you again replied, "It is in Sue Greci's office." You then left Port property as directed.

In a letter dated November 10, 2011 from Pat Karinen, Senior Field Representative for Piledrivers Union Local 34, Mr. Karinen indicated that you told him that morning that you had left the cell phone at Pier 45 on the desk in the trailer where the crew meets in the morning.

However, phone records confirm that you did in fact have your Port-issued cellular phone at the time and that you used that phone immediately before and after your meeting with Port management, and witnesses confirmed that you discussed your proposed dismissal with them. (See the attached phone records.) To date, you have not returned your Port-issued cellular phone as directed.

BASES FOR THE ADDITIONAL CHARGES

Charge: Dishonesty

You were dishonest when you asserted three times to Port management that your Port-issued cellular telephone was in Sue Greci's office. During that same time frame (between the times of approximately 11:00 a.m. and 12:25 p.m.), your cellular phone records reflect that you made two outgoing calls and received one incoming call on that same phone. Specifically, records indicate that you phoned Ms. Greci from your Port cellular phone at 11:12 a.m., shortly after you left Pier 1 to walk to Pier 45 to retrieve your personal items from your trailer office. Records also confirm that you made a second call from that phone at 11:22 a.m. to Brent McLain, Pile Driver Supervisor, from your Port-issued cellular phone, shortly before or at the time that you arrived at Pier 45. The incoming call at 11:43 a.m. was from a non-Port number.

Between 12:25 p.m. and 7:47 p.m. that same day (November 3rd), phone records reflect that there were eleven more calls attributed to your Port issued cellular phone. At 12:28 p.m. you made another call to Ms. Greci—within minutes after you reiterated a final time to Mr. Keast that your cellular telephone was in Ms. Greci's office. Ms. Greci verified by viewing her incoming calls on her cellular phone that you contacted her from phone number 415-850-6710 at 12:28 p.m. that day (November 3rd) and she confirmed that you spoke for about five minutes. (See attached email from Sue Greci).

Five of the remaining calls that day were with Port employees—Ms. Greci, Michael O'Connor, Anthony Bettiga, Michael Stez, and Robert Edwards—with the calls lasting from between two to seven minutes. Each of the five employees verified that they spoke with you on your Port-issued cellular phone and that you reported to them that you had been terminated.

Needless to say, Ms. Grenci was unable to find your cellular phone after a search of her office because you have continued to retain possession of this phone. Tom Carter and Bill Keast also searched for the phone in the trailer at Pier 45 by on Friday, November 4, 2011. Although there was a phone in the trailer, Mr. Carter dialed your phone in order to determine if the phone in the trailer was the cellular phone issued to you but the cell phone in the trailer did not ring. Upon further investigation the phone in the trailer was found to be the "Dive Shop" phone and not the cellular phone issued to you. There was no other cellular phone in the trailer at the time of the search.

Charge: Misappropriation of City/Port Property

You failed to return your Port-issued cellular phone as directed, and to date have not returned it to the Port. You are not authorized to possess or use the Port cellular phone, and your continued intentional refusal to return it constitutes misappropriation of Port property.

Charge: Violation of the City's and the Port Property Use Policies

The Port's and the City's policies are clear that City/Port property may only be used for official Port and/or City purposes only. The Port's policy is also clear that violation of this policy may result in discipline, up to and including termination. (See the attached policies.) You used the Port's cellular phone for personal purposes. Your conduct is a violation of both the City's and the Port's policies regarding the use of City and/or Port property.

The above charges further support the Port's recommendation that you be dismissed from your position in Class 9332 Pile Workers Supervisor I. The November 3rd Skelly Notice was clear that the Port would not tolerate disregard of its policies and its managers' directives. The above conduct underscores your continuing refusal to comply with these conditions of employment.

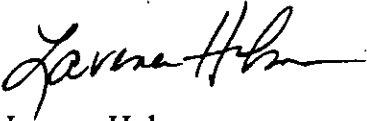
RIGHT TO RESPOND

The Port has scheduled a Skelly Hearing on this Amended Skelly Notice in order to provide you with a full opportunity to respond to the charges underlying your proposed dismissal and to present any objections or concerns you may have about the proposed dismissal or the charges contained in this notice and the Original Skelly Notice dated November 3rd. At the request of Mr. Karinen, the Port has agreed to schedule the meeting for **2 p.m. on Friday, November 18, 2011** in the Embarcadero Conference Room at Port of San Francisco Pier 1.

You are not required to attend the Skelly Hearing; however, if you choose to attend, you are entitled to bring a representative. You may also submit a written response and any relevant written materials for the Port to consider before making a final decision in lieu of or in addition to attending the Skelly Hearing. If you choose to submit a written response or additional documents for the Port's consideration, you must submit them to me at Port of San Francisco, Pier 1, San Francisco, CA 94111 by 5:00 p.m. on November 18th. If you do not attend the Skelly Hearing or submit a written response by that date, the Port will make its decision on your proposed dismissal based on the available information and materials.

Please contact me at 415-274-0423 or Lavena.Holmes@sfgov.org if you have any questions about the *Skelly* Hearing.

Sincerely,



Lavena Holmes
Assistant Deputy Director, Human Resources

Cc: Hearing Officer
Elaine Forbes
Tom Carter

Attachments:

1. DHR EEO Determination Letter
2. DHR EEO Investigative Report
3. Port Human Resources' Investigative Report with attached documentation from Sue Greci
4. Phone Log for Port-Issued Cellular Phone 415-850-6710
5. November 3, 2011 Letter to James Meisenbach – Notice of Administrative Leave
6. Port's Property Use Policy
7. City's Property Use Policy
8. November 4, 2011 Email from Sue Greci
9. November 10, 2011 Email from Bill Keast
10. November 8, 2011 Letter from Piledrivers' Union to reschedule Skelly Hearing
11. November 9, 2011 Letter to Piledrivers' Union from Lavena Holmes in response to request
12. November 10, 2011 Letter from Piledrivers' Union

City and County of San Francisco



Department of Human Resources

Edwin M. Lee
Mayor

Mick Callahan
Human Resources Director

CONFIDENTIAL

June 13, 2011

Monique Moyer
Port Director
Ferry Building, Suite 3100
San Francisco, CA 94111

RE: Complaint of Discrimination, EEO File No. 1569

Dear Director Moyer:

In accordance with the San Francisco Charter, Section 10.103, the Human Resources Director is responsible for the review and resolution of complaints of employment discrimination. The purpose of this letter is to notify you of my determination in the complaint of discrimination filed by [REDACTED]

On June 24, 2010, Ms. Walker contacted Tom Carter, Port Deputy Director to complain about harassment by Mr. James Meisenbach, 9332 Pile Drive Supervisor. Mr. Carter contacted Linda Simon, Equal Employment Opportunity Division Director, Department of Human Resources, seeking counsel on how to proceed with Ms. [REDACTED]'s complaint. Ms. Simon advised Mr. Carter to document the conversation with Ms. [REDACTED], submit the Department Report of Employment Discrimination Complaint and request that Ms. [REDACTED] document her request to be transferred to another supervisor. The requested information was faxed to Ms. Simon.

On June 30, 2010, the complaint was assigned to Magaly Fernandez, Senior Specialist, EEO Programs for investigation.

Background

The Pile Drive Crew supervised by Mr. Meisenbach (Caucasian male) consists of four (4) Caucasian male Pile Workers, one African American female Pile Worker (Ms. [REDACTED]), and one Caucasian male Pile Engine Operator. The Pile Workers perform a variety of manual work in the repair and construction of piers, wharfs and related substructures. The equipment utilized consists of pneumatic and electrical tools such as drills, sanders, wrenches, saws, etc. The working environment is noisy, dirty and requires safety precautions.

Investigative Standards**Harassment – Hostile Work Environment Standard:**

- (1) the complainant is subject to physical, verbal or visual conduct on account of the complainant's membership in a protected category;
- (2) the conduct is unwelcome; and
- (3) the conduct is sufficiently severe or pervasive as to alter the condition of the complainant's employment and create an abusive working environment.

Disparate Treatment Standard:

- (1) the complainant is a member of a protected category;
- (2) the complainant has suffered an adverse employment action; and
- (3) the complainant suffered an adverse employment action because of her membership in a protected category.

Harassment Allegations Based on Gender (Female)

Since May 8, 2008, Ms. [REDACTED] has been a 9330 Pile Worker at the Port of San Francisco. She alleges the following:

Allegation A: Ms. [REDACTED] alleges Mr. Meisenbach [REDACTED] uses the "F" word routinely. [REDACTED] He also has a hostile tone and speaks to her in a demeaning manner.

Allegation B: On June 24, 2010, Mr. Meisenbach told Ms. [REDACTED] to move her "fucking" truck three times. Ms. [REDACTED] responded that she did not want to get in the truck with her dirty clothes and if she did she was leaving the work site. Mr. Meisenbach responded, "I don't give a fuck what you do." [REDACTED]

Allegation C: On May 17, 2010, Mr. Meisenbach yelled at Ms. [REDACTED] in front of the crew, asking her questions about what time she started work, inferring she was late. Jeffrey Bettiga arrived after her and Mr. Meisenbach did not yell or question him about his arrival.

Allegation D: On April 24, 2010, while Ms. [REDACTED] was attempting to sharpen a chain saw, Mr. Meisenbach yelled at her that she did not know what she was doing. Ms. [REDACTED] contends she was sharpening the saw according to the equipment manual. [REDACTED]

Allegation E: On April 24, 2010, after Ms. [REDACTED] had worked with Anthony and Jeffrey Bettiga on a deck assignment, Mr. Meisenbach told her she "fucked up." Ms. [REDACTED] alleges the Bettigas were the Leads on the job and Mr. Meisenbach did not address the issue with them.

Allegation F: In April 2010, at Pier 45, Mr. Meisenbach told Ms. [REDACTED] to guard the doors to a museum while the crew was moving equipment. Ms. [REDACTED] alleges that Mr. Meisenbach yelled, "We're going to meet. You're on the fucking phone? Get your ass over here." Ms. [REDACTED] alleges she was not on the phone and Mr. Meisenbach yelled at her and not the male coworkers.

Disparate Treatment Allegation Based on Gender (Female)

Allegation G: Ms. [REDACTED] alleges Mr. Meisenbach does not give her the same work assignments as the males and has not assigned her to be Lead.

Harassment Allegations Based on Race (Black)

Allegation H: On March 17, 2010, Mr. Meisenbach approached Ms. [REDACTED] and asked her where the harness was. Ms. [REDACTED] alleges Mr. Meisenbach said, "I should slap the black off of you."

Allegation I: On April 25, 2010, while the crew was lowering the ramps at AT&T Park, Mr. Meisenbach told a racist joke about Blacks (a Black and Decker joke). Jeffrey Bettiga told Mr. Meisenbach that he should not be telling Black jokes. Mr. Meisenbach responded that if Ms. [REDACTED] had a problem she could talk to him.

Investigative Findings

I. Harassment Based on Gender (Female)

Allegations A - F

Witnesses confirmed Mr. Meisenbach uses profanity and the "F" word. Witnesses testified Mr. Meisenbach uses the "F" word a lot, that his vocabulary is laced with profanity, and that profanity is part of his normal conversation.

Mr. Carter and Sue Greci, Superintendent, Maintenance Division, confirmed that Mr. Meisenbach does use the "F" word. Mr. Carter testified that missives have been issued several times to staff regarding harassment in the workplace and use of appropriate language. Ms. Greci testified Mr. Meisenbach uses profanity with the crew. She has tried to curb it and has told Mr. Meisenbach to "keep it zipped." Ms. Greci has also heard male crew members use profanity. She testified Mr. Meisenbach would and has criticized crew members. He yells and insults employees and has done the same to her.

Mr. Meisenbach confirmed he uses the "F" word but no more than crew members. He said, "the word comes out while I'm working." He testified that "Profanity and the F word is not meant or directed at any one person, it's just said. It's part of the language of the crew."

The investigation established Mr. Meisenbach yelled at Ms. [REDACTED] several times to move her "fucking" truck. Mr. Meisenbach testified he told the crew his father was in the hospital and possibly would not make it. He asked the crew to move their trucks so he could leave if called to the hospital. He contends and witnesses confirmed that he told Ms. [REDACTED] at least a half dozen times to move her truck. Ms. [REDACTED] was on her cell phone and everyone was waiting for her to move her truck. He told Ms. [REDACTED] to hang up her "fucking" phone and move her truck and she got in her truck and left.

[REDACTED] The facts established Mr. Meisenbach yelled and used profanity at Ms. [REDACTED] because she did not heed his repeated requests to move her vehicle.

Ms. [REDACTED] alleges that Mr. Meisenbach yelled at her and questioned her about her start time. [REDACTED] Five (5) witnesses, all of whom are Caucasian males, testified that Mr. Meisenbach yells at anyone who is late. Three (3) of the witnesses stated they have been "chewed out" or "grilled" by Mr. Meisenbach when they are late to work.

[REDACTED] Witnesses testified Ms. [REDACTED] is the Spool Tender and her job is maintaining and sharpening the tools and she should have the saws sharpened and ready to use. They can see Mr. Meisenbach going off if the saw wasn't ready for use. Two (2) witnesses testified they have been treated similarly (yelled at) by Mr. Meisenbach for not sharpening the saw and not having the chain saw and tools ready. Ms. Grenzi testified Mr. Meisenbach doesn't have the best people skills and he has criticized male crew members. She further stated Mr. Meisenbach does not single out any one person, he treats everyone the same "it's his personality."

[REDACTED] Witnesses testified they were trying to move and set up the crane at Pier 45 and a heated argument ensued between Anthony Bettiga and Robert Edwards. Mr. Meisenbach came over and tried to out yell them; anyone in his eye sight was going to get it. The investigation established Mr. Meisenbach has a practice of yelling, insulting and criticizing crew members, whether sharpening a chain saw, moving a crane or performing other aspects of the Pile Worker duties.

The investigation established Ms. [REDACTED] was treated differently by Mr. Meisenbach when he singled her out by yelling that she had "fucked up" on the deck assignment. The evidence showed that Anthony and Jeffrey Bettiga were the Leads on the job and Mr. Meisenbach did not yell at them. The evidence is sufficient to establish that Ms. [REDACTED] was subjected to verbal conduct based on her gender and that the conduct was unwelcome. However, this one time incident was not sufficiently severe as to alter Ms. [REDACTED]'s condition of employment and create an abusive working environment.

II. Disparate Treatment Based on Gender (Female)

Allegation G

Ms. [REDACTED] testified Mr. Meisenbach did not give her the same work assignments as the males and she has not been assigned as Lead.

The investigation established Ms. [REDACTED] was subject to disparate treatment based on her gender when she was denied a work assignment as Lead. Ms. [REDACTED] is a member of a protected category, due to her gender (female), she suffered an adverse employment action when she was denied a work assignment (Lead), and she was denied a Lead assignment because she is female.

The investigation established Ms. [REDACTED] has not been assigned or asked to be a Lead. The other four (4) Pile Workers, all males, have been assigned as Lead.

Mr. Carter testified Ms. [REDACTED] is a journey level Pile Worker and there is no reason she can't do all aspects of the Pile Worker job.

Mr. Meisenbach and Ms. Grenci testified they had concerns with Ms. [REDACTED]'s performance and thus, she could not be expected to be Lead. They testified Ms. [REDACTED] doesn't have the knowledge to be Lead because she is constantly on her cell phone, is not safety conscious, can't set up the crane and is not able to give hand signals to the crane operator.

There is no documentation to establish that Ms. [REDACTED] has such deficiencies. Her performance appraisal for the review period 7/1/08-7/1/09, signed by Mr. Meisenbach and Ms. Grenci, states Ms. [REDACTED] "consistently performed the duties required of a pile man and crew member, consistently performs extremely well and is very knowledgeable, attentive to her job functions and is very safety conscious." Ms. [REDACTED]'s performance appraisal for the review period 7/1/09-6/30/10 and signed by her new supervisor Mike Wetzal and Ms. Grenci, states "It is a pleasure having you on my crew because you are a hard worker and knowledgeable in your trade. I can see you someday being promoted to Pile Driver Supervisor." Ms. [REDACTED] received an overall performance rating of 9- Exceeded Expectations on both of her performance evaluations. Based on this documentation, it can be concluded Ms. [REDACTED] can and was performing the essential duties of her position as a Pile Worker and is eligible to be a Lead. It can also be concluded there was no legitimate business reason for not assigning Ms. [REDACTED] as Lead, so it is more likely than not it is because she is female.

III. Harassment Based on Race (Black)

Allegations H-J

The investigation established that it is more likely than not that Mr. Meisenbach made two racially inappropriate comments ("I should slap the black off of you.") and a Black joke (Black and Decker). Mr. Meisenbach told Ms. [REDACTED] the following joke: a man took his daughter to a hardware store. His daughter ended up in jail. The daughter called her mom and told her she was in jail. The mom asked what happened. The daughter said that her dad told her to get a Black and Decker, so she looked for a Black person and decked her.

While Mr. Meisenbach denied making the inappropriate comment and racial joke, his credibility is questionable as he did admit to sharing ethnic or racial jokes when he goes to night clubs. Additionally, four (4) witnesses testified Ms. [REDACTED] complained to them about Mr. Meisenbach's comments and one (1) witness testified she appeared upset.

A reasonable person would perceive the comments referencing being slapped and decked as intimidating and threatening. This is particularly true as the comments came from a large Caucasian male who has been described by his employees and management as being loud, aggressive, a loose cannon and has been previously reprimanded for being disrespectful and unprofessional. The comments are a violation of the City's Harassment Free Workplace Policy, the City's Violence in the Workplace Policy and the Port's Workplace Violence Prohibited Policy. The City's policy states "Any act or threat of violence made or committed at the workplace is prohibited." The Department's policy states "The following actions by employees are prohibited during the course of employment. . . . Physically or verbally intimidating another employee or member of the public."

Mr. Meisenbach's conduct was unwelcome to Ms. [REDACTED] as she reported Mr. Meisenbach's behavior to four (4) coworkers and filed a complaint. The conduct was severe and pervasive and Ms. [REDACTED] asked to be reassigned to another crew and reported that she dreaded going to work. The investigation established Ms. [REDACTED] was subject to harassment based on her race.

Determination

Based on my review of the investigative report [REDACTED] I have determined there is sufficient evidence to sustain the charge of racial harassment and disparate treatment due to gender. Based on these investigative findings, I am requiring the Port to:

- (1) Inform Mr. Meisenbach of the Human Resources Director's findings that he discriminated against Ms. Walker on the basis of her gender and race and that such actions violated the City's Harassment-Free Workplace Policy. Inform him that his racial comment and joke also violated the City's and the Port's Violence in the Workplace Policy.
- (2) Take appropriate significant disciplinary action against Mr. Meisenbach, consistent with the severity of the violations and his disciplinary history, for discriminating against Ms. [REDACTED] on the basis of her gender and race. He discriminated against her based on her gender when he denied her the opportunity to perform as a Lead and he created a hostile working environment for Ms. [REDACTED] when he made a racial comment and a racial joke. The investigation established Mr. Meisenbach violated the City's Harassment-Free Workplace Policy and the Violence in the Workplace Policy. The investigation also established a pattern of inappropriate and unprofessional behavior by

Mr. Meisenbach towards Ms. [REDACTED] the crew and even Port management. In fact, in August 2010, he was issued a reprimand for disrespectful behavior towards management including being loud, aggressive, failing to follow instructions and unprofessional behavior.

- (3) Remind Mr. Meisenbach of the City's policy prohibiting retaliation against employees complaining about discrimination, or providing testimony in support of a discrimination complaint.
- (4) Direct Mr. Meisenbach to refrain from using the "F" word and other profanity with the crew. The investigation established through witness testimony, including his own, that it is common practice for him to use such language when directing the crew. He should be instructed that such language could be a violation of the City's Harassment-Free Workplace Policy and that any future use will result in disciplinary action.
- (5) Require Mr. Meisenbach to attend the Employee Assistance Program workshops on "Managing Our Emotions" and "Positive Problem Solving." The investigation established that Mr. Meisenbach has a practice of yelling, screaming and insulting employees which can be perceived as intimidating and hostile. He also has been described as being a loose cannon, speaking before thinking and not filtering what he says. This type of conduct was evident during his interview with Ms. Fernandez when he became enraged, bolted out of his seat, walked out of the interview and accused Ms. Fernandez of "trying to piss him off."

(6)

(7)

(8)

- (9) On May 10, 2011, Ms. [REDACTED] reported to Ms. Fernandez that Mr. Meisenbach had violated the directive issued to him to cease any communication with her during the investigation of her complaint and during her reassignment to another Pile Drive Crew. Ms. [REDACTED] alleged Mr. Meisenbach had approached her on several occasions and on May 10, 2011, picked up Ms. [REDACTED] after her interview at the Department of Human Resources.

(10)

[REDACTED] The Department should investigate whether Mr. Meisenbach violated any directive, and if so, take appropriate disciplinary action.

The Port is to submit a report to my attention within 45 days of the date of this letter regarding its plan for implementing the required actions.

A copy of my letter to Ms. [REDACTED] is enclosed. The San Francisco Charter, Section 10.103, provides that the decision of the Human Resources Director shall be final unless the decision is appealed to the Civil Service Commission, and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102, within thirty (30) calendar days of the postmarked date of this letter.

You may contact Linda Simon, DHR EEO Director at 557-4837 if you have any questions.

Sincerely,



Micki Callahan
Human Resources Director

Enclosure: Director's Decision Letter to Ms. Walker

cc: Lavena Holmes-Williams, Port, HR Director
Linda Simon, Director, DHR EEO
EEO File No. 1569

EEO INVESTIGATIVE REPORT

To: Micki Callahan, Human Resources Director

Through: Linda Simon, Director, EEO Division

From: Magaly Fernandez, Senior Specialist, EEO Programs

EEO File No.: 1569

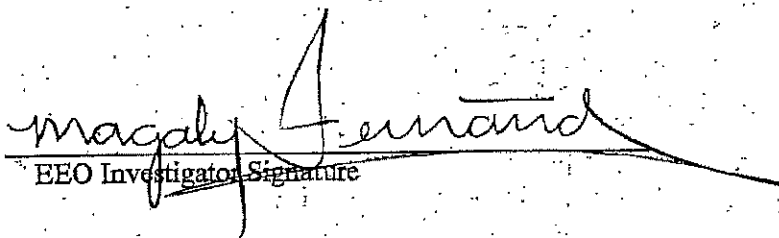
Complainant: [REDACTED]

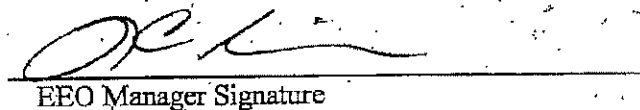
Respondent: Port of San Francisco

Issues/Basis: Harassment based on gender (female) and race (Black)

Date Complaint Filed: June 24, 2010

Date of Report: June 10, 2011


EEO Investigator Signature


EEO Manager Signature

1. Introduction

Ms. [REDACTED] is a 9330 Pile Worker at the San Francisco Port. She has been employed as a Pile Worker for two years. When Ms. [REDACTED] started with the Port she was assigned to the dive crew and was supervised by Brent McClain and was later assigned to a pile crew under the supervision of James Meisenbach. Mr. Meisenbach was her supervisor for approximately a year.

The Pile Drive Crew supervised by Mr. Meisenbach (Caucasian male) consists of four Caucasian male Pile Workers, one African American female Pile Worker (Ms. [REDACTED]), and one Caucasian male Pile Engine Operator. The Pile Workers perform a variety of manual work in the repair and construction of piers, wharves and related substructures. The equipment utilized consists of pneumatic and electrical tools such as drills, sanders, wrenches, saws, etc. The working environment is noisy, dirty and requires safety precautions.

On June 24, 2010, Ms. [REDACTED] contacted Tom Carter, Port Deputy Director to complain about harassment by Mr. Meisenbach. Mr. Carter contacted Linda Simon, Director, Department of Human Resources Equal Employment Opportunity (DHR EEO) Division seeking counsel on how to proceed with Ms. [REDACTED]'s complaint. Ms. Simon advised Mr. Carter to document the conversation with Ms. [REDACTED] complete the Department Report of Employment Discrimination Complaint and request that Ms. [REDACTED] document in writing her request to be transferred to another supervisor. See Exhibit A. The requested information was faxed to Ms. Simon and the complaint was assigned to Magaly Fernandez, Senior Specialist, EEO Programs for investigation on June 30, 2010.

On July 7, 2010, Ms. [REDACTED] was reassigned to another crew pursuant to her request.

2. Complainant's Allegations

On June 24, 2010, the Department Report of Employment Discrimination Complaint was submitted to DHR EEO setting forth Ms. [REDACTED]'s complaint of harassment. On July 7 and 22, 2010 and August 11, 2010 interviews were conducted with Ms. [REDACTED]. On August 11, 2010 Ms. [REDACTED] signed a Charge of Discrimination. See Exhibit B.

Ms. [REDACTED] alleges her supervisor Jim Meisenbach harassed her based on her gender (female) and race (Black) from April through June 2010.

[REDACTED]

Allegation A: Ms. [REDACTED] alleges Mr. Meisenbach [REDACTED] the "F" word routinely, [REDACTED]. He also has a hostile tone and speaks to her in a demeaning manner.

Allegation B: On June 24, 2010, Mr. Meisenbach told Ms. [REDACTED] to "move her fucking truck" three times. Ms. [REDACTED] said she didn't want to get in the truck with her dirty clothes and said if she had to do so she was leaving the work site. Mr. Meisenbach responded, "I don't give a fuck what you do." [REDACTED]

Allegation C: On May 17, 2010, Mr. Meisenbach yelled at Ms. [REDACTED] in front of the crew, asking her questions about what time she started work, inferring she was late. Jeffrey Bettiga arrived after her and Mr. Meisenbach didn't yell at him or question him about his arrival.

Allegation D: On April 24, 2010, while Ms. [REDACTED] was attempting to sharpen a chain saw with a new sharpener, Mr. Meisenbach yelled at her that she didn't know what she was doing. Ms. [REDACTED] contends she was sharpening the saw according to the equipment manual. [REDACTED]

Allegation E: On April 24, 2010, after Ms. [REDACTED] had worked with Anthony and Jeffrey Bettiga on a deck assignment Mr. Meisenbach told her she "fucked up." Ms. [REDACTED] alleges the Bettiga's were the Leads on the job and Mr. Meisenbach did not address the issue with them.

Allegation F: In April 2010, at Pier 45, Mr. Meisenbach told Ms. [REDACTED] to guard the doors to a museum while the crew was moving equipment. Ms. [REDACTED] alleges that Mr. Meisenbach yelled at her from a distance, "We're going to meet. You're on the fucking phone? Get your ass over here." [REDACTED]

Disparate Treatment based on gender (female)

Allegation G: Ms. [REDACTED] alleges Mr. Meisenbach does not give her the same work assignments as the males.

Harassment based on race (Black):

Allegation H: On March 17, 2010 Mr. Meisenbach approached Ms. [REDACTED] and asked her where the harness was. Ms. [REDACTED] alleges Mr. Meisenbach said, "I should slap the black off of you."

Allegation I: Ms. [REDACTED] alleges on April 25, 2010, while the crew was lowering the ramps at AT&T Park, Mr. Meisenbach told a racist joke about Blacks (Black and Decker joke). Jeffrey Bettiga told Mr. Meisenbach that he shouldn't be telling Black jokes. Mr. Meisenbach responded that if Ms. [REDACTED] had a problem she could talk to him.

[REDACTED]

Ms. [REDACTED] seeks the following relief: to be treated fairly and to be reassigned to another supervisor. It should be noted that Ms. [REDACTED] was reassigned effective July 7, 2010.

3. Allegations Requiring Investigation

The allegations as stated above were investigated and are the subject of this report.

4. Departmental Response

On August 13, 2010, a Notice of the Charge of Discrimination and a Request for Information was sent to the Department. See Exhibit B. Tom Carter, Deputy Director, Port Maintenance Division responded to the Request for Information on September 3, 2010. See Exhibit C.

In the Response, Mr. Carter stated the Department was aware of Allegation A and has witnessed this behavior from Jim Meisenbach recently. A written reprimand dated August 27, 2010 from Mr. Carter to Mr. Meisenbach was attached. The Department was also aware of Allegations B, C and H and attached a memo dated June 24, 2010 to Linda Simon, DHR EEO Manager from Mr. Carter. The Department was unaware of allegations D, E, F, G, I and J.

5. Investigative Standards

Harassment/Hostile Work Environment Standard:

- (1) the complainant is subject to physical, verbal or visual conduct on account of her membership in a protected category;
- (2) the conduct is unwelcome; and
- (3) the conduct is sufficiently severe or pervasive as to alter the condition of her employment and create an abusive working environment.

Disparate Treatment Standard:

- (1) the complainant is a member of a protected category;
- (2) the complainant has suffered an adverse employment action; and
- (3) the complainant suffered an adverse employment action because of his or her membership in a protected category.

6. The Investigation

a. The Investigative Process

Immediately after Ms. [REDACTED] signed the Charge of Discrimination, this investigator began investigating her claims.

b. Summary of Interviews

The respondent Department identified the following persons as having relevant information:

- Rebecca (Sue) Grecni, 0931 Manager III, Superintendent, Maintenance Division
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] 9330 Pile Worker

Ms. Grecni and [REDACTED] were the only department witnesses determined to have relevant information regarding Ms. [REDACTED]'s allegations. Other witnesses were not percipient witnesses and did not work with the Complainant during the relevant period.

Ms. [REDACTED] identified the following persons as having relevant information pertinent to the investigation:

- Tom Carter, 0953 Deputy Director II, Maintenance Division, [REDACTED]
- Rebecca (Sue) Grecni, 0931 Manager III, Superintendent, Maintenance Division, [REDACTED]
- [REDACTED] 9330 Pile Worker, [REDACTED]
- [REDACTED] 9330 Pile Worker, [REDACTED]
- [REDACTED] 9330 Pile Worker, [REDACTED]
- [REDACTED] le Engine Operator, [REDACTED]
- [REDACTED] Pile Worker Supervisor I (Respondent), [REDACTED]
- [REDACTED] 9330 Pile Worker, [REDACTED]
- [REDACTED] Pile Worker, [REDACTED]

See Summary of Investigative Interviews, Exhibit D.

c. Summary of Documents Reviewed

In addition to conducting interviews, this investigator gathered and reviewed the following documents relevant to Complainant's allegations:

- People Soft record of Mr. Meisenbach's completion of AB1825 Harassment Prevention Training in 2005, 2007 & 2010.
- People Soft record of Mr. Miesenbach's completion of 24 Plus Training for Experienced Supervisors in 2008
- Memo dated August 27, 2010, written reprimand from Tom Carter to James Meisenbach – Mr. Meisenbach was found to have conducted himself in an inappropriate, unprofessional, and disrespectful manner towards Mr. Carter and Layena Holmes-Williams, Human Resource Manager. He also failed to model

appropriate professional behavior to his subordinate employees. Mr. Meisenbach was told that any other inappropriate or unacceptable behavior or similar conduct may lead to progressive disciplinary action up to and including termination.

- Ms. [REDACTED]'s Employment Application
- The Job Specification for the 9330 Pile
- Ms. [REDACTED]'s Performance Plan and Appraisal Reports for 7/1/08-7/1/09 & 7/1/09-6/30/10
- City and County of San Francisco Violence in the Workplace Policy
- San Francisco Port Workplace Violence Prohibited Policy

See Summary of Documents Reviewed, Exhibits E, F & G.

7. Findings of Fact

Allegation A: Ms. [REDACTED] alleges [REDACTED] uses the "F" word routinely, he does it more frequently and targets her. He also has a hostile tone and speaks to her in a demeaning manner.

Summary of Relevant Evidence:

1. Interview of [REDACTED] (Complainant)

Ms. [REDACTED] states she does not curse but Mr. Meisenbach uses the F word frequently. Coworkers also use the F word. Ms. [REDACTED] stated Mr. Meisenbach uses the F word with everybody, "its part of his regular conversation." She emphasized that when incidents have occurred on the job, Mr. Meisenbach directs the F word at her. When Mr. Meisenbach gets mad at the guys or he's upset about something that happened at home, he will use the F word. Ms. [REDACTED] said her current crew and the dive crew do not use profanity.

Ms. [REDACTED] contends that [REDACTED] Mr. Meisenbach [REDACTED] use of the F word is more blatant and directed at her. Mr. Meisenbach uses the F word in conversation with the guys. For example, the dog chewed up the "fucking" ball. Mr. Meisenbach interjects the F word in conversations [REDACTED]

Mr. Meisenbach yells at the male crew but they always yell or talk back to him and he eventually backs off. Ms. [REDACTED] maintains she doesn't talk back to Mr. Meisenbach. She contends there have been instances where Mr. Meisenbach has come right up to her and yelled in her face (truck incident) or grabbed something from her (chainsaw incident). [REDACTED] See Exhibit D, Attachments A-C.

2. Interview of [REDACTED]

[REDACTED] said he has heard Mr. Meisenbach use the F word. He is not aware if the crew uses profanity but it is not uncommon for crews to use profanity. Missives have been issued to staff regarding harassment in the workplace and use of appropriate language several times. He has not received any complaints from crew members regarding the use of profanity at the work site. See Exhibit D, Attachment H.

3. Interview of [REDACTED]

Ms. [REDACTED] has not heard Mr. Meisenbach use profanity or the F word when talking to Ms. [REDACTED]. However, Ms. [REDACTED] confirmed that Mr. Meisenbach does use the F word and profanity with the male crew. Ms. [REDACTED] said she has tried to curb it and has told Mr. Meisenbach to "keep it zipped." She has also heard male crew members use profanity and states there is no excuse for it. One time she heard Mr. Meisenbach yell and use profanity at the engine operator because he dropped the pile. Ms. [REDACTED] said that Mr. Meisenbach and the crew have been warned about the use of profanity when tourists or the public are around. However, if the crew is working down at the southern waterfront, where there are no tourists, they use inappropriate language. Ms. [REDACTED] has never heard Ms. [REDACTED] use profanity. Ms. [REDACTED] never complained to her about Mr. Meisenbach's or the crew's use of profanity.

[REDACTED] was asked if she had documentation of any counseling session with Mr. Meisenbach and his use of the F word and profanity. She has not counseled Meisenbach. She said she heard Meisenbach using inappropriate language with the crew and told him, in passing, that he needed to curb his language and behavior. She told him she did not want patrons, tourists or the public to hear their communications. She also told Meisenbach that the crew also had to curb their language. She did not document this discussion.

4. Interviews of [REDACTED]

All witnesses confirmed Mr. Meisenbach uses profanity and the F word and crew members do also. Witnesses testified Mr. Meisenbach "talks like that to everyone." "It's part of his vocabulary. It's the way he talks. . . ." "It's his persona; he's a File/Butt Driver."

Witnesses concur that Ms. [REDACTED] does not use profanity and tries to ignore it, although some have heard her say "shit" or "crap." She reads the Bible during breaks and heard her father was a preacher. Witnesses described Ms. [REDACTED] as clean, straight, and soft-spoken.

Witnesses testified when Mr. Meisenbach uses the F word he directs it at the crew; it's

not directed at anyone specifically. [REDACTED] said Mr. Meisenbach does not use the F word or profanity any more than anybody else. There is no difference in Mr. Meisenbach's communication with Ms. [REDACTED] compared to other crew members. [REDACTED] testified Mr. Meisenbach's vocabulary is laced with profanity. "He talks to everyone the same way, he doesn't discern between males and females." The F word is not directed at Ms. [REDACTED]. He gets frustrated and expresses himself that way. Mr. [REDACTED] contends Mr. Meisenbach may start out cordial however, if the person is not listening or not getting what he is saying, he will use the F word.

[REDACTED]

Allegation B: On June 24, 2010, Mr. Meisenbach told Ms. [REDACTED] to "move her fucking truck" three times. Ms. [REDACTED] said she didn't want to get in the truck with her dirty clothes and said if she had to do so she was leaving the work site. Mr. Meisenbach responded, "I don't give a fuck what you do." [REDACTED]

1. Interview of [REDACTED]

Ms. [REDACTED] testified she called Tom Carter on June 24, 2010, to complain about Mr. Meisenbach. She went to work and was dressed and ready to work at 6:30 a.m. She arrived at work with a new truck which she parked on the far end of the apron (dock) near the bull rail. Jeffrey Bettiga arrived after her and parked his truck blocking everyone. Ms. [REDACTED] alleges that Mr. Meisenbach came out and yelled at her to move her "fucking" truck. She said he was standing so close she could feel his breath on her face. Mr. Meisenbach yelled at her a second time to move her "fucking" truck. Ms. [REDACTED] told Mr. Meisenbach that she wasn't getting in her truck to move it with her dirty work clothes on and if she had to change she was leaving. Mr. Meisenbach said, "I don't give a fuck what you do." A while later, as Ms. [REDACTED] continued to load the boom truck and prepare to go out on a job someone asked Mr. Meisenbach if there was something bothering him. Mr. Meisenbach yelled, "Yeah, it's that black fucking truck" referring to her truck. Ms. [REDACTED] was so upset she changed her clothes and told Mr. Meisenbach she was sick and leaving. Jeffrey Bettiga had to move his truck and the crew cab also had to be moved to allow her to drive out. [REDACTED]

2. Interview of [REDACTED]

Mr. [REDACTED] confirmed Ms. [REDACTED] contacted him by phone the morning of June 24, 2010, and described the incident that occurred with Mr. Meisenbach (refer to Ms. [REDACTED]'s testimony above). Mr. [REDACTED] told Ms. [REDACTED] he would have to consult with others on how to proceed and would call her back. He contacted Linda Simon, DHR-EEO who

advised him to document the conversation with Ms. [REDACTED] file a Department Report of Employment Discrimination Complaint, and recommended Ms. [REDACTED] put her request for transfer to another supervisor in writing. See Exhibits A and D, Attachment H.

3. Interview of [REDACTED]

Ms. [REDACTED] was aware of the truck incident because Mr. Meisenbach called to inform her of what happened and told her that Ms. [REDACTED] had left the work site without requesting leave. Mr. Meisenbach said he told Ms. [REDACTED] to move her truck several times; she was blocking Jeff Bettiga's truck. Ms. [REDACTED] responded if she had to move her truck again she was leaving. Mr. Meisenbach told Ms. [REDACTED] that he was putting Ms. [REDACTED] down as AWOL. She told him he couldn't do that. She later received Ms. [REDACTED]'s time sheet marked AWOL with her signature. She brought the timesheet to Tom Carter who asked her to talk to the crew and find out what happened.

The crew confirmed that Mr. Meisenbach used the F word and told Ms. [REDACTED] to move her "fucking" truck. She learned later from Mr. Meisenbach that his father was ill and in the hospital. Mr. Meisenbach said he told Ms. [REDACTED] to move her truck in the event he had to leave and go to the hospital.

4. Interviews of [REDACTED]

[REDACTED] testified they were not present when this incident occurred. [REDACTED] were. They stated Mr. Meisenbach informed the crew that his father was sick and in the hospital and that he may have to leave if he got a call from the hospital. Mr. [REDACTED] testified Mr. Meisenbach was almost in tears, he believed his father might die. Ms. [REDACTED] was sitting next to him when Mr. Meisenbach told the crew.

[REDACTED] said he parked his personal vehicle outside the doorway of the Pier and Ms. [REDACTED] parked her vehicle behind everyone else. Apparently Ms. [REDACTED]'s truck was blocking Mr. Meisenbach's truck and he couldn't get his truck out if he had to leave. Mr. [REDACTED] stated Mr. Meisenbach asked him and Ms. [REDACTED] to move their vehicles because his vehicle was blocked in. Mr. Meisenbach asked Ms. [REDACTED] to move her vehicle several times. [REDACTED] said Mr. Meisenbach was calm the first couple of times he asked Ms. [REDACTED] to move her truck and eventually got louder. They got into an argument and were hollering at each other. [REDACTED] confirmed that Mr. Meisenbach did tell Ms. [REDACTED] to move her "fucking" truck. [REDACTED] said Ms. [REDACTED] told Mr. Meisenbach if she had to get in her truck she was leaving and she did.

5. Interview of James Meisenbach

Mr. Meisenbach said his father was in the hospital and it was possible he wasn't going to make it. He asked the guys to move their trucks so that he could drive out if he needed to. All the crew was present when he told them about his father except Robert Edwards, he sent Edwards to Pier 80 on a job.

Ms. [REDACTED] arrived late and parked her truck in the middle of everything. He asked her to move her truck. Jeffrey Bettiga also arrived late and he also told him to move his truck. Mr. Meisenbach claims he told Ms. [REDACTED] at least a half dozen times to move her truck. Ms. [REDACTED] was on her phone and he said let's go it's time to go to work. Mr. Meisenbach said Jeffrey Bettiga moved his truck and everyone was waiting for Ms. [REDACTED] to move her truck so they could go to work. He told her to hang up her "fucking" phone and move her truck and she got in her truck and left. Ms. [REDACTED] left and didn't say anything to him or the crew. After Ms. [REDACTED] left he called his boss, Sue Greci. He told Ms. Greci that Ms. [REDACTED] took off and he didn't know where she was.

Allegation C: On May 17, 2010, Mr. Meisenbach yelled at Ms. [REDACTED] in front of the crew asking her questions about what time she started work, inferring she was late. Ms. [REDACTED] alleges Jeffrey Bettiga arrived after her and Mr. Meisenbach didn't yell at him or question him about his arrival.

1. Interview of [REDACTED]

On May 17, 2010, Ms. [REDACTED] states she walked into the trailer at 6:25 a.m. Mr. Meisenbach began grilling her about the time inferring she had arrived late and put her on the spot. Mr. Meisenbach looked at her and said, "So what time do we start?" Ms. [REDACTED] said "6:30" and Mr. Meisenbach said "what time is it?" She responded, "It's 6:27 a.m." Ms. [REDACTED] contends she is never late for work and this was a form of harassment by Mr. Meisenbach. Jason Dodson and Robert Edwards were present. She said Jeffrey Bettiga walked in shortly after her and Mr. Meisenbach said nothing to him.

2. Interview of [REDACTED]

Mr. [REDACTED] and Ms. [REDACTED] were unaware of this incident because Ms. [REDACTED] never reported it to them. Ms. [REDACTED] said Ms. [REDACTED] has time and attendance problems. She is often late to work, doesn't call in and has requested to leave early. Jeffrey Bettiga also has time and attendance problems but calls when he's late.

3. Interviews of [REDACTED]

The witnesses concurred that Mr. Meisenbach makes the same comments to anyone who arrives late to work. He does it to everyone. Several witnesses testified the same thing has happened to them.

██████████ said people show up late and usually the first person who arrives late will get it from Mr. Meisenbach. ██████████

██████████ Mr. ██████████ has heard Mr. Meisenbach yell at ██████████ about his late arrivals. Mr. Meisenbach has done the same thing with all the guys, he does it to everyone.

██████████ He has observed Mr. Meisenbach call out ██████████ for being late and he has also been talked to by Mr. Meisenbach. It's Mr. Meisenbach's mannerisms, he goes through the same litany with other crew members when they arrive late.

██████████ said Mr. Meisenbach grills everybody about their time. It's the supervisor's role to enforce the rules. If the boss is on time and the crew drags in late he has the right to question them about their time. He has heard Mr. Meisenbach grill crew members a couple of times.

██████████ said Mr. Meisenbach has yelled at him about his late arrivals. Mr. Meisenbach has told him to call if he thinks he will be late. Everyone gets yelled at by him. ██████████

4. Interview of James Meisenbach

Mr. Meisenbach confirmed he did ask Ms. ██████████ if she knew what time it was. He said the crew is suppose to arrive at least fifteen minutes ahead of time so they can change into their work clothes and be ready to start work at 6:30 a.m. He doesn't just say this to Ms. ██████████, "everyone gets it."

Mr. Meisenbach said that ██████████ called in that morning to say he was running late. ██████████ has had problems coming in to work on time. Now ██████████ is required to call in every time he arrives late.

Allegation D: On April 24, 2010, while Ms. ██████████ was attempting to sharpen a chain saw, Mr. Meisenbach yelled at her that she didn't know what she was doing. Ms. ██████████ contends she was sharpening the saw according to the equipment manual. ██████████

1. Interview of ██████████

Ms. ██████████ said she was at Pier 45 on March 24, 2010, when Mr. Meisenbach told her to sharpen the chain saw with a new sharpener. He sarcastically asked her if she knew how to connect the sharpener to the battery. She followed the directions and held the

sharpener at a certain angle to sharpen the saw. Mr. Meisenbach began screaming at her that she didn't know what she was doing and she wasn't doing it right. Ms. [REDACTED] told Mr. Meisenbach she was following the directions but Mr. Meisenbach clearly did not want her to sharpen the saw according to the directions he wanted it done his way [REDACTED] from the other crew was present when Mr. Meisenbach screamed at her.

[REDACTED] Ms. [REDACTED] said the incident with the chain saw was an example of how Mr. Meisenbach publicly criticized and yelled at her that she didn't know what she was doing and told her to give him the sharpener. She further stated that Mr. Meisenbach does not make any effort to correct or coach her, other than to yell at her if he believes she has made a mistake on the job.

2. Interview of [REDACTED]

Mr. [REDACTED] had no information regarding this incident because it was not reported to him.

[REDACTED] Mostly that he yells at people.

Mr. [REDACTED] said he has held meetings where Mr. Meisenbach has acted out. At a recent meeting he called to discuss the switching of supervisors (Wetzel and McClain), Mr. [REDACTED] could not disclose specific information regarding the change other than it was an accommodation for one of the supervisors. During the meeting Mr. Meisenbach was unprofessional. He got loud and animated.

Mr. [REDACTED] has monthly supervisory meetings and Mr. Meisenbach always starts in with the yelling and swearing.

3. Interview of [REDACTED]

Ms. [REDACTED] did not report this incident. Ms. [REDACTED] does not believe Mr. Meisenbach would take the chainsaw from Ms. [REDACTED] and attempt to sharpen the chain saw; the crew would do it. Ms. [REDACTED] said that Mr. Meisenbach ordered a new sharpener and it may have been different from the previous sharpener.

Ms. [REDACTED] said that Mr. Meisenbach doesn't have the best people skills. She confirmed that Mr. Meisenbach would and has criticized crew members. He will yell and insult employees and has done the same to her. Mr. Meisenbach doesn't single out any one person, he treats everyone the same, "It's his personality." Ms. [REDACTED] has talked to Mr. Meisenbach on several occasions and told him, "If you want to scream, yell and bitch do it here (in her office) but not out in the field."

4. Interviews of [REDACTED]

[REDACTED] were not present when this incident occurred.

Mr. [REDACTED] said he remembers seeing Mr. Meisenbach and Ms. [REDACTED] on the dock with the chain saw. However, he was not close enough to hear their conversation. Mr. [REDACTED] and Mr. [REDACTED] both said Mr. Meisenbach has gotten on them for the same thing; not sharpening the saw correctly or providing the correct tools to the crew.

Mr. [REDACTED] testified he did not hear the discussion between Mr. Meisenbach and Ms. [REDACTED]. Mr. [REDACTED] said Mr. Meisenbach was trying to make Ms. [REDACTED] the Spool Tender and have her feed tools to the crew. He remembers the day they brought the sharpener and took it out of the box. The crew was using the chain saw a lot and sending the saws to be sharpened by Ms. [REDACTED]. Ms. [REDACTED] was reading the instructions and trying to plug in the battery. Mr. Meisenbach and Ms. [REDACTED] were trying to figure out how the sharpener worked. It was comical to watch. Mr. Meisenbach was not yelling any more than other times.

[REDACTED] Mr. Meisenbach is "brash" but he has the crew's best interest.

5. Interview of James Meisenbach

Mr. Meisenbach said no one could figure out how to turn the sharpener on. Robert Edwards was present also. He said it was quite comical. He asked, "How does this piece of shit work, do you have to go to college to work it?" Mr. Meisenbach denied he yelled at Ms. [REDACTED]. He said there was no yelling, they were joking.

Allegation E: On April 24, 2010, after Ms. [REDACTED] had worked with Anthony and Jeffrey Bettiga on a deck assignment Mr. Meisenbach told her she "fucked up." Ms. [REDACTED] contends the Bettiga's were the Leads on the job and alleges Mr. Meisenbach did not address the issue with them.

1. Interview of [REDACTED]

Ms. [REDACTED] maintains that Mr. Meisenbach did not address the deck assignment (not opening holes enough on a deck to insert pilings) of March 24, 2010, with the Bettiga's. The Bettiga's were not present when Mr. Meisenbach told her she "fucked up." The next day Ms. [REDACTED] told Jeffrey Bettiga what Mr. Meisenbach had said to her about the holes. Jeffrey was dismissive of Mr. Meisenbach's criticism but he never mentioned that Mr. Meisenbach raised the issue with him.

2. Interview of [REDACTED]

Ms. [REDACTED] stated she was on a job at Pier 45 assisting the crew to move the hammer with a crane onto the back of a truck. Mel, Truck Driver with the Port was present. Mr. Meisenbach had her guarding the doors to a Museum. She was told to guard the doors and prevent the public from going on to the pier while they were loading the hammer onto the truck. Robert Edwards and Anthony Bettiga, "Got into it." They were arguing about how to set up the crane. Because of their disagreement Mr. Edwards insisted they meet to discuss the setting up of the crane. Ms. [REDACTED] alleges Mr. Meisenbach yelled "We're having a meeting. You're on the phone? Get your ass over here." Ms. [REDACTED] said she and Mel turned around and then looked at each other because they thought Mr. Meisenbach was talking to someone else because neither of them was on the phone. She realized he was directing his comments at her. Mr. Edwards asked Mr. Meisenbach why he was talking to her like that. Mr. Meisenbach said nothing.

[REDACTED]

2. Interviews of [REDACTED]

Neither Mr. [REDACTED] nor Ms. [REDACTED] had any knowledge of this incident.

3. Interviews of [REDACTED]

[REDACTED] was not interviewed and could not be reached.

[REDACTED]

Mr. [REDACTED] testified they were not present when this incident occurred.

[REDACTED] recalled the day they moved the crane at Pier 45 and confirmed that Mel Long was present. However, he did not hear what was said because he was working on the apron. He did not hear the comments alleged by Ms. [REDACTED].

[REDACTED] recalled this incident and said the crew was trying to pull the crane in. There was no communication and the crew was not on the same page. His brother Anthony and Robert Edwards disagreed on how to move the crane. Edwards blew up at Anthony and they began arguing. Mr. Meisenbach called a meeting. Mr. [REDACTED] could not recall hearing the comments alleged by Ms. [REDACTED]. Mr. [REDACTED] did not know if Ms. [REDACTED] was on her cell phone but states she uses her cell phone a lot on the job.

Mr. [REDACTED] was working on the pier apron. He said the crew was repairing the dock because there was not enough piling to hold the weight of pedestrians. He went to Pier 29 and got the hammer, Mel Long, Truck Driver also came. Anthony Bettiga and the

crew were not being careful about where to park the crane. He and Anthony got into it and were yelling at each other about where to set up the crane. Mr. Meisenbach came over and tried to out yell them. Anyone in his (eye) sight was going to get it.

Mr. [REDACTED] said all this happened in front of Mel [REDACTED]. Mr. [REDACTED] said he was not paying attention to what others were saying because he had his own thing going on; he was having a heated argument with Anthony. Anthony was not interested in setting up the crane safely, there seemed to be a lax attitude by the crew.

Mr. [REDACTED] said Ms. [REDACTED] was on her cell phone at the job site. "She's on her cell phone a lot." He has seen her on her cell phone while she is on the boat under the piers. Mr. [REDACTED] did not recall Mr. Meisenbach yelling at Ms. [REDACTED] but believes Mr. Meisenbach probably made the comment. A lot was said that morning but he did not remember telling Mr. Meisenbach not to talk to Ms. [REDACTED] like that.

4. Interview of James Meisenbach

Mr. Meisenbach confirmed he had Ms. [REDACTED] guarding the door to a museum to prevent the public from entering the work area. He denied he yelled, used profanity or made a derogatory comment to Ms. [REDACTED] in public. He said he doesn't talk like that and doesn't talk like that in front of his girlfriend. Mr. Meisenbach said he whistled and told her to come over. He said as a supervisor his job is to calm things down. Had he said what Ms. [REDACTED] alleged it would get him in trouble.

Mr. Meisenbach maintains he is cautious in public about his language. Mr. Meisenbach said his language is not directed at anybody. He said he has not been counseled about his language.

Mr. Meisenbach said that Ms. [REDACTED] has never said anything to anybody about their language. If he yelled or said something it was intended to calm everyone down. If he stopped everyone it was because something was going on. Mr. Meisenbach did not recall Robert Edwards saying anything to him about how he had spoken to Ms. [REDACTED].

Analysis:

I. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Witnesses confirmed Mr. Meisenbach uses profanity and the F word. Witnesses testified Mr. Meisenbach uses the F word a lot, that his vocabulary is laced with profanity, and that profanity is part of his normal conversation. The investigation established that Mr. Meisenbach is loud and aggressive in his tone and communications with the crew. He communicates by yelling, ribbing, criticizing and using profanity. The male crew members are used to Mr. Meisenbach's behavior and accept it as part of their working environment.

Tom Carter, Deputy Director and Sue Greci, Superintendent, Maintenance Division, confirmed that Mr. Meisenbach does use the F word. Mr. Carter testified that missives have been issued several times to staff regarding harassment in the workplace and use of appropriate language. Ms. Greci testified Mr. Meisenbach uses profanity with the crew. She has tried to curb it and has told Mr. Meisenbach to "keep it zipped." Ms. Greci has also heard male crew members use profanity. She testified Mr. Meisenbach would and has criticized crew members. He will yell and insult employees and has done the same to her.

Mr. Meisenbach confirmed he uses the F word but no more than crew members. "The word comes out while I'm working." He testified that "Profanity and the F word is not meant or directed at any one person, it's just said. It's part of the language of the crew."

The investigation established Mr. Meisenbach yelled at Ms. [REDACTED] several times to move her "fucking" truck. Mr. Meisenbach testified he told the crew his father was in the hospital and possibly would not make it. He asked the crew to move their trucks so he could leave if called to the hospital. He contends and witnesses confirmed that he told Ms. [REDACTED] at least a half dozen times to move her truck. Ms. [REDACTED] was on her cell phone and everyone was waiting for her to move her truck. He told Ms. [REDACTED] to hang up her "fucking" phone and move her truck and she got in her truck and left.

[REDACTED] Mr. Meisenbach's conduct and behavior towards Ms. [REDACTED] was unprofessional. The facts established Mr. Meisenbach yelled and used profanity at Ms. [REDACTED] because she did not heed his repeated requests to move her vehicle.

Ms. [REDACTED] alleges that Mr. Meisenbach yelled at her and questioned her about her start time. [REDACTED] Five

witnesses, [REDACTED], testified that Mr. Meisenbach yells at anyone who is late. Three of the witnesses stated they have been "chewed out" or "grilled" by Mr. Meisenbach when late to work.

[REDACTED]
[REDACTED]
Witnesses testified Ms. [REDACTED] is the Spool Tender and her job is maintaining and sharpening the tools and she should have the saws sharpened and ready to use. They can see Mr. Meisenbach going off if the saw wasn't ready for use. Two witnesses testified

they have been treated similarly (yelled at) by Mr. Meisenbach for not sharpening the saw and not having the chain saw and tools ready. Ms. Greni testified Mr. Meisenbach doesn't have the best people skills and he has criticized male crew members. She further stated Mr. Meisenbach doesn't single out any one person, he treats everyone the same "it's his personality."

Witnesses testified they were trying to move and set up the crane at Pier 45 and a heated argument ensued between Anthony Bettiga and Robert Edwards. Mr. Meisenbach came over and tried to out yell them; anyone in his eye sight was going to get it. The investigation established Mr. Meisenbach has a practice of yelling, insulting and criticizing crew members, whether sharpening a chain saw, moving a crane or performing other aspects of the Pile Worker duties.

The investigation established Ms. [REDACTED] was treated differently by Mr. Meisenbach when he singled her out by yelling that she had "fucked up" on the deck assignment. The evidence showed that Anthony and Jeffrey Bettiga were the Leads on the job and Mr. Meisenbach did not yell at them.

Ms. [REDACTED] cited six examples of harassing conduct by Mr. Meisenbach. The evidence established that she was subjected to yelling, profanity and criticism of her work by Mr. Meisenbach.

The evidence also established that the conduct was unwelcome. However, this one time incident was not sufficiently severe as to alter Ms. [REDACTED]'s condition of employment and create an abusive working environment.

II. Disparate Treatment based on Gender (female)

Allegation G: Ms. [REDACTED] alleges Mr. Meisenbach doesn't give her the same work assignments as the males.

1. Interview of Ms. [REDACTED]

Ms. [REDACTED] stated Mr. Meisenbach doesn't give her the same work assignments as the males. There are two Leads in the crew, Anthony Bettiga is the Lead for lay out, Jeffrey Bettiga is the Lead for the rigging and hammer.

Ms. [REDACTED] contends that Mr. Meisenbach doesn't think she's competent to do the pile driving or other tasks. She inevitably becomes "the gopher." Ms. [REDACTED] contends she

has to prove herself even though she has met all the requirements and qualifications to be hired as a Pile Driver. She insists she is capable of performing her job. Ms. [REDACTED] believes Mr. Meisenbach doesn't assign her other tasks because she's a woman and he doesn't think she knows how to do it.

Ms. [REDACTED] contends that Anthony and Jeffrey Bettiga know she can do the work. Sometimes the guys get tired using the jack hammer or chain saw and she has offered to take over. Anthony and Jeffrey have seen her perform various tasks and have more confidence in her abilities. Ms. [REDACTED] said she has offered to use her harness to climb the leads to attach the rigging and hammer to the crane but Mr. Meisenbach will not let her.

Ms. [REDACTED] states she has not been the Lead on a job while all the male coworkers have been and received Lead pay. Mr. Meisenbach has never assigned her the Lead position. Ms. [REDACTED] contends she has never asked to be Lead because she knows its not going to happen. She has taken the Lead on certain jobs and Jeffrey Bettiga and Jim Werder have told Mr. Meisenbach that she should get paid as Lead. Ms. [REDACTED] contends that Mr. Meisenbach has never acknowledged that she has performed as a Lead and therefore she has never received Lead pay.

2. Interview of [REDACTED]

Mr. [REDACTED] said a qualified journey level Pile Worker can be Lead. In the Crafts being a Lead could be limited to narrow tasks. Leads are delegated at the discretion of the supervisor and not all work days require a Lead. To his knowledge [REDACTED] has never been compensated as a Lead.

[REDACTED] believes a supervisor can find those moments to allow everyone an opportunity to be a Lead. It is up to the supervisor to assess the needs for the job and distribute the work among the crew. You want employees to be balanced and learn all aspects of the craft; you find opportunities to plug them in. A supervisor has to be confident with his team; pile work is dangerous. You have to create a team that works well together. Ms. [REDACTED] was a journey level worker on the outside. There is no reason she couldn't do all aspects of the Pile Driver job. It requires the supervisor to incorporate her into the job so she can learn. Any person on the crew should be incorporated so that they are confident working with the crew.

3. Interview of [REDACTED]

Ms. [REDACTED] said a Lead is designated based on their experience and how well the employee is aware of a project. Designating a Lead is the supervisor's prerogative. Ms. [REDACTED] did not know if Ms. [REDACTED] has asked to be Lead. She said Ms. [REDACTED] is not qualified to be a Lead and does not believe she has been designated as a Lead in Mr. Meisenbach's crew. Ms. [REDACTED] doesn't have enough knowledge to be a Pile Driver. The Lead runs the crew.

Ms. [REDACTED] has observed Ms. [REDACTED] at work and she doesn't seem to have picked up the full range of duties of a Pile Worker. She's a welder. Working as a Pile Worker you have to be able to handle the tools and know the various steps to take on a specific assignment. Others have been able to come on board and pick up the tools and know how to handle them. All the other Pile Workers know what to do and there was an expectation she would also.

Ms. [REDACTED] said Ms. [REDACTED]'s work habits are not safe and she cannot be left alone. She has observed on more than one occasion where Ms. [REDACTED] was not aware of safety concerns. She has observed Ms. [REDACTED] at a work site where the crane is moving pile and she is on her cell phone. Several of the guys had to yell at her to pay attention or to get out of the way because she was on her cell phone. If the guys are looking or focused on only one individual then they are not paying attention to their own safety. The work of a Pile Worker is dangerous and everyone has to be alert and paying attention to what is going on.

Ms. [REDACTED] said if there are safety issues with Ms. [REDACTED] how can she expect to be Lead. If employees have had to tell her to watch out and keep her safe they are not going to want to have her as their Lead. Ms. [REDACTED] was asked if she knew what Ms. [REDACTED] has or has not been trained on. She responded that when Jason Dodson went out on Worker's Comp, Ms. [REDACTED] was put in his position as the Spool Tender. This required her to stay in the Commix Box and keep the tools in order. The Tender works the chain saws and gets the tools ready. Ms. [REDACTED] worked with Jason getting her trained before he left. In the beginning it may have been rough for her. However, Mr. Dodson was out for four months and she wasn't able to do the tasks. Ms. [REDACTED] must have seen what a Spool Tender does in previous construction sites she worked at.

Ms. [REDACTED] has observed Mr. Meisenbach meeting with the crew in the morning to discuss the project for the day. Each individual knows their job. If one doesn't do it the other will. They shift around. Each person should be able to do all aspects of the job, i.e., operate the chain saw, pick, jack hammer, safety harness, etc. Some employees are just better at what they do than others. Ms. [REDACTED] has observed Ms. [REDACTED] working on the skiff, sweeping asphalt and performing a variety of tasks. Ms. [REDACTED] has not complained to her about work assignments or not being designated Lead.

4. Interviews of [REDACTED]

[REDACTED] stated they have all performed as Lead. The witnesses were not sure how a crew member is designated Lead but believe it is based either on seniority, work experience, and/or knowledge. Their consensus was that Ms. [REDACTED] was a welder before she came to work at the Port and is new to this work and doesn't know all aspects of pile driving. She has only worked with the crew for a short time and the other crew members have done the work for over 20 years. Mr.

█████ stated, "She is new to this kind of work and everything she does you have to teach her. If you don't know the work you can't be Lead." Mr. █████ said, "Ms. █████ hasn't been here long enough to run a crew." Ms. █████ doesn't know the work. It's not fair to put a person as Lead that doesn't know the work.

Witnesses disagreed with Ms. █████'s assertion that she is not given the same work assignments as the males. She performs the same work as the male crew members. When the crew is given an assignment they all work together. They work on the pile barge, crane barge, on deck and under the deck. Everybody knows what their job is. █████ works with everything (tools/equipment) the male crew members work with. She lays decking down with spikes, drives pile, etc. She's learning, when she asks for help the crew have helped and shown her what to do.

5. Interview of James Meisenbach

Mr. Meisenbach said people who are designated Lead know how to do the work. Anthony Bettiga has been designated Lead because he knows the job. Ms. █████ doesn't know the work. We all have tried to show her how to be a pile driver. He said Ms. █████ has to be shown exactly how to do her job because she doesn't comprehend or retain it. She has to be shown again and again. She needs to know what the work is, the guys know. Mr. Meisenbach said he has tried to explain why the guys are doing something so she will understand. However, she's far from getting it. It's going to be a long time before she can be a lead. To be a lead the crew needs to trust what you're doing and that you're doing it right.

Mr. Meisenbach said Ms. █████ is supposed to be out there doing everything but he's still working with her. Any crew member can set up the crane but not Ms. █████. She's also not able to give signals to the crane operator. However, she has driven the fork lift; she can operate a chain saw and a jack hammer. He has even sent her underneath the dock to cut and suck piling. She also is handling the tools, equipment and straps. She has done all aspects of the job.

6. Review of 9330 Pile Worker Job Specification

The class specification states applicants must have, "Three years verifiable experience as a journey-level pile worker or three years verifiable experience as a journey-level carpenter in a port/marine environment or completion of a 4-year Pile Worker Apprenticeship Program."

A review of Ms. █████ City and County of San Francisco Employment Application indicates she has limited work experience and held four positions as a Pile Driver/Welder for approximately sixteen months between 2004 thru 2008. Her application did not demonstrate she had three years verifiable experience and training as a journey-level pile worker or carpenter in a port/marine environment. However, her application stated she

had a certificate in Pile Driving/Welding from the Pile Driver Apprenticeship School, Pleasanton, California. See Exhibit E, Attachment C.

Analysis:

Ms. [REDACTED] testified Mr. Meisenbach does not give her the same work assignments as the males and she has not been assigned as Lead.

The investigation established Ms. [REDACTED] was subject to disparate treatment based on her gender when she was denied a work assignment as Lead. Ms. [REDACTED] is a member of a protected category, gender (female), she suffered an adverse employment action when she was denied a work assignment (Lead), and she was denied a Lead assignment because she is female.

The investigation established Ms. [REDACTED] has not been assigned as Lead nor has she been asked to be Lead. The other four Pile Workers, all males, have been assigned as Lead.

Mr. Carter testified Ms. [REDACTED] was a journey level Pile Worker and there was no reason she could not do all aspects of the Pile Driver job.

Mr. Meisenbach and Ms. Grenci testified they had concerns with Ms. [REDACTED]'s performance and thus, she could not be expected to be Lead. They testified Ms. [REDACTED] doesn't have the knowledge to be a Pile Worker because she is constantly on her cell phone, is not safety conscious, can't set up the crane and is not able to give hand signals to the crane operator.

There is no documentation to establish that Ms. [REDACTED] has such deficiencies. Her performance appraisal for the review period 7/1/08-7/1/09, signed by Mr. Meisenbach and Ms. Grenci, states she "consistently performed the duties required of a pile man and crew member, consistently performs extremely well and is very knowledgeable, attentive to her job functions and is very safety conscious." Ms. [REDACTED]'s performance appraisal for review period 7/1/09-6/30/10, signed by her new supervisor Mike Wetzel and Ms. Grenci, states "It is a pleasure having you on my crew because you are a hard worker and knowledgeable in your trade. I can see you someday being promoted to Pile Driver Supervisor." Ms. [REDACTED] received an overall performance rating of 9- Exceeded Expectations on both of her performance evaluations. Based on this documentation it can be concluded Ms. [REDACTED] can and was performing the essential duties of her position as a Pile Worker and is eligible to be a Lead. It can also be concluded there was no legitimate business reason for not assigning Ms. [REDACTED] as Lead, so it must be because she is female. See Exhibit F, Attachments A & B.

III. Harassment based on race (Black)

Allegation H: On March 17, 2010, Mr. Meisenbach approached Ms. [REDACTED] and asked her where the harness was. Ms. [REDACTED] alleges Mr. Meisenbach said, "I should slap the black off of you."

1. Interview of [REDACTED]

On March 17, 2010, while Ms. [REDACTED] was supporting the crew as they were driving piles, Mr. Meisenbach walked over shaking his life vest. She assumed he was asking her about the life vest. She walked to the truck and put on a life vest. He yelled and asked her, "Where's the harness?" She told him she thought he was asking her about the life vest. Mr. Meisenbach then said, "I should slap the black off of you." Ms. [REDACTED] said all the guys were there and heard Mr. Meisenbach's comment. Ms. [REDACTED] said she and Jeffrey talked about the incident afterwards.

2. Interview of [REDACTED]

Mr. [REDACTED] was not aware of any racial comments, jokes or slurs made by Mr. Meisenbach. Mr. [REDACTED] said Mr. Meisenbach had an African American male [REDACTED] working on his crew. He was not aware of any complaints based on race made by Mr. Johnson against Mr. Meisenbach.

3. Interview of [REDACTED]

Ms. [REDACTED] was not aware of this incident. She has not heard Mr. Meisenbach make any inappropriate racial comments. Ms. [REDACTED] said Mr. Meisenbach is rough with his words and speaks a lot faster than he thinks.

4. Interviews of [REDACTED]

All of the witnesses testified they were not present when the alleged comment was made by Mr. Meisenbach.

[REDACTED] recalls that one day Ms. [REDACTED] wasn't herself, she seemed bothered. He asked her if she was okay. Ms. [REDACTED] said that Mr. Meisenbach told her a Black joke and also said he would "knock the black off of her." Mr. [REDACTED] told Ms. [REDACTED] he was going to say something to Mr. Meisenbach. Mr. [REDACTED] talked to Mr. Meisenbach but he denied making the comment or telling a racist joke.

Mr. [REDACTED] said Ms. [REDACTED] did tell him about the slap comment earlier in the year. She didn't appear upset; she was matter of fact when she told him.

Mr. [REDACTED] said he heard about the incident and may have been told by Ms. [REDACTED]. [REDACTED] Mr. [REDACTED] believes he told Ms. [REDACTED] she should talk to Mr. Meisenbach.

5. Interview of James Meisenbach

Mr. Meisenbach denied making the comment. He said he has a lot of Black friends and you don't do that. He told Ms. [REDACTED] if he or a crew member say something that has offended her to come talk to him. He said he would never say something like that, it's not funny. He said he has heard the comment made on TV.

Allegation I: On April 25, 2010, while the crew was lowering the ramps at AT&T Park, Mr. Meisenbach told a racist joke about Blacks (Black and Decker joke). Jeffrey Bettiga told Mr. Meisenbach that he shouldn't be telling Black jokes. Meisenbach responded that if Ms. [REDACTED] had a problem she could talk to him.

1. Interview of [REDACTED]

On April 25, 2010, the crew had to lower the ramps at AT&T Ball Park for a game. Ms. [REDACTED] said Mr. Meisenbach told her a joke and believes he told the joke to make her feel better because she was so upset the day before. Ms. [REDACTED] said it was a "Black" joke. Mr. Meisenbach said that a man took his daughter to a hardware store. His daughter ended up in jail. The daughter called her mom and told her she was in jail. The mom asked what happened. The daughter said that her dad told her to get a Black and Decker, so she looked for a Black person and decked her. Ms. [REDACTED] was shocked that Mr. Meisenbach would tell her a racist joke. Jeffrey Bettiga was present. Ms. [REDACTED] said Jeffrey told her he tried talking to Mr. Meisenbach and said he shouldn't be telling Black jokes. Mr. Meisenbach responded that if Ms. [REDACTED] had problems with what he said, she could talk to him.

2. Interviews of [REDACTED]

Mr. [REDACTED] nor Ms. [REDACTED] were aware of this alleged incident. Ms. [REDACTED] did not report it to them.

3. Interviews of [REDACTED]

Witnesses testified they were not present and did not hear the alleged racist joke told by Mr. Meisenbach. Witnesses also stated they have not heard Mr. Meisenbach make comments, slurs or jokes based on race or ethnicity.

[REDACTED] testified he believes his brother Jeffrey may have been present because he told him about the incident days later. He recalls Jeffrey telling him that Mr. Meisenbach made a joke and Ms. [REDACTED] was present; she was upset. [REDACTED] did not know the joke told by Mr. Meisenbach or if Jeffrey spoke to Mr. Meisenbach about the joke.

[REDACTED] testified he was not present when Mr. Meisenbach allegedly told a racist joke. However, Ms. [REDACTED] told him about this incident. He stated Ms. [REDACTED] told him

she did not like the way Mr. Meisenbach talked to her. Ms. [REDACTED] told him she was tired of his mouth. He told Ms. [REDACTED] she should talk to someone and that Mr. Meisenbach should not talk to her like that, its not right. When asked to elaborate on what Ms. [REDACTED] told him he could not remember specifically what she said.

Mr. [REDACTED] said Mr. Meisenbach usually talks about sports or the job. He usually says what's on his mind. There's not a lot of filter when he speaks.

4. Interview of James Meisenbach

Mr. Meisenbach denied he said a racist joke to Ms. [REDACTED]. He said he is not good at making jokes. He has tried to make jokes but it doesn't come out right so he doesn't bother with them. He said he goes to night clubs and shares jokes of a racial or ethnic nature that he's heard from comedians like Chris Rock.

Allegation J: Ms. [REDACTED] alleges Mr. Meisenbach repeated racist comments about Blacks made by his father.

1. Interview of Ms. [REDACTED]

Ms. [REDACTED] believes the conversation regarding Mr. Meisenbach's father occurred approximately six months ago. She couldn't recall how the conversation came up. She remembers that the crew was talking about the "good old days" and how things were. Mr. Meisenbach told the crew that his father had worked at the Port. He said his father is a racist and use to call Black people "Niggers." He then said his father "didn't like Black people" and "still believes in hanging Black people." Ms. [REDACTED] does not believe Mr. Meisenbach's comments were directed at her however, she was the only Black person present. Ms. [REDACTED] said Anthony and Jeffrey Bettiga and Jim Werder were present when Mr. Meisenbach made his comments.

2. Interviews of [REDACTED]

[REDACTED] had no knowledge of this incident.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Interviews of [REDACTED]

[REDACTED] did not recall any conversation or racist comments made by James Meisenbach about his father.

██████████ did not hear the comments alleged by Ms. ██████████ ██████████
██████████

Mr. ██████████ said he was not around and did not hear comments allegedly made by Mr. Meisenbach in reference to his father.

4. Interview of James Meisenbach

Mr. Meisenbach said most of the people who worked for his dad like Percy and Willie were Black. His father didn't have a problem with Black people. Mr. Meisenbach said neither he nor anyone else on the crew would make the comments alleged by Ms. ██████████. Mr. Meisenbach said talk like that comes back on me. If my father felt like that, then I would think like that. It's wrong.

Analysis:

The investigation established that it is more likely than not that Mr. Meisenbach made two racially inappropriate comments ("I should slap the black off of you.") and a Black joke (Black and Decker). Mr. Meisenbach told Ms. ██████████ the following joke: a man took his daughter to a hardware store. His daughter ended up in jail. The daughter called her mom and told her she was in jail. The mom asked what happened. The daughter said that her dad told her to get a Black and Decker, so she looked for a Black person and decked her.

While Mr. Meisenbach denied making the inappropriate comment and racial joke, his credibility is questionable as he did admit to sharing ethnic or racial jokes when he goes to night clubs. Additionally, four witnesses testified Ms. ██████████ complained to them about Ms. Meisenbach's comments and one witness testified she appeared upset.

A reasonable person would perceive the comments referencing being slapped and decked as intimidating and threatening. This is particularly true as the comments came from a large Caucasian male who has been described by his employees and management as being loud, aggressive, a loose cannon and has been previously reprimanded for being disrespectful and unprofessional. The comments are a violation of the City's Harassment Free Workplace Policy and also a violation of the City's Violence in the Workplace Policy and the Department's Workplace Violence Prohibited Policy. The City's policy states "Any act or threat of violence made or committed at the workplace is prohibited." The Department's policy states "The following actions by employees are prohibited during the course of employment. . . . Physically or verbally intimidating another employee or member of the public." See Exhibit G, Attachments A & B.

Supervisors are required to attend Harassment Prevention Training every two years in compliance with AB 1825. A review of People Soft records showed that Mr. Meisenbach

attended AB 1825 Harassment Prevention Training in 2005, 2007 and 2010. See Exhibit E, Attachment A. As such, Mr. Meisenbach was on notice and was required to prevent harassment in the workplace.

Mr. Meisenbach's conduct was unwelcome to Ms. [REDACTED] as she reported Mr. Meisenbach's behavior to four coworkers, filed a complaint. The conduct was severe and pervasive and Ms. [REDACTED] asked to be reassigned to another crew and reported that she dreaded going to work. The investigation established Ms. [REDACTED] was subject to harassment based on her race.

The investigation was inconclusive as to whether Mr. Meisenbach made racist comments about Blacks while referencing his father. Witnesses testified they were either not aware of this conversation or did not hear the alleged comments.

8. Recommendations Regarding Workplace Issues

The investigation established a pattern of inappropriate and unprofessional behavior by Mr. Meisenbach. As a supervisor Mr. Meisenbach is expected to mentor and model appropriate behavior to his subordinate employees. His use of profanity when directing or talking to employees should not be tolerated and should immediately stop. I therefore recommend the following actions:

- (1) Inform Mr. Meisenbach of the Human Resources Director's findings that he discriminated against Ms. [REDACTED] on the bases of her gender and race and that such actions violated the City's Harassment-Free Workplace Policy. Inform him that his racial comment and joke also violated the City's and the Port's Violence in the Workplace Policy.
- (2) Take appropriate significant disciplinary action against Mr. Meisenbach, consistent with the severity of the violations and his disciplinary history, for discriminating against Ms. [REDACTED] on the basis of her gender and race. He discriminated against her based on her gender when he denied her the opportunity to perform as a Lead and he created a hostile working environment for Ms. [REDACTED] when he made a racial comment and a racial joke. The investigation established Mr. Meisenbach violated the City's Harassment-Free Workplace Policy and the Violence in the Workplace Policy. The investigation also established a pattern of inappropriate and unprofessional behavior by Mr. Meisenbach towards Ms. [REDACTED], the crew and even Port management. In fact, in August 2010, he was issued a reprimand for disrespectful behavior towards management including being loud, aggressive, failing to follow instructions and unprofessional behavior.
- (3) Remind Mr. Meisenbach of the City's policy prohibiting retaliation against employees complaining about discrimination, or providing testimony in support of a discrimination complaint.

(4) Direct Mr. Meisenbach to refrain from using the "F" word and other profanity with the crew. The investigation established through witness testimony, including his own, that it is common practice for him to use such language when directing the crew. He should be instructed that such language could be a violation of the City's Harassment-Free Workplace Policy.

(5) Require Mr. Meisenbach to attend the Employee Assistance Program workshops on "Managing Our Emotions" and "Positive Problem Solving." The investigation established that Mr. Meisenbach has a practice of yelling, screaming and insulting employees which can be perceived as intimidating and hostile. He also has been described as being a loose cannon, speaking before thinking and not filtering what he says. This type of conduct was evident during his interview with Ms. Fernandez when he became enraged, bolted out of his seat, walked out of the interview and accused Ms. Fernandez of "trying to piss him off."

(6) [REDACTED]

[REDACTED]

(7) [REDACTED]

(8) [REDACTED]

(9) On May 10, 2011, Ms. [REDACTED] reported to Ms. Fernandez that Mr. Meisenbach had violated the directive issued to him to cease any communication with her during the investigation of her complaint and during her reassignment to another File Drive Crew. Ms. [REDACTED] alleged Mr. Meisenbach has approached her on several occasions and on May 10, 2011, picked up Ms. [REDACTED] after her interview at the Department of Human Resources. The Department should investigate whether Mr. Meisenbach violated any directive and if so, take appropriate corrective action.

(10) [REDACTED]

9. Attachments to Report

Attached to this report are the following exhibits:

Exhibit A: Letter of Complaint; Charge of Discrimination

Exhibit B: Notice of Charge of Discrimination and Request for Information

Exhibit C: Department's Response to Charge and Request for Information

Exhibit D: Summary of Investigative Interviews

Attachment A - Interview of [REDACTED] (Complainant), 7/7/10

Attachment B - Interview of [REDACTED] 7/22/10

Attachment C - Interview of [REDACTED] 8/11/10

Attachment D - Interview of [REDACTED]

Attachment E - Interview of [REDACTED]

Attachment F - Interview of [REDACTED]

Phone call with [REDACTED] - 1/10/11

Attachment G - Interview of [REDACTED]

Attachment H - Interview of [REDACTED]

Attachment I - Interview of [REDACTED]

Attachment J - Interview of [REDACTED]

Attachment K - Interview of James Mr. Meisenbach (Respondent)

Attachment L - Interview of [REDACTED]

Exhibit E: Summary of Documents Reviewed

Attachment A - People Soft record of Mr. Meisenbach's completion of AB1825 Harassment Prevention Training in 2005, 2007 & 2010

- Attachment B - People Soft record of Mr. Meisenbach's completion of 24 Plus Training for Experienced Supervisors in 2008
- Attachment C - Memo dated August 27, 2010, Written Reprimand from Tom Carter, Deputy Director, Maintenance to James Meisenbach
- Attachment D - [REDACTED] Employment Application
- Attachment E - 9330 Pile Worker Class Specification

- Exhibit F: Attachment A - Performance Plan and Appraisal Report (7/1/08-7/1/09)
- Attachment B - Performance Plan and Appraisal Report (7/1/09-6/30/10)

- Exhibit G: Attachment A - City and County of San Francisco Violence in the Workplace Policy
- Attachment B - San Francisco Port Workplace Violence Prohibited Policy

CONFIDENTIAL

Date: October 14, 2011

To: Monique Moyer, Executive Director, Port of San Francisco

From: Lavena Holmes, Port HR Director

RE: Investigative Report - Investigation of Violation of Cease and Desist Order,
Gender-based Harassment and Retaliation

Investigation Background Summary of the Complainant

On May 25, 2011, [REDACTED] Complainant in an EEO investigation which DHR was conducting. At this meeting met with Port Human Resources and brought forth the information. Ms. [REDACTED] stated that on May 10, 2011, James Meisenbach, Class 9332 Piledriver Supervisor, picked her up after a meeting she attended at DHR. This was after Mr. Meisenbach had been instructed by Superintendent Sue Grenci not [REDACTED] act or interaction with Ms. [REDACTED] as a result of the charges she filed against him with DHR.

[REDACTED]

Based on the foregoing and after a meeting between the Port and DHR held on June 9, 2011, DHR instructed the Port to investigate these allegations which if confirmed, could constitute harassment and retaliation. I commenced with the investigation following the meeting.

Investigative Process

On Monday, June 27, 2011, [REDACTED] Meisenbach, piledriver supervisors and [REDACTED] business representatives, [REDACTED] Pat Karinen, Pileworkers, were notified of the fact-finding meetings I scheduled in order to investigate the allegations. The notifications were sent via email and hard-copy document. I also advised Monique Moyer, Port Executive Director, of the notifications sent in case she was contacted by any of the recipients or other interested parties about the nature of the investigation.

• **Interviews Conducted**

The first round of interviews [REDACTED] (James Meisenbach) was conducted on Thursday, July 7, 2011 with the exception of [REDACTED] interview that took place on Tuesday, July 11, 2011.

The second round of interviews [REDACTED] was conducted on Thursday, August 18, 2011, with the exception of [REDACTED] that were rescheduled to Wednesday, August 24, 2011, [REDACTED] was interviewed on Monday, September 12, 2011 and [REDACTED] was interviewed on Tuesday, September 20, 2011.

Additionally, [REDACTED] was interviewed by phone on Thursday, 8/11/11.

Application of Guidelines or Policies

Harassment

Harassment of City employees on the basis of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, or other protected category is prohibited and unlawful. Harassment consists of unwelcome visual, verbal, or physical conduct engaged in as a result of a person's actual or perceived membership in a protected category. Harassment of applicants or persons providing services to the City or contractor, whether employees or non-employees, is prohibited. This policy applies to all employees and agents of the City, including supervisors and non-supervisory employees.

Retaliation

Retaliation against an individual who reports harassment, files a complaint of harassment or who otherwise opposes or assists in the investigation of a complaint is also prohibited.

Retaliation includes any acts that are (1) "materially adverse" (2) to a reasonable employee - whether or not those acts result in loss of pay, benefits, or any other privilege of employment.

Analysis/Summary of Key Facts/Findings

The Pick Up - 5/10/11 (Violation of Cease and Desist Order)

Ms. [REDACTED] stated that on May 10, 2011, James Meisenbach, Class 9332 Piledriver Supervisor, picked her up after a meeting she attended at DHR. This was after Mr. Meisenbach had been instructed by Superintendent Sue Greci not to have any personal contact or interaction with Ms. [REDACTED] as a result of the charges she filed against him with DHR.

[REDACTED] reported that on May 10th she was dropped off for a meeting at DHR [REDACTED] informed Ms [REDACTED] when he dropped her off that he would not be able to pick her up. Ms. [REDACTED] stated that [REDACTED] told her during the meeting on 5/10/11 that, "the Port was informed that she [REDACTED] is not supposed to be working with or near Jimmy". Jim Meisenbach arrived at DHR at the conclusion of her meeting to pick her up and asked to take her to lunch. She declined the lunch invitation.

According to Ms. [REDACTED], the following incidents were also violations of the cease and desist order: 1) She and Mr. Meisenbach were on the same job together on Pier 9 (MAY 2011) and Pier 80 (JAN/FEB 2011). Mr. Meisenbach came out to supervise the job. Ms. [REDACTED] was on the rig and she stayed away from him. 2) She stated that Mr. Meisenbach came over and spoke to her after Mother's Day (Pier 9, MAY 2011). He suggested taking her to lunch. Ms. [REDACTED] immediately walked away. 3) During March Madness (Pier 9, MARCH 2011) Mr. Meisenbach told Ms. [REDACTED] that he tried to call her about the women's basketball team playing in Tennessee. Yet, when they were working at Pier 80 she said that Mr. Meisenbach wouldn't even look in her direction. 4) Again on Pier 9, Mr. Meisenbach told Ms. [REDACTED] that he had the Bee movie (Ms. [REDACTED] loaned him the movie when she was on his crew). She told him to keep it.

Due to the reported anxiety over these incidents, Ms. [REDACTED] stated that she wants Mr. Meisenbach [REDACTED] to "just get away from me. Jimmy [REDACTED] stress me out. My neck broke out from stress."

[REDACTED] told Ms. [REDACTED] "He (Jimmy) came to pick you up. I was looking to see if [REDACTED] could pick you up; Jimmy laughed and said "No, I'm going to go get her."

[REDACTED] he said that when he called [REDACTED] to have someone go pick up [REDACTED] at DHR [REDACTED] so he can't pick her up. [REDACTED] crew or Jimmy's crew pick her up?" [REDACTED] he asked Jimmy, "Can you have Jeffrey or Anthony pick her up?" Jimmy said "I'll go get her cause they don't know where to go. [REDACTED] thought it "odd for him (Jimmy) to say he'd pick her up." When I asked [REDACTED] about laughing it off with Mr. Meisenbach as it was reported,

"No. There was no conversation like that. I was shocked, I told him (Jimmy) to get [REDACTED] to get him. Jim said "Oh no: I'll go get him. That's what I remember. I definitely don't remember laughing about it with Jim."

[REDACTED] were interviewed on July 7, 2011 about this incident and both reported that they were not asked nor did they volunteer to pick up Ms. [REDACTED]

[REDACTED]

Conclusion

1a. Harassment: Violation of Cease and Desist Order
Harassment of City employees on the basis of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, or other protected category is prohibited and unlawful. Harassment consists of unwelcome visual, verbal, or physical conduct engaged in on account of a person's actual or perceived membership in a protected category. Harassment of employees, applicants, or persons providing services to the City by contract, whether by employees or non-employees, is prohibited. This policy applies to all employees and agents of the City, including supervisory and non-supervisory employees.

Sustained. I find Mr. Meisenbach's [REDACTED] statement to be inconsistent with one another in that [REDACTED] stated he called [REDACTED] for the runner to pick up Ms. [REDACTED] and Mr. Meisenbach stated that he received a call from Mr. McLain for the runner. In fact, [REDACTED] would not call Mr. Meisenbach to locate the "runner". The runner is not a pile driver; the runner is a general laborer who

reports to [REDACTED] not to Mr. Meisenbach. [REDACTED]
Laborer Supervisor dispatches the "runner" [REDACTED]

Additionally, since [REDACTED] was recently interviewed at DHR as witnesses in Ms. [REDACTED] claim they [REDACTED] would have known where DHR is in order to go pick her up. [REDACTED] are also long-term employees who have been to DHR for several reasons over their term of employment with the C. These facts are irreconcilable with Mr. Meisenbach's statement, that "they would know where to go." I find Mr. Meisenbach's statements and his continued attempts to engage Ms. [REDACTED] in friendly banter disingenuous. He knew that Ms. [REDACTED] had filed a complaint and was meeting with DHR regarding her complaint. He knew there was a cease and desist order in place and he was not to interact in any way with Ms. [REDACTED]. He also knew that the cease and desist order had not been [REDACTED] because he continually inquired with the Superintendent re: the status of the claim. By insisting on picking up Ms. [REDACTED] himself, she felt that he intended to use that opportunity to harass and retaliate against her for filing a claim against him. Although he did not make any explicit statements to Ms. [REDACTED] when he picked her up she felt just his mere presence was unexpected and intimidating.

[REDACTED]

1b. Harassment: based on gender

[REDACTED]

2. Retaliation

Retaliation against an individual who reports harassment, files a complaint of harassment or who otherwise opposes or assists in the investigation of a complaint is also prohibited. It is illegal to fire, demote, harass, or otherwise "retaliate" against people (applicants or employees) because they filed a charge of

discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

Retaliation includes any acts that are (1) "materially adverse" (2) to a reasonable employee - whether or not those acts result in loss of pay, benefits, or any other privileges of employment. Retaliation is prohibited when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Sustained: In "the pick-up" incident

This incident meets the standard for retaliation. Mr. Meisenbach's insistence to pick-up Ms. [REDACTED] despite the cease and desist order specifically prohibiting this type of interaction is on-going harassment. He continued to pursue and attempt to engage Ms. [REDACTED] instead of taking proactive steps to gauge his behavior and stop doing what the complainant says is harassment in retaliation for her complaint of discrimination against him based on race and gender.

[REDACTED]

Additional Findings: James Meisenbach

Unprofessional and Inappropriate Conduct in the Workplace

The second round of interviews investigating Mr. Meisenbach's behavior as a supervisor provided many more examples of his unprofessional and inappropriate conduct in the workplace. Each employee interviewed confirmed that Mr. Meisenbach swears, yells and rants at his subordinates. He was described by [REDACTED] "brash, harsh, rough around the edges", [REDACTED] described him as "boisterous, colorful in his language", and Sue Grenco stated, "Jimmy is a gruff supervisor." Many of the pile workers have also worked for supervisors, [REDACTED] neither of these supervisors were reported as supervisors that direct their staff by yelling, swearing or ranting at them.

Unsuitable Supervisory Skills

In terms of Mr. Meisenbach's supervisory capabilities [REDACTED] described him as "playing the part of supervisor," [REDACTED] stated

"Jim's not big on planning or organization in particular. ...Sometimes when you plan a job, things don't go as planned, with Jim that can be expected. ...he's not systematic, organized or have the most thoughtful way of doing things. The crew would put order to things, we'd work out the logistics...we develop our own action plan....Jim, at times may not have been clear in his

mind what was required to get a job done, and if he did, maybe he wasn't able to communicate it to his team, so there was confusion. He depended on his team a lot to get the job done.... I think some of the guys were used to getting more clear direction. They expressed frustration (with Jimmy's supervisory style).... I can see how with a different crew it would be real chaos. He would be in trouble with a crew of rookies."

These types of comments were consistent throughout the course of the investigation. This employee stated them most succinctly.

Recommendations

1. Significant progressive discipline for Mr. Meisenbach up to and including dismissal from supervisory position.

This report reflects the best assessment and recommendations for the complaint given the information revealed during the investigative process.

¹ During their interviews, [REDACTED] James Meisenbach referred to [REDACTED] as "he" or "him".
² See note above



Re: Documented telephone conversation of 8/11/11

to:
lavena.holmes-williams@sfport.com
08/17/2011 04:04 PM

Hide Details

From: [REDACTED]

To: "lavena.holmes-williams@sfport.com" <lavena.holmes-williams@sfport.com>

Please respond to [REDACTED]

History: This message has been forwarded.

This documentation is correct according to my recollection.

From: "lavena.holmes-williams@sfport.com" <lavena.holmes-williams@sfport.com>
To: [REDACTED]
Sent: Wednesday, August 17, 2011 3:30 PM
Subject: Documented telephone conversation of 8/11/11

Hi [REDACTED]

Per our telephone discussion on Thursday, August 11, 2011, I advised you that I would document back to you our discussion for your verification that the documentation was accurate. I ask that you review this email and respond with your confirmation as requested at your earliest convenience and by Thursday, 8/18/11, 10:00 AM. You are reminded that our discussion and the contents of this email are part of an investigation and are confidential. This email nor the contents of our verbal discussion can be shared by you with anyone.

Telephone discussion between Lavena and [REDACTED] 8/11/11, 4:05 PM

After you answered the phone I apologized for calling you while you are on leave of absence. I inquired about your injury and recovery and explained to you the nature of my called. I explained that I am conducting an ongoing EEO investigation and our discussion is confidential.

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I asked you what Tom Carter said to you about the complaint and what did you communicate to Jim Meisenbach? What did you specifically direct Jim to do regarding his interactions with [REDACTED]?

You didn't recall the specific date that Tom Carter came to your office to talk to you about the complaint. However, per your recollection, is it well documented in your planner book at work. You stated that Tom Carter had a discussion with you indicating that [REDACTED] had filed a complaint against Jim that was being investigated by DHR and while the investigation was going on Jim could not supervise [REDACTED] have any interaction with her, talk to her or retaliate against her. He directed you to have a discussion with Jim about this directive.

You explained that on the day (7/2/10) Tom Carter told you to talk to Jimmy that there was a retirement party at the boat house for Bruce and you could not have a discussion with Jim at the time because everyone had gone over to the party by then. After your discussion with Tom Carter, you proceeded to the retirement party as well and you saw both [REDACTED] and Jim at the party. You spoke to both [REDACTED] and Jim at the party but not about the complaint.

On the Tuesday (7/6/10) following the retirement party (Jim was off on Monday) you called Jim to your office and spoke with him. You say that the discussion you had with Jim is better detailed in your planner book that is put away somewhere in your office. You stated you told Jim that something is going on with [REDACTED] she filed a complaint. He was not to supervise her, talk to her, have any contact with her or retaliate against her. You recalled that Jim asked you what am I going to do? as if to say he would not retaliate against her. You told him, "I don't know, retaliation can be considered talking to others, don't talk to anyone." You stated it wasn't a very long conversation just you telling him not to talk to [REDACTED]

That was on whatever date it was (7/6/10) but then not long after that you stated that you observed Jimmy and [REDACTED] at the barbecue (9/17/10) [REDACTED] was setting up and they were chatting so you thought there was no longer an issue of Jim talking to her. You stated that you asked Tom Carter had he heard anything from Personnel about what's going on, and he had not.

I asked if you had any further discussions with Jim about the complaint. You said, that you never said anything more to him (in terms of direction) after that day (you originally spoke with him). Jim continually asked you what was going on, however, you were not able to respond to his questions because you did not receive an update or any additional information about the complaint. You stated that [REDACTED] also came by to talk to you (7/6/10) and she said "it's been going on for a while and I've had it". You told her she should have come to see you sooner so that you could have done something about it. At this point [REDACTED] was reassigned to report to Brent McLain. You reported that Jim said "give me guys to work with, I need men, I need bodies."

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About 3 - 4 months after the initial investigation Jim told you when this is all over, "I want an apology." You commented, "in my opinion although I wasn't there every single day...unfortunately, Jimmy is a gruff supervisor with all his guys. Like (for example) with Jimmy and Anthony you can't tell which one is the supervisor because they're both at each other." You went on to say that [REDACTED] was doing what she was told to do, but even the guys have said she's dangerous, she's always on the phone. All three of the supervisors have said to me that she does what she is told to do, We only give her what she's capable of doing." As an example you stated that "they were trying to teach her to be the tender, I guess that didn't work out very well." You further stated, "I never called them in to talk to them together [REDACTED] and Jim). Tom basically told me 'it's out of your hands'".

You said that "news of the investigation spread like wildfire once the guys were called in. Nothing can be kept a secret down here."

I asked you if your direction to Jim not to supervise [REDACTED] have any interaction with her, talk to her or retaliate against her was in writing. You said "No, Tom told me to talk to him. I wasn't told to give him anything in writing. I was told it was all being handled by HR."

I then asked you what you did when you came in on 6/20/11. You stated you came in at 6:00 AM, started work at 6:30 AM. You talked with Dan Lazzari, Mike Stez and Dan Maguire, then got in the truck and went to J4. You said that you were using a cane to walk and was not out there very long, you couldn't take (tolerate) the cane. You returned to P50 and met with Tom Carter and he reviewed with you what was going on with the projects. Because you didn't have the appropriate return to work forms and you were having a lot of pain you both decided it better if you returned home and come back to work when you were ready and had the appropriate release to full duty.

end of documentation - telephone discussion ended at 4:35 PM

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Date/Time	Usage Type	Direction	Destination/Origin Number	City Called	PTN	UFMI	Duration	Air
11/3/2011 4:11	Multimedia Usage		4158506710	SNFC CNTRL	4158506710	116*3*17 31	1	0
11/3/2011 6:18	Voice Home	Mobile2 Mobile	4153072633	Incoming	4158506710	116*3*17 31	1	0
11/3/2011 9:09	Voice Home		4158506710	Incoming	4158506710	116*3*17 31	1	0
11/3/2011 10:04	Voice Home	Mobile2 Mobile	4158195828	Incoming	4158506710	116*3*17 31	1	0
11/3/2011 10:26	Voice Home		650	SOSAN FRAN	4158506710	116*3*17 31	1	0
11/3/2011 10:26	Voice Home	Mobile2 Mobile	4158195828	SNFC CNTRL	4158506710	116*3*17 31	1	0
11/3/2011 10:28	Voice Home		650	SOSAN FRAN	4158506710	116*3*17 31	1	0
11/3/2011 11:12	Voice Home	Mobile2 Mobile	4153072633	SNFC CNTRL	4158506710	116*3*17 31	1	0
11/3/2011 11:22	Voice Home	Mobile2 Mobile	4158506819	SNFC CNTRL	4158506710	116*3*17 31	1	0
11/3/2011 11:43	Voice Home		925	Incoming	4158506710	116*3*17 31	1	0
11/3/2011 12:28	Voice Home	Mobile2 Mobile	4153072633	SNFC CNTRL	4158506710	116*3*17 31	5	0
11/3/2011 12:34	Voice Home		650	SAN MATEO	4158506710	116*3*17 31	3	0
11/3/2011 13:30	Voice Home		415	Incoming	4158506710	116*3*17 31	2	0
11/3/2011 13:47	Voice Home		925	Incoming	4158506710	116*3*17 31	2	0

11/3/2011 13:56	Voice Home	Mobile2Mobile		4158191760	Incoming	4158506710	116*3*17	7	0
11/3/2011 18:11	Voice Home			925	Incoming	4158506710	116*3*17	3	0
11/3/2011 18:14	Voice Home			650	Incoming	4158506710	116*3*17	2	0
11/3/2011 18:19	Voice Home			925	CONCORD	4158506710	116*3*17	5	0
11/3/2011 18:32	Voice Home			650	SAN MATEO	4158506710	116*3*17	1	0
11/3/2011 19:39	Voice Home			510	HAYWARD	4158506710	116*3*17	1	0
11/3/2011 19:47	Voice Home			510	Incoming	4158506710	116*3*17	2	0
11/4/2011 17:40	Multimedia Usage			4158506710		4158506710	116*3*17	1	0
11/4/2011 17:44	Multimedia Usage			4158506710	SNFC CNTRL	4158506710	116*3*17	1	0
								562	\$0.00

11/3/2011 13:56	Voice Home	Mobile2 Mobile		4158191760	Incoming	4158506710	116*3*17 31	7	0
11/3/2011 18:11	Voice Home			9258	Incoming	4158506710	116*3*17 31	3	0
11/3/2011 18:14	Voice Home			650	Incoming	4158506710	116*3*17 31	2	0
11/3/2011 18:19	Voice Home			925	CONCORD	4158506710	116*3*17 31	5	0
11/3/2011 18:32	Voice Home			650	SAN MATEO	4158506710	116*3*17 31	1	0
11/3/2011 19:39	Voice Home			510	HAYWARD	4158506710	116*3*17 31	1	0
11/3/2011 19:47	Voice Home			510	Incoming	4158506710	116*3*17 31	2	0
11/4/2011 17:40	Multimedia Usage			4158506710		4158506710	116*3*17 31	1	0
11/4/2011 17:44	Multimedia Usage			4158506710	SNFC CNTRL	4158506710	116*3*17 31	1	0
								562	\$0.00





Via Hand Delivery

November 3, 2011

James Meisenbach

Subject: Administrative leave

Dear Mr. Meisenbach:

As you will find in the attached letter, the Port of San Francisco ("Port") intends to terminate your employment as a Class 9332 Pile Worker Supervisor I, Maintenance Division. Effective immediately, you are on administrative leave with pay, pending the Skelly hearing and decision. You are not to return to the workplace unless and until otherwise notified.

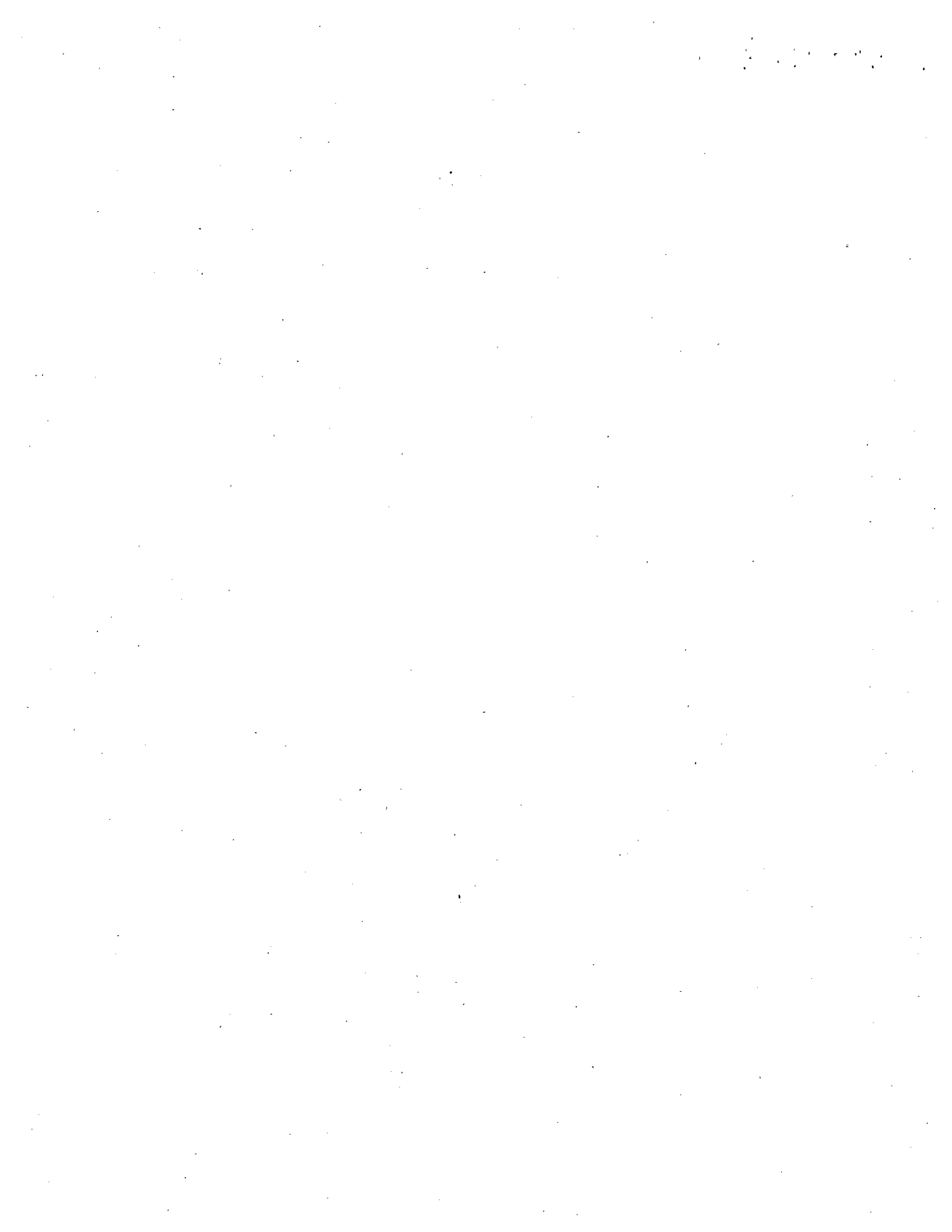
As a supervisor, you are aware that it is a violation of City policy to take any adverse action against a City employee based on their participation in a City investigation or based on claims of unlawful conduct. You are also aware that you have a duty not to impede or attempt to interfere with a matter in an investigatory or administrative process. You must treat this matter as confidential and must absolutely refrain from discussing the allegations against you with any potential witnesses to this matter. Failure to comply with this directive will result in further disciplinary charges.

Sincerely,

Elaine Forbes
Deputy Director, Finance and Administration

cc: Hearing Officer
Lavena Holmes

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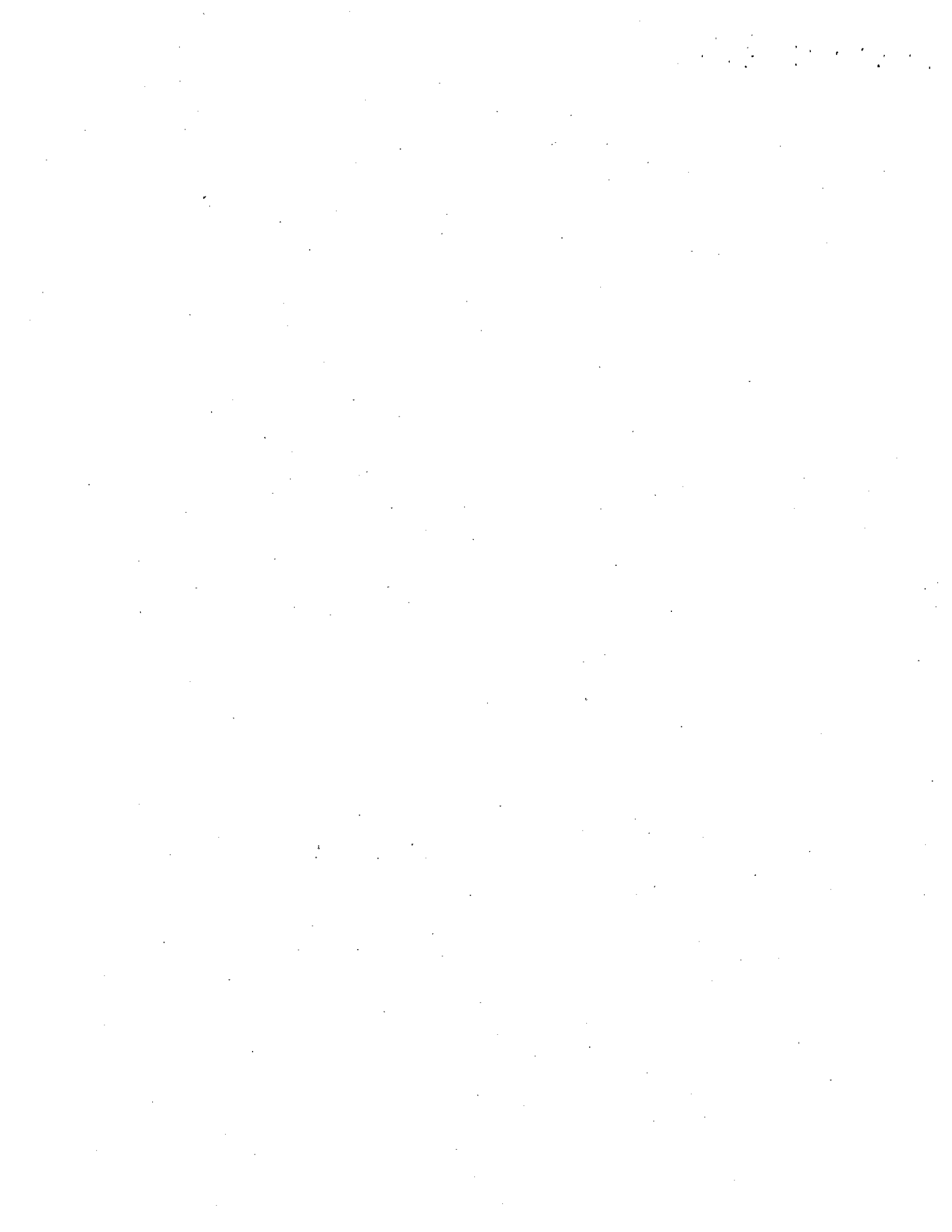


USE OF PORT PROPERTY

City property, including by not limited to, telephones, computers and other telecommunications equipment; office supplies and equipment; vehicles; and credit cards are to be used for Port and/or City business purposes only.

Violations of this policy may result in disciplinary action up to and including discharge from employment.

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grievance, complaint, or opinion on any matter related to the conditions of municipal employment as long as it does not interfere with the full, faithful, and proper performance of the duties of employment.

Political Activity

It is unlawful for city officers or employees to use public resources or personnel to engage in political activity relating to elective offices and ballot measures at the federal state and local level. City officers and employees may not engage in political activities while on duty or in the workplace. Employees may not use City resources, such as photocopier or fax machines, telephones, postage, or email, for political activities. The ban on engaging in political activity while on duty prohibits such activities as circulating petitions, addressing envelopes or engaging in any other political activities that use City resources or divert you from your assigned duties.

Considerable penalties may be imposed for violation of these rules. Use of City funds or resources for political or election activities also justifies discipline up to and including dismissal.

If You Suspect Improper or Criminal Activity on the Job

As a City employee, you have a duty to report any incidents of improper or illegal activity involving your department or another City department. Never confront an employee whom you suspect is involved in illegal or criminal activity. Discuss the matter with your supervisor or departmental personnel officer. If you feel it necessary to protect your safety or avoid retaliation, you may report illegal or improper conduct to the Whistleblower Hotline at 554-CITY. You may make an anonymous report on the hotline. However, keep in mind that anonymous reports are more difficult to investigate.

Use of City and County Property for Business Purposes Only

All City equipment, devices, and materials (e.g., photocopier, telephones, computers, vehicles, stationery, fax machines etc.) must be used only for conducting City business. Use of City property for personal, political, employee organization, or other non-City business is strictly prohibited.

Work Site Security

To prevent and discourage unauthorized access to your work site, do not leave your office area unattended. Do not prop open doors or windows that are normally kept locked. Lock all office doors after business hours or when you leave. Prevent and discourage theft by securing your valuables.

Work-site keys and passes may not be shared, may not be duplicated without permission and must be returned upon separation.



Fw: Phone Conversation
Tom Carter to: Lavena Holmes-Williams

11/10/2011 04:07 PM

Sue Grencl

----- Original Message -----

From: Sue Grencl
Sent: 11/04/2011 08:47 AM PDT
To: Tom Carter
Subject: Phone Conversation

Per our conversation on November 3, 2011, Jim Meisenbach called me @ 12:28 pm on 11/3/11. Per you direction, I checked the number that appears on my phone and it shows 415-850-6710.

He asked me if I know this was happening? I told him I did not know in advance. He said he was sad that it happened and that if he were told to go back to work, he would do just that. He said that all he wants to do is work, that's all. Nothing else was discussed.

Our conversation lasted 4:48.





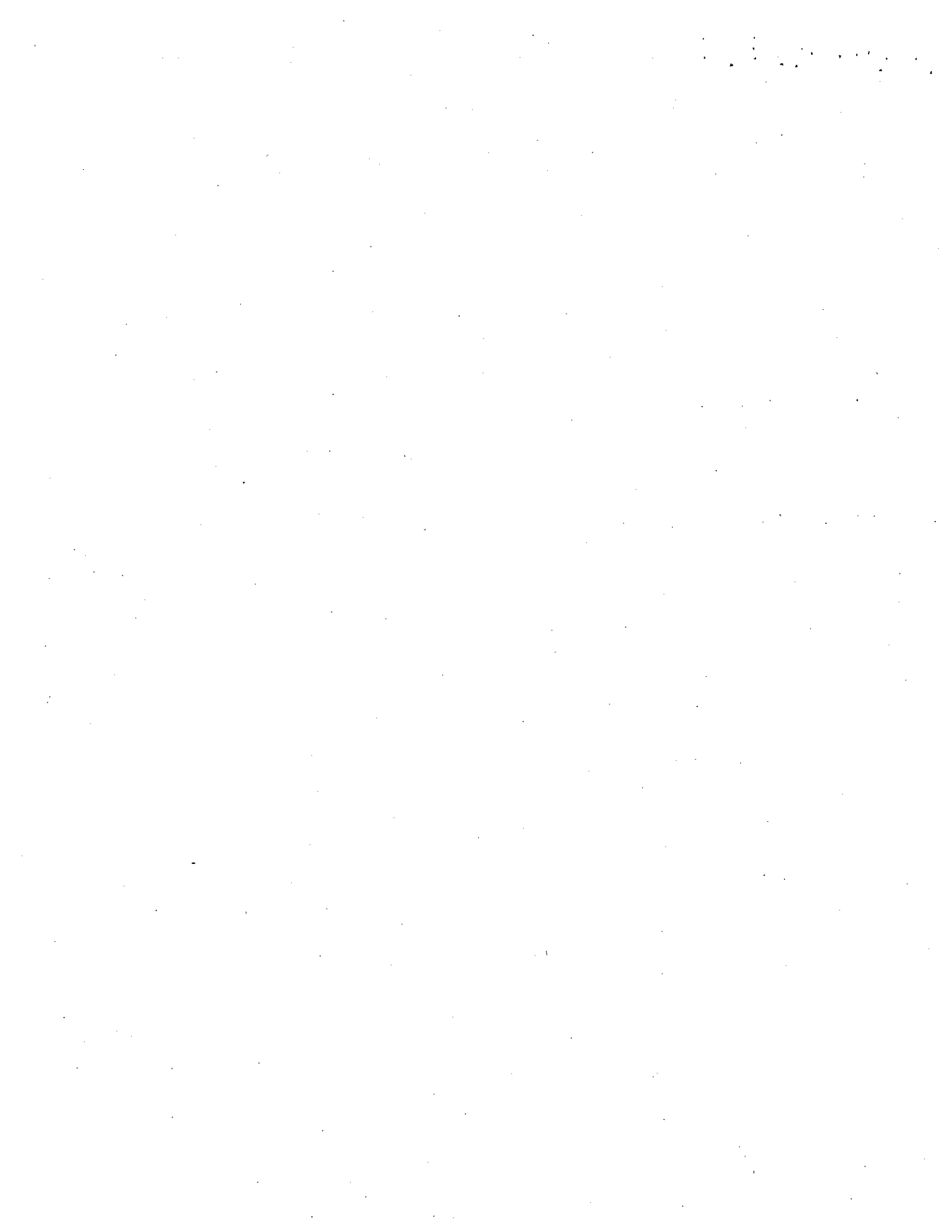
Trip to Pier 45 - Shed A
William Keast to: Lavena Holmes
Cc: Tom Carter

11/10/2011 04:24 PM

Lavena,

Tom Carter and I went down to Pier 45 on Friday morning November 4, around 10:15 AM . We drove into Shed "A" on Pier 45 and parked in front of the Pile Trailer. We entered the trailer using the key Jim turned over to me the day before and looked around to see if we could find Jim Meisenbach's Cell Phone anywhere on the premises. While we were there, we checked inside Jim's locker, we looked in all of the drawers and on top of all of the desks in the trailer. Just before we left, Tom called Jim's Cell Phone number and we waited to see if we could hear it ring. We heard nothing and concluded that the cell phone in question was not in the trailer.

Bill Keast, Senior Personnel Analyst
Port of San Francisco, Pier 50





LOCAL UNION NUMBER 34
PILE DRIVERS
DIVERS, CARPENTERS, BRIDGE, WHARF & DOCK BUILDERS

ATTACHMENT # 10

55 Hegenberger Place
Oakland, California 94621-1301
Tel. (510) 635-4227 • Fax (510) 635-1234

November 8, 2011

Ms. Lavena Holmes
Port of San Francisco
Pier 1
San Francisco, CA 94111

Re: James Meisenbach

Dear Ms. Holmes:

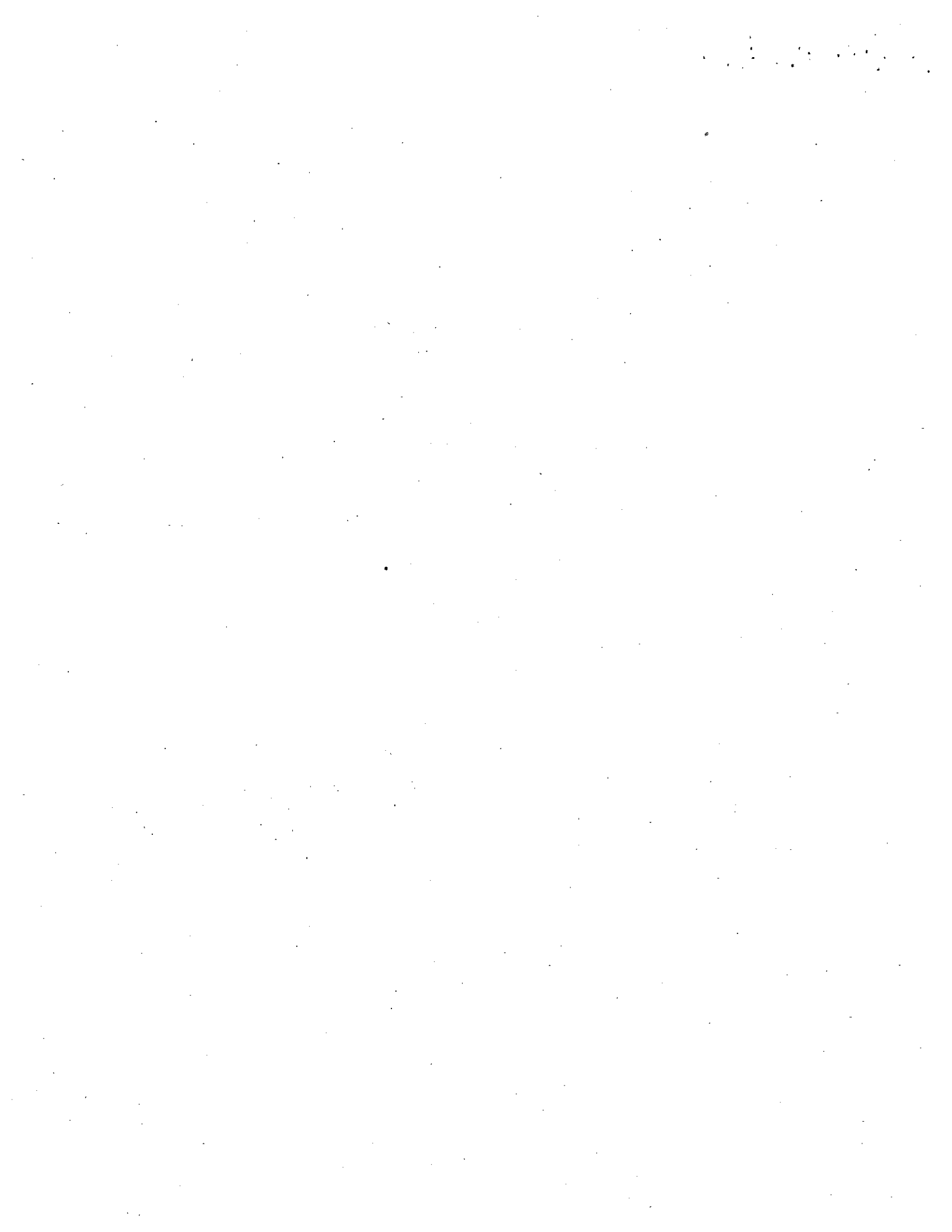
In regards to the November 3, 2011 letter to James Meisenbach informing him of the Ports intention to terminate his employment and the Skelly Hearing scheduled for November 14, 2011 at 9:00 a.m., please be advised that it will need to be rescheduled due to scheduling conflicts.

Sincerely,

Pat Karinen
Senior Field Representative
Pile Drivers Local Union No. 34

PK/cjt
open:29/afl-cio

cc: Steward Weinberg
James Meisenbach



PORT of San Francisco

Human Resources * Pier 1, San Francisco, Ca 94111 * Tel. 415-274-0422 * Fax 415-274-0583 * TTY 415-274-0587



Via Facsimile: 510-635-1234

November 9, 2011

Mr. Pat Karinen
Pile Drivers Union, Local 34
55 Hegenberger Place
Oakland, CA 94621

Subject: Response to request to reschedule Skelly Hearing for James Meisenbach

Dear Mr. Karinen:

I have received your request to reschedule the Skelly Hearing for James Meisenbach that is scheduled to take place on Monday, November 14, 2011 at 9:00 a.m. I am very reluctant to reschedule the Skelly Hearing for the following reasons:

- 1). Mr. Meisenbach is in possession of Port property that he was asked to return, and
- 2). Mr. Meisenbach is in direct violation of the terms of his administrative leave.

At the meeting held with Mr. Meisenbach on November 3, 2011 he was asked to turn over his Port cellular phone. Mr. Meisenbach denied he had his Port cellular phone and yet continued to make and receive calls from the Port issued cellular phone discussing with Port staff the meeting content. These actions not only reflect his dishonesty they also demonstrate direct violation of the specific direction given to him at the meeting which was to absolutely refrain from discussing the allegations against him with any potential witnesses.

Due process requires that Mr. Meisenbach be afforded the right to representation and the right to respond either in person or in writing. I am of the opinion that both can be accomplished at the Skelly Hearing as scheduled on Monday November 14, 2011 at 9:00 a.m. so long as there is a representative available to attend with him. If there is no representative available, the Hearing Officer has agreed to reschedule the Skelly Hearing to Wednesday, November 16, 2011 at 2:00 PM. However, if a representative is available I would like to proceed on Monday, November 14, 2011, 9:00 AM as originally scheduled. Please let me know by 5:00 p.m. tomorrow.

If I do not hear from you by 5:00 p.m. tomorrow, I will assume that we are proceeding as previously scheduled and the Port will conduct the Skelly Hearing promptly at 9:00 a.m. on Monday, November 14, 2011.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lavena Holmes".

Lavena Holmes
Assistant Deputy Director, Human Resources
Port of San Francisco





LOCAL UNION NUMBER 34
PILE DRIVERS
DIVERS, CARPENTERS, BRIDGE, WHARF & DOCK BUILDERS

ATTACHMENT #12

55 Hegenberger Place
Oakland, California 94621-1301
Tel. (510) 635-4227 • Fax (510) 635-1234

Via Fax: 415-274-0583

November 10, 2011

Levna Holmes
Assistant Deputy Director Human Resources
Port of San Francisco
Pier 1
San Francisco Ca. 94111

Re; Response to Skelly Hearing Letter

Dear Levna Holmes;

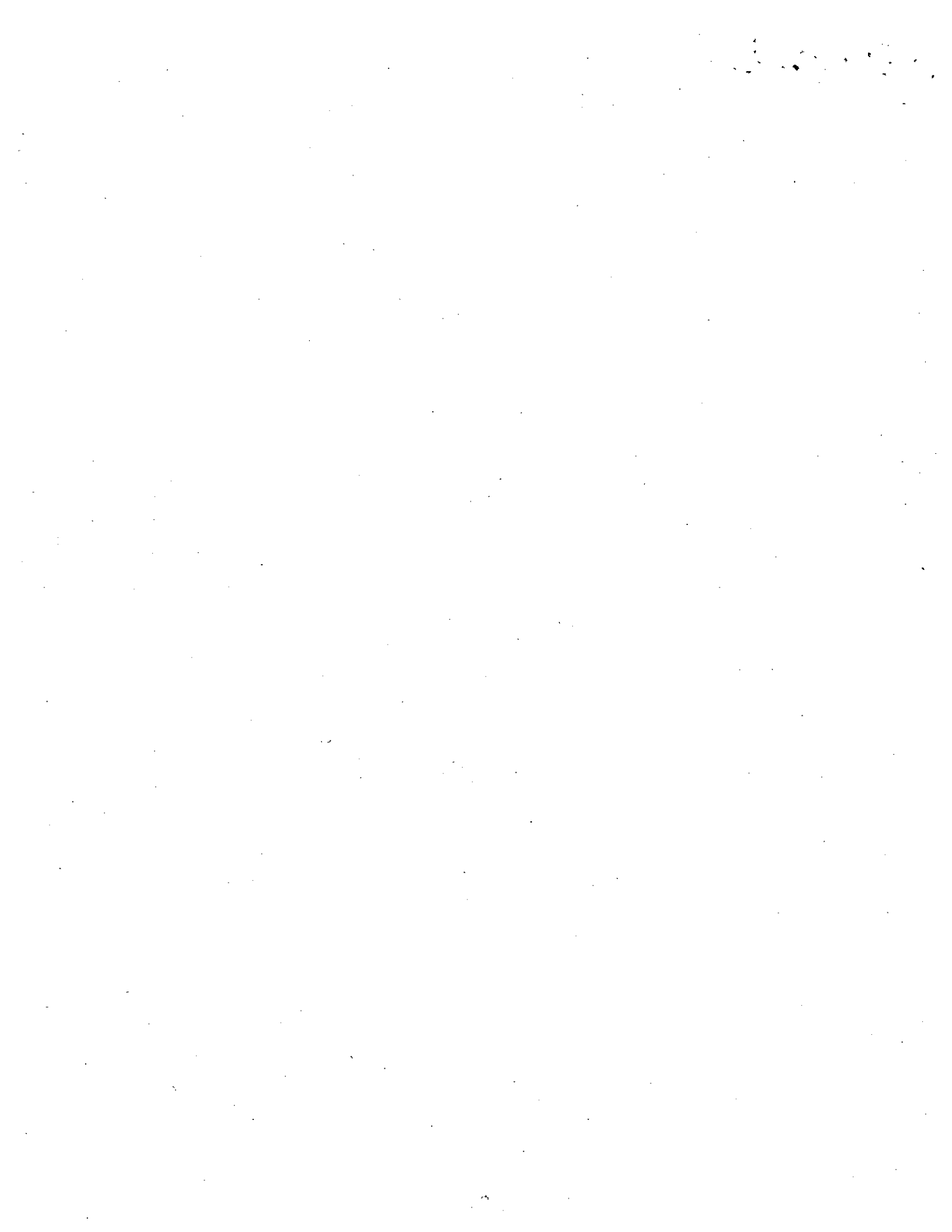
In response to your letter to me dated November 9, 2011; I talked to Jim Misenbach this morning and he claims that the phone in question was left by him at Pier 45 on the desk in the trailer where the crew meets in the morning.

Due to serious nature of the allegations in the Notice of Administrative Leave letter dated November 3 2011 to Mr. Meisenbach and the fact that I have been out of town for most of the past 3 weeks I will request the Skelly Hearing be scheduled for the November 16th date at 2:00 pm.

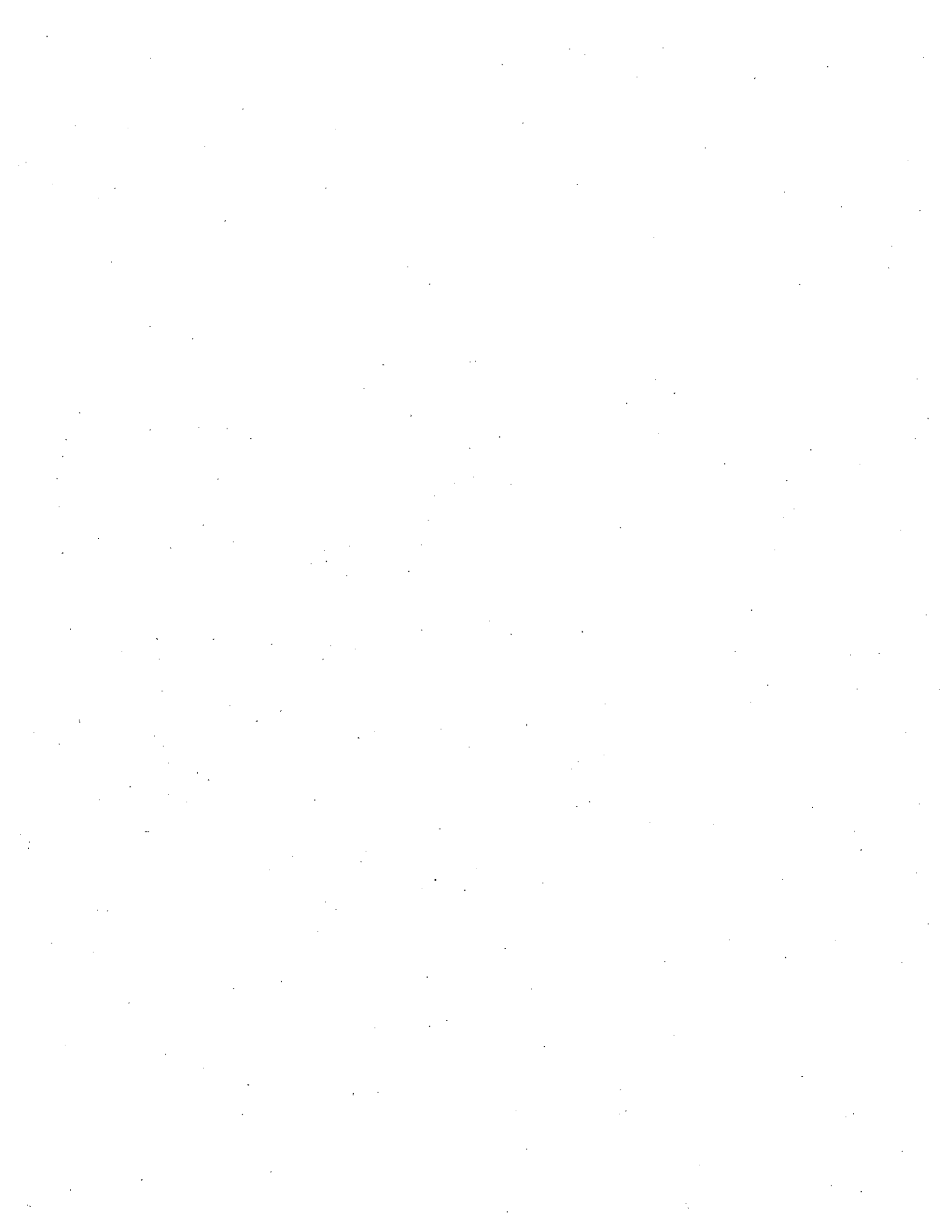
If you have any questions you can contact me at the Union Hall.

Signed;


Paul Karinen
Senior Field Representative
Piledrivers Local Union #34



Attachment D



The hearing was conducted over three (3) days, October 16, 17 and 23, 2013. The parties stipulated to seventeen (17) joint exhibits and all were accepted into evidence. The City offered an additional nine (9) exhibits, and the union offered an additional fifteen (15). Despite objections on the part of either party to any, the arbitrator admitted all exhibits into evidence. Testimony was received from sixteen witnesses, some of whom were subpoenaed by both parties.

The union raised concerns about not receiving attachments to one of the Joint Exhibits both prior to and during the hearing here, and prior to the grievant's "Skelly Hearing." Those concerns will be addressed in the opinion section of this decision.

POSITIONS OF THE PARTIES

The City and County of San Francisco/Port of San Francisco:

On November 3, 2011, the grievant was informed that the employer was proposing to terminate his employment for the following charges (Joint Exhibit 9):

1. Intimidating, unprofessional and inappropriate behavior and conduct in the workplace (including but not limited to: using profanity toward, yelling at, and insulting subordinates)
2. Violation of the City's and the Port's Harassment Free Workplace Policies (harassment and discrimination)
3. Violation of the City's and the Port's Violence in the Workplace Policies
4. Insubordination/Violation of a direct order
5. Retaliation

On November 10, 2011, the grievant was provided another notice amending the November 3 notice by adding the following charges (Joint Exhibit 10):

1. Dishonesty
2. Misappropriation of Port Property
3. Violation of the City's and the Port's Property Use Policies
4. Insubordination/Violation of a Direct Order

At the outset of the hearing, the City removed from consideration any basis for any related charge that the grievant discriminated against [REDACTED] by his failure to assign her to a lead position at any time while she was employed within his crew.

Such assignment carries with it additional compensation while performing in such capacity.

The foundations for the charges are as follows:

From the November 3, Notice

1. An investigation conducted by Megaly Fernandez, Senior Specialist, EEO Programs (Joint Exhibit 4) determined that grievant yelled at, used profanity, and berated subordinates. One specific instance, on June 24, 2010, he yelled at [REDACTED] several times to "move her fucking truck." Grievant has ignored repeated direction to refrain from such conduct.
2. Despite receipt of the City's and Port's Harassment Free Workplace Policy, and training in its applications, that policy was violated when grievant, on March 17, 2010, told Ms. [REDACTED], "I should slap the black off you", and again on April 25, 2010, when grievant told Ms. [REDACTED] a racist joke (the Black and Decker joke). The City/Port has removed from consideration the gender discrimination aspect of this foundation alleging disparate treatment for failure to assign Ms. [REDACTED] to a Lead position. However, The grievant did treat Ms. [REDACTED] in a disparate manner when he yelled at her that she "Fucked up," on the deck assignment, April 24, 2010. The two Bettiga brothers, who were the lead for that assignment, were not similarly yelled at.
3. Despite receipt of and training in the City's and Port's Violence Free Workplace Policy, the "Slap the Black off you" statement and the "Black and Decker" joke can be perceived as threatening.
4. Grievant was directed by his supervisor, Sue Greci, to have no interaction or contact, whatsoever, with Ms. [REDACTED] until notified otherwise. Ms. Greci also directed grievant to refrain from retaliating against Ms. [REDACTED]. This was confirmed in a conversation grievant had with Tom Carter on May 26, 2011. It was additionally confirmed, during the investigation HR was conducting, in an interview with Ms. Greci that she at no time advised grievant that the order had been lifted. Grievant knowingly and intentionally violated Ms. Greci's order by personally picking up and transporting Ms. [REDACTED] from her DHR interview in his Port vehicle on May 10, 2011. Shortly after Mother's Day in May 2011, grievant approached Ms. [REDACTED] at Pier 9 and suggested taking her to lunch. At Pier 9, in March 2011 during March madness, grievant approached Ms. [REDACTED] and told her he had tried phoning her about the Women's Basketball playoff in Tennessee. Grievant also approached Ms. [REDACTED] about a movie she had lent to him (the Bee movie). Grievant was insubordinate and violated a clear directive to have no contact or interaction with Ms. [REDACTED].

5. Grievant harassed Ms. [REDACTED] by volunteering to pick her up from her DHR interview knowing she was there for a meeting regarding her complaint against him. This was a clear attempt at retaliation by showing Ms. [REDACTED] that grievant could surmount any protections management could offer her including co-opting or circumventing another manager (Mr. McLain). Grievant's conduct was an attempt to harass and intimidate her.

From the November 10, Notice

1. Grievant was dishonest when he asserted three (3) times to Port management that his cellular phone was in Sue Greci's office. During the time period 11:00 a.m. through 12:25 p.m. (November 3, 2011) grievant's phone records reflect that he made two outgoing calls and received one call. Specifically, grievant phoned Ms. Greci at 11:12 a.m. shortly after leaving Pier 1 to walk to Pier 45 to retrieve his personal items. The phone record also shows he made a call at 11:22 a.m. to Brent McLain, Pile Driver Supervisor. The incoming call at 11:43 a.m. was from a non-Port number.

Between 12:25 p.m. and 7:47 p.m. on November 3, eleven more calls were recorded from grievant's Port issued phone. At 12:28 p.m. a call was made to Ms. Greci, within minutes of advising Mr. Keast a final time that the phone was in Ms. Greci's office. Ms. Greci confirmed that grievant spoke with her for about five minutes from his phone. Five of the remaining calls that day were to Port employees who each confirmed that grievant had spoken with them that day to advise he had been terminated. Grievant's phone has not been returned to this day. Searches of Ms. Greci's office did not recover the phone. A search for the phone at the trailer at Pier 45 turned up a phone that was not the grievant's.

2. Grievant's failure to return his Port issued cell phone as directed, and to date having not returned it constitutes misappropriation of Port property.
3. The Port's and City's Property Use Policies are clear that Port property is to be used for official Port or City purposes only. Grievant's conduct is a violation of those policies.

Much of the information contained in the documents submitted in this case is not disputed. What is disputed is whether or not grievant made the comments attributed to him, and acted in a discriminatory and/or harassing manner toward Ms. [REDACTED].

Pile Drivers Local #34, Grievant James Meisenbach

1. Grievant is a twenty-five year employee of the Port of San Francisco.

2. Grievant is a very experienced pile driver supervisor. The work is loud, dirty, and dangerous.
3. Grievant is very safety conscious and believes that the safety of his crew and the public is far more important than kowtowing to the Port management.
4. ~~There are particularly two managers at the Port who took particular offense that he would put them off in business related conversation because he had men under the dock and the tide was coming in.~~
5. A five-day suspension the grievant recently served was reduced to that level by Arbitrator Barry Winograd who found that Port Maintenance Director Carter's basis for discipline was not supported by the facts.
6. The Port wanted to terminate grievant and they latched on to the complaints of crewmember [REDACTED]
7. Ms. [REDACTED] is a serial complainer of harassment and discrimination, whose many prior complaints have been dismissed by the agencies to which she has taken them.
8. The culture of the construction site is one laced with profanity, that if grievant used profanity in his interactions with Ms. [REDACTED], such language was not used toward her because she was African-American, or because she was a woman. The U.S. Supreme Court and the California Supreme Court have said that the harassment laws are not a general code of civility, and that such language was used no more to Ms. [REDACTED] than to any other member of the crew.
9. The Port lied to grievant to deprive him of his Weingarten rights.
10. The Port destroyed evidence that was helpful to grievant's case (Skelly violation).
11. The charges issued against the grievant concerning return of his phone, were frivolous.
12. Grievant did not make the racist comments alleged against him.
13. Grievant did not harass or intimidate Ms. [REDACTED] when he picked her up from DHR despite having an order to refrain from contact with her.
14. Grievant should be reinstated and made whole for all lost wages and benefits.

OPINION

The union introduced two matters, "Weingarten Rights" and "Skelly Rights" as defenses against the action of the Port. Union Exhibit "3" is a letter to grievant from Port Maintenance Director Tom Carter, directing grievant to attend an EEO interview. ~~The letter goes on to advise that grievant is not a subject of the investigation, merely a witness, and therefore, not entitled to have a representative present with him.~~ The evidence introduced at hearing showed that grievant appeared with a representative, and that there was no objection on the part of the employer to that representative's presence or participation. Weingarten Rights extend to individuals, upon their request, to have a representative present. There is no obligation on the part of an employer to advise an interviewee that they may request one. That grievant was indeed the subject of the investigation, and that error, while egregious, caused no harm in this matter, it is better left to the parties to the collective bargaining agreement to determine how best to prevent such occurrences in the future.

The "Skelly Rights" violation, on the other hand, may have compromised grievant's ability to organize his responses at both his pre-removal hearing, and at this hearing. It appears that the interview notes of Magaly Fernandez, the City's Senior EEOC Investigator, along with certain other attachments to her report were not provided to grievant or his representative upon request for them. That was indeed here the case, during this proceeding, as well. A permanent civil servant, hired under a merit system of employment, is recognized, under the U.S. Supreme Court's decision in *Skelly v. The State Personnel Board* as having a property interest in that employment such that that property cannot be removed without due process of law. Subsequent decisions, California Supreme Court among others, have defined some of the elements of appropriate due process in disciplinary matters to be presentation to the employee, an accurate record of the charges for which they are being disciplined, as well as the documents and information being used to base the decision on the discipline being imposed. The requirement to provide information is not considered to be a general order of discovery. The MOU between the parties, Article I-Representation 11. "Skelly" Rights, provides an entitlement to (c) a copy of the charges and the materials upon which the action is based. In this matter, the information requested was acknowledged by Ms. Fernandez to be of such nature that it would ordinarily be provided to the affected employee, and she seemed genuinely surprised that it had not been. Resolution of this matter shall be incorporated into the award section of this decision.

A Charge of Discrimination (Joint Exhibit 3) filed on August 11, 2010 by [REDACTED] in the crew supervised by grievant initiated an investigation that led to the decision of the City/Port to terminate the employment of the grievant. Ms. [REDACTED] an African-American woman is a member of protected classes of employees, and her charges of discrimination and/or harassment must be seriously considered, and diligently investigated.

Magaly Fernandez, Senior Specialist, EEO Programs performed the intake of the complaint and its subsequent investigation for the City and County of San Francisco. Ms. Fernandez issued her report on June 10, 2011, and the report dates the complaint as having been filed June 24, 2010.¹ In the course of investigation, Ms. Fernandez interviewed a good number of the witnesses that appeared here, including the grievant. The allegations against the grievant by Ms. [REDACTED] were discussed with him at that interview. In her analysis, Ms. Fernandez determined that it is more likely than not that grievant made the "slap the black off you comment" and the "Black and Decker" joke. In these two matters I disagree with the analysis of Ms. Fernandez. In her signed complaint Ms. [REDACTED] establishes the date for the "Black and Decker" joke at the time of lowering the ramps at AT&T Park as April 25, 2010. Again in her complaint she assigns a date of April 24, 2010 to her allegation of the "slap the black off" remark. In her testimony here, during Ms. Benson's cross examination, she again acknowledged the April 25 date for the "Black and Decker" remark, but agreed with Ms. Fernandez report of a March 17, 2010 date for the "slap the Black off" remark. On direct examination by Mr. Howzell, Ms. [REDACTED] asserted that the time frame between the utterances of each remark was less than a week apart, but in the vicinity of time of lowering the ramps at AT&T Park. She did not report the remarks to anyone but Jeffrey Bettiga. Mr. Bettiga acknowledged that Ms. [REDACTED] only told him about the "Slap the Black off" remark, which he asked the grievant about, and the grievant denied making the remark. He did not establish a date at which she told him of the remark. The grievant established that the lowering of the ramps at AT&T Park could not have occurred on April 25 as claimed by Ms. [REDACTED] because the Giants home season began April 5 that year. The ramps need to be lowered before the season begins. In closing remarks Mr. Howzell asks that it be considered that the remarks are so convoluted, or not the usual complaints of utterance in discrimination cases, as not to be contrived by Ms. [REDACTED]. Unfortunately, both comments have been overplayed in the public domain of our cyber age. In her interview summary of her discussion with Jeffrey Bettiga Ms. Fernandez notes that Mr. Bettiga reported that in his discussion with Ms. [REDACTED], she indicated that, "she did not like the way grievant talked to her and that she was tired of his mouth."² It is more likely, that Ms. [REDACTED], having been victimized once too often by the grievant's profanity-laced tirades, sought relief through the best mechanism she felt was available. The grievant established that she was practiced in making discrimination/harassment claims.

Ms. Fernandez' investigation, supported at hearing, established a pattern of inappropriate and unprofessional behavior on the part of grievant toward Ms. [REDACTED], his crew and Port Management.

¹ Ms. Fernandez dates the complaint from the time Ms. [REDACTED] reported to Tom Carter, Deputy Director of Port Maintenance, of her concerns.

² Joint Exhibit 4 Page 25 of 30

There is no dispute that on June 24, 2010, grievant yelled at Ms. [REDACTED] "Move your fucking truck." Earlier in the day, grievant advised his crew that his father was in the hospital; that he was concerned that his father might not make it through the day; that he was expecting a call from the hospital to advise him if he needed to be there; and that he might need to leave the job site in a hurry if that call came. Testimony from Jason Dodson established that Ms. [REDACTED] was present during this early briefing. Mr. Dodson also testified that Ms. [REDACTED]'s truck was parked in a manner that blocked the only exit out from the job site. According to Ms. [REDACTED] she was unaware of grievant's earlier briefing. Apparently, she did not pay attention. While he was not immediately leaving, grievant noticed that Ms. [REDACTED]'s truck was blocking him if he needed to make an early exit. After several unsuccessful attempts to get her to move her truck, grievant let loose the profane comment which is a subject of the City/Port's action against him³. Ms. [REDACTED] was clearly insubordinate. However, grievant's choice to escalate the matter the way he did is indicative of a faulty management style that does not comport to the intentions of the City/Port's prohibition against violence in the workplace which, "requires employees to treat co-workers and members of the public with courtesy and respect (City Exhibit 3)." Tom Carter issued a Directive on May 15, 2007, further supporting that policy and commitment (City Exhibit 1)⁴.

Article I.D. MANAGEMENT RIGHTS of the MOU establishes that:

"The Unions agree that the City has *complete* (emphasis mine) authority for the policies and administration of all City departments which it shall exercise under the provisions of law and in fulfilling its responsibilities under this agreement. Said authority *shall include the establishment of work rules and regulations* (again emphasis mine) not inconsistent with the terms of this Agreement...."

No evidence was received at this hearing, nor in any of the exhibits offered by grievant or the City/Port indicating any disputes with either the Violence in the Work Place Prohibition, or Mr. Carter's supporting directive.

Most, if not all, of grievant's crewmembers testified that grievant, as much as anyone else in the workplace, used profanity laced language. Grievant, by policy and directive, was charged with monitoring and preventing such behavior. Certainly not contributing to it. That the construction culture is one laced with salty language is no excuse for grievant to be contributory to it. His former lead man, Willie Johnson testified that as lead, he did not use such language, nor did he need to resort to it to manage his crews. He felt, in fact, that use of such language inflamed minor disagreements and hampered the objectives of the work. Many of the crewmembers,

³ Ms. [REDACTED] contends that grievant remarked in the offensive manner three (3) times, though that was not confirmed by other witness testimony.

⁴ City Exhibit 1 was renumbered from its former order of City Exhibit 4.

testifying here, expressed a desire that the environment was different with regard to the use of such language.

Grievant acknowledged that he uses profanity at the work site. He also acknowledged that he is able to manage his crew and curb both his use and the crew's use of profane expression when they are in earshot of the general public. By his own choice, he did not pursue such objective to the totality of the work environment though there was a directive to do so.

Sometime in June of 2010, Sue Greci, Superintendent of Harbor Maintenance, received direction from her manager that she was to direct the grievant not to have contact with, nor supervise [REDACTED]. She gave this directive to grievant orally, and grievant acknowledges receiving it. Grievant pursued with Ms. Greci, on several subsequent occasions, the status of Ms. [REDACTED]'s complaint against him. Ms. Greci never advised grievant that such "no contact order" had ever been lifted. Grievant was also called to interview with Ms. Fernandez during the investigation to Ms. [REDACTED]'s complaint⁵, and that interview took place. There is no dispute that grievant received training in the City/Port's Workplace Violence Prohibited and Harassment Free Workplace policies. It is undisputed that, despite all this, grievant voluntarily offered to and did pick up Ms. [REDACTED] from her meeting at the City's DHR office on May 10, 2011.

Grievant's offer of defense to this action is as follows:

1. He felt the order had been lifted because, in his supervisor's absence⁶ he had been assigned to work in close proximity to the crew Ms. [REDACTED] was working on.
2. When Ms. [REDACTED]'s supervisor went on leave, he was assigned supervisory responsibility over Ms. [REDACTED]'s crew.

At no time did grievant offer that he sought direction from his supervisors concerning the obvious problems these situations created for him. As Arbitrator Winograd noted in his decision (City Exhibit 3) concerning grievant's five day suspension⁷, "...a five-day suspension was upheld for multiple instances of inappropriate resistance to management involvement and direction for work assignments." The suspension Arbitrator Winograd upheld, concerned actions that are not charged here. Yet the same pattern of behavior emerges. Whatever his motivation for volunteering to pick up Ms. [REDACTED], and so doing, it is clear that a

⁵ This is the letter the grievant complained violated his Weingarten Rights a it indicated that he was not the subject of the investigation but merely a witness and therefore not entitled to have a representative present. While originally scheduled for October 1, 2010, the interview was apparently conducted at a later date. For our purposes here, it is only necessary to know that the interview did occur and that its purpose was known to grievant.

⁶ Ms. Greci had been absent for an extended period during all the events described here.

⁷ Arbitrator Winograd upheld a suspension of five days that had been reduced through the City/Port's "Skelly" process from a proposed ten (10) day suspension.

perception to intimidate and harass can be inferred from his conduct. It is also clear that he violated a direct order and was, therefore, insubordinate.

It is alleged that the grievant treated Ms. [REDACTED] in disparate fashion due to her gender when he yelled at her, "You fucked up," on the deck job for which she was not the lead. The Bettiga brothers, who were the lead, were not similarly yelled at. ~~From the evidence presented at hearing, it is not clear whether this incident actually happened.~~ What is clear is that if the incident occurred, it did so at a time when the Bettiga brothers were not present, so Ms. [REDACTED] would be in the unfortunate circumstance of being the only one present at the time of discovery by grievant of the error. As Mr. Edwards put it, the grievant has no filters; and as grievant himself testified, "These things just pop out." If this occurred the conduct is not an example of disparate treatment against an employee in a protected class, but rather a continuation of conduct already dealt with above.

On November 3, 2011, grievant was called to a meeting at the San Francisco Port Human Resources office. In attendance were Ms. Forbes, Tom Carter and Bill Keast, Senior Personnel Analyst. He was given a letter from Elaine Forbes, Deputy Director, Finance and Administration of the Port (Joint Exhibit 7), advising him that "Effective immediately, you are being placed on administrative leave with pay, pending the Skelly hearing and decision." The letter also advised that the Port intended to terminate his employment; directed him not to return to the workplace unless and until otherwise notified; directed him to treat the matter as confidential; refrain from discussing the allegations against him with any potential witnesses to the matter⁸; and advised that failure to comply with the directive will result in further disciplinary action. Grievant was also given a "Notice of Proposed Dismissal and Skelly Hearing" (Joint Exhibit 8) containing the charges and information used to inform the Port's decision.

At the conclusion of that meeting, grievant was directed to turn over his employee badge, his Port keys, Port issued radio and Port issued cellular phone (415-850-6710). He turned over everything but his cell phone. Mr. Keast testified that grievant's explanation at the time for not having his cell phone was that he believed he had left it in Ms. Greci's office where he had been before being called to the meeting. Grievant stated he left the meeting and walked to Pier 45 to retrieve his personal items. Upon leaving Pier 1 to walk to Pier 45 he discovered that his phone had slipped into the lining of his jacket. For clarification here, grievant pointed out that the phone issued to him originally by the Port did not work properly, so he sought a replacement phone and was unable to receive one from the Port. He testified that Dan Lazzari, upon hearing this, offered him his own phone and grievant accepted it. He placed the broken phone at home and used it to charge his battery, and the phone he used at the Port was Mr. Lazzari's phone, which was held

⁸ The directive to refrain from discussing the allegations against him with any potential witnesses to the matter seems an unnecessary infringement on the grievant's right to respond at his Skelly meeting. That issue was not raised here, so it must be assumed that the process moved as it was intended.

together by duct tape. Grievant acknowledged that he made a call to Brent McLain on the way to Pier 45. He then indicated that he left the phone on his desk in his trailer. He removed the SIM card from the phone because he thought it was a telephone number and thought it had his contact numbers on it. He placed the SIM card into the phone in his car. Grievant stated he left the phone on his desk and told Bill Keast, "the phone is here what do you want me to do with it?" He stated that Mr. Keast told him to "Just leave it on your desk." In his testimony, Mr. Keast (who met grievant at Pier 45) stated that, while at Pier 45, grievant was again asked for the phone and again advised him that the phone was at Ms. Grecni's office. Ms. Grecni testified that she found the phone in Shed A at Pier 45, the Pilebutt's trailer either the afternoon of grievant's placement on administrative leave, or the day after. She took the phone to her office and called Tom Carter to advise him that the phone had been retrieved. Mr. Carter testified that the phone recovered by Ms. Grecni belonged to another employee, Dan Lazzari, not the grievant. Phone records reflect that over the course of the next twenty-four hours, grievant made a substantial number of phone calls from his Port issued phone number, if not directly from the cell phone that was issued to him. The calls were followed up by Port management, who discovered that calls were made to grievant's crew members and other Port personnel, many of whom could be persons grievant was directed not to contact. Approximately five days later, grievant's port issued cell phone was returned to the Port by grievant's union representative.

The over arching problem for the grievant in this matter is that having found the phone in his pocket, he did not make sure to turn it over to Mr. Keast and receive an acknowledgement that he had returned it. He did nothing to clarify with his managers, the circumstances of his phone. He claims to have removed the SIM card without acknowledging that it did not belong to him. He made calls to people he was ordered not to have contact with from his Port cell phone number. He continued a pattern of inappropriate resistance to management direction and insubordination that he has been disciplined for before.


It is apparent that Ms. [REDACTED] lacked the familiarity with the work required on grievant's crew being a recent addition to its ranks. There seems to have been some resistance, or inability on her part, to acquire the necessary skills and a lack of attentiveness on her part, to the work environment, to assure her successful contribution to it. Unlike her peers, she did not adjust to, and readily accept, the salty nature of grievant's direction and supervision. Confronted with his outbursts, she became insecure in her prospects of continued employment. She responded in the manner she best knew how and filed her claim of discrimination. The City/Port responded in appropriate manner by diligently investigating her claim. That investigation may have been flawed in concluding acts of discrimination and disparate treatment, but it ultimately discovered grievant's conduct addressed here. The grievant did not engage in conduct that constituted acts of harassment or discrimination against any individual because of race or gender. His actions, as described above, were a continued pattern of inappropriate resistance to management involvement and direction, and insubordination, as well.

His failure to pursue and abide the policies instituted by the City/Port have resulted in wasting hours of work time that would have otherwise been used to productive purpose. Minor workplace disputes have escalated to civil suits and counter suits. His conduct undermined the best interests of his employer and exemplifies why such policies have been put in place.

DECISION AND AWARD

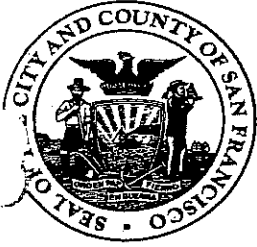
The City and the Port had sufficient just cause to discharge the grievant, and the grievance is denied. With respect to the Skelly violation, it is ordered that the Port pay to grievant eighty days of pay (salary only). The MOU Article 1- Representation 9. Hearing Dates and Date of Award contemplate that the parties will make best efforts to have an arbitration conducted within forty (40) days of selection of an arbitrator, and to assure that the arbitrator issues a decision within forty (40) days of closing arguments. The remedy is modeled on those parameters.

SO ORDERED:


Alan L. Elnick
Arbitrator

15 November 2013
Date

Attachment E



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

NOTICE OF RECEIPT OF APPEAL ON FUTURE EMPLOYMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO

E. DENNIS NORMANDY
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

MARY Y. JUNG
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

DATE: December 27, 2011

REGISTER NO.: 0350-11-7

APPELLANT: JIM MEISENBACH

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dear Ms. Callahan:

The Civil Service Commission has received the attached letter from ^{at} Karinen, Senior Field Representative, Pile Drivers Local Union No. 34 on behalf of Jim Meisenbach requesting a hearing on his future employment restrictions as a 9332 Pile Worker Supervisor I with the Port of San Francisco, which is transmitted to you for review and action as is appropriate.

This matter has been tentatively scheduled for hearing by the Civil Service Commission at 2:00 p.m. on March 7, 2011 in Room 400, 4th Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. If you are unable to proceed on this date or if for any reason the appeal is not timely or appropriate, please notify me by use of the "Action Request on Pending Appeal/Request" (CSC Form Number 13).

Sincerely,

CIVIL SERVICE COMMISSION

Andra Lee
ANITA SANCHEZ
Executive Officer

Attachment

c: Donna Kotake, Department of Human Resources
Marie De Vera, Department of Human Resources
Lavena Holmes, Port of San Francisco

12 JAN -3 PM 2:40
PERSONNEL OFFICE
SAN FRANCISCO
PORT COMMISSION

145



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

DATE: December 27, 2011

REGISTER NO.: 0350-11-7

APPELLANT: JIM MEISENBACH

E. DENNIS NORMANDY
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

MARY Y. JUNG
COMMISSIONER

Pat Karinen
Senior Field Representative
Pile Drivers Local Union No. 34
55 Hegenberger Place
Oakland, CA 94621

Dear Pat Karinen:

The Civil Service Commission received your letter on behalf of Jim Meisenbach requesting a hearing on his future employability as a Pile Worker Supervisor I (Job Code 9332) with the Port of San Francisco.

Your request has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If timely and appropriate, this matter will be scheduled for hearing by the Civil Service Commission in the near future. You will be notified approximately one week in advance of the hearing date. If you are unable to attend the scheduled hearing, please notify us immediately in writing.

The Civil Service Commission meets on the 1st and 3rd Mondays of each month. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date.

Sincerely,

CIVIL SERVICE COMMISSION

Sandra E. FDE
ANITA SANCHEZ
Executive Officer

- c: Micki Callahan, Department of Human Resources
- Donna Kotake, Department of Human Resources
- Marie De Vera, Department of Human Resources
- Lavena Holmes, Port of San Francisco

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RECEIVED
15 JAN 2012
ANITA SANCHEZ
EXECUTIVE OFFICER
HUMAN RESOURCES
OFFICE



LOCAL UNION NUMBER 34
PILE DRIVERS
DIVERS, CARPENTERS, BRIDGE, WHARF & DOCK BUILDERS

55 Hegenberger Place
Oakland, California 94621-1301
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CIVIL SERVICE COMMISSION
REGISTER
NUMBER 0350 11 7

X M. CALLAHAN
D. KOTAKE
L. HOLMES
M. DEVERA

December 21, 2011

Executive Officer
Civil Service Commission
25 Van Ness Ave., Suite 720
San Francisco, CA 94111

CERTIFIED MAIL
7010 1870 0001 7082 2031

Re: Jim Meisenbach-9332, Pile Worker Supervisor I Maintenance Division
Port of San Francisco

Dear Executive Officer:

The purpose of this letter is to notify the Civil Service Commission that Pile Drivers Local Union No.34 represents James Meisenbach with respect to the Port of San Francisco's decision to terminate his employment. The Union has begun the process of arbitration as described in the Memorandum of Understanding between the City and County of San Francisco and Local No.34. Therefore we reserve the right to an appeal hearing concerning Mr. Meisenbach's rehire rights at the Port of San Francisco.

If you have any questions I can be contacted at the above phone number.

Respectfully,

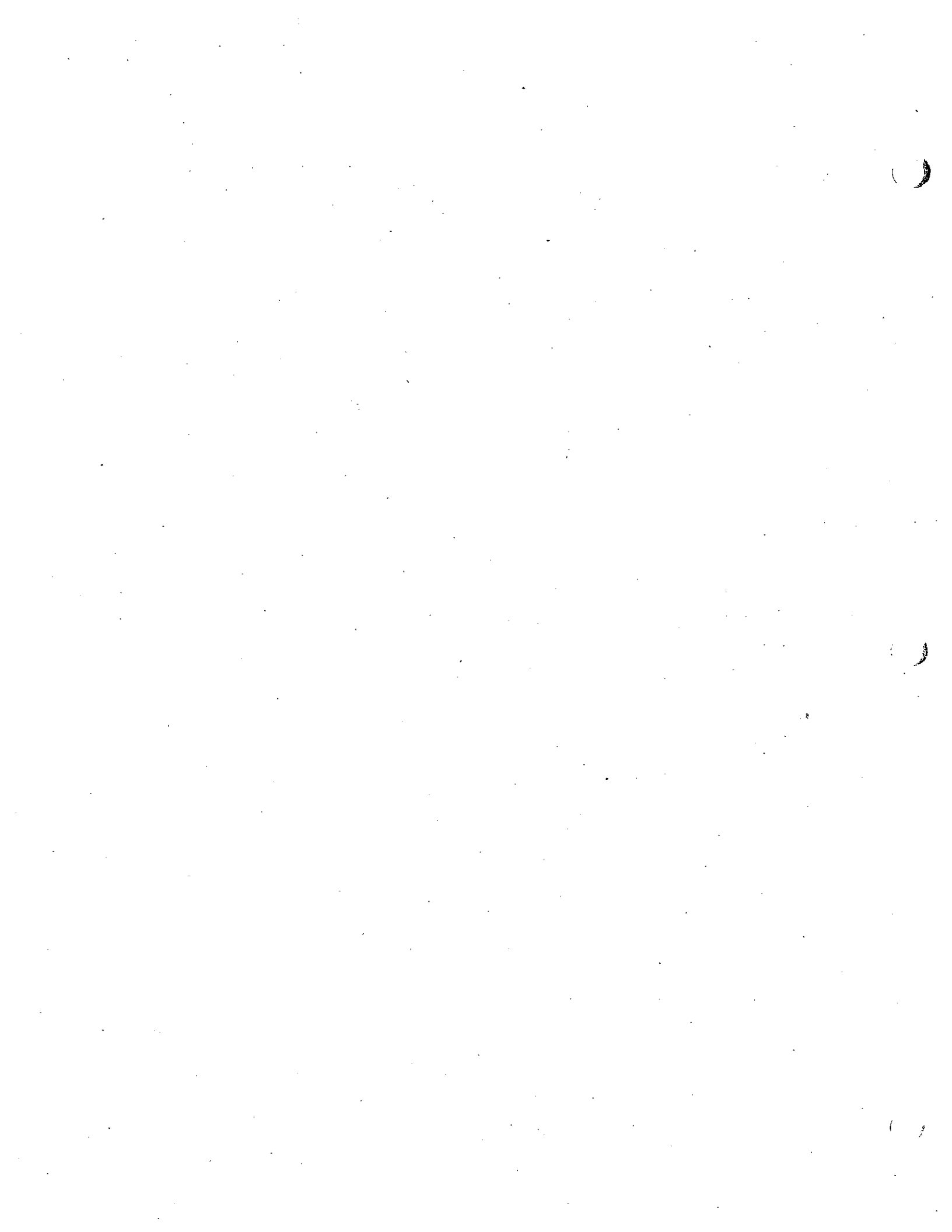
Pat Karinen
Senior Field Representative
Pile Drivers Local Union No.34

PK/sh
opeiu:29/afi-cio

CC: Steward Weinberg, Sandy Benson, Jim Meisenbach

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EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION
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CLOSED SESSION AGENDA

- (13) Public comment on all matters pertaining to Items #14 through #18.**
- (14) Vote on whether to hold Item #16 in Closed Session—Action Item.
Basis for Closed Session: Personnel Exception (Gov. Code § 54957(b)(1), Admin Code § 67.10(b); Peace Officer Confidentiality Statutes (Penal Code §§ 832.5, 832.7, 832.8))**
- (15) Vote on whether to hold Item #17 in Closed Session—Action Item.
Basis for Closed Session: Personnel Exception (Gov. Code § 54957(b)(1), Admin Code § 67.10(b); Peace Officer Confidentiality Statutes (Penal Code §§ 832.5, 832.7, 832.8))**

(18) Reconvene in Open Session.

- a) Vote on whether to elect to disclose any or all discussions held on Item #16 in Closed Session (San Francisco Administrative Code Section 67.12 (a)) – Action Item**
- b) Vote on whether to elect to disclose any or all discussions held on Item #17 in Closed Session (San Francisco Administrative Code Section 67.12 (a)) – Action Item**

**Commissioners'
Announcements/
Request**

Adjournment