

RECEIVED

AUG 27 2018

Memorandum

HUMAN RESOURCES

Date: August 22, 2018

To: Michele Greene - Human Resources Director

From: Paul Dyal, Assistant City Manager/Utilities and Public Works *PD*

Re: Written Reprimand Received August 21, 2018 from Joseph Helfenberger

Ms. Greene:

I was e-mailed by Ms. Joyce Bruner, Executive Assistant to City Manager, on Monday, August 20, 2018 to come to the City Manager's office at 3:30 p.m. the next day, being August 21, 2018, for a meeting. I was not told what the meeting pertained to or any other instructions. I arrived early at 3:15 p.m. for the meeting and waited for my allotted time. Shortly after my arrival I was told by Mr. Helfenberger, after he came out of another meeting, that we would meet at the scheduled time of 3:30 p.m. and that he was going to ask Human Resources (HR) to sit in during the meeting, as he stated to me that he has HR sit in on all his personnel meetings regardless of whether they are good or bad. As you are aware, being the HR Director, you arrived a little before 3:30 p.m. and went into Mr. Helfenberger's office and after a short time you came out and asked me to come in, which was a few minutes after 3:30 p.m. After walking into Mr. Helfenberger's office the door was closed and Mr. Helfenberger proceeded with the meeting with only the three of us in attendance. Mr. Helfenberger started out the meeting by saying he wanted to start on a positive and brought up about how the City's Natural Gas Division just had a great Public Safety Commission (PSC) audit, and since I was over Natural Gas I had something to do with it. After the positive comments Mr. Helfenberger opened a folder on his desk and handed me a single sheet of paper, which was a typed document that had the words "Written Reprimand" as the header. As I began to read the document that was dated "August 21, 2018", addressed to myself, "Paul Dyal, Assistant City Manager, Utilities and Public Works" and being from "Joseph Helfenberger, City Manager" and Mr. Helfenberger had as the regarding segment of the document "Budget Workshop Behavior/Kicklighter Issue", and as I began reading the document Mr. Helfenberger began speaking, thus not allowing me time to read the document and concentrate on the content therein. The first part of the document referenced an event that had taken place on August 7, 2018, however, the allegations referenced in this document actually occurred on August 8, 2018, during a budget workshop. I completely refute the allegation set forth in the document that the discussion was alright until I made a statement and that I escalated the conversation. I, as an employee of the City, was accosted verbally by a City Councilman who made threats toward me and no one, including my direct supervisor the City Manager, Joseph Helfenberger, made any comments or moves to defend me as an employee of this City. The one person who made any attempt to chime in and bring some sort of end to the verbal assault was Councilwoman Melinda Moses. How anyone can construe the comment made by Councilman Hill toward me as other than threatening or

challenging is beyond normal comprehension. I did get up and inadvertently knocked over the chair for which I was sitting, however, removing myself from the situation was what I thought was best for myself and all involved at that time, especially since I received no support from Mr. Helfenberger or others, except Councilwoman Moses, to bring the verbal attacks directed at me under control.

The latter part of the document, which I was given by Mr. Helfenberger had content under a bold segment that was titled "Kicklighter Facility". Mr. Helfenberger had written and which his words implies that I hadn't made him aware, during his three weeks as the new City Manager, of a critical issue in a timely manner concerning elevation issues at the new Kicklighter Water Reclamation Facility (WRF). I totally disagree with Mr. Helfenberger on this and feel I am being singled out for some reason. First, the elevation issue was known and brought to everyone's attention including the Executive Director of Utilities, the City Engineer, and City Manager back in 2014 when construction on the WRF began, therefore I cannot see where an issue that is almost four-years-old can be considered critical. I was not over the project or the Utility Department at that time. Secondly, Mr. Helfenberger started with the City on August 1, 2018, which the first two days had him occupied with budget. I sent Mr. Helfenberger an e-mail at 8:01 a.m. on August 3, 2018 to see if he wanted to meet with me that I had some items I wanted to get his guidance on. I received a read receipt back from this e-mail on August 6, 2018 at 3:36 p.m. and I never heard back from him regarding the content of the e-mail. August 7th and 8th were Budget Workshops after which Mr. Helfenberger did not reach out to meet with me until August 15, 2018. I received an e-mail from Joyce Bruner, Executive Assistant to City Manager, on August 13, 2018 asking if I could meet with Mr. Helfenberger on Wednesday, August 15, 2018 to discuss utility issues. During the August 15th meeting I made Mr. Helfenberger aware of several items including Kicklighter issues and I had asked for him to attend a meeting with the contractor, engineers, and staff for a meeting so he could get the full picture from all parties involved. Unfortunately, Mr. Helfenberger informed me he would be out of town the rest of the week at a convention, so with short notice we cancelled the meeting scheduled for August 16th with everyone to accommodate Mr. Helfenberger's travel schedule. We rescheduled the meeting with all parties involved with the Kicklighter project for August 20, 2018 at 10:00 a.m. so Mr. Helfenberger could attend. Mr. Helfenberger, along with Grayson Cason the Assistant City Manager, arrived at the meeting around 10:10 a.m., at which time the meeting resumed and Mr. Helfenberger was informed of current and past issues in getting Kicklighter 100% completed. The critical elevation issue for which Mr. Helfenberger referenced in his reprimand was thoroughly discussed and he was informed by the engineers and contractor that the elevation issue superseded myself and Cody Pridgeon the WRF Director. All Cody Pridgeon and myself have been trying to do is fix a problem that we did not create and have a facility the City of Lake City can be proud of and that the taxpayers get the best product for their money. I feel being reprimanded for something I did not have a hand in creating is not fair and at this point I cannot see how Mr. Helfenberger can correlate this as a critical issue that did not get reported to him right away. Although the elevations are and always have been an issue, there is no fix for it now because the WRF is built and completed. Now we can only deal with what miscalculated elevations cause, which in our case at the new WRF is finding a fix to the retention areas and drainage piping to move stormwater. All of which are important, but not something that is critical that couldn't wait to be discussed, because

nothing is going to be resolved today, tomorrow, next week, or even next month on an issue such drainage.

I completely refute this reprimand and feel it was politically motivated for the purpose of Mr. Helfenberger to garner favor with certain individuals on the City Council in hopes of preserving his job.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Dyal".

Paul Dyal

Written Reprimand

Date: August 21, 2018
To: Paul Dyal, Assistant City Manager, Utilities and Public Works
From: Joseph Helfenberger, City Manager
Re: Budget Workshop Behavior/Kicklighter Issue

gjah
On August 7, 2018, during the budget workshop, you got into an argument with City Council Member Jake Hill and when Mr. Hill asked a question regarding why the City has two assistant city managers. The discussion was alright until you stated "Ah now, wait a minute now Mr. Hill. I'm the type of person you can sit here and have a conversation with me. But I'm not Wendell Johnson don't raise your voice to me." At that point, you escalated the conversation, which Mr. Hill took to be a challenge. The rest of the conversation went negative. You ended the incident by knocking over your chair and leaving the meeting. Once you defended yourself, you needed to be silent on the subject and address the matter with me after the meeting. You already know there is tension between Mr. Hill and you from the past. This incident did not help the situation.

You are required to be at the budget workshop. You are required to advocate, during a budget workshop, for directors that count on your support. The following directors are under your management and deserve your support during the budget workshop: Distribution and Collections Director Brian Scott, Natural Gas Director Steve Brown, Wastewater Director Cody Pigeon, Water Director Mike Osborn, Public Works Director Thomas Henry, and Recreation Director Terri Phillips. By leaving the meeting, the managers under you had to advocate their budget positions without your support. You need to keep your emotions in check and continue to act professionally, especially during critical public meetings like the annual budget workshop.

Knocking your chair onto the ground and abruptly leaving the meeting is unacceptable behavior. If this happens again, further action will be taken. If there is a problem, you need to address it to the City Manager to handle the matter. I expect that you will act professionally going forward.

Kicklighter Facility

Also, you need to be telling me right away about critical issues like the elevation problem at the Kicklighter Facility so matters like this can be addressed right away. Critical issues like this problem need immediate communication. The Kicklighter Wastewater Treatment Facility is approximately \$17 million and having the correct elevation is critical.

MEMO FOR RECORD:

February 23, 2018

I have verbally counseled Mr. Dyal regarding the matter appearing to implicate a policy violation of Chapter 16 of the Personnel Manual. (Ref: Page 3, Para 3 of attached Letter) Specifically, the matter of content and appropriateness of emails to his peers and subordinates. Mr. Dyal understands my expectations.



Wendell Johnson, City Manager

cc: Paul Dyal



Memorandum

TO: Michele Greene, HR Director, City of Lake City, Florida

FROM: Meagan L. Logan, Esq.

SUBJECT: Hostile Work Complaints

DATE: February 2, 2018

Ms. Greene:

At your request, I reviewed two "hostile work environment" complaints received from Laurette M. Burks, Director of Procurement and Karen Nelmes, Procurement Coordinator on January 29, 2018. Both complaints relate to an email sent by Assistant City Manager of Utilities & Public Works, Paul Dyal on January 19, 2018. Mr. Dyal sent the email to Ms. Burks and copied multiple City employees, including Ms. Nelmes.

In their respective complaints, both Ms. Burks and Ms. Nelmes allege that Mr. Dyal's conduct violates sections 3.03B.5, 3.03B.6 and 303.B.16. of the Lake City Personnel Manual:

After reviewing the complaints filed by Ms. Burks and Ms. Nelmes in conjunction with the City of Lake City's Personnel Manual, I am of the opinion that Mr. Dyal's conduct, while disrespectful and unprofessional, does not violate the policy provisions alleged by Ms. Burks and Ms. Nelmes and in fact, despite their use of the term "hostile work environment," does not in fact implicate or give rise to such a claim.

Section 3.03 of the City's Personnel Manual is entitled "Policy Against Harassment, including Sexual Harassment." Section B. defines "harassment", as including but not limited to:

slurs, jokes, and other verbal, graphic, or physical conduct relating to an individual's race, color, sex (including discrimination against or harassment of individuals of the same sex), pregnancy, religion, national origin, citizenship, age, disability, worker's compensation claims, marital, veteran, or any other protected status. Harassment may include a range of subtle and not so subtle behaviors and also includes unwelcome or unwanted sexual advances, requests or demands for favors, offensive touching, and other types of conduct whether it be physical, verbal, graphic, or electronic communication of a harassing or sexual nature involving individuals of the same or different gender. This includes:

...

5. Action that create a work environment that is intimidating, hostile, abusive or offensive because of unwelcome or unwanted conversations, suggestions, requests, demands, nonverbal gestures, or physical contacts, whether sexually oriented or otherwise related to a prohibited form of discrimination or harassment. (emphasis added).
6. The distribution, display or discussion of any written or graphic material, including calendars, posters, cartoons, or names, that belittles or shows hostility or aversion toward an individual, his/her relatives, friends or associates or a group because of race, color, religion, sex (including same sex discrimination or harassment), pregnancy, national origin, citizenship, age, disability, workers compensation claims, marital, veteran or other protected status. (emphasis added).

3.16 WORKPLACE VIOLENCE PREVENTION

- B. Conduct that threatens, intimidates, or is disrespectful to another employee, a customer, vendor, contractor, or a member of the public at any time, including off-duty periods will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any other characteristic protected by federal, state, or local law. All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor or any other member of management. This includes threats by employees, as well as threats of customers, vendors, solicitors or other members of the public. When reporting a threat of violence, you should be as specific and detailed as possible.

As emphasized by the bold type, policy provisions 3.03B.5 and 6. are intended to prevent harassment due to one's status in a protected class, including race, age, ethnicity, gender, religion, national origin, citizenship and the like. There is nothing to suggest any of Mr. Dyal's comments or criticisms are based on any protected class. Rather, Mr. Dyal's complaint challenges the job performance of fellow employees, completely independent and unrelated to any protected class. In her complaint, Ms. Nelmes seems to recognize as much, stating that the email "shows hostility towards our director and our department" and recognizing that the email was sent to "embarrass and belittle" the Procurement department based on allegations of the members of the Procurement Department not being "team players" and having "every intention of causing as much backlog as possible for getting tasks completed," but not based on any protected class. Notably, neither Ms. Burks nor Ms. Nelmes state or infer that the comments made by Mr. Dyal were due to some protected status enjoyed by either woman. While inappropriate, these comments are not the type of complaints contemplated by Sections 3.03B.5. and 6. of the Personnel Manual.

Given the current climate with regard to sexual and other forms of harassment is not surprising to see allegations of "hostile work environment" by co-workers or superiors in the workplace. However, simply labeling conduct as creating a "hostile work environment" does not make it so. In order to be deemed a "hostile work environment, the actions or behavior must be based on a protected characteristic of the employee. Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269 (11th Cir. 2002). In the absence of anything indicating Mr. Dyal's complaints about Ms.

Burk, which Ms. Nelmes merely received, were based on her status in a protected class, Ms. Burks and Ms. Nelmes simply have not encountered a "hostile work environment" under the legal definition.

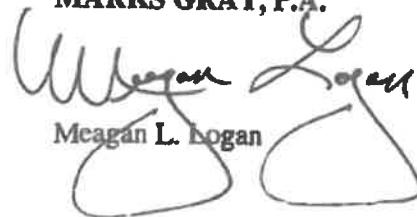
Ms. Burks and Ms. Nelmes also allege that Mr. Dyal's email violates Section 3.16 of the Personnel Manual governing Workplace Violence Prevention. Mr. Dyal's email does not contain any threats, either overt or implied and certainly does not threaten physical violence.

While sensitive to the complaints raised by Ms. Burks and Ms. Nelmes, the conduct at issue does not implicate any protected class and does not give rise to a "hostile work environment" as recognized by state and federal law. Rather, this matter appears to me to implicate a policy violation which requires discipline pursuant to Chapter 16 of the Personnel Manual.

I trust that the above analysis answers your questions with regard to the complaints made by Ms. Burks and Ms. Nelmes and the further handling of these complaints. Please do not hesitate to contact me with any further questions or concerns.

Very truly yours,

MARKS GRAY, P.A.



Meagan L. Logan

c: Wendell Johnson, City Manager