



**PIMA COUNTY
MERIT SYSTEM COMMISSION
OPEN MEETING MINUTES OF JANUARY 3, 2020**

**Continuation of
Jennifer Moore v. Pima County Procurement Department**

Commission Members present were Mr. Fink, Chair; Mr. Freund and Mr. Rubin

Also Present Were

Barry Corey	Counsel for the Commission/Council
Mary Jo Furphy	Director, Pima County Procurement
Jennifer Moore	Appellant
Ana Wilber	Division Manager, Pima County Procurement
Dan Jurkowitz	Deputy County Attorney for the Respondent
Laureen Pew	Paralegal, Pima County Attorney's Office
Aurora Hernandez	MSC Recording Secretary

The Open Meeting of the Pima County Merit System Commission was called to order by John Fink, Chair, at 9:00 AM. Roll call was taken and there was a quorum present. All persons in attendance were asked to state their names for the record.

Ms. Moore provided a copy of a food product solicitation containing SBE language. She explained her understanding of the standard articles in the and Policy D 29.2. Ms. Moore wanted to show how she previously complied with the policy. Mr. Jurkowitz asked if it says anywhere the vendor is to fill out the paperwork even if it doesn't apply to them. Ms. Moore said no, but they always included the language under the last Procurement Director. They were previously required to keep reports on how many solicitations were SBE eligible. Mr. Jurkowitz asked if there was anything in the Procurement Procedure Section mandating inclusion of the language. She said no.

Mr. Fink stated Ms. Moore was advised by her supervisor in June of 2019 not to include SBE language and 2 months later she included the SBE language. He asked her how she would respond to that.

Ms. Moore stated the SBE language and the investment broker was an RFP. The documents given to her were a draft, there were several questions she had and needed clarification. She stated the RFP is different than an IFB as far as the SBE preference. She followed what she did in her last IFB, which was the food product solicitation. She felt the supervisor only meant to exclude SBE language from an RFP.

Respondent's Witness: Ms. Wilber was called to testify about the basis for which Ms. Moore claimed the language exclusion did not apply to an IFB.

Ms. Wilber told Ms. Moore the SBE language did not apply to the RFP and asked her to remove it. Her instructions to Ms. Moore at the time did not apply to a future IFB. She stated Ms. Moore has to understand procedures and rules as she is putting together solicitations.

Mr. Freund asked if there was something different about the IFB and RFP that would make the situation for not including the language different. Ms. Wilber said there's no distinction between the two solicitations, she has to follow policy.

Mr. Fink asked if the SBE language with regards to the dollar amount being under or over 500k pertained across the board. Ms. Wilber said yes.

Allegation #5

Ms. Moore testified the PowerPoint slide had been corrected prior to presentation by staff. She stated she used the BOS-AIR guidance to prepare the presentation.

Mr. Jurkowitz asked Ms. Moore if she was familiar with Pima County Procurement Code and Board of Supervisors Policies regarding procurement. Did she ever read through it? If she refers to it? If she encounters an issue she is unsure about? Ms. Moore answered yes.

Mr. Jurkowitz asked Ms. Moore if she would agree to say the County Administrator had award authority was completely erroneous. She did. Ms. Moore left that in the slide to show there was an extra step in the process.

ACTION: EXHIBIT #87, a more legible version of what is in exhibit 67, Bates 2580, was introduced by Mr. Jurkowitz and admitted with no objections.

ACTION: Exhibit A1, Slides Following the Slide in Exhibit 87 was introduced by Ms. Moore and admitted with a notation from Mr. Jurkowitz that the slides were changed.

Mr. Fink asked Ms. Moore to explain why on a slide that has a heading of Who Can Award? She listed three, two who can award, but the County Administrator who cannot. Ms. Moore said it was for illustration purposes for a direct select, you must obtain the County Administrator's approval. Ms. Moore stated this was just a PowerPoint and included discussion of the Board Policy D29-6.

Allegation #6

Ms. Moore said she would not consider this typo a critical error because the contract number was on the first page, it included a copy of the contract which had the correct contract number on it. There are situations where typos are in BOS-AIR packets that go to the Board. Ms. Moore stated she thought the Buyer Senior mixed up papers.

Mr. Jurkowitz asked Ms. Moore if the Clerk relied on the information and put the contract under that contract number but the contract actually had a different number, would people be able to look it up online? Ms. Moore said there could be an issue.

Mr. Jurkowitz asked Ms. Moore if she subscribed to what other Procurement Officers testified, the Buyers are there to assist the Procurement Officers but the Procurement Officer is ultimately responsible for the work product?

Ms. Moore said the Buyers are to provide professional level support and they are responsible for certain tasks and performing their work. She said after it leaves her hands and she is not aware of what is happening then she is not directly responsible.

Allegation #7

Ms. Moore said she didn't add a scope to Exhibit 62.

Mr. Jurkowitz referenced Exhibit 62, stating the first thing that happened was Ms. Moore tried to comply with the issues of the Department by amending the scope of an unrelated contract to include the same language. Isn't that what happened? Ms. Moore said no.

Mr. Jurkowitz said according to Ms. Furphy, it's not appropriate to amend a Master Agreement to add an entirely different Scope of Services. He asked Ms. Moore if she was saying that's not what happened? She stated it was the same Scope of Services.

Allegation #8

Ms. Moore testified when working on an RFP, they ask the Department to establish an Evaluation Committee at the onset, but sometimes things change and they add committee members later and process paperwork at different times. She stated this was the first time it was brought to her attention. Ms. Moore stated she was currently working on several and this time she would not accept an RFP packet unless the paperwork is done.

Allegation #9

Ms. Moore stated she thought this was discussed at length and she had nothing to add.

ACTION: Recessed for 10-minute break at 10:31 AM and reconvened at 10:41 AM.

Allegation #10

Ms. Moore stated typically past due requisitions are accounted for on year end in relationship to the total number of solicitations conducted. She believed her last performance appraisal was a 90% overall for the entire year.

Allegation # 11

Ms. Moore stated the Buyer Senior had an approved packet to process for further signature and somehow things got bungled. Mr. Fink asked Ms. Moore if she took no responsibility for it. Ms. Moore explained when she gives a packet to the Buyer Senior, she expects that person to provide professional service in processing the packet. It is one of their main responsibilities. She stated she is not involved and aware in every step of the process.

Mr. Jurkowitz asked if she signed off on the packet when it was given to the Buyer Senior. Ms. Moore answered she believed so. The packet was approved by her, the Division Manager and the Procurement Director.

Allegation #12

Ms. Moore testified she provided instruction to the Buyer to process and also gave him a copy of the procedure in which to follow. She stated if a Buyer performs a task and she's not aware of it, there is nothing she can do at that particular time to determine whether or not there was a mistake. She became aware of the mistake via email.

Allegation #13

Ms. Moore said she is not responsible for adding descriptions to commodity codes or adding commodity codes into the system in the descriptions. The second part using the term vendor instead of discount or free form lines, leaving old comments on requisition notes and approving requisitions with incorrect descriptions. She stated there is no policy or procedure on how to create free form lines. Ms. Moore stated the problems were due to OccMed not being under Risk management and the new person was unfamiliar with the free form lines. She stated she does not check every commodity line as it is the Buyer Senior responsibility to create and alter commodity lines.

Allegation #14

Ms. Moore stated she did not change the unit price in the tabulation.

Allegation #15

Ms. Moore stated changes and upgrades were made to the system and they were in the process of changing how they complete NORFAs, Notice of Recommendation For Award. Once it was brought to her attention, it was corrected.

Allegation #16

Ms. Moore stated corrections were requested and corrections were made.

Allegation #17

Ms. Moore testified the packet was given to Ana for review and approval. The corrections were made and processed. It was after the fact that she was notified when working on a contract it must have all signatures. Ms. Moore said the packet was given directly to James by Ms. Wilber.

Allegation #18

Mr. Fink asked Ms. Moore if she agreed there were numerous formatting errors. She stated there were typos.

Allegation #19

Ms. Moore stated she believed this to have been discussed and included in number 13.

Allegation #20

Ms. Moore stated she believed this was discussed and included in number 13.

Allegation #21

Ms. Moore stated there was no note in the file that a notification had been sent out. She doesn't follow up on every single action performed by a Buyer Senior.

Allegation #22

Ms. Moore testified she has no control over vendors complaining.

ACTION: Commission recessed for break at 11:27 AM and returned at 11:32 AM.

Ms. Moore and Mr. Jurkowitz had nothing additional. Mr. Fink asked the Commission if they had questions for Ms. Moore.

Mr. Rubin asked Ms. Moore what went on during the Special Observation Periods.

Ms. Moore stated Ana would request a meeting, she would come in with a list of issues, she would note those issues. Sometimes Ms. Moore was allowed to discuss. She testified there was no special training during that time. She was only told what she did wrong.

Mr. Fink asked if she was informed of the areas that needed improvement over the 3-month period. Exhibit #10 previously admitted. Ms. Moore said she was to consistently perform her job

duties, understand the Procurement Code and Policies, follow proper procedure during the solicitation process, communicate project issues, update project status, follow Administration Procedure 22-16 time worked, promptly report mistakes or potential issues to manager, perform a full day's work in an efficient and professional manner. Ms. Moore stated Ms. Wilber nit-picked everything she did.

Mr. Fink asked Ms. Moore if she took issue with the three areas in the evaluation marked inconsistent. She stated she performs her work consistent with other POs.

Mr. Fink asked Ms. Moore what she thought was going on. She described Ms. Wilber telling her no one liked her. When Ms. Wilber became her manager she told her they were going to have issues. Ms. Wilber later apologized saying she had come on too strong. Ms. Moore believes Ms. Furphy doesn't like and doesn't appreciate her. She believes Ms. Furphy and Ms. Wilber are taking steps to get rid of her.

Mr. Rubin asked if she was evaluated weekly. She stated there were periods where they did not meet or have weekly meetings.

Mr. Fink asked if she requested a meeting with her supervisor during the Special Observation Period. Ms. Moore said it was not her responsibility.

Mr. Freund asked if she thought the Buyer Senior should have been disciplined for the things she said they did. She stated the Buyer Senior needs to be evaluated on the quality of their work.

Mr. Freund asked if she went to the supervisors for the Buyer Seniors to tell them James was not doing his job right. She stated Ms. Page and Ms. Wilber were involved. Ms. Wilber told her she was responsible for him not performing. Ms. Wilber reassigned Mr. Johnson to Ms. Page and Ms. Waldo for additional training.

Mr. Fink asked if she brought her concerns about Mr. Johnson to her supervisor. She did not inform her supervisor of the issues with her current Buyer Senior.

Mr. Fink asked what she thinks changed being that her evaluations showed her performing adequately from 2014 to 2017. She stated it was the way management performs and what they review.

Mr. Freund asked if Ms. Furphy and Ms. Wilber were put in their positions in 2015.

Ms. Wilber stated she had been Ms. Moore's supervisor since August of 2016.

Mr. Fink asked Ms. Moore to explain what changed in this past year or so. She stated management started looking at different things to account for. Her last performance appraisal, everything was satisfactory. She stated she just doesn't fit in and Ms. Furphy wants to get rid of her. She thinks management and the Procurement Director are micromanagers and have to control everything. She said her clients are pleased with her work overall.

Mr. Fink asked Ms. Moore if she would like to decide whether or not she was ready to rest her case over the lunch break and she stated she would.

ACTION: Hearing recessed for lunch at 12:10 PM and reconvened at 1:13 PM.

Ms. Moore rested her case.

Mr. Jurkowitz called Ms. Wilber back. Mr. Jurkowitz asked Ms. Wilber to explain what the issue was with the freeform lines from Allegation 13, why that was important. She explained free form lines are created for an end user to purchase against a contract when there is no commodity line for that item. Ms. Moore created a different description instead of a free from line. Ms. Wilber stated the department needs the free form line to order something that is not listed in the contract. If it is not there, they don't know what to do next. Ms. Wilber testified this should be a basic understanding of Procurement Officers.

Mr. Jurkowitz asked if she addressed Ms. Moore's interaction with her Buyer Senior and specifically whose responsibility is what? Ms. Wilber stated as two POs testified, Ms. Page and Ms. Canizales, POs are held accountable for the work they produce. Contracts are the responsibility of the POs. The Buyer Senior is there to assist them to do those processes. To file paperwork, to route paperwork for signatures. The quality of work they produce is to be reviewed because everything is reviewed by the Procurement Officer. The BOS-AIR document, they may draft it, but the Procurement Officer signs it and reviews their work. It's the same for everything.

Ms. Wilber described the strained working relationships Ms. Moore has with several of her Buyer Seniors.

Mr. Jurkowitz asked Ms. Wilber what the motivation for the Special Observation Period was.

Ms. Wilber said she expects everyone in her department to perform and to produce quality work. She helps and trains whoever needs help. Ms. Moore is not the only person that had to be re-trained and has issues with work. Ms. Moore's claim that she is being targeted is untrue.

Mr. Fink asked if she had been given any direction from Ms. Furphy in regards to Ms. Moore. Anything about having a personal vendetta against Ms. Moore. Ms. Wilber said no.

Mr. Jurkowitz asked if the frustration was that she gives direction to Ms. Moore and then it's not followed again immediately afterwards. Ms. Wilber described her meetings with Ms. Moore during the Special Observation Period. She said Ms. Moore would shut down and not respond or she would blame everything on her Buyer Senior. She said Ms. Moore would say that's the way she'd done it and it is what it is.

Mr. Freund asked her to characterize Ms. Moore's workload during the Special Observation Period. Ms. Wilber stated it decreased. She explained she reassigned much of Ms. Moore's work to other POs, but the errors kept happening even with the decreased workload.

Mr. Freund asked about Ms. Wilber's expectations of Procurement Officers and Buyer Seniors. She stated she expects Ms. Moore to look at the policy when drafting a new template and pick what is applicable rather than dumping all the language as it relates to SBE in there.

Mr. Fink asked if Ms. Moore had used her as a resource in the past. Ms. Wilber said she did not prior to the Special Observation Period. When put on the Special Observation Period she improved. Ms. Wilber saw it as a positive sign that Ms. Moore would come to her for advice on issues. She stated the Special Observation Period is to help the employee improve performance.

Mr. Rubin asked how she helped Ms. Moore improve her performance. She described inviting Ms. Moore to sit across from her and explain what was happening. Ms. Wilber said she helped wherever she could as long as she was able to have communication with her.

Mr. Rubin asked why they decided to suspend Ms. Moore on September 19th when the Special

Observation Period had ended in August. Ms. Wilber stated she brought up the issue to the Procurement Director. She explained to Ms. Furphy, she could not rate Ms. Moore successful on her Special Observation Period performance appraisal. It took that long because the Procurement Director, herself and another Division Manager worked with Human Resources to figure out what do.

Ms. Wilber testified Human Resources recommended a three-day suspension for Ms. Moore as she hadn't successfully passed her Special Observation Period. She explained it was the Procurement Director's decision to suspend. It was Ms. Wilber's ratings of Ms. Moore that caused her to be suspended.

Mr. Freund asked, since you and Ms. Furphy seemed to have not gone through a suspension before because you didn't know what to do at that point. I'm guessing that at least as long as you and Ms. Furphy have been there that no one else has ever actually had a suspension meted out as a discipline? Ms. Wilber stated no.

Mr. Fink asked, regardless of the outcome of this appeal, what she foresaw transpiring with Ms. Moore in the future. Ms. Wilber said she really didn't know how to answer that question. She has given Ms. Moore two projects and she did not meet the deadlines. She stated she did not have trust in Ms. Moore. She was not working well with the other Procurement Officers.

Ms. Moore began her cross examination.

Ms. Wilber testified Ms. Moore had been involved preparing for the hearing and been out on vacation since being given those two projects.

Ms. Moore asked her what people were saying about her and why they couldn't work with her. Ms. Wilber explained Ms. Moore coming up with her own processes which are different from how people are being trained.

Ms. Moore had no further questions. Mr. Jurkowitz had none.

Mr. Rubin asked if Ms. Waldo's testimony that 95% of errors had to be sent back to the Buyer Senior and 30% of those errors were critical, was that accurate? Ms. Wilber stated no. Ms. Waldo had recently started to review the folders to gain an understanding of where the Buyers needed to be trained. The error rate applied only to BOS-AIRs.

ACTION: Hearing recessed for a five-minute break at 2:03 PM and reconvened at 2:08 PM.

Mr. Jurkowitz introduced an affidavit from Paul Robles in regards to Ms. Moore's testimony.

Initial copy was given to Mr. Corey to review and advise the Commission. Mr. Corey stated the Commission can't admit hearsay evidence, but the Commission can consider it, but the weight they give it is up to the Commission as Ms. Moore cannot cross examine.

ACTION: Exhibit #88, Affidavit from Mr. Paul Robles was introduced by Mr. Jurkowitz and admitted without objection.

Mr. Jurkowitz rests.

Mr. Corey stated Ms. Moore should have the opportunity to testify in regards to the affidavit.

Ms. Moore said she stands firm that she directed Mr. Robles to discuss it with Ms. Wilber and the Director at the next managers meeting. She did not direct him to submit the requisition.

Mr. Freund asked if the rules and procedures were changing more often now than in the past.

Ms. Moore stated some of her exhibits show just how often templates and directions given are changed.

CLOSING ARGUMENTS

Mr. Jurkowitz stated other Merit hearings pertained to policy violations and this is hearing pertains to Ms. Moore's work performance. Her work performance is not up to the standards management expects from someone of her knowledge and experience. They are going through progressive discipline to improve her work performance. They issued a Letter of Reprimand in 2018 and the next step would be suspension but they chose a Special Observation Period for six months. This would be her opportunity to improve but it was unsuccessful. The Department moved forward with suspension and is the appropriate action for the Department.

Ms. Moore believes the errors listed in the allegations are routinely committed by other Procurement Officers. The standards should be consistently applied to all Procurement Officers, regardless of length of service in the department and should apply to those who are in the same classification. She believes her performance is good and the performance appraisals are inconsistent. It doesn't lead to incompetency or not satisfactorily performing.

Mr. Jurkowitz stated Ms. Moore points finger to others, i.e. Ms. Wilbur, Mr. Johnson, and other Procurement Officers. There is no insight for her owning the responsibilities of the position and being accountable for her work product. Ms. Waldo testified the buck stops at the Procurement Officer. It's your contract and your procurement process, you own it.

Ms. Moore stated she doesn't believe she has done anything wrong. Previous Management in 2014 graded her work habits as unacceptable by exceeding her award authority regarding the premature exercise of annual renewals, did not follow department NORFA procedure, department practice regarding multiple supplier awards, and award deviated from the published solicitation. This is not new, it's a long standing issue.

Mr. Robles testified there's procedures and there's your way of doing things. It's not new policies being implemented every other week and she can't keep up with them. It's the way she's been doing things and she's not changing.

ACTION: Hearing recessed for a break at 2:43 PM and reconvened at 2:55 PM.

Mr. Freund asked Mr. Corey if the 22 allegations prove what the Department alleged. If so, is this an all or nothing proposition.

Mr. Corey stated no, not necessarily. The Commission could decide if some of the 22 allegations were established by predominance of the evidence. Then decide whether or not those constitute just cause for some or all of the disciplinary action imposed.

Mr. Freund stated the Department established the errors alleged did happen. Some of the errors were serious critical issues that had to be addressed and resolved.

Mr. Rubin divided the issued into categories:

- Buyer Senior issues such as typing errors and formatting.
- How to deal with a contract. Ms. Moore thought it should be done one way and Management thought it should be done another way.
- A couple of allegations did not have any merit. Allegation 10 indicated Ms. Moore was late submitting. She was late on three of the things. Something was noted on one page and there were no other pages. It was difficult to conclude that was a valid issue. Allegation 20 was about past comments being left in. It took a week before anyone could explain why it had to be retyped when it was already in the document.

Mr. Rubin stated some discipline is appropriate but did not support the 3-day suspension. He thought a written warning would be sufficient and is open to discuss with the other Commissioners.

Mr. Fink did not want to review each allegation individually. He said four of the allegations reference typing errors and those could be disregarded because we all make typing errors. Critical typing errors are different and those have merit. The critical typing errors were included in the allegations and should not have occurred.

He did not give merit to allegations 10, 20, and 22.

- In allegation 10 the supervisor logged three past due requisitions and provided reference numbers. There was no documentation for him to make a determination if Ms. Moore was out of line with other Procurement Officers.
- Allegation 20, comments were left in the RQM that were no longer applicable. There wasn't sufficient evidence to make a determination.
- Allegation 22 was a complaint from a vendor and pertained to the interpretation of the contract. He asked Ms. Wilbur her interpretation and it was similar to his interpretation. The vendor could have interpreted it proper way and he didn't think that was a violation either.

Mr. Fink thought suspension was the next proper step and he was not open to anything less than suspension without pay. He was open to discuss the number of days to be applied to the suspension.

Mr. Rubin stated he would agree to a one-day suspension.

FOR THE RECORD: Mr. Corey said Disciplinary Action does not include written warnings. There is a Letter of Reprimand which is considered formal discipline or there could be verbal counseling or Letter of Counseling which...

In reference to the number of days for suspension, Mr. Freund would be willing to go with two-days. Mr. Fink initially thought three-days was sufficient but compromised with two-days. Mr. Rubin wanted one-day. Mr. Fink informed Mr. Rubin that was his prerogative with no hard feelings. He asked if anyone wished to make a Motion.

ACTION: Mr. Freund made the following motion: Mr. Chair, I would move that the Commission find that the appellant, Jennifer Moore, knew or should have known that her conduct could have resulted in disciplinary action, that the appeal of Jennifer Moore be sustained as to the discipline

imposed and the discipline be modified from a 3-day suspension to a period of 2-day suspension without pay for the reason that while there was evidence that the employee engaged in improper conduct and there was evidence to support the imposition of some disciplinary action. The Appointing Authority failed to establish there was just cause for the action imposed and that the one-day change be compensated.

Fink: I will **second the motion** All in favor? Any further discussion?

Roll Call Vote Mr. Fink Aye, Mr. Freund Aye, Mr. Rubin No

Motion Passes 2-1

Mr. Freund motioned to adjourn. Mr. Rubin seconded.

MOTION TO ADJOURN: Passed unanimously

ACTION: Commission adjourned the hearing at 3:30 PM

/s/ Mike Hellon
Mike Hellon, Chair

September 14, 2021

Minutes approved on September 14, 2021