



**PIMA COUNTY
MERIT SYSTEM COMMISSION
LAW ENFORCEMENT MERIT SYSTEM COUNCIL
MINUTES OF OCTOBER 15, 2019**

The Pima County Merit System Commission/Law Enforcement Merit System Council met at the Human Resources Conference Room at 150 W. Congress Street, Tucson, Arizona, on October 15, 2019, at 9:00 a.m.

Commission Members Present: John Fink, Chairman; Mike Hellon and David Freund.

Also Present were:

Barry Corey	Counsel for the Commission/Council
Dan Jurkowitz	Deputy County Attorney for the Respondent
Lenora Anderson	Paralegal, Pima County Attorney's Office
Aurora Hernandez	Human Resources
Mike Storie	Attorney for the Appellant
Lt. Joseph Cameron	Appellant
Captain Harold Janes	PCSD-Department Representative
Chief Byron Gwaltney	PCSD

ACTION: Mr. Fink Chairman, re-convened the Hearing at 9:03 a.m. The previous Commissioners present at the October 14, 2019 meeting returned.

Mr. Fink asked if there were any preliminary matters and there were none.

Mr. Storie continued his cross examination of Chief Gwaltney. He asked if Chief Gwaltney remembered being questioned by Mr. Jurkowitz regarding the targeting of Lt. Cameron. Chief Gwaltney replied he did not.

Mr. Storie asked about the Senior Staff Meetings. Chief Gwaltney explained Senior Staff meetings are held twice a month and all senior staff, Captains, Chiefs and Bureau Chiefs, and the Sheriff attend. and continued his testimony. Mr. Storie questioned if Chief Gwaltney remembers telling senior staff to shun and turn their back on Lt. Cameron. Chief Gwaltney stated no.

Mr. Storie continued his questioning as to whether or not he had said "Lt. Cameron shouldn't even be a Sargent much less a Lieutenant." Chief Gwaltney testified he did make that statement.

Mr. Storie continued questioning the witness on the demotion process and the difference between formal vs informal discipline. He explained informal discipline could consist of a Letter of Reprimand (LOR) and serious discipline would be a demotion, termination or suspension, a taking of some sort, usually pay.

When there is serious discipline what is the process? Chief Gwaltney stated it depended on the circumstances.

Mr. Storie continued his questioning regarding the general process of discipline. The first item in the process of an investigation, fact finding, by Internal Affairs (IA) and why this step was not followed, why this was not investigated by Internal Affairs.

Mr. Storie explained how important the process is. Mr. Jurkowitz objected as to relevance. Mr. Hellon and Mr. Fink agreed to allow the witness to continue regarding what is normal and abnormal about the process in this case.

Mr. Storie indicated this discipline was issued from the top of the chain of command. There was testimony that this process has been totally different from the usual process. He explained the general investigative process. First, investigation, fact finding, did he violate the rules, and was it excessive? Second, once there is a fact finding, what discipline is warranted?

Chief Gwaltney explained that process is for an Executive Review process for an IA Investigation and stated this case was not appropriate for IA. This was an employee behavior and performance issue, all the facts were known, and therefore there was no need for an IA investigation, interviewing anyone would not have changed anything, all the facts were known.

Chief Gwaltney explained when there is an employee performance issue the procedure depends on the circumstances. They review the entire circumstance. This case pertained to the LOR being out after he was ordered to take it down and the continued violation of the recording policies. An investigation was not needed it was simply up to the employee's Chain of Command to review the material and decide the discipline.

Chief Gwaltney stated the packet came from Chief Woolridge to him. He reviewed it then he handed it to Chief Stuckey, this was the Chain of Command. He did not make a recommendation for discipline.

Mr. Storie asked if this is normal for the issue to go from the bottom up or does it come down from the top.

Chief Gwaltney stated it depends on how the information developed. He said in this particular case, Chief Woolridge forwarded the memorandum that was the totality of the issues he was dealing with when Lt. Cameron was in his Chain of Command with Capt. Ponzio. Now Lt. Cameron was in a different Chain of Command reporting to Capt. Janes and Chief Stuckey. He gave the material to Chief Stuckey to forward to Capt. Janes for review and to make recommendations.

Mr. Hellon asked if Chief Woolridge is the person who saw the LOR out and is that why the memo came from the top down.

Chief Gwaltney stated in March when the original issue appeared it was handled informally in his Chain of Command; in October when it resurfaced it fell under Chief Stuckey's Chain of Command.

Mr. Hellon asked when it was referred down the Chain of Command to Capt. Stuckey, was it directly to him or through Chief Woolridge? Chief Gwaltney stated Chief Woolridge spoke with Sheriff Napier who instructed him it should go to the employee's current Chain of Command, Chief Gwaltney.

Mr. Storie asked about the "model" where discipline goes up the Chain with recommendations, and is that model still in place. Chief Gwaltney stated they never had a model that he was aware of, it has always been case by case.

Mr. Storie, asked if independent thought was discouraged.

Chief Gwaltney explained "when disciplinary recommendations are made Sheriff Napier expects them to go down to the supervisor level to make their recommendations. Their recommendations are independent and are not expected to be a group think or be in line with anything other than what they truly believe them to be. When those recommendations come back up each level of the Chain of Command they can be changed. They can aggravate or mitigate or go up or down and move entirely along the span. There is no process where they have to submit a particular recommendation. There could be discussions when the matter is grave enough or serious enough and based on what we know it to be. The Sheriff reinforced to each section, when a recommendation is made it is to be independent and heartfelt."

In the past the Captains and Chiefs made the decisions at the Executive Review and determine the discipline. Sheriff Napier changed the process. It now goes down to the supervisor of the employee involved for their input.

Mr. Hellon asked if this bypassed Chief Woolridge and went directly to Chief Stuckey. Chief Gwaltney stated Chief Woolridge was no longer in the Chain of Command. Chief Stuckey was the Chief and the direct supervisor was Capt. Janes.

Mr. Hellon asked why it did not go to Capt. Janes the direct supervisor. Chief Gwaltney explained because it goes down the Chain of Command. The Chief decides when and how to meet with the Captain.

Mr. Storie asked if this is the first time Chief Gwaltney heard Capt. Janes was pressured to come to a conclusion absent of his independent thought.

Chief Gwaltney replied, the pressure would be surprising, discussion/conversation is not unusual. He believed the Sheriff met with Capt. Janes at least once if not twice and reiterated that whatever the recommendation was it had to be his.

ACTION: Point of Order at 9:26 a.m. Mr. Fink was informed that Roll Call had been overlooked at the beginning of the hearing and asked for Roll Call at this time. (Attendees documented on the first page.)

Chief Gwaltney continued his testimony. Mr. Storie asked about previous progressive discipline, in the Notice of Suspension it refers to previous discipline, and the LOR is listed as one of the items for discipline, accounting for one of the days of the suspension.

Mr. Storied asked if Chief Gwaltney knew Lt. Cameron asked the LOR to be rescinded.

Mr. Jurkowitz objected based on relevance.

Mr. Fink stated the Sheriff, County employee vs. departmental employee has been visited and would not be discussed with this witness at this time. When the time comes the Commission will weigh and decided the issue. He asked Mr. Storie to continue.

Mr. Storie asked about the State Law regarding the Pre-Action Meetings and how Capt. Stephens was in charge of the meeting. He indicated the Captain operates under the State Law. Chief Gwaltney stated no, he is the Captain in charge of that meeting at that particular time. It is his meeting.

Chief Gwaltney stated the Captain has the right to cancel or reschedule, if the representative is being disruptive another representative can be called in, it is his meeting.

Mr. Hellon asked if Mr. Storie was going to introduce the statute. Mr. Storie indicated it was in Title 38 A.R.S. § 1104.

Mr. Storie asked if he knew Capt. Ponzio was being pressured to discipline Lt. Cameron. Chief Gwaltney stated no, but there was pressure on Capt. Ponzio to do his job. Mr. Storie had no other questions.

ACTION: Mr. Jurkowitz began his re-direct.

Mr. Jurkowitz asked Chief why it is important for Commanders to follow the rules. Chief Gwaltney stated they are held to a higher standard because they are management and in a leadership role, it's important for them to set an example for all the employees.

Mr. Jurkowitz stated the Sheriff cares about everyone's opinion. Everyone is allowed to make assessments of what discipline is to be issued. Then it is reassessed by the Chain of Command and the final decision is up to the Appointing Authority (Sheriff Napier), after weighing everyone's opinion. If Capt. Janes decided on an LOR and the Sheriff believed something more significant, the final decision is ultimately up to him.

Mr. Jurkowitz asked if it would have been a waste of time and resources to send this to IA. Chief Gwaltney stated yes, because there was nothing to investigate, the facts were clear; the LOR was out and clearly seen by Senior Staff, and the recordings were recorded and transcribed.

He asked the Chief if he modified recommendations as they came to him. Chief Gwaltney stated he did and believed the discipline was appropriate. Independent of anyone else's opinion.

Mr. Hellon questioned Chief Gwaltney that in his opinion Lt. Cameron should not be a Sergeant much less a Lieutenant, how did he become a Lieutenant?

Chief Gwaltney stated he had no control over those decisions. The comments made during the Senior Staff meeting are to be left in the staff meeting. These meetings are

intended to be open discussions about staff and other issues within the Sheriff's Department.

Mr. Fink went back to the LOR. It was on display in October and was asked to removed it. In March it reappeared, Capt. Ponzio told him to remove it and did not discipline him, it was a verbal.

Mr. Storie followed up by asking if it troubled him there is no documentation whatsoever about Chief Woolridge seeing the LOR out again.

Chief Gwaltney stated Capt. Ponzio had verified and communicated it to Chief Woolridge, who documented it in the 12-page memo. **EXHIBIT 15**, Chief Woolridge Memo dated 12/31/2018, Bates Nos. 1955-1965. (Previously admitted by Mr. Jurkowitz)

Chief Gwaltney read from Bates 1956, paragraph 3, beginning with "On Tuesday, October 9, 2018, I learned Lt. Cameron was again displaying the LOR on a table in his office."

Mr. Storie wanted to see where Chief Woolridge documented personally seeing the LOR, when, where, how. There was no documentation of him actually seeing it.

Mr. Hellon indicated it sounded to him that Chief Woolridge wasn't the person who saw it, it states "I learned". Chief Gwaltney stated it was a matter of writing style.

Mr. Jurkowitz continued his questioning. He asked when Capt. Ponzio was ordered to have Lt. Cameron remove it, did he (Chief Gwaltney) surmise Capt. Ponzio had been the one to see it out.

Chief Gwaltney stated yes, he had no doubt.

Mr. Fink asked if there was a copy of the Memo from Capt. Ponzio, he would like to see it. Mr. Jurkowitz stated there is a memo and would have it at the next hearing.

ACTION: Chief Gwaltney was excused and reminded of the invocation of the Rule by Mr. Corey.

Mr. Jurkowitz said this was his last witness, subject to rebuttal.

Mr. Fink asked if anything further before recessing to November 14, 2019 at 9:00 am.

Calendars were reviewed for setting future hearings. They agreed to hold January 13, 21, 22 and 23; February 5, 6, 10, 11, 18, 19, 25, 27.

Mr. Jurkowitz will call Sheriff Napier on November 14 and 15.

ACTION: Mr. Freund motioned to adjourn, Mr. Hellon second.

ACTION: Mr. Fink adjourned the meeting at 9:55 a.m. to reconvene November 14, 2019 at 9:00 a.m.

Minutes approved by /s/ Mike Hellon on September 21, 2020