THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
2020 EMPLOYMENT LAW VIRTUAL SEMINAR

June 5, 2020
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Corporation Counsel
Carmel, Indiana

RESPONDING TO EEOC CHARGES EFFECTIVELY AND PERSUASIVELY

Introduction

My remarks and my accompanying materials are designed to help you avoid "traps for the unwary" when faced with an EEOC Charge, and prepare a position statement that is persuasive, responsive, and ultimately, successful.

Roadmap of Presentation

1. The "life cycle" of an EEOC Charge of Discrimination.
2. The initial steps to take after receiving a Charge.
3. The do's and don'ts of preparing an EEOC position statement.
4. How to respond to other aspects of an EEOC investigation.

Anatomy of an EEOC Investigation

1. When a Charge is filed, the EEOC first evaluates it to determine whether it is one that the Commission wants to litigate itself. Unless your case has significant social significance, the EEOC will not litigate the Charge itself.

2. If the EEOC does not litigate the Charge, it is referred to the EEOC's mediation unit.

3. If mediation is declined or fails, the Charge is referred to the EEOC's investigative unit. Once assigned to an investigator, the investigation typically begins with a request for a position statement.

4. A written position statement is prepared and submitted to the EEOC, who gives a copy to the Charging Party for the opportunity to submit to it (but not to you) a written reply.

5. The investigation then ends, unless the investigator decides to request further information, interview witnesses, or conduct a site visit.

6a. The EEOC issues a "Dismissal and Notice of Rights" letter, commonly referred to as a "right to sue" letter, in over 95% of its cases. [1] The Charging Party then has 14 days to request a review of this "no cause" finding and, if the finding is affirmed, 90 days to bring suit in federal court, or

6b. The EEOC issues a Letter of Determination" indicating that "reasonable cause" exists for believing that discrimination occurred.

7. If 6b, the EEOC attempts to settle the matter through informal conciliation. If conciliation fails, the EEOC will both decide whether to itself bring suit and issue a "right to sue" letter to the Charging Party.

8. If no suit is brought by the Charging Party within 90 days, the matter normally ends. If suit is timely brought, the matter is tried in federal court.

Initial Steps To Take

1. **DO NOT** Ignore the Charge.

   Unlike a lawsuit, a Charge of Discrimination does not have to be formally served on a defendant. Whether you receive a Notice of Charge of Discrimination by certified mail or electronically, do not ignore it.

[1] See, *Is the EEOC Protecting Workers or Discriminatory Employers?*, Patricia Barnes, Forbes, September 4, 2019.

The Notice may direct you to the EEOC's password-protected Respondent Portal, through which you will be able to download the Charge and related Charge documents. You will later use this Portal to submit your position statement and to respond to the EEOC's inevitable Request for Information.

Access this Portal promptly to read the Charge and to add your name as the Respondent's "legal representative." Make use of the EEOC's handy Portal User's Guide.[2]

2. **DO** Read the Charge in its Entirety.

Outline each specific allegation. Never assume that you understand a vague allegation – get it clarified by the EEOC. Send an initial denial letter.[3]

3. **DO** Check the Date.

If all the acts alleged in the Charge occurred more than 180 days (300 days in some cases) from the date of the Charge, the Charge should be dismissed as untimely filed.

4. **DO** Notify your Insurance Carrier.

Notify your insurance company. Check your EPLI policy.

5. **DO** Contact Management.

Contact the Charging Party's supervisor, advise of Charge and instruct to gather and secure all evidence that may be relevant to it. Instruct to keep the matter confidential and on a "need to know" basis.

6. **DO** Avoid Acts of Retaliation.

Filing an EEOC Charge is a "protected activity" regardless of how you feel about the Charge and the Charging Party.[4] Over half the Charges filed in FY 2019 contained a retaliation claim.[5] Retaliation claims have risen by 15% in last decade. [6]

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[2] See, https://www.eeoc.gov/employers/eeoc-respondent-portal-users-guide.
[3] See, Attachment A.
[4] See, e.g., EEOC v. HP Pelzer Automotive Systems, No. 1:17-CV-00031 (E.D. Tenn., February 6, 2016) & Attachment B.

7. **DO** Issue a Litigation Hold.

Contact you IT Department and place a "litigation hold" on all e-mails, texts, social media postings, and other electronically stored information that may be relevant to the Charge. Ensure that all paper records and physical evidence that may be relevant to the Charge or your defense are also preserved.

8. **DO** Contact the EEOC Investigator.

You can oftentimes gain a wealth of knowledge just by letting the investigator speak. At the very least, you can develop a positive rapport with him or her.

9. **DO** Ask for an Extension of Time to Respond to the Charge.

A 30-day extension should be no problem. Additional extensions need a more persuasive explanation. Asking for an extension provides more time to investigate the Charge before the EEOC begins in earnest its own investigation. Confirm the extension.[7]

10. **DO** Start Your Internal Investigation Immediately.

Use the natural lull in the process that occurs after you are served with the Charge to conduct your own thorough investigation into each allegation of unlawful conduct. The person chosen to conduct your internal investigation should be un-involved, un-biased, and experienced.

- Review the personnel and disciplinary files of the Charging Party and of all persons involved in the alleged misconduct.

- Review all relevant personnel policies to make sure they justify actions taken.

- Interview all potentially relevant witnesses, starting with the accuser and then the accused. Remind your decision-makers that they may have to later testify under oath about what they tell your investigator.

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[5] See, https://www.eeoc.gov/statistics/enforcement-and-litigation-statistics.
[6] See, https://www'eeoc.gov/enforcement/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2019.
[7] See, Attachment C.

- Seeking comparator information.

- Keep your investigation confidential, in order to prevent the polarization of your workforce, bad Press, or a defamation suit.

11. **DO** Decide Whether to Fight or Settle.

If your case has unfavorable facts or poor witnesses, cut your losses with an early settlement. However, if you continue to settle dubious claims, you will encourage more dubious claims.

12. **DO** Consider Mediation.

Mediation has a great success rate. Benefits include:

- It's free and quick.
- It obviates the need to prepare a full-blown position statement, answer RFIs, or submit to on-site visits.
- It allows parties to craft a mutually acceptable resolution.
- It obviates the need for an admission or finding of liability.
- It can avoid Press or general public involvement.

Preparing Your Position Statement

The EEOC found "reasonable cause" in less than 5% of its cases last year, and itself litigates only about one tenth of one percent (0.001%) of the Charges filed. Your position statement must be persuasive. Do your best job.

1. **DO** Review the EEOC's Guidance

Before you draft your position statement, review the EEOC's guidelines for responding to a Charge.[8]

[8] See, https://www.eeoc.gov/employers/effective-position-statements.

2. **DO** Be Accurate

Your position statement will bind you to a case rationale, is discoverable, and can be used against you in later litigation. Be sure that all the information contained in it is 100% accurate and complete.

3. **DO** Be Persuasive

Show the EEOC the "big picture" and tell the "real" story.

4. **DO** Start Strong

Firmly deny each allegation contained in the Charge.

5. **DO** Tell Your Story

"Set the stage" with background information

a. Describe your municipality and the specific department involved.

b. Identify your EEO policy.

c. Identify all policies, practices, and procedures that are relevant to the Charge, and show that the Charging Party was aware of them.

d. Identify and personalize the management personnel who made decisions or took actions relating to the Charge. Use their name, not their title, throughout your statement. Soften and humanize them.

e. Identify any decision-maker who is of the same sex, race, ethnicity and/or age as the Charging Party, or who interviewed, hired, or promoted the Charging Party. If the person who hired the Charging Party is the same person alleged to have taken the discriminatory action, or decision-maker is from the same protected class as the Charging Party, stress these facts.

f. Identify and de-personalize the Charging Party and refer to him or her by that name. Explain his or her job and expected workplace conduct Identify any favorable actions your client has taken towards the Charging Party, and any second chances that he or she has already been given for past workplace misconduct. Be careful not to disrespect or demean the Charging Party.

Tell the real story

a. Tell in narrative form the events that led up to each allegedly improper action set forth in the Charge. Clearly explain the facts and circumstances that led up to each action taken. Explain your legitimate, non-discriminatory reason for taking it, its appropriateness, and the decision-maker who took it. Address any detours from normal practice.

b. Include evidence of other similarly situated employees not in the Charging Party's protected class who were treated no better than the Charging Party and explain why any similarly situated employee was treated differently.

c. Consider providing internal hearing reports, especially if they show a thorough and unbiased process that supports your position.

5. **DO NOT** provide too much information.

An effective position statement provides enough information to "tell the story", but omits extraneous information not directly related to the allegations in the Charge.

6. **DO** Consider Adding A Legal Argument.

Consider adding a legal argument. However, it may detract from "telling the story," limits later legal arguments, changes the tone of the position statement from persuasive to adversarial, may be ignored, and may disclose legal arguments to the Charging Party's lawyer.

7. **DO** Assert Your Defenses

Your position statement should contain any legal defenses relevant to the Charge. These may include: jurisdictional arguments; the taking of timely and appropriate corrective action; the Charging Party's failure to use an internal complaint procedure; a "same actor" defense; the absence of evidence supporting a finding of "constructive discharge;" an unconditional offer of reinstatement; and, after-acquired evidence of Charging Party misconduct.

8. **DO** Double-Check Your Facts.

Have persons read that portion of your statement that includes the facts they provided or the incidents they were involved in, to ensure that what you have written is accurate and complete.

9. **DO** Search for Inconsistencies.

The EEOC looks with disfavor upon inconsistent explanations for an adverse action, and courts find shifting explanations to support an allegation of pretext. If more than one independent reason justifies an employment action, or if an action is justified by not one, but a combination, of reasons, address each of these reasons.

10. **DO NOT** Provide Affidavits.

There is no need to attach sworn affidavits with your position statement.

11. **DO NOT** Provide Confidential Information.

Reference, but do not include, confidential documents and information in position statement. If essential, segregate, put in sealed envelope labeled "Confidential," and provide under separate cover. Explain why they are "confidential."

12. **DO NOT** Use Your Lawyer Voice.

EEOC investigators do not especially like lawyers. Speak in plain English.

13. **DO** Consider Proposing a Resolution

If the Charge may have some validity, or other circumstances dictate, include a proposed resolution in your statement.

14. **DO** End Strong.

End with a strong but short conclusion. Ask for the relief you want. Reserve the right to supplement your statement.

15. **DO** Identify Yourself as the Point of Contact

Identify yourself as the person responding to the Charge and whom the EEOC investigator should contact.

16. **DO** Submit Your Statement

Use your Respondent's Portal, certified mail, return receipt requested, or a reputable overnight delivery service to submit your position statement. Sample statements are attached.[9]

After You Complete Your Position Statement

1. Respond to a Request for Information.

You have the right to object and negotiate the scope of a RFI. However, the EEOC has broad administrative subpoena powers and is given great latitude in conducting an investigation. Legitimate reasons for objecting include: no valid Charge; subpoena is too indefinite in scope or time; and, the information sought is not reasonably relevant to the Charge.

2. Address a Witness Interview Request.

An EEOC investigator does not need your permission or presence in order to interview your non-managerial employees. If the EEOC requests an interview with one of your supervisors, you have the right to arrange a convenient time and location for that interview and to be present through-out. To preserve the attorney-client privilege, have a lawyer interview and prepare managerial interviewees, accompany them during their interview, take detailed notes of and/or record the interview, and review any sworn statements before execution.

3. Address an On-Site Visit Request

Use an escorted site visit to educate the investigator about your client. Have a management representative lead the tour, accompanied by you. Plan and walk the tour route in advance.

4. Be Patient.

An EEOC decision takes 9-12 months. Keep everyone quiet. Prevent retaliation.

Conclusion

[9] See, Attachments D, E, & F.

VIA CERTIFIED MAIL NO. 7000 0520 0018 2113 4606, RETURN RECEIPT REQUESTED

[date]

Danny G. Harter, Director
Equal Employment Opportunity Commission
200 East Washington Street, City-County Building
Indianapolis, Indiana 46204
ATTENTION: Larry Sanner, Supervisor

RE: *[Charging Party]* v. City of Carmel Wastewater Treatment Plant
EEOC Charge No. _____

Dear Director Harter:

I represent the City of Carmel, Indiana, and its Wastewater Treatment Plant ("the City") in the referenced matter. This letter serves as the City's preliminary response to the Charge. The City reserves the right to supplement this response with additional documentation and to raise additional defenses to the allegations contained in the Charge, and will respond to the Charge with a more detailed position statement in the near future.

As regards the substantive allegations contained in the Charge, the Charging Party alleges as follows:

> "I was discharged from my position of Maintenance on March 21, . I had been employed by the City of Carmel since June 27,
>
> I was not give a specific reason for my termination.
>
> I believe that I have been discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, in that I was discharged because of my race, Black."

The City denies each and every allegation contained in the Charge, asks that the Charge be dismissed in its entirety, that the Charging Party take nothing by way thereof, and for all other appropriate relief.

Please address all additional correspondence in this matter directly to my office.

Very truly yours,

Douglas C. Haney
City Attorney

DCH/eb

cc: Director *[name]*

ATTACHMENT A

Press Release
02-03-2017

HP Pelzer Sued By EEOC for Retaliation

Automotive Components Manufacturer Fired an Employee for Making a Sexual Harassment Complaint, Federal Agency Charges

CHATTANOOGA, Tenn. - HP Pelzer, Inc., an automotive components manufacturer located in Athens, Tenn., violated federal law by firing a female employee because she complained of sexual harassment in the workplace, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

According to the EEOC's lawsuit, a female employee alleged that a human resources manager at the Athens plant made unwelcome comments that the employee believed constituted sex harassment. Although the woman reported the comments to the plant manager, he delayed in investigating the allegation. The female employee reported the harassment to a higher official in the company, who ordered the plant manager to conduct an investigation. After completing the investigation, the plant manager informed the female employee that the company could not substantiate her complaint. The company then fired the employee, supposedly for violating its harassment policy. Specifically, the company claimed the employee "purposefully falsified a claim of harassment" in violation of company policy.

Such alleged conduct violates the retaliation provision of Title VII of the Civil Rights Act of 1964, which prohibits employers from punishing an employee because she complained of alleged discrimination. EEOC filed suit (*EEOC v. HP Pelzer Automotive Systems, Inc.*, Civil Action No. 1:17-cv-00031) in U.S. District Court for the Eastern District of Tennessee, Southern Division, after first attempting to reach a pre-litigation settlement through its conciliation

process. The EEOC seeks injunctive relief prohibiting HP Pelzer from retaliating against employees in the future, as well as compensatory and punitive damages.

"Management officials may not retaliate against employees for their reasonable good-faith belief that the company subjected them to harassment in the workplace," said Katharine W. Kores, district director of the EEOC's Memphis District Office, which has jurisdiction over Arkansas, Tennessee and portions of Mississippi. "Such a policy creates a chilling effect for employees in the workplace. The EEOC will continue to enforce the retaliation provision of Title VII."

On Aug. 25, 2016, the EEOC issued a new Enforcement Guidance on Retaliation and Related Issues to replace its 1998 Compliance Manual section on retaliation.

According to its website, HP Pelzer was founded in 1969 in Witten, Germany by Helmut Pelzer. Over the last 30 years, the Pelzer Group has grown to 31 manufacturing plants and five technical centers, employing almost 6,000 people, spanning Europe, Asia and North and South America.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our email updates.

VIA FACSIMILE TRANSMISSION TO (317) 226-5471
AND U. S. FIRST CLASS MAIL

[date]

Equal Employment Opportunity Commission
Indianapolis District Office
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204
ATTENTION: Karen M. Bellinger, ADR Coordinator

RE: *[Charging Party]* v.
City of Carmel Wastewater Treatment Plant
EEOC Charge No. _____

Dear Ms. Bellinger:

This letter confirms our telephone conversation of earlier this date. In this regard, I requested, on behalf of my client, the City of Carmel, Indiana and its Wastewater Treatment Plant, an enlargement of time, to and including May 12, . in which to file a detailed position statement in the referenced matter. On behalf of the Commission, you agreed to this extension of time. The City will therefore postmark its detailed response to the Charge no later than May 12, . Thank you for your courtesy. If this document does not accurately summarize our agreement in the referenced matter, please contact me immediately.

Very truly yours,

Douglas C. Haney
Carmel City Attorney

DCH/eb

Cc: Larry Sanner, Commission Supervisor

ATTACHMENT C

Identifying information redacted

VIA CERTIFIED MAIL NO. 7002 3150 0002 2006 5119, RETURN RECEIPT REQUESTED

[date]

Danny G. Harter, Director
Equal Employment Opportunity Commission
200 East Washington St., City-County Bldg.
Indianapolis, Indiana 46204
ATTENTION: David A. Tite, Federal Investigator

RE: *[Charging Party]* v. City of Carmel
Wastewater Treatment Plant
EEOC Charge No. _____

Dear Director Harter and Investigator Tite:

I represent the City of Carmel, Indiana and its Wastewater Treatment Plant ("City"). This letter constitutes the City's position statement in the referenced matter. The City reserves the right to amend this statement, raise additional defenses to the Charge and provide the Commission with additional documentation relative to the Charge and the City's response thereto. The City's preliminary response to the Charge, dated April 1, , is incorporated herein by reference. The City denies the Charge and each of the allegations contained therein. Subject to the above, the City responds to the Charge as follows:

I. BACKGROUND INFORMATION

A. The City and its Utilities Department

The City is an Indiana municipal corporation with its main offices located at City Hall, One Civic Square, Carmel, Indiana 46032. It employs approximately 350 persons. The City's Utilities Department ("Utilities Department") operates a water and sewage works, including a wastewater treatment plant located at 9609 Hazel Dell Parkway, Carmel, Indiana ("Treatment Plant"). Approximately 75 persons work in the Utilities Department. The City's Utilities Director is *[name]* ("Director *[name]*"). The supervisors who work at the Treatment Plant are:

ATTACHMENT D

(names and positions listed)

B. The City's Equal Employment Policy

At all relevant times, the City has had in place and has enforced a written equal employment opportunity policy that applies to all aspects of the employment relationship, including recruiting, hiring and discipline. Any employee who feels that he or she may be the victim of unlawful harassment or discrimination is encouraged to file a complaint with his or her Department Director, the City's Human Resources Director or the City Attorney. All such complaints are treated seriously, investigated thoroughly and, if founded, result in disciplinary action being taken against the perpetrator. No such complaint has ever been received relative to the Charge.

Each City employee is provided with a written copy of the EEO policy as part of the City's hiring process. A copy of the City's EEO policy is attached hereto and incorporated herein as **Exhibit A.**

C. The City's Workplace Rules

At all relevant times, the City has had in place and has enforced written workplace rules prohibiting, among other things: (i) personal use of City phones in non-emergency situations; (ii) solicitation of employees during working hours; (iii) workplace harassment and discrimination; (iv) insubordination; (v) breach of duty in connection with work; (vi) failure to properly report a work absence; (vii) conduct unbecoming a City employee; (viii) fighting on City time or property; (ix) failure to comply with a City or department policy, rule or regulation; (x) conviction of a misdemeanor or felony charge; and (xi) falsification of an employment application. Any one of these offenses may result in the immediate termination of the employee involved.

All employees receive a written copy of these workplace rules during the City's hiring process, and are required to abide by them as a condition of their employment with the City. A copy of the City's workplace rules is attached hereto and incorporated herein as **Exhibit B.**

II. THE CHARGING PARTY

A. As Contract Worker

The Utilities Department is periodically in need of outside contract workers to assist it in the maintenance of its facilities, and oftentimes looks to Industrial Workforce, Inc., an employment services company located at 6350 Westhaven Drive, Indianapolis, Indiana ("Industrial Workforce"), to provide such workers as needed.

In June, , the Utilities Department contacted Industrial Workforce seeking a temporary contract worker to assist with the maintenance of the Treatment Plant. Industrial Workforce provided the Utilities Department with a list of five (5) contract workers for its consideration, one (1) of whom was the Charging Party. A copy of this contract worker list is attached hereto and incorporated herein as **Exhibit C**.

After interviewing the first four (4) of these individuals, *[name]* selected the Charging Party (the only non-Caucasian interviewed). He was subsequently assigned by Industrial Workforce to work at the Treatment Plant and did so from August 5, to September 15, . Copies of the Industrial Workforce invoices relating to the Charging Party's contract work for the City are collectively attached hereto and incorporated herein as **Exhibit D.**

B. As City Employee

In July, , Director *[name]* decided to hire a full-time maintenance employee to work at the Treatment Plant. Nine (9) persons applied for this job position, including the Charging Party (the only non-Caucasian applicant). A copy of the Charging Party's job application, as signed and submitted by him to the Utilities Department, is attached hereto and incorporated herein as **Exhibit E.**

Supervisors *[name]* and *[name]* reviewed each of the applications received and then narrowed their search down to four (4) applicants, including the Charging Party. After interviewing each of the remaining applicants, *[name]* and *[name]* both concluded that the Charging Party was the best qualified candidate for the job position.[1] After himself interviewing the Charging Party, Director *[name]* authorized his hire. He did so despite the

[1] That same month, these same supervisors also hired another African-American to work at the Treatment Plant, a Mr. *[name]*. Mr. *[name]* worked with the same supervisors and the same employees who later worked with the Charging Party. He left City employment in August, , for a higher-paying job. Significantly, this African-American male is now inquiring about coming back to work at the Treatment Plant, for the same supervisors with whom the Charging Party worked and whom the Charging Party now alleges discriminated against him on the basis of his race.

fact that the Utilities Department had to "buy-out" the Charging Party's employment contract with Industrial Workforce, something that would not have been necessary if any other job applicant had been selected. Copies of the Industrial Workforce contract "buy-out" invoice and payment memo regarding the Charging Party are jointly attached hereto and incorporated herein as **Exhibit F.**

On September 16, , the Charging Party was hired by the City into the "General Labor/ Maintenance" job category. On September 18, he received and signed for his copy of the City's employment handbook, which contained the City's EEO Policy and workplace rules. Copies of the Charging Party's Handbook Acknowledgement and Agreement Form and hiring memorandum are attached hereto and incorporated herein as **Exhibits G and H,** respectively.

C. His Job Duties

The Charging Party's primary job duties were to dust, sweep, mop and otherwise clean the Treatment Plant facilities, to wash and clean Utilities Department equipment, to replace light bulbs, and to pick up trash from the Treatment Plant grounds. Other job duties were assigned as needed.

III. THE CHARGING PARTY'S WORKPLACE PROBLEMS BEGIN

A. His Letter To *[name]*

On November 6, , less than two (2) months after being hired by the City, the Charging Party took it upon himself to send a letter to supervisors *[name]* and *[name]*. In this letter, he objected to the way a co-worker, *[name]*, was "doing his job."[2] The Charging Party went on to say that he "had been checking a lot of *[name's]* work," and that he "felt" it was being performed "in an improper manner." He complained that *[name]* simply would not "stay with the work routine" the Charging Party wanted him to follow!

In response to this letter, *[name]* and *[name]* counseled the Charging Party that it was not part of his job duties, and he was not being paid by the City, to supervise his fellow employees or to tell them how he "felt" they should do their job. He was counseled to, instead, concentrate on doing his own job well, and to leave it to his supervisors to monitor the work performance of other employees. A copy of this letter is attached hereto and incorporated herein as **Exhibit I**.[3]

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[2] Coincidently, *[name]* (a Caucasian) and the Charging Party were hired by the City on the same day into the same job category.

[3] Significantly, nowhere in his letter does the Charging Party allege that he was discriminated against on account of his race.

B. The *[name]* Incident

On or about December 11, *[name]* sought out the Charging Party in the Treatment Plant, and complained to him about his November 6, letter and the fact that he had complained to others about *[name's]* work performance. The next day, the Charging Party told *[name]* about this meeting.[4]

C. His Meeting With *[name]*

On or about December 12, , after listening to the Charging Party complain about his incident with *[name]*, *[name]* decided to meet with both employees. During this meeting, *[name]* counseled them on their need to get along and treat each other with respect. He reminded them that that they were both still "probationary" employees.[5] Both men assured *[name]* that their "differences were behind them" and that they would be able to work together "just fine" in the future. Nevertheless, because *[name]* had precipitated the December 11, incident with the Charging Party by seeking him out, the City decided to extend *[name]* probationary period by thirty (30) days, in order to give his supervisors more time to evaluate his job performance and his ability to work with others. The Charging Party's probationary period was not extended as a result of this incident. A copy of *[name]* probationary period extension memorandum is attached hereto and incorporated herein as **Exhibit K**.

D. The Second *[name]* Incident

On February 24, , *[name]* approached the Charging Party in the Treatment Plant's maintenance shop and told him, in a loud voice, "stop trying to tell me how to do my job" and "stop complaining to our supervisors whenever I don't do things your way." After making these statements, *[name]* calmed down and apologized to the Charging Party for his outburst. The Charging Party accepted *[name's]* apology and the men shook hands. They then went back to their respective job duties and worked the remainder of their shift without further incident.

[4] Significantly, the Charging Party did not allege that *[name]* had discriminated against him on account of his race.
[5] A copy of the City's "probationary employee" policy is attached hereto and incorporated herein as **Exhibit J**.

E. His Evening Call To *[name]*

On February 24, , after accepting *[name's]* apology, the Charging Party called supervisor *[name]* at home, and informed him that he was "not getting along" with *[name]*.[6] *[Name]* told the Charging Party to finish his shift, and that he would investigate the matter when he came to work the following day.

F. His Letter To *[name]*

When *[name]* arrived at work on February 25, , he found a handwritten letter from the Charging Party that had been pushed under his door. The letter detailed the previous evening's incident between the Charging Party and *[name]*. Significantly, at no time did the Charging Party allege that his race had anything to do with this incident. To the contrary, he confirmed that it had resulted solely from his continued attempts to tell *[name]* how to do his job. A copy of this letter to *[name]* is attached hereto and incorporated herein as **Exhibit L.**

G. His Meeting With *[name]*

After reading the Charging Party's letter, *[name]* decided to meet with *[name]* and the Charging Party. He asked *[name]* to sit in on this meeting. The purpose of the meeting was to try to find out why these co-workers were not getting along. After opening the meeting, *[name]* asked each employee why he was "not getting along" with the other. *[Name]* said that he did not think there was any problem between them that they could not work out themselves. The Charging Party disagreed, stating that he felt *[name]* "would bite his head off" if he tried to show him "a better way to do his job." The Charging Party then made a startling admission, telling everyone present that "the Devil" had tried to get him to say that *[name]* had called him "a fucking nigger" during their February 24, incident, but that he had "been able to resist" this temptation. The Charging Party then admitted to all present that *[name]* had actually made no racial remarks during this incident, and that it was not racially motivated.

After hearing both employees out, *[name]* told them that the word "nigger" offended him, and that if such language were ever used in the Treatment Plant, he would not tolerate it. He then told the Charging Party that it was not his job to be telling *[name]* how to do his job, and that he needed to concentrate on doing a good job with his own work and to let *[name]* supervise the other Treatment Plant employees.

[6] Significantly, the Charging Party did not allege that any racial animus or discrimination was involved.

It is unclear whether, at this point, the Charging Party lost his battle with "the Devil." What is clear is that, for the very first time, he took this occasion to inject his race into the conversation. He announced to *[name]* that he was "the only Black man in the plant." *[Name]* responded by telling him that a person's race "did not matter" at the Treatment Plant, and asked him if anyone at the Treatment Plant "made him feel otherwise." The Charging Party said that no one other than *[name]*, who sometimes made him "remember that he was Black" when "he argued with him and would not do things his way." *[Name]* then again told the Charging Party that he was not getting paid to tell his co-workers how he thought they should do their job, to which the Charging Party snapped: "Oh, this is the way it's going to be. I see, I have to keep my mouth shut and not say anything while you guys have your little clique." *[Name]* told the Charging Party that there was no "clique" at the Treatment Plant, but that he should stop worrying about how everyone else was doing their job, and let his supervisors worry about that. Acting like he had not even heard, the Charging Party charged ahead, now started to cry and yelling: "*[Name]* won't do things my way." He then simply announced that he did not think he could "work with *[name]*."

H. His Call-In Violation

The next day, on February 26, , the Charging Party left a voice mail message for *[name]*, telling him he "was sick" and would not be at work that day. By doing so, he violated the Utilities Department's policy of requiring its employees to personally talk to a supervisor – not simply leave a message – if they were going to be absent from work. This long-standing policy, of which the Charging Party was well aware, is designed to ensure that the Treatment Plant is always properly staffed, due to the importance of its public health service to the community. The Charging Party gave no reason for failing to follow this policy on February 26, . As a result of this incident, the Charging Party was verbally counseled by *[name]* on his need to follow the Department's call-in policy. No other disciplinary action was taken against him.

IV. THE ASSIGNMENT OF A FULL-TIME NIGHT SHIFT SUPERVISOR

On or about March 20, , Director *[name]* decided to assign a full-time night shift supervisor to the Treatment Plant. His decision was based, in part, on reports he had received from his staff about the inability of *[name]* and the Charging Party to work together without direct supervisory involvement. *[Name]* was further motivated by a desire to have a supervisor "on site," so as to be in a better position to evaluate the performance of his night shift employees and to address their workplace concerns. *[Name]* assigned *[name]* to this supervisory position.

V. MORE MISCONDUCT AND MORE COUNSELLING

A. His Refusal To Perform Assigned Work

On March 4, , the Charging Party asked foreman *[name]* about the whereabouts of the keys to the Treatment Plant's administration building. *[Name]* told him that Director *[name]* had recently assigned *[name]* as night shift supervisor, and that, as the supervisor, *[name]* now carried the keys. The Charging Party told *[name]* that he "felt like no one trusted him" because they would not give him the keys. *[name]* told the Charging Party that that "was nonsense," that everyone had their own job to do, and that he should stop worrying about "upper management's decision about the keys." The Charging Party ignored this advice and loudly announced to his foreman that he "would not clean the administration building unless I have the keys." *[Name]* tried to diffuse the situation by suggesting that the Charging Party clean the administration building at the start of his shift, when it was unlocked. The Charging Party told him that this solution "was fine with him," and walked away.

Concerned about this blatant and rather odd refusal by the Charging Party to perform his assigned job duties, *[name]* reported the matter to *[name]*, who passed on these concerns to *[name]*. After hearing about the Charging Party's actions, *[name]* decided to have a meeting with *[name]*, *[name]*, *[name]* and the Charging Party. The purpose of this meeting was to discuss and resolve the Charging Party's bad work attitude, his deteriorating work relationships, and his now persistent, albeit decidedly vague, "feeling" that someone at the Treatment Plant was "out to get him."

B. His Meeting With *[name]*

On March 5, , *[name]*, *[name]*, *[name]* and the Charging Party met to discuss the latter's workplace conduct and work attitude. At this meeting, the Charging Party was told that:

1. Due to his continuing problems with *[name]*, the co-workers would be assigned different job duties to keep them separated.

2. He was not *[name]* supervisor, and his job duties did not include evaluating or directing *[name's]* work performance.

3. *[Name]* was now the night shift supervisor and the "on-site point of contact" for any workplace concerns.

4. When calling in sick, he was required to talk to a supervisor. Simply leaving a voice mail message, as he had done on February 26, , was not acceptable.

5. His refusal to perform work without any credible justification, as he had done on March 4, , was not acceptable, was insubordinate, and could have resulted in his discharge. He was not free to dictate what he would clean and where he would work.

6. He need not, and should not, be concerned over how other employees were doing their jobs, but should concentrate on how well he performed his own job duties.

7. There was no "conspiracy" against him. The Utilities Department had bought out his contract with Industrial Workforce in order to bring him "on board" as an employee and avail himself of the City's insurance, leave and other benefits.

8. His custodial work was "good" in both quality and quantity, and he was a valued City employee.

9. He should contact *[name]* or another supervisor immediately if he experienced any workplace problems.

At the conclusion of this meeting, the Charging Party admitted that he had been "rash" in his previous workplace thoughts and actions, that he appreciated these efforts by the Utilities Department to resolve his concerns, and that he would get along "very well" with *[name]* as his night shift supervisor.

C. His Improper Phone Use

On March 20, , while at work and on duty, the Charging Party used a City phone to call *[name]* and several other on-duty employees. He made these calls in an effort to find a sales catalog he had brought to work. By doing so, the Charging Party violated the City's workplace rule prohibiting the use of City phones for personal calls of a non-emergency nature.[7] As a result, a "letter to file" regarding this misconduct was prepared by *[name]*, a copy of which is attached hereto and incorporated herein as **Exhibit M.**

[7] The solicitation of employees during work hours violates the City's "no-solicitation" workplace rule.

VI. MARCH 21, – THE FINAL INDICENTS

A. His Refusal To Sign The Phone Use Memo

On March 21, , as a result of the Charging Party's improper phone usage during the preceding day, *[name]* felt it prudent to circulate a memo to the employees under his supervision that clearly explained the City's phone use rule. This memo was not disciplinary in nature, but was simply an effort on *[name's]* part to ensure that all of his employees knew what was expected of them as regards their personal use of City phones. *[name]* signed this memo and then asked each of his employees to read and sign it. All of them did so, except the Charging Party. He flatly refused, telling *[name]* that the memo was "kindergarten stuff." A copy of phone use memo is attached hereto and incorporated herein as **Exhibit N**.

B. His Meeting With *[name]*

After the Charging Party refused to sign the phone use memo, reported this conduct to *[name]*. *[Name]* then called the Charging Party into his office, showed him *[name]* memo, and asked him to read and sign it.[8] The Charging Party refused. *[Name]* then explained that the memo was not disciplinary in nature and was not directed towards any specific employee, but was simply *[name's]* attempt to ensure that all of his night shift employees knew and followed the rules. The Charging Party again refused to sign the memo.

Putting the memo aside, *[name]* turned to the sales catalog that was the impetus behind the Charging Party's improper phone calls. *[name]* reminded the Charging Party that employees were not allowed to sell products on City property, but had to use the employee "bulletin board" if they wanted to sell something. The Charging Party immediately became angry and defensive, telling *[name]*, in a loud voice, that the only reason things were "being pointed at him" was because "you are all prejudice." *[Name]* told the Charging Party that this was absolutely not true. The Charging Party said that, well, he "felt" that way, although he could not think of or articulate any reason for this "feeling."

After his meeting with the Charging Party, *[name]* called *[name]* to tell him about the Charging Party's refusal to sign *[name's]* memo. He then asked *[name]* for permission to change the Charging Party's work schedule from the night shift to the day shift, so that he could better evaluate his work performance and workplace conduct. *[Name]* approved this scheduling change. *[Name]* then decided to himself meet with the Charging Party.

[8] *[name]* had recently learned of another City employee who had been disciplined for the improper use of a City phone.

C. His Meeting With *[name]*

At approximately 3:30 p.m. on March 21, *[name]* asked *[name]* and the Charging Party to meet him in his office. When they arrived, *[name]* asked the Charging Party why he would not read and sign *[name's]* memo. In response, the Charging Party immediately turned insubordinate and yelled at *[name]* that he "would not sign shit." He then told *[name]* and *[name]* that they were "some prejudice motherfuckers." *[Name]* asked why he felt this way. The Charging Party said he "felt that way" because people had "picked on him" by putting a memo in his file.[9] *[Name]* told the Charging Party that no one was "picking on him," and that he should "take a strong look at his own behavior" if he wanted to understand why he had been "written up." He then dismissed the Charging Party back to his work station.

D. His Final Meeting

At about 4:00 p.m. on Friday, March 21, , *[name]* received a telephone call from *[name]*. *[Name]* asked him to "get *[name]*" and to come to *[name's]* office "immediately."

When *[name]* arrived, he found *[name]*, *[name]* and the Charging Party all present. *[Name]* asked: "What now?" *[Name]* told him that *[name]* and he had just met with the Charging Party to inform him of his work schedule change, and that the Charging Party had angrily refused to work his new shift. *[Name]* had then ordered the Charging Party to report for work on his new shift beginning on March 25, . The Charging Party again refused to do so, and offered his plant keys to *[name]*. *[Name]* refused to accept them, and called *[name]*.

After being brought up to date on this latest incident, *[name]* turned to the Charging Party and asked him to explain his conduct. The Charging Party refused to do so, and, instead, began shouting that *[name]* and the others were "racists." *[Name]* then pointedly asked the Charging Party if he was going to work his assigned shift. The Charging Party yelled "No," that he had "tried to turn in his keys", but that "no one would take them." *[Name]* told him that he would "take the keys." The Charging Party immediately handed his keys to *[name]* and then left the Treatment Plant. As a result, the Charging Party's last date of employment with the City was March 21,

[9] Presumably, the Charging Party was referring to *[name's]* phone usage memo, the only disciplinary memo contained in his personnel file.

VII. DISCOVERY OF AFTER-ACQUIRED EVIDENCE

As part of the City's record-keeping system, applicants for City job positions are required to submit a job application to the City's Human Resources Office, even if they have already submitted a job application to the City Department which advertised the job opening. This ensures that the City has a job application for each City employee that is located in a central, secure location. On July 18, , the Charging Party submitted such a job application to the City's Human Resources Office, having previously submitted a separate job application to the Utilities Department when he applied for the open job position he was subsequently hired to fill. A copy of this latter job application is attached hereto and incorporated herein as **Exhibit O.**

The job application submitted by the Charging Party to the Human Resources Office differs materially from the job application submitted to and relied upon by the Utilities Department when it made its decision to hire him. Specifically, the Charging Party completely omitted from the job application he submitted to the Utilities Department his apparent conviction for an act of workplace violence. Given the close proximity in which Treatment Plant employees work, the lack of close supervision on the night shift, and the presence of tools and other objects that could readily be used as weapons, this history of workplace violence, if it had been known to Director *[name]* at the time he made his hiring decision, may well have resulted in the Charging Party not being hired by the City. This material omission could also have led to the Charging Party's discharge, pursuant to the City's workplace rules, had it been discovered at a time when he was still employed by the City.

VIII. DISCUSSION

The facts in this case do not support even the slightest inference that the Charging Party was the victim of "racial discrimination" as a result of the termination of his employment relationship with the City. To the contrary, it is clear that the City went out of its way to recruit, hire, counsel and accommodate the Charging Party and his myriad acts of workplace misconduct and perceived slights. Moreover, it is simply incredible to suggest – as the Charging Party must – that *[name]*, *[name]* and *[name]*, the very people who chose him as a contract worker from a group of otherwise Caucasian candidates, who then chose him as a City employee from a group of otherwise Caucasian applicants, who then agreed to "buy-out" his contract with Industrial Workforce rather than hire a Caucasian applicant with no "buy-out" requirement, and who then continued to counsel and encourage him for six (6) months after his hire despite his continued refusals to work, his insubordination, and his other acts of workplace misconduct, are the very people who subsequently discriminated against him on account of his race. The facts in this case, as well as common sense, belie such an assertion.

The fact is, the Charging Party was a good maintenance worker and a valued City employee who, for reasons known only to him, simply refused, again and again and again, to accept the non-supervisory nature of his job position and to follow the City's reasonable workplace rules. His sporadic "feeling" that he was "being picked on" (which coincidently occurred whenever he was being counseled about his work performance), represents nothing more than an opportunistic attempt to justify his own misconduct and personal shortcomings.

Far from being the "victim" of discrimination, the Charging Party was the beneficiary of the City's considerable leniency in dealing with his bad attitude, misconduct, and paranoia. Rather than fire him when he refused to stop trying to tell *[name]* how to do his job, he was simply moved away from the only employee he, by his own admission, could not "get along with." Rather than fire him when he refused to follow workplace rules, he was provided with a full-time night shift supervisor to counsel him, to soothe his "feelings," and to ensure that any problems he created were immediately addressed. Yet, despite these efforts, the Charging Party consistently refused to address his own workplace deficiencies, persisted in viewing every action by the City as part of some secret "conspiracy" against him, and demanded that everyone do things "his way" or face condemnation. His resignation was merely the final act in his workplace melodrama. The truth is, whenever pressed to justify with facts his irrational "feelings" and improbable assertions, the Charging Party has always had to admit that his workplace problems are not and were not race-related, but rather the result of his own "need" to tell everyone else "how to do their job," and his own rashness in rushing to judge the actions and motives of others. Nothing more.

To be blunt, the only whiff of discrimination that exists in this case emanates from the Charging Party himself, who, by his own admission, has been locked in a "battle with the Devil" over whether he should fabricate acts of "discrimination" to excuse his own misconduct. It is fair to surmise that the filing of the instant Charge signifies that he has finally lost this battle.[10] The case facts certainly do not support any other basis for the allegations now at issue.

IX. CONCLUSION

As is clear from the above, there is absolutely no basis for the allegations contained in the Charge, which are decidedly false. The Charging Party's race was not considered by, and had no bearing whatsoever on, the City's actions herein. Nothing that was said or done to the Charging Party by the City was even remotely "discriminatory" or otherwise unlawful. The City denies each and every allegation contained in the Charge, asks that the Charge be dismissed in its entirety, that the Charging Party take nothing by way thereof, and for all other appropriate relief.

[10] His failure to tell the truth on his job application, and his own admissions of February 25, and March 5, were clear portents of this final act.

I trust that the attached information is sufficient to establish that the Charge is baseless and should be dismissed. If you would like to discuss this matter, or require further information to complete your investigation, please feel free to contact me directly.

Respectfully submitted,

Douglas C. Haney
City Attorney

DCH/eb

cc: Director *[name]*

ATTACHMENT D

Identifying information redacted

VIA CERTIFIED MAIL NO. 7004 1350 0005 0526 9265 RETURN RECEIPT REQUESTED

[date]

Danny G. Harter, Director
Equal Employment Opportunity Commission
Indianapolis District Office - 470
Suite 1900
Indianapolis, Indiana 46204
ATTN: Alvin E. Hines, Enforcement Supervisor

RE: *[Charging Party]* v.
City of Carmel, Indiana
EEOC Charge No. _____

Dear Director Harter and Supervisor Hines:

I represent the City of Carmel, Indiana ("City"). This letter constitutes the City's position statement in the referenced matter. The City reserves the right to amend this statement, raise additional defenses to the Charge and provide the Commission with additional documentation relative to the Charge and the City's response thereto. The City's preliminary response to the Charge, dated March 3, is incorporated herein by reference. The City denies the Charge and each of the allegations contained therein. Subject to the above, the City responds to the Charge as follows:

I. BACKGROUND INFORMATION

A. The City and its Utilities Department

The City is an Indiana municipal corporation with its main offices located at City Hall, One Civic Square, Carmel, Indiana 46032. It employs approximately five hundred (500) persons.

The City's Utilities Department ("Utilities Department") operates a water and sewage works, including a water treatment plant located at 5484 East 126th Street, Carmel, Indiana ("Water Plant") and a wastewater treatment plant located at 9609 Hazel Dell Parkway, Carmel, Indiana ("Wastewater Plant"). Approximately seventy-two (72) persons work in the Utilities Department. The City's Utilities Director is *[name]* ("Director *[name]*").

ATTACHMENT E

At all relevant times, the supervisors who worked at the Water Plant were:

(three names and positions listed)

At all relevant times, the supervisors who worked at the Wastewater Plant were:

(three names and positions listed)

All of the Utilities Department employees who were involved in the Charging Party's hire, promotion, counseling, discipline and termination are male.

B. The City's Equal Employment And No Harassment Policies

At all relevant times, the City had in place and enforced a written equal employment opportunity policy that applied to all aspects of the employment relationship, as well as a written policy prohibiting sexual harassment and other forms of harassment in the workplace.[1] Every City employee is provided with a written copy of these policies as part of the City's hiring process. A copy of the Charging Party's acknowledgement form, indicating that he received these policies and agreed to comply with them as a condition of his employment, is attached hereto and incorporated herein as **Exhibit A**.

Pursuant to these policies, any employee who feels that he or she may be the victim of unlawful harassment or discrimination is encouraged to file a complaint with his or her Department Director, the City's Human Resources Director or the City Attorney. All such complaints are treated seriously, investigated thoroughly and, if founded, result in disciplinary action being taken against the perpetrator. No such complaint was ever filed relative to the Charge. Copies of the City's EEO and Harassment policies are jointly attached hereto and incorporated herein as **Exhibit B**.

C. The City's No Workplace Violence Policy

At all relevant times, the City had in place and enforced a written policy prohibiting acts or threats of workplace violence, including intimidation, harassment and coercion. Any employee who experiences such conduct is to report the incident to his or her supervisor. Any violation of this policy will result in disciplinary action being taken against the perpetrator. A copy of the City's no workplace violence policy is attached hereto and incorporated herein as **Exhibit C**.

[1] The Charging Party was also required to attend a City-sponsored workplace harassment training program in March,

D. The City's Workplace Rules

At all relevant times, the City had in place and enforced written work rules that prohibit, among other things: (i) acts or threats of workplace violence; (ii) insubordination; (iii) workplace harassment and discrimination; (iv) breach of duty; (v) conduct unbecoming a City employee; (vi) violation of safety rules; (vii) negligent or willful damage of City property; (viii) use of abusive language; (ix) unsatisfactory job performance; and (x) failure to comply with a City or department policy, rule or regulation. Any one of these offenses can result in the immediate termination of the offending employee. An employee terminated for the violation of a work rule has fifteen (15) days from his or her termination date to appeal the termination to the Carmel Board of Public Works and Safety.

All employees receive a written copy of the City's workplace rules during their hiring process, and are required to abide by them as a condition of their employment with the City. A copy of the City's workplace rules is attached hereto and incorporated herein as **Exhibit D.**

II. THE CHARGING PARTY

A. His Hire

The Charging Party was hired by the City as an at-will employee on January 5, . He was hired into the "General Labor/Janitorial/Maintenance" job position, and assigned to work at the City's Wastewater Plant. His job duties included the performance of manual work functions associated with the maintenance and repair of Wastewater Plant facilities, systems and equipment. The Charging Party's hiring official was Director *[name]*, the same individual who would later terminate his employment with the City.

B. His Initial Job Performance

The Charging Party's job performance during his first three (3) years of his employment with the City was generally satisfactory. As a result, Director *[name]* gave him a pay increase on December 26, , promoted to the "Sewer Mechanic B" job position on July 24, , and gave him a second promotion, to the "Unit Process Operator" job position on June 23, As a "Sewer Mechanic B," the Charging Party performed semi-skilled and manual functions associated with the maintenance and repair of Wastewater Plant facilities, systems and equipment. As a "Unit Process Operator," the Charging Party performed specialized work functions associated with Wastewater Plant operations and maintenance.

III. THE CHARGING PARTY'S WORKPLACE PROBLEMS BEGIN

A. City Property Is Damaged

On February 12. , the Charging Party managed to get the forklift he was driving stuck in the mud. He then negligently hit an air conditioning unit and a wall, and caused minor damage to his forklift, while attempting to extract it from the mud.

B. Work Attendance Becomes Erratic

On February 6, , the Utilities Department was forced to begin requiring the Charging Party to submit his time-off requests at least three (3) days in advance, because his work attendance over the prior six (6) months had become noticeably erratic.

IV. THE CHARGING PARTY BECOMES ABUSIVE, INSUBORDINATE AND UNSAFE

A. Reprimand For Abusive Language

On June 20, , the Charging Party walked into the Wastewater Plant's laboratory and began shouting at his co-workers, calling them "fucking pigs." (Apparently the Charging Party had discovered water under a plexiglass countertop cover, and this had set him off.) The Charging Party then singled out one employee, *[name]*, for special abuse. He not only again called *[name]* a "fucking pig," but also mocked and harassed him by saying "Does your wife wipe your ass for you because you are too much of a fucking pig to do it yourself?" In response to this harassment, *[name]* and another co-worker left the room. A third co-worker, *[name]*, walked over to the Charging Party and told him that his comments were uncalled for. Rather than calming down or apologizing, the Charging Party then went off on *[name]*, yelling "fuck it" several more times, and taunting *[name]*, saying "Tell [Foreman] *[name]* about it, I don't care." The Charging Party was given a verbal warning for his actions, and told that any further misconduct on his part could result in his termination.

B. Reprimand For Insubordination And Unsafe Act

On August 20, , the Charging Party managed to get the bed of the dump truck he was operating stuck in the "up" position. When he called Foreman *[name]* and advised him of the situation, Foreman *[name]* gave the Charging Party a direct order to "stand by", to "not get around the truck," and to wait for Manager *[name]* and him to arrive. However, when Foreman *[name]* and Manager *[name]* approached the scene, they were horrified to see the Charging Party not only "around the truck," but actually **hanging from its bed**. As Manager *[name]* began honking the horn, trying to get the Charging Party to get away from the truck, the truck bed started to quickly descend. The Charging Party barely got out from underneath the bed before he was crushed.

Manager *[name]* and Foreman *[name]* immediately confronted the Charging Party, asking him if he was trying "to get on full disability," and telling him that his actions were extremely unsafe and that he "could have been killed." Inexplicably, the Charging Party replied, **"I have no reason to live. So what if something happen[ed] to me."** As a result of his actions, the Charging Party was again warned that any further misconduct on his part could lead to his immediate termination.

V. THE CHARGING PARTY GETS A "FRESH START" RATHER THAN GETTING FIRED

A. The Decision To Transfer Rather Than To Terminate

As a result of the Charging Party's unacceptable workplace conduct, his poor attitude and his safety violations, as well as his repeated failure to obtain his Class Two Wastewater Operator's License, Director *[name]* decided not to give him a pay increase at the beginning of . He also considered terminating the Charging Party's employment. However, after consulting with Manager *[name]*, Director *[name]* decided to give the Charging Party another chance, reasoning that his work performance and attitude might improve if he were given the opportunity to "start over."

On July 29, , Director *[name]* transferred the Charging Party into an open "General Service and Maintenance" job position at the Water Plant. His new job duties included the performance of semi-skilled and manual work functions associated with the maintenance and repair of Water Plant facilities, grounds, systems and equipment. He was specifically told by Director *[name]* at the time of his transfer that he was **"getting a fresh start"** and that *[name]* hoped that he would begin to again "perform to his capabilities."

B. His Initial Job Performance

The Charging Party did perform better after his transfer to the Water Plant. As a result, Director *[name]* gave him a pay raise on August 31, and a second pay raise on October 12,

C. The Charging Party Is Interviewed

In August, , the Charging Party was interviewed as part of the City's investigation into an unrelated claim of workplace harassment. The City's investigation resulted in the termination of the alleged harasser and the voluntary resignation of his accuser. Aside from his investigatory interview, the results of which were kept strictly confidential, the Charging Party was not involved in this separate matter and suffered no adverse repercussions as a result thereof. He certainly never brought to the City's attention any suggestion that he was himself harassed in any manner as a result of this interview.[2]

D. The Charging Party Is Promoted

On January 13, , Director *[name]* promoted the Charging Party to the "Plant Operator" job position. This was, by far, the Charging Party's biggest promotion, and resulted in a pay raise of over $4,000.00. As a Plant Operator, the Charging Party performed specialized functions associated with the purification and clarification of water for human consumption. As such, he was able to add chemicals directly to the City's drinking water. As a Plant Operator, the Charging Party was also subject to more overtime hours than he had worked as a general laborer. This was especially true in late , when another Operator went on maternity leave, which led to more overtime for the remaining Plant Operators.

VI. THE CHARGING PARTY'S HOSTILE ATTITUDE RETURNS, WITH A VENGENCE

A. "I Want To Kill Myself"

In late , for reasons as unknown and inexplicable as those which led to his hostile and dangerous conduct in , the Charging Party's work conduct and temperament again became very hostile. Moreover, his statements to co-workers began to take on a decidedly destructive tone. The Charging Party began telling his co-workers, over and over again, that he **"wanted to die."** They tried to ignore his comments, rationalizing that it was just "his attitude" or "the holidays." However, the Charging Party soon began to make comments that no co-worker could justify, rationalize or ignore.

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[2]The Charging Party does not (and cannot) allege that he was forced to quit his job as a result of a "hostile work environment."

B. "I Want To Kill My Co-Wokers"

By December, , the Charging Party was not only disrupting the workplace with his comments about suicide, but began talking about killing his co-workers as well. He told his fellow employees that he had "thoughts" about **"killing everyone,"** and about **"putting cyanide in the coffee maker."**[3] The Charging Party's threat to put cyanide into the Water Plant's coffee maker was especially disconcerting **because he had direct access to both the City's public water supply and a ready supply of cyanide.**

On December 21, , the Charging Party's threats became even more specific. He told his co-workers that he **"was sorry he did not hit and kill"** Director *[name]* when his vehicle slid on the ice near *[name]* earlier that day. He said that **if he killed** *[name]* **in this way, it would be "considered an accident."**

C. "I Hope I Die"

On December 28, the Charging Party entered the Water Plant's laboratory with a red face and an angry expression. When asked by a co-worker if he "was okay," the Charging Party snarled **"Hopefully, I'm dying."**

VII. THE CHARGING PARTY WORKS ON DECEMBER 22nd

On December 22, , most of the Water Plant employees were on holiday vacation. The staff that day consisted of four (4) male employees, including the Charging Party. At 3:30 p.m., three (3) of these employees were permitted to go home. However, because the Plant was expecting a salt delivery, and because he was the Plant Operator "on call" that day, the Charging Party was asked to remain at the Plant until the salt arrived. This was normal procedure. If there had not been a delivery coming, the Charging Party would have been able to leave at 3:30 p.m. as well. Moreover, since the Charging Party had car-pooled with co-worker *[name]*, *[name]* was also allowed to remain at work with the Charging Party to await the salt delivery. The salt arrived at about 3:50 p.m., and the Charging Party and co-worker *[name]* were able to leave the Plant by 4:30 p.m. The Charging Party was paid for all the hours he worked on December 22, .[4]

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[3] Cyanide is an extremely fast acting poison that is easily transported by water and acutely toxic to humans. The ingestion of as little as 50 milligrams of cyanide (less than two thousandths of an ounce) can result in death from respiratory failure in less than 30 minutes. Even smaller doses can cause heart and brain damage. The Water Plant uses cyanide as a solvent and in some tests. It is never placed in the public water supply.

[4] To the extent the Charging Party feels that he was "shorted" on overtime pay, that is a wage and hour issue, not an EEOC issue. It appears from the Charge that the Charging Party is really complaining about having to actually work an extra hour while "on call," rather than getting paid for being "on call" and not having to work that hour. This is not an actionable issue.

VIII. FEARFUL CO-WORKERS NOTIFY MANAGEMENT

On January 3, , Supervisor *[name]* returned from his holiday vacation. Water Plant employees *[name]* and *[name]*, both co-workers of the Charging Party and victims of his recent threatening remarks, were waiting for him. They told Supervisor *[name]* about the threats the Charging Party had made to his co-workers, as well as of their concerns and fears about continuing to work with the Charging Party. They pleaded with Supervisor *[name]* to do something about the Charging Party, so that they could again come to work and feel safe. At *[name's]* request, both *[name]* and *[name]* summarized their concerns in writing. Copies of their statements are attached hereto and incorporated herein as **Exhibits E and F**, respectively.

IX. THE CHARGING PARTY IS TERMINATED

A. The Decision Is Made

After investigating the allegations of misconduct brought against the Charging Party by *[name]* and *[name]* and finding them to be credible and serious, and after consulting with the City's Legal and Human Resources Departments and reviewing the Charging Party's employment record, Director *[name]* decided to terminate the Charging Party's at will employment with the City. Director *[name]* therefore personally met with the Charging Party and terminated his employment on January 9,

Given the nature and seriousness of the Charging Party's recent workplace threats and comments, and at the suggestion of the City's Chief of Police, the Charging Party was told during his exit interview that he was not to re-enter his workplace, but that he could visit the City's Human Resources Office if he had questions. As several co-workers felt threatened by the Charging Party, he was also told that the City could not control whom he talked to after hours, but that the City recommended that he not contact his co-workers. At no time during his exit interview did the Charging Party suggest in any way that he had been the victim of harassment or discrimination of any kind.

B. The Charging Party Is Escorted From The Premises

As is standard procedure whenever an employment termination involves an employee who is known to become easily upset or who might otherwise be a threat to a safe workplace, Director *[name]* had plain clothed police officers present on the premises when he met with and terminated the Charging Party. Since the Charging Party had driven a City-owned vehicle to work, these police officers drove him home after he was terminated.

C. No Appeal Taken

Pursuant to written City policy, the Charging Party could have appealed his termination to the City's Board of Public Works and Safety within fifteen (15) days of his date of termination. He chose not to do so.

D. The City Did Not Respond To The Unemployment Benefits Claim

The City did not respond to the Charging Party's unemployment benefits claim, knowing that this would result in a finding that he was eligible for benefits. This was a conscious decision by Director *[name]*, who does not like to "kick someone when he is down" and who was willing to absorb this cost into his Utilities Department budget. The decision not to respond to the Charging Party's unemployment benefits claim was not based upon the merits of that claim.

X. DISCUSSION

The facts of this case do not support even an inference that the Charging Party was the victim of sexual harassment or discrimination as the result of the termination of his employment with the City.[5] To the contrary, it is clear that the City's Utilities Department, and specifically Director *[name]*, went out of its way to retain and retrain the Charging Party even after his hostile attitude and threatening conduct began to surface at work. It was only after Director *[name]* became aware of the Charging Party's repeated specific threats to the safety of other employees that he felt compelled to terminate his employment. There are limits to any employer's leniency and willingness to continue giving second chances and "fresh starts." Any lesser action, given the public safety concerns raised by the Charging Party's expressed willingness to use cyanide to kill others, as well as his direct reference to the killing of co-workers and of Director *[name]* himself, would have been unthinkable.

It is simply incredible to suggest – as the Charging Party must – that Director *[name]* and his supervisors, **all males**, hired the Charging Party, counseled him, gave him a "fresh start," gave him three (3) promotions and an additional three (3) pay raises, and kept him employed for eight (8) years despite his numerous acts of misconduct, any one of which would have justified his termination, but then, after all of this, discriminated against him by terminating him **on account of his sex**. The facts in this case, as well as common sense, belie such an assertion.

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[5]The Charge also suggests, in the vaguest of terms, that the Charging Party was the victim of unspecified discrimination from "years ago." Obviously, the only tangible employment action taken against the Charging Party in the 180 days prior to his January 29, Charge date, and thus the subject of a timely claim, is his termination. However, the City also denies any other allegation of discrimination that might be gleaned from the language of the Charge.

The truth is, the Charging Party is someone who, for reasons only known to himself, simply refused to control his temper, to follow safety rules, and to conduct himself in a manner that did not threaten his life or the lives of his fellow employees. Far from being the "victim" of discrimination, the Charging Party was the beneficiary of the City's considerable leniency in dealing with his misconduct.

XI. CONCLUSION

As is clear from the above, there is absolutely no basis for the allegations contained in the Charge, which are decidedly false. The Charging Party's sex was not considered by, and had no bearing whatsoever on, the City's actions herein. Nothing that was said or done to the Charging Party by the City was even remotely "discriminatory," "harassing" or otherwise unlawful. The City denies each and every allegation contained in the Charge, asks that the Charge be dismissed in its entirety, that the Charging Party take nothing by way thereof, and for all other appropriate relief.

I trust that the attached information is sufficient to establish that the Charge is baseless and should be dismissed. If you would like to discuss this matter, or require further information to complete your investigation, please feel free to contact me directly.

Respectfully submitted,

Douglas C. Haney
City Attorney

DCH/eb

cc: Director *[name]*

Identifying information redacted

VIA CERTIFIED MAIL NO. 7007 1490 0000 1912 6445, RETURN RECEIPT REQUESTED

[date]

Mr. Alvin E. Hines
Enforcement Supervisor
Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204
ATTENTION: Investigator Vance

RE: *[Charging Party]* v. City of Carmel
Charge No. _____

Dear Supervisor Hines and Investigator Vance:

I represent the City of Carmel, Indiana ("City"), and its Communications Center ("Center"). This letter constitutes the City's position statement in the referenced matter. The City reserves the right to amend this statement, raise additional defenses to the Charge and provide the Commission with additional documentation relative to the Charge and the City's response thereto. The City's previously submitted preliminary response to the Charge is incorporated herein by reference. The City denies the Charge and each of the allegations contained therein. Subject to the above, the City responds to the Charge as follows:

I. BACKGROUND INFORMATION

A. The City

The City is an Indiana municipal corporation with its main offices located at City Hall, One Civic Square, Carmel, Indiana 46032. It employs approximately five hundred (500) full-time employees.

ATTACHMENT F

B. The City's Communications Center

The Center has its main offices located at 31 1st Avenue N.W. in Carmel, Indiana. It answers both emergency and non-emergency calls from City residents and residents of Clay Township, Hamilton County, Indiana. The Center also dispatches the City's police, fire, emergency medical and other public safety responders. In addition, the Center provides communications support for all of the City's departments. The Center is staffed by approximately twenty-five (25) full-time employees.

During the Charging Party's period of employment with the City, Director (name) hired eight (8) female and one (1) male employee and terminated two (2) female employees.[1] Of these new hires, five (5), or fifty-five percent (55%) were forty (40) years of age or older. Of these terminated employees, one (1) was over forty years old at the time of her termination. On the date the Charging Party was terminated, the Center's workforce was sixty-six percent (66%) female and fifty-two percent (52%) of its employees were forty (40) years old or older.[2]

C. The City's EEO Policy

At all relevant times, the City had in place and enforced a written equal employment opportunity policy that applies to all aspects of the employment relationship, including hiring and discipline. Under this policy, any employee who feels that he or she may be the victim of unlawful discrimination is encouraged to file a complaint with the City's Human Resources Director, the City Attorney, and/or his or her Department Director. All such complaints are treated seriously, investigated thoroughly and, if founded, result in disciplinary action being taken against the perpetrator. No such complaint was ever received by the City relative to the Charge.

[1] From the start of Director (name's) tenure at the Center (December 2, :) through the Charging Party's termination date, five (5) employees also resigned from the Center. Of these employees, three (3) were female and three (3) were over forty (40) years old. Of these, one (1) resigned during her training period, saying that the job "was not for her," one (1) resigned to take a private sector job, and one (1) resigned after undergoing a fitness for duty examination. During this same period, Director (name) terminated four (4) employees, three (3) of which were female and three (3) of which were under forty years of age at the time of their termination.

[2] Obviously, these employment statistics belie the Charging Party's unsupported assertion that the Center's supervisors attempted to keep employees aged forty (40) or over from working at the Center. Over one-half of the Center's employees are over forty (40) years old, and the percentage of such employees hired by the Center has increased under Director (name's) tenure.

Each City employee is provided with a written copy of the City's EEO policy as part of his or her hiring process. A copy of the City's EEO policy is attached hereto and incorporated herein as Exhibit A.

D. The Center's EEO Policy

At all relevant times, the Center also had in place and enforced its own Department equal employment opportunity policy that covered all aspects of employment at the Center and that complimented the City's EEO policy. Under this policy, any Center employee who feels that he or she may be the victim of unlawful discrimination may report the matter directly to the Center Director or may attempt to resolve the matter informally through his or her immediate supervisor and, if the matter remains unresolved, up through his or her chain of command. No such complaint was ever received by the Center relative to the Charge.

Each Center employee is provided with a written copy of the Center's EEO policy as part of his or her Center orientation process. A copy of the Center's EEO policy is attached hereto and incorporated herein as Exhibit B.

E. The City's Workplace Rules

At all relevant times, the City had in place and enforced written workplace rules prohibiting, among other things:

1. Harassment or discrimination.
2. Breach of duty in connection with work.
3. Fighting on City time or property.
4. Absenteeism, tardiness and failing to properly report an absence.
5. Leaving one's work station during regular working hours without permission.
6. Using obscene or abusive language.

7. Conduct unbecoming a City employee.

8. Unsatisfactory job performance.

9. A failure to comply with City or Department policies, rules or regulations.

10. A failure to act in a courteous and professional manner towards co-workers.

11. The unauthorized use or removal of City records or copies thereof.

Any of these workplace offenses, depending upon the circumstances of the offense, will subject an employee to disciplinary action up to and including immediate termination. Moreover, the City's enactment of these work rules does not alter the "at will" status of all the City's employees except for its sworn law enforcement officers and firefighters.

Any employee who believes that a disciplinary action has been taken against him or her in an unfair, inconsistent or inappropriate manner is encouraged to bring the matter to the attention of his or her immediate supervisor (or next level of management if the matter involves the immediate supervisor), and to have the matter investigated at each step of his or her chain of command and, if not then resolved, by the City's Human Resources Director and finally by the City's Board of Public Works and Safety. No such complaint was ever received by the City relative to the Charge.

All employees receive a written copy of the City's workplace rules and disciplinary procedures as part of their hiring process, and are required to abide by them as a condition of their employment. A copy of the City's relevant workplace rules and disciplinary procedures is attached hereto and incorporated herein as Exhibit C.

F. The Center's Workplace Rules

At all relevant times, the Center also had in place and enforced written workplace rules prohibiting, among other things:

1. Leaving one's assigned post without authorization while on duty.

2. Failing to treat Center employees, supervisors and law enforcement personnel civilly, respectfully and courteously.

3. Failing to obey a lawful order given by a supervisor, even if it conflicts with a previous order, rule, regulation or directive.

4. An unwillingness or failure to perform assigned job duties.

5. Insubordination.

6. Conduct that reflects unfavorably upon or brings discredit to the Center.

7. The unauthorized removal of Center records or copies thereof.

8. Being rude, argumentative or unprofessional towards others.

9. Disrupting Center operations by shouting or creating a disturbance.

10. Failing to notify one's supervisor of one's inability to report for work at least one (1) hour before shift start, late reporting for work, and an unauthorized absence from work.

11. Using the Center's message system in an unprofessional manner.

The Center's enactment of these work rules and disciplinary procedures does not alter the "at-will" nature of the Center's employees. However, as a general rule, and within the Center Director's discretion, any violation of the first seven (7) above-listed work rules will subject an employee to discipline up to and including immediate termination, whereas the violation of the last four (4) listed work rules will subject an employee to a verbal or written warning for the first offense and more severe discipline, up to and including termination, for subsequent violations. Any employee who feels that a management action is inappropriate is required to follow his or her chain of command in bringing his or her concerns to management. All work rule grievances, unless earlier resolved, will be investigated by the Center Director or his/her designee. No such grievance was ever received by the Center relative to the Charge.

All Center employees receive a written copy of the Center's workplace rules and procedures as part of their Center orientation process, and are required to abide by them as a condition of their employment at the Center. A copy of the Center's relevant work rules and procedures is attached hereto and incorporated herein as Exhibit D.

G. The Charging Party Receives A Copy Of The Work Rules

On June 1, , the Charging Party signed an "Acknowledgment of Receipt and Agreement to Comply Form" indicating that she had received, would read, and would comply with the City's "Personnel Policy Handbook," which contains the City's work rules and procedures. On January 22, , the Charging Party signed a separate "Acknowledgement Form" indicating that she had received a copy of the Center's "Rule and Regulation Manual," which supplements the City's Personnel Policy Handbook and contains the Center's work rules and procedures.

Copies of the Charging Party's City and Center "acknowledgment forms" are jointly attached hereto and incorporated herein as Exhibit E.

II. THE CHARGING PARTY'S SUPERVISORS

At all relevant times, the Charging Party's immediate supervisor was Shift Supervisor *[name]* (Female, DOB 08- -74), her second level supervisor was Operations Manager *[name]* (Male, DOB 03- -64) and her third and highest level supervisor was the Director of the Center, *[name]* (Male, DOB 05- -43). When Supervisor *[name]* was absent from the Center, the Charging Party's immediate supervisor was occasionally Assistant Supervisor *[name]* (Female, DOB 09- 81) and, after October 21, , was *[name]* (Male, DOB 03- -64).[3] At all relevant times, the Charging Party's proper chain of command was therefore Supervisor *[name]* (or Assistant Supervisor *[name]*), then Operations Manager *[name]*, then Director *[name]*.[4]

[3] The Charging Party apparently contends that she was not considered for the Assistant Supervisor job position held by (name). This is not surprising, since (name) was appointed to that position over a year before the Charging Party was hired by the City! On October 21, , he was transferred from the "Night B" shift to the "Day A" shift that the Charging Party worked. There was no "posting" for this transfer, as it did not involve a new job position opening. Copies of a time sheet and e-mail message that confirm this shift transfer are jointly attached hereto and incorporated herein as Exhibit CC.

[4] On the other hand, on January 4, , the City did post an announcement for a new Assistant Supervisor job position. However, despite being given every opportunity to do so, the Charging Party did not apply for this open position. Copies of the documents posted for this new job position are jointly attached hereto and incorporated herein as Exhibit DD.

III. THE CHARGING PARTY

A. Her Hire

On June 1, , the Charging Party was hired by Director *[name]* into the Telecommunicator (a/k/a "Dispatcher") job position. At hire, the Charging Party was forty-seven (47) years old. She was hired ahead of two (2) male applicants.

B. Her Job Duties

At all relevant times, the Charging Party's primary job duties were to swiftly receive, screen and monitor calls, and to calmly and quickly dispatch appropriate personnel and apparatus to incident locations. She performed other job duties as required. Copies of the Charging Party's original and amended job description (the latter changing her job title but not changing her essential job functions) are jointly attached hereto and incorporated herein as Exhibit F.

C. Her First Year of Employment

The Charging Party's first eleven (11) months of employment at the Center was relatively uneventful. She became quite skilled as a dispatcher, and was generally a good and valued employee.

IV. THE CHARGING PARTY'S MISCONDUCT BEGINS

A. The Week of May 8,

On or about May 9, , the Charging Party openly complained that her fellow employees were not doing their job to her satisfaction. Even after Supervisor *[name]* explained to her that she was wrong, and that these employees were performing their assigned tasks, the Charging Party continued to complain about them on an almost daily basis.[5] Unfortunately, this was only the beginning of her misconduct.

[5] At a minimum, this conduct violated the Center's Work Rules A46 (Argumentative/ unprofessional conduct) and A48 (Discourtesy/disrespect to fellow employees), as well as its General Rule 46 (Criticism of fellow employees).

On May 11, , the Charging Party became verbally upset that a police officer was not marking himself back "in service" as quickly as she would like. Supervisor *[name]* told her that this officer was a long time veteran of the Carmel Police Department, was not under her control, and that she was not to upset the good relationship between the Carmel Police Department and the Center. Instead of following *[name's]* work order, the Charging Party went around her and complained directly to a Police Department supervisor. She even printed out run sheets from the Center's computers and provided them to the Police Supervisor. All this was done without her own supervisor's knowledge or consent. These actions caused the Center and Supervisor *[name]* much embarrassment.[6]

A copy of the memorandum summarizing the Charging Party's referenced misconduct is attached hereto and incorporated herein as Exhibit G.

B. The Week of May 15,

The following week, the Charging Party again refused to follow Supervisor *[name's]* orders and became insubordinate. The first such occasion involved the proper protocol to follow for correcting erroneous suite numbers on the Center's call screens. The Charging Party was instructed by Supervisor *[name]*, that, whenever the wrong suite number came up for a business, the dispatcher was to instruct the business owner to contact his/her telephone company and have this information corrected. Rather than simply following this work order, the Charging Party became verbally upset and began to loudly and heatedly argue with Supervisor *[name]* over her order. She continued to do so even after *[name]* repeated her order and despite the fact that *[name]* went so far as to confirm the correctness of her instructions with Operations Director *[name]*. The Charging Party even stopped her assigned work and started paging through Center binders in an unsuccessful effort to find something that refuted the accuracy of *[name's]* order.[7]

[6] At a minimum, this conduct violated the Center's Work Rules A12 (Unauthorized use/removal of records), A36 (Conduct not in the best interests of the Center), B5 (Disobeying or ignoring a supervisor's order) and C11 (Failing to devote full attention to work duties), as well as its General Rules 37 (Chain of command), 42 (Insubordination) and 44 (Criticism of official acts).

[7] This conduct, at a minimum, violated the Center's Work Rules A46 (Argumentative and unprofessional conduct), A47 (Disrupting Center operations), A48 (Being disrespectful and discourteous to supervisors), B5 (Disobeying or ignoring a supervisor's order) and C11 (Failure to devote full attention to work duties), as well as its General Rules 42 (Insubordination), 43 (Failure to carry out lawful orders) and 46 (Criticism made with a reckless disregard for the truth).

The second occasion took place on May 18, , when the Charging Party was being instructed by Supervisor *[name]* on the correct way to input information during a fire alarm run. After *[name]* pointed out the Charging Party's input errors and corrected them, the Charging Party again became loud and argumentative, claiming that she had been "trained differently." Supervisor *[name]* then reminded the Charging Party that *[name]* had personally trained her, and that the input procedure she was directing the Charging Party to follow was the correct procedure. In response, the Charging Party challenged *[name's]* order, ignored her, and stopped performing her assigned tasks in order to again take work time to page through the Center's binders in an attempt to find something saying that *[name's]* instructions were incorrect. When *[name]* saw her doing this, she told the Charging Party that nothing in the binders would support her contentions. In response, the Charging Party refused to answer *[name]*, pointedly ignored her and kept paging through the binders.[8]

A copy of the memorandum summarizing these incidents of the misconduct is attached hereto and incorporated herein as Exhibit H.

C. The Week of May 22,

On May 27, , two automobile accidents occurred in the City at approximately the same time and location. The emergency vehicle the Center dispatched to the first accident had arrived on the scene, but the vehicle sent to assist the second accident was still en route, when the Charging Party received a telephone call from an irate citizen. He told her that nobody had arrived at the (second) accident scene and to "get someone here immediately." Instead of reacting calmly, as she had been trained to do, the Charging Party became very agitated and began yelling at her fellow dispatchers, soon screaming again and again that they needed to get someone to the scene immediately, because she had a man yelling at her. This conduct disrupted the entire dispatch room, and forced one dispatcher to request permission to leave the area until the Charging Party could compose herself. In response to this unexpected and wholly inappropriate conduct, Supervisor *[name]* immediately intervened, ordered the Charging Party to "stop yelling" and to "calm down," and told her that the other unit would be on the scene momentarily. However, the Charging Party was out of control. She completely ignored *[name's]* order and continued screaming.

[8] This misconduct, at a minimum, violated the Center's Work Rules A46 (Argumentative or unprofessional conduct), A47 (Disrupting Center operations), A48 (Being discourteous or disrespectful to a supervisor), B5 (Disobeying or ignoring a supervisor's order) and C11 (Failure to devote full attention to work duties), as well as its General Rules 42 (Insubordination) and 43 (Carrying out lawful orders).

She also loudly and disrespectfully told *[name]* that if *[name]* was the one getting yelled at, she would be acting the same way. In response, *[name]* again ordered her to stop screaming at the other employees in the dispatch room. While she did eventually gain control over herself, it was only when the other dispatchers got busy with other calls that the Charging Party stopped arguing with *[name]* about this incident and returned to her job duties.[9]

A copy of the memorandum summarizing this misconduct is attached hereto and incorporated herein as Exhibit I.

V. THE CHARGING PARTY IS COUNSELED

A. The Counseling Session

After the Charging Party's screaming incident, Supervisor *[name]* met with her and counseled her about her disruptive conduct, her continually complaining about everything, and her constant challenges to *[name's]* authority and work orders. *[name]* told the Charging Party that she could not act that way anymore and that she was "a great dispatcher." She encouraged her to maintain a positive work attitude. In response, the Charging Party claimed that she "did not realize" that she was acting this way.

B. The Charging Party's Conduct And Attitude Temporarily Improve

After her counseling session with Supervisor *[name]*, the Charging Party's work attitude and conduct did improve for almost two (2) months.

VI. THE CHARGING PARTY'S MISCONDUCT BEGINS ANEW

A. The Week of July 17,

After a lull of almost two (2) months, the Charging Party's bad attitude and work misconduct returned with a vengeance. For no apparent reason, she again began simply refusing to follow Supervisor *[name's]* work orders or her chain of command, and to complain about her routine tasks and job assignments on almost a daily basis.

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[9] At a minimum, this misconduct violated the Center's Work Rules A46 (Being rude, argumentative or unprofessional), A47 (Disrupting Center operations), B1 (Failing to perform job duties in a satisfactory manner), B3 (Refusing to perform job duties) and B5 (Disobeying or ignoring a supervisor's order), as well as its General Rules 43 (Refusal to carry out lawful order), 49 (Being discourteous to fellow employees) and 76 (General conduct).

First, on or about July 18, , the Charging Party challenged a work order from Supervisor *[name]*, loudly telling her Supervisor to "take a chill pill!" *[Name]* responded by firmly telling the Charging Party that she was the one who needed to calm down and to stop questioning her work orders.[10]

Then on July 22, , two emergency response vehicles were dispatched to the same site. The second unit was informed by the first to "disregard the call," that it "was not needed," and to go back to "in service" status. Inexplicably, the Charging Party, who was monitoring this radio traffic, refused to dispatch the second unit away from the scene, stating that she was going to keep it on the run because that unit "had made her mad." Supervisor *[name]* overheard this comment and told the Charging Party that, if this unit was not needed at the scene, she was to take it off the run immediately, as the City needed all available public safety units "in service." The Charging Party flatly refused to obey Supervisor *[name's]* order, telling her that she was keeping the second unit on the run "just in case." *[Name]* told her that the unit on the scene could call for backup if the situation required it, and again ordered the Charging Party to take the second unit off this run and mark it back "in service." The Charging Party again flatly refused, forcing Supervisor *[name]* to take the unit off the run herself!

Not yet finished with her misconduct, the Charging Party then ignored *[name]* and contacted Operations Manager *[name]* to ask his opinion on when a unit should leave a run after it is told to "disregard." *[Name]* was shocked by this intentionally insubordinate behavior and said: "I just told you what to do, why are you asking the same thing?" True to form, the Charging Party simply ignored *[name]*, refused to answer her question and started arguing with *[name]* about how the Center should handle its runs.[11]

A copy of the memorandum summarizing this misconduct is attached hereto and incorporated herein as Exhibit J.

[10] These actions, at a minimum, violated the Center's Work Rules A46 (Rudeness, abrupt or unprofessional conduct) and A48 (Being discourteous or disrespectful to a supervisor), as well as its General Rules 42 (Insubordination) and 76 (General conduct).

[11] At a minimum, this conduct violated the Center's Work Rules A46 (Rudeness; unprofessional conduct), A47 (Disrupting Center operations), A48 (Being discourteous and disrespectful to a supervisor), A51 (Using the Center's message system in an unprofessional manner), B1 (Failure to satisfactorily perform job duties), B3 (Unwillingness to perform job duties), B5 (Disobeying or ignoring a supervisor's order) and C11 (Failure to devote full time to work duties), as well as its General Rules 37 (Chain of command), 41 (Insubordination), 42 (Obeying a lawful order), and 76 (General conduct).

B. The Week of July 24,

Three (3) days later, on July 25, , one of the Center's dispatchers was taking a Spanish class at the Center's request, so that the Center could better serve its Spanish-speaking callers. Her class ran long that night, and she arrived after the scheduled start of her work shift. As soon as she entered the Center, she was shocked when the Charging Party began grilling her about why she was late, and trying to start an argument with her. She was even more shocked to learn that, before she arrived for work, the Charging Party had been loudly telling the other dispatchers that she "was probably lying about going to class." These false accusations only further upset this dispatcher and disrupted the workplace.[12]

Copies of the memoranda summarizing this misconduct are jointly attached hereto and incorporated herein as Exhibit K.

C. The September 20, Incident

On September 20, and despite numerous counselings from her supervisors, the Charging Party again ignored her chain of command, this time ignoring both *[name]* and *[name]*, and contacted Director *[name]* directly about her pay rate. When Supervisor *[name]* learned about this and questioned the Charging Party, she lied, saying that "another dispatcher" had told her to directly contact *[name]*. However, when this dispatcher was questioned, she denied telling the Charging Party anything of the sort. *[Name]* then again ordered the Charging Party to bring all such questions to her, rather than jumping her chain of command and going directly to *[name]* without *[name's]* knowledge or consent. Incredibly, the Charging Party shot back, telling *[name]* "It's none of your business," that she would not inform *[name]* if she was going to contact *[name]* directly, and that she "didn't need *[name's]* permission to send an *(expletive)* email to anyone!"

Faced with this direct insubordination and stated refusal to follow her chain of command, Supervisor *[name]* told the Charging Party that if she ever contacted Director *[name]* again without informing her first, unless it involved a complaint about *[name]* herself, she would be written up. *[Name]* then told the Charging Party to "stop defying my authority." Incredibly, the Charging Party told *[name]* again that: "It's none of your business" and that she would not tell *[name]* before she contacted Director *[name]*. The Charging Party then screamed at *[name]*, telling her to "write me up," that "this is asinine," and that she was going to talk to *[name]* as soon as another dispatcher could cover her console.

[12] At a minimum, these actions violated the Center's Work Rules A41 (Defamatory or disruptive language), A44 (Abusive language), A46 (Rudeness; argumentative conduct), A47 (Disrupting Center operations), A48 (Discourtesy to fellow employees), A49 (Harassment) and C11 (Failure to devote full attention to work duties), as well as its General Rules 46 (Criticism of fellow employees) and 76 (General conduct).

And so she did. Ignoring Supervisor *[name's]* order, and without an appointment, the Charging Party by-passed *[name]* and *[name]* and confronted Director *[name]* in his office. Although startled by this intrusion, *[name]* permitted the Charging Party to question him about her pay rate. He answered her questions the best that he could and suggested that the Charging Party contact the City's Human Resources Department if she had any further questions. It was during this discussion that the Charging Party also complained that her supervisor was not "getting along with her." When *[name]* asked why, she volunteered that it was probably because she exhibited "Type A behaviors."[13] *[name]* suggested that it would be appropriate for her to exhibit a less aggressive approach when discussing work issues with her supervisors and fellow employees, reasoning that this would reduce the possibility of confrontational situations and improve her relationship with these persons. However, he did not tell her that she "needed to find a new profession." This meeting ended on a cordial note.[14]

VII. THE CHARGING PARTY RECEIVES A WRITTEN WARNING

On September 20, , the Charging Party received formal counseling and a written warning for her insubordinate, argumentative and unprofessional workplace conduct of that date. She was also counseled about her general rudeness, unwillingness to politely interact with co-workers and supervisors, and her use of profanity.

A copy of the Charging Party's written warning is attached hereto and incorporated herein as Exhibit L.

[13] The Charge implies that this discussion of "Type A" personalities took place shortly before the Charging Party's termination. This is untrue. It actually took place over one and one-half years earlier, was prompted by the Charging Party herself, and pre-dated numerous acts of workplace misconduct in themselves more than sufficient to justify the Charging Party's termination.

[14] At a minimum, these actions violated the Center's Work Rules A1 (False statement), A41 (Disruptive language), A44 (Profane language), A46 (Rude or unprofessional conduct), A48 (Disrespect or discourtesy to supervisor) and B5 (Disobeying or ignoring a supervisor's order), as well as its General Rules 37 (Chain of command), 42 (Insubordination), 43 (Obeying a lawful order) and 76 (General conduct).

VII. THE COUNSELING CONTINUES

On September 27, , the Charging Party was again counseled by Supervisor *[name]* and Operations Manager *[name]* about her workplace misconduct. She was specifically and emphatically told that no further acts of insubordination would be tolerated and that the chain of command would be followed. She was even given and signed for a copy of the Center's "Chain of Command" SOP.

Copies of the memorandum summarizing this counseling session, the Center's "Chain of Command" SOP and the Charging Party's counseling rebuttal are jointly attached hereto and incorporated herein as Exhibit M.

IX. THE MISCONDUCT ALSO CONTINUES

On December 25, , the Charging Party and another dispatcher got into an argument over who would work what 911 console. This incident involved yelling and disrupted the workplace.[15] On January 5, , both the Charging Party and her fellow dispatcher were counseled by Supervisor *[name]* about this incident and their need to get along with one another. They were also instructed to immediately contact *[name]* if a future workplace disagreement occurred.

A copy of a memorandum summarizing this counseling session is attached hereto and incorporated herein as Exhibit N.

X. THE COUNSELING ALSO CONTINUES

On or about March 10, , the Charging Party was again counseled by Supervisor *[name]* about her workplace misconduct and poor attitude. The issues specifically addressed included:

1. The Charging Party's continuing need to stop complaining about and trying to change everything in the workplace.

2. The Charging Party's continuing need to stop questioning virtually every work directive from *[name]* by demanding to know if there was a written "SOP" that covered the issue.

[15] At a minimum, this conduct violated the Center's Work Rules A40 (Fighting), A41 (Disruptive language), A47 (Disrupting Center operations) and A48 (Being discourteous to fellow employees), as well as its General Rule 49 (Addressing fellow employees) and 76 (General conduct).

3. The Charging Party's continuing need to stop being insubordinate.

4. The Charging Party's continuing need to follow her chain of command.

5. The Charging Party's continuing need to advise Supervisor *[name]* of all officer safety issues that occurred when *[name]* was absent from the Center.

6. The Charging Party's continuing need to change her negative attitude.

7. The Charging Party's continuing need to stop her angry outbursts and tantrums, which were poisoning the Center's work environment.

8. The Charging Party's continuing need to stop disrupting the workplace.

The Charging Party was also asked to disclose anything over which she was troubled or unclear. The only issue she raised was her use of compensatory time at the end of her lunch period.

This meeting ended with Supervisor *[name]* telling the Charging Party that she had "strong dispatch skills" when she was not being disruptive or insubordinate, but that if she did not like the way *[name]* ran her shift, she could, "if she wanted to," put in for a shift transfer. The Charging Party declined this offer, stating that she did not want to switch her work shift.

A copy of the memorandum summarizing this counseling session is attached hereto and incorporated herein as Exhibit O.

XI. THE MISCONDUCT BEGINS AGAIN

After her counseling session of March 10, the Charging Party's work attitude and conduct did improve for a few weeks. However, on April 12, , Supervisor *[name]* had to caution her about the sarcastic tone of her on-the-air remarks to public safety officers. This conduct resulted in a police supervisor contacting Supervisor *[name]*.[16]

A copy of the memorandum summarizing this incident is attached hereto and incorporated herein as Exhibit P.

[16] At a minimum, this conduct violated the Center's Work Rule A48 (Disrespect or discourtesy to law enforcement personnel) and its General Rule 78 (Respect and courtesy to law enforcement officers).

XII. THE COUNSELING BEGINS ANEW

Shortly after her on-the-air sarcasm, the Charging Party again began to complain about imagined slights and minor workplace issues and to generally disrupt the workplace. For example, on June 5, , she complained to Operations Manager *[name]* because Supervisor *[name]* did not ask about her son, who had been in an automobile accident, because, when she asked *[name]* if she had "done something to piss her off," *[name]* told her "No," and because *[name]* was "not very talkative" at the start of the workshift. *[name]* responded by e-mail, admonishing the Charging Party for making "a mountain out of a molehill," for refusing to recognize *[name's]* supervisory authority over her, and for getting him involved in these minor, if not imaginary, workplace issues.[17]

A copy of the memorandum summarizing this incident is attached hereto and incorporated herein as Exhibit Q.

XIII. MORE MISCONDUCT

In response to Operations Manager *[name's]* admonishment, the Charging Party again jumped her chain of command, ignored Supervisor *[name]* and charged directly into *[name]* office. She told him, in no uncertain terms, that she did not like his statement that *[name]* "was in charge of her" or that she was "going to have to accept it." [18]

XIV. MORE COUNSELING

On June 6, , the day after the Charging Party barged into Operations Manager *[name]* office, *[name]* met with her and Supervisor *[name]*. He told the Charging Party that if there was anything she wanted to complain about, "now was the time." In response, the Charging Party restated that *[name]* had not asked her about her injured son, and had said "No" when the Charging Party asked her if she had done anything to "piss her off." She then told *[name]* that *[name]* had said that she "hated her and wanted her off the shift." This was untrue. What Supervisor *[name]* had actually told the Charging Party said was that she would treat her "the same as everyone else on the shift, and that if she didn't like it, then maybe she should think about going to another shift."[19] Confronted with her own falsehood, the Charging Party simply said that she "wasn't going anywhere."[20]

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[17] At a minimum, this conduct violated the Center's General Rules 37 (Chain of command) and 46 (Criticism of fellow employees).

[18] At a minimum, these actions violated the Center's Work Rule B5 (Disobeying or ignoring a supervisor's order) and its General Rules 37 (Chain of command), 42 (Insubordination), 43 (Obeying a lawful order) and 76 (General conduct).

[19] This was confirmed by a fellow dispatcher who heard the conversation. See, Exhibit R.

[20] At a minimum, this conduct violated the Center's Work Rule A1 (False statement) and its General Rule 46 (Criticism in reckless disregard of the truth).

Copies of the memoranda summarizing this June 6, counseling session are jointly attached hereto and incorporated herein as Exhibit R.

XV. THE OCTOBER 8, INCIDENT

On October 8, Assistant Supervisor *[name]*, who was filling in for *[name]*, asked the Charging Party to make a parental notification call to *[name]*, a well-known event site located in the City. This was necessitated by the fact that the minor daughter of parents who were then at the Mansion had been involved in an accident and the Lawrence Fire Department was seeking their consent to transport her and provide her with medical treatment. When the Charging Party put the Mansion's telephone number into the dispatch system, it did not immediately verify that the Mansion's address matched the telephone number. Therefore, she informed *[name]* that there was "no address listed" for the call. *[Name]* then gave her the street address for the Mansion. However, the Charging Party simply ignored her, and repeated that the system was "showing no address." *[Name]* then ordered the Charging Party to make the call to the Mansion. She flatly refused, informing *[name]* that she "would wait until the address was verified." *[Name]* told her "No, it *(the call)* needs to go out now." Incredibly, the Charging Party delayed another full minute before making this call. This misconduct took place in the face of two direct orders from her supervisor, knowing that public safety personnel were waiting for permission to treat and transport an injured child, and that any delay could have been disastrous for the child and the Center!

After the call to the Mansion was finally placed, *[name]* asked the Charging Party why she had disobeyed her direct orders. The Charging Party then claimed, for the first time, that a notation on her computer screen saying that the run could "wait 5 minutes" gave her the right to disobey *[name's]* orders. *[Name]* told her that this notation was irrelevant, as she had ordered the Charging Party to make the call immediately. The Charging Party began to argue the point with *[name]* in a loud voice, which disrupted the workplace. Then, not content with mere insubordination and a refusal to perform her job duties, the Charging Party jumped her chain of command and called Operations Manager *[name]* on his cell phone about this incident. *[Name]* ordered the Charging Party to follow her supervisor's orders no matter what notation might appear on her computer screen, "no questions asked."[21]

Copies of the memoranda summarizing this misconduct are jointly attached hereto and incorporated herein as Exhibit S.

[21] At a minimum, these actions violated the Center's Work Rules A39 (Damaging the public's trust through unbecoming conduct), A46 (Rude or unprofessional conduct), A47 (Disruption of the workplace), A51 (Unprofessional use of message system), B3 (Refusal to perform duties in an acceptable manner) and B5 (Disobeying or ignoring a supervisor's order), as well as its General Orders 37 (Chain of command), 42 (Insubordination), 43 (Lawful orders) and 76 (General conduct).

XVI. THE CHARGING PARTY RECEIVES A VERBAL WARNING

On October 8, , the Charging Party received a verbal warning and was formally counseled about her insubordination of earlier that day, as well as regarding her rudeness, disruptive behavior, and other misconduct.

A copy of this written warning and counseling statement is attached hereto and incorporated herein as Exhibit T.

XVII. THE NOVEMBER 21, INCIDENT

On November 21, , the Charging Party apparently became frustrated with her computer system and/or a police officer who was in the Center discussing road assignments for that evening. This caused her to, once again, lose her temper and begin yelling,[22] this time at the police officer and in front of a new dispatcher trainee. Her behavior was so unexpected, unprofessional and disruptive that both the trainee and the police officer looked at her with shocked expressions.[23]

Copies of the memoranda summarizing this incident are jointly attached hereto and incorporated herein as Exhibit V.

XVIII. THE CHARGING PARTY RECEIVES ANOTHER WRITTEN WARNING

On November 28, , the Charging Party missed a mandatory in-service training session without contacting her supervisor or receiving prior approval for her absence.[24] She received a written warning for this misconduct.

A copy of the Charging Party's written warning and counseling report for this misconduct is attached hereto and incorporated herein as Exhibit W.

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[22] On November 14, only one (1) week earlier, Assistant Supervisor (name) had sent an e-mail to the Charging Party asking her not to yell in the dispatch room, and to control her temper. As with all of the Center's supervisory admonitions and counselings, this advice apparently fell on deaf ears. A copy of this e-mail is attached hereto and incorporated herein as Exhibit U.

[23] At a minimum, this conduct violated the Center's Work Rules A41 (Disruptive language), A44 (Abusive language to law enforcement personnel), A46 (Rude, argumentative or unprofessional conduct), A47 (Disruption of Center operations) and A48 (Discourtesy or disrespect to law enforcement personnel), as well as its General Rules 76 (General conduct) and 78 (Relations with law enforcement officers).

[24] This conduct violated, at a minimum, the Center's Work Rules C1 (Failure to timely notify supervisor of absence), C2 (Late reporting for work) and C3 (Unauthorized absence).

XIX. THE FINAL STRAW

1. The Shift Memo

On March 26, , Operations Manager *[name]* overheard a dispatcher raise her voice while commenting about the amount of radio traffic she was experiencing from the Police Department. This occurred while an intern from the Police Department was in the room. *[name]* instructed Supervisor *[name]* to remind all of her shift employees that they were not to engage in verbal outbursts or make negative comments about the police or about anyone else, especially when trainees, officers or visitors were present. *[Name]* complied, sending out a generic e-mail message to all of her shift employees, advising them of their responsibilities in this regard. Copies of this e-mail message and an explanatory follow-up message are jointly attached hereto and incorporated herein as Exhibit X.

2. The First Blow-Up

For some reason, the Charging Party apparently felt that Supervisor *[name's]* generic message was a personal attack on her. Ignoring her chain of command, and leaving her work post without permission (thereby leaving it uncovered and unmonitored during traffic rush hour),[25] she stormed into Operations Manager *[name's]* office and complained to him that *[name's]* e-mail was directed at her. *[Name]* explained that the e-mail was generic, and not directed at any specific person. The Charging Party then became very agitated, started waving her arms and yelling at *[name]*, telling him that the e-mail should have gone out to all Center employees – not to just her shift. She told *[name]* that she "hated working dispatch" and "being treated like a child."

At this point, *[name]* told her sternly that the discussion was over, that she was to leave his office immediately, and that she was to follow her chain of command in raising future concerns. The Charging Party ignored him and continued to rant. *[Name]* then raised his voice and again told the Charging Party that the discussion was over, and to leave his office. She ignored him again, and continued to rant. These actions by the Charging Party were clearly visible to other dispatchers, officers and interns then in the Center. They even caused one police officer to ask what her tantrum was all about.[26]

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[25] This was perhaps the most serious of all of the Charging Party's acts of misconduct, given the Center's mission of swiftly answering all emergency calls and immediately dispatching the appropriate public safety units to assist persons in distress.

[26] These actions violated, at a minimum, the Center's Work Rules A36 (Disruptive language or gestures), A44 (Abusive language to a supervisor), A46 (Rudeness or unprofessional conduct), A47 (Disrupting Center operations), A48 (Being discourteous or disrespectful to a supervisor), B5 (Disobeying or ignoring a supervisor's order) and C9 (Leaving work area without authorization), as well as its General Rules 37 (Chain of command), 42 (Insubordination), 43 (Failure to carry out a lawful order), 65 (Attention to duty) and 76 (General conduct).

2. The Second Blow-Up

After the Charging Party finally left his office, Operations Manager *[name]* called Supervisor *[name]*, explained to her what had just happened, and directed her to schedule a meeting with Assistant Supervisor *[name]* and the Charging Party for Thursday, March 29, . The purpose of this meeting was to, yet again, explain the chain of command to the Charging Party and counsel her about her insubordinate, disruptive and improper conduct. *[Name]* complied, sending an e-mail message to the Charging Party advising her of this meeting and that the subject to be discussed was her workplace behavior of earlier that date and her need to follow her chain of command.

Upon receiving *[name's]* e-mail, the Charging Party again ignored her chain of command, and marched straight into *[name's]* office. She demanded that *[name]* tell her what this meeting was about (although its purpose was clearly spelled out in *[name's]* e-mail). *[Name]* told the Charging Party that he "did not want to get into it" and that he had asked her supervisors to have a short meeting with her on Thursday about her workplace behavior. The Charging Party then demanded that this meeting be held there and then, said that she would refuse to attend the Thursday meeting, and threatened that, if *[name]* answers didn't satisfy her, she would go over his head to Director *[name]*. *[Name]* calmly told her that Director *[name]* would back his decision. This further enraged the Charging Party, who told *[name]* that the Center was "probably going to lose a dispatcher." She then stormed out of *[name]* office and left the Center, without telling anyone where she was going. She went missing for about twenty (20) minutes, without authority or permission.[27]

A copy of a memorandum summarizing these March 26, incidents is attached hereto and incorporated herein as Exhibit Y.

[27] At a minimum, these actions violated the Center's Work Rules A44 (Abusive language towards supervisor) A46 (Rudeness or unprofessional conduct), A48 (Discourtesy or disrespect to supervisor) and C9 (Leaving work area without authorization), as well as its General Rules 37 (Chain of command), 42 (Insubordination) and 76 (General conduct).

3. The Final Written Warning And Counseling Session

On March 29, , as a result of her misconduct of earlier that week, the Charging Party met with Supervisor *[name]*, Operations Manager *[name]* and Director *[name]*. She was given another written warning and told by *[name]* that her demeanor and constant challenging of authority would not be tolerated. Incredibly, the Charging Party refused to acknowledge that she even had any problems with her attitude or with authority, and became angry and argumentative. She then asked for the rest of the day off, and *[name]* granted her request. Before leaving work, the Charging Party took all of her personal belongings with her.[28]

Copies of the written warning and counseling report, as well as a memorandum summarizing the above meeting, are jointly attached hereto and incorporated herein as Exhibit Z.

4. The Charging Party's Supervisors Recommend Her Termination

After the March 29, counseling session, and the Charging Party's refusal to even recognize that she had any workplace problems, Operations Manager *[name]*, Supervisor *[name]* and Assistant Supervisor *[name]* jointly drafted, signed and presented to Director *[name]* a letter recommending that he terminate the Charging Party. A copy of this recommendation letter is attached hereto and incorporated herein as Exhibit AA.

5. The Charging Party Is Terminated

On March 29, , Director *[name]* terminated the Charging Party's employment. A copy of the e-mail memorializing this action is attached hereto and incorporated herein as Exhibit BB.

[28] At no time during this counseling session did anyone discuss "personality types," say that the Charging Party had a "Type A personality" or tell her that she should seek another career because "dispatching was not the right profession" for her.

XX. DISCUSSION

The facts in this case do not support even the slightest inference that the Charging Party was the victim of "sex" or "age" discrimination as a result of the termination of her employment relationship with the City. To the contrary, it is clear that the City went out of its way to counsel the Charging Party about her myriad acts of workplace misconduct and perceived slights, and to try to salvage her job. Moreover, it is simply incredible to suggest – as the Charging Party must – that *[name]* (over 40), *[name]* (over 40) and *[name]* (Female), the very people who chose her from a group of otherwise qualified candidates,[29] and who then continued to counsel and encourage her for almost three (3) years despite her continued insubordination, failure to follow her chain of command, disruptive and disrespectful language and actions, and her other acts of workplace misconduct, are the very people who subsequently discriminated against her on account of her age and sex. The facts in this case, as well as common sense, belie such an assertion.

The fact is, the Charging Party was a good dispatcher and a valued City and Center employee who, for reasons known only to her, simply refused, again and again and again, to accept the non-supervisory nature of her job position, to respect authority, to keep her anger and rudeness in check, to obey lawful orders, and to follow the City's and Center's reasonable workplace rules. Her eleventh hour assertion of "discrimination," which she never raised during her almost three (3) years of employment, which she never mentioned in any of her disciplinary statements, and which she never made the subject of any complaint under either the Center's or the City's EEO or grievance procedures, represents nothing more than an opportunistic attempt to justify her own misconduct and personal shortcomings.

Far from being the "victim" of discrimination, the Charging Party was the beneficiary of the City's and the Center's considerable leniency in dealing with her bad attitude, insubordination, various acts of misconduct and paranoia. The City could have lawfully fired her, as an "at-will" employee, after any of her three false statements; any of her eight failures to follow her chain of command; any of her eleven insubordinate acts; any of her ten failures to obey a lawful order; any of her nine disruptions of Center operations; any of her three abandonments of her work station; or, for any of the dozens of other work rules she knowingly, intentionally and routinely flaunted and violated.[30] Instead, it chose to counsel her, again and again, about her workplace attitude and conduct, in an effort to get her to change her ways and save her job. Yet, despite these efforts, the Charging Party continued to ignore her own misconduct, discount the Center's counseling efforts, and, finally, deny that any problems even existed with her workplace attitude or conduct.[31]

[29] The Charging Party was hired from a pool of candidates that included several males and/or persons under forty (40) years of age.

[30] Disingenuously, the Charging Party never grieved any of the disciplinary actions taken against her.

[31] Of course, this litany of Center work rule violations does not even begin to address her numerous violations of the City's work rules.

By March 29, it was crystal clear to the City, the Center and any intellectually honest observer that the Charging Party's conduct and attitude would not change and that her continued employment would only further disrupt the workplace, challenge supervisory authority, denigrate the Center's relationship with other public safety personnel and the public, make a mockery out of reasonable work rules, and impede the Center in the performance of its vital mission. For these reasons, and these reasons alone, the Charging Party's employment was terminated.

XXI. CONCLUSION

As is clear from the above, there is absolutely no basis for the allegations contained in the Charge, which are decidedly false. The Charging Party's sex and/or age were not considered by, and had no bearing whatsoever on, the City's actions herein. Nothing that was said or done to the Charging Party by the City was even remotely "discriminatory" or otherwise unlawful. The City denies each and every allegation contained in the Charge, asks that the Charge be dismissed in its entirety, that the Charging Party take nothing by way thereof, and for all other appropriate relief.

I trust that the attached information is sufficient to establish that the Charge is baseless and should be dismissed. If you would like to discuss this matter, or require further information to complete your investigation, please feel free to contact me directly.

Respectfully submitted,

Douglas C. Haney
City Attorney

DCH/eb

cc: Director *[name]*

ATTACHMENT F