



**PIMA COUNTY
MERIT SYSTEM COMMISSION
OPEN MEETING MINUTES OF NOVEMBER 29, 2021**

Commission Members Present:
Mike Hellon, Chair
David Freund, Vice Chair
Sami Hamed

All persons in attendance were asked to state their names for the record.

Paul Loucks	Counsel for the Commission
Bryson Buckley	Deputy County Attorney for the Respondent
Ellen Brown	Deputy County Attorney for the Respondent
Jonathan Hildebrand	Paralegal, Pima County Attorney's Office
Lisa Josker	Director of Facilities Management
Merle Joy Turchik	Attorney for Appellant
Daniel Waters	Appellant
Trina Bergen	Recording Secretary

The Open Meeting of the Pima County Merit System Commission was called to order by Mr. Hellon, Chair, at 1:00 p.m. All persons in attendance were asked to state their names for the record.

Item D Appeal Hearing

Allen Dew v. Pima County Public Library – Withdrawal
(Appealing Suspension without Pay)

Mr. Hellon stated Allen Dew submitted a withdrawal in accordance with the rules of the Pima County Merit System.

ACTION: Mr. Hamed moved to accept the withdrawal and Mr. Freund second the motion. Motion passed unanimously.

Daniel Waters v. Pima County Facilities Management
(Appealing Suspension without Pay and Dismissal)

Mr. Hellon stated the two actions were consolidated into one. Mr. Hellon read the opening statement into the record. He asked if either party wished to invoke the Rule of Privilege. The Rule of Privilege was invoked by Ms. Turchik, Council for the Appellant.

Witnesses Lisa Josker, Facilities Management, and Cindy Madrid, Employment Rights, were sworn in by Mr. Loucks and informed to the Rule of Privilege. Ms. Madrid was excused and will be called at a later time.

Mr. Hellon asked if either side any objections to the Exhibits? Ms. Brown has objection. She received an amended the list of exhibits that added several more exhibits on Tuesday afternoon and she has not had the opportunity to review them all and list her objections. She will review them this evening. Mr. Hellon asks Ms. Turchik if she had any objections to the Respondents exhibits. Ms. Turchik stated she had an objection to Exhibit 30, Waters Merit Appeal Timeline, because it is incomplete.

Mr. Hellon admitted the Respondent's Exhibits 1-58, excluding Exhibit 30 as it is an incomplete time line. Any objection to an Exhibit will be reviewed and decided at that time. The Appellant's Exhibits will be reviewed and decision made when presented.

Exhibit #	Exhibit Name
1.	Pima County Merit System Appel Form dated Sept. 3, 2021; Admitted without objection.
2.	Pima County Merit System Appel Form dated Sept. 17, 2021; Admitted without objection.
3.	Pima County Merit Rule 12.1 C - Disciplinary and other Personnel Actions; Admitted without objection.
4.	Pima County Personnel Policy 8-110 - Rules of Conduct; Admitted without objection.
5.	Pima County Administrative Procedure 12-9 - Employee Assistance Program (EAP), revised 12/06/2019; Admitted without objection.
6.	Pima County Administrative Procedure 12-9 - Employee Assistance Program (EAP), revised 07/01/2021; Admitted without objection.
7.	Notice of Dismissal, dated September 14, 2021; Bates Pima County #007-009; Admitted without objection.
8.	Employee's Rights to an Appeal Form, dated September 14, 2021; Bates Pima County #060; Admitted without objection.
9.	Notice of Intent to Dismiss and Pre-Action Meeting, dated September 2, 2021; Bates Pima County #028-030; Admitted without objection.
10.	Letter, Formal Response: To Letter of Intent to Dismiss, From: Daniel Waters, To: Lisa Josker, Director Facilities Management, dated September 9, 2021; Bates Pima County #012-014; Admitted without objection.
11.	Notice of Suspension, Dated August 24, 2021; Bates Pima County #039-043; Admitted without objection.
12.	Email from Human Resources to Debra Mulvey, Lisa Josker and Jason Parrish, dated August 17, 2021; Bates Pima County #187; Admitted without objection.
13.	Notice of Intent to Suspend and Pre-Action Meeting, dated July 30, 2021; Bates Pima County #054-056; Admitted without objection.
14.	Pima County Employee Grievance Form, dated September 2, 2021; Bates Pima County #031-033; Admitted without objection.
15.	Letter of Reprimand, dated July 26, 2021; Bates Pima County #050-051; Admitted without objection.
16.	Pima County Grievance Form, dated August 2, 2021; Bates Pima County #046-048; Admitted without objection.
17.	Appointing Authority Response to Grievance, dated August 9, 2021; Bates Pima County #052-053; Admitted without objection.

Exhibit #	Exhibit Name (continued)
18.	Notice of Right to Representation, dated July 19, 2021; Bates Pima County #061; Admitted without objection.
19.	Letter of Counseling, dated July 12, 2021; Bates Pima County #067-069; Admitted without objection.
20.	Response to Letter of Counseling from Daniel Waters, dated July 13, 2021; Bates Pima County #070; Admitted without objection.
21.	Exit Interview Survey and Notes, dated September 17, 2021; Bates Pima County #307-308; Admitted without objection.
22.	Management Referral Form/Authorization for Release of Information, dated August 23, 2021; Bates Pima County #182; Admitted without objection.
23.	Management Referral Form/Authorization for Release of Information, dated August 9, 2021; Bates Pima County #190; Admitted without objection.
24.	Management Referral Form/Authorization for Release of Information, dated July 26, 2021; Bates Pima County #060; Admitted without objection.
25.	Management Referral Form/Authorization for Release of Information, dated July 16, 2021; Bates Pima County #066; Admitted without objection.
26.	Management Referral Form/Authorization for Release of Information, dated July 9, 2021; Bates Pima County #207; Admitted without objection.
27.	Management Referral Form/Authorization for Release of Information, dated February 26, 2021; Bates Pima County #279; Admitted without objection.
28.	Pima County Confirmation of Attendance Form, dated May 5, 2021; Bates Pima County #004; Admitted without objection.
29.	Daniel Waters Policy Acknowledgement 8-119, Rules of Conduct, and C-2.1, Workplace Ethics Conduct and Compliance, dated February 8, 2018; Bates Pima County #522; Admitted without objection.
30.	Waters Merit Appeal Timeline; Bates Pima County #119-1200; Admitted with objection.
31.	Facilities Management Organizational Chart 2021-022; Bates Pima County #1198; Admitted without objection.
32.	Email chain, Subject: Daniel Waters, dated February 23, 2021; Bates Pima County #280-282; Admitted without objection.
33.	Email chain, Subject: Daniel Waters, dated November 13-16, 2020; Bates Pima County #284-287; Admitted without objection.
34.	Email chain, Subject Daniel Waters Schedule, dated October 21, 2020-November 2, 2020; Bates Pima County #288-290; Admitted without objection.
35.	Email chain, Subject Daniel Waters Schedule, dated October 14 2021, 2020; Bates Pima County #291; Admitted without objection.

Exhibit #	Exhibit Name (continued)
36.	Email chain, Subject Daniel Waters Schedule, dates October 14-16, 2020; Bates Pima County #292-293; Admitted without objection.
37.	Notes from Dismissal Meeting taken by Debra Mulvey, dated September 9, 2021; Bates Pima County #302; Admitted without objection.
38.	Notes from Pre-Action Meeting taken by Debra Mulvey, dated September 9, 2021; Bates Pima County #303-304; Admitted without objection.
39.	Notes from meeting to deliver Notice of Suspension taken by Debra Mulvey, dated August 24, 2021; Bates Pima County #045; Admitted without objection.
40.	Notes from Debra Mulvey, dated July 19, 2021; Bates Pima County #062; Admitted without objection.
41.	Handwritten Notes, taken by Debra Mulvey, dated April 6, 2021; Bates Pima County #294; Admitted without objection.
42.	Department Personnel Representative Notes taken by Debra Mulvey, various dates; Bates Pima County #165-170; Admitted without objection.
43.	Handwritten notes regarding Timeline in DPR Notes taken by Debra Mulvey; Bates Pima County #177-178; Admitted without objection.
44.	Memorandum - Final Decision Administrative Investigation 21X-52 Daniel Waters, signed by C.H. Huckleberry dated June 4, 2021; Bates Pima County #001; Admitted without objection.
45.	Letter, from HR Director, Cathy Bohland, to Facilities Management Director, Lisa Josker, Re: Administrative Investigation 21X-52, dated June 4, 2021; Bates Pima County #002; Admitted without objection.
46.	Administrative Investigation Report 21X-52, dated June 4, 2021; Bates Pima County #859-882; Admitted without objection.
47.	Exhibits for Administrative Investigation Report 21X-52; Bates Pima County #1064-1182; Admitted without objection.
47-1.	Waters Documentation to include EAP Referral and Emails; Bates Pima County #1064-1102; Admitted without objection.
47-2.	Mulvey Notes from Waters meeting with Josker; Bates Pima County #1103-1105; Admitted without objection.
47-3.	Emails between Waters and Josker; Bates Pima County #1106-1115; Admitted without objection.
47-4.	Mulvey Notes from HR Conversation; Bates Pima County #1116-1119; Admitted without objection.
47-5.	Jerry Orta Schedule for Waters; Bates Pima County #1120-1163; Admitted without objection.
47-6.	Moran Email and Daily log; Bates Pima County #1137-1139; Admitted without objection.

Exhibit #	Exhibit Name (continued)
47-7.	Email Re: Daniel Waters - Daughter School Update; Bates Pima County #1140-1147; Admitted without objection.
47-8.	Email Re: Initial Complaint from Daniel Waters; Bates Pima County #1148-1150; Admitted without objection.
47-9.	Email Re: EFMLA; Bates Pima County #1151-1152; Admitted without objection.
47-10	Email re: Doreen Press; Bates Pima County #1153-1154; Admitted without objection.
47-11	Complete Interviews; Bates Pima County #1155-1182; Admitted without objection.
48.	Notice of Complaint from the Industrial Commission of Arizona, Division of Occupational Safety and Health, dated September 20, 2021; Bates Pima County #1052-1054; Admitted without objection.
49.	ADOSH Report; Bates Pima County #0636-0645; Admitted without objection.
50.	Email from Lisa Josker to Human Resources, dated April 16-22, 2021; Bates Pima County #447-448; Admitted without objection.
51.	Email Chain, Subject: Continuation of EAP Referral Issued dated June 16-22, 2021; Bates Pima County #360-362; Admitted without objection.
52.	Email chain, Subject: EAP-Daniel Waters, dated April 22, 2021; Bates Pima County #387-388; Admitted without objection.
53.	Email chain subject: EAP Daniel Waters-Daughters school updated, dated April 22, 2021; Bates Pima County #404; Admitted without objection.
54.	Email chain, Subject: Daniel Waters Schedule, dated November 2-16, 2020; Bates Pima County #782-783; Admitted without objection.
55.	Email chain, Subject: Yard Wall, dated August 16-17, 2021; Bates Pima County #192; Admitted without objection.
56.	Email chain, Subject Daniel Waters, dated April 28, 2021 - May 3, 2021; Bates Pima County #223-224; Admitted without objection.
57.	Email chain, Subject: Mandatory Referral, dated July 22,2021 - August 5, 2021; Bates Pima County #163; Admitted without objection.
58.	Maintenance Ops Manager Notes, June 16, 2021 Re: Refusal to do work on June 15, 2021; Bates Pima County #163; Admitted without objection.

Ms. Turchik stated a Discovery package pertaining to this hearing was delivered to her office at 12:15p while she was here. She did not have an opportunity to review the documents prior to the hearing. She asked to be allowed to re-cross the Respondent's witness for day. She will review the documents this evening. Mr. Hellon agreed.

Mr. Hellon stated it was time for opening statements. Ellen Brown, Deputy County Attorney, made an opening statement. Merle Joy Turchik, Attorney for the Appellant, made an opening statement.

Respondent's First Witness: Ms. Brown called Lisa Josker, Director of Facilities Management for Pima County. She provided a brief employment history and provided testimony in this hearing.

The Commission recessed for a break at 2:49 p.m. and reconvened at 2:57 p.m.

Respondent's First Witness: Ms. Brown continued questioning Ms. Josker and completed her examination.

Respondent's First Witness: Ms. Turchik began her cross-examination. Ms. Josker continued to provide testimony in this hearing.

Ms. Turchik completed her cross-examination. Ms. Brown requested to re-direct. The Commissioners agreed to recess for the day and continue on Wednesday, December 1, 2021 at 9:00 a.m.

Mr. Hellon recessed the hearing at 4:20 p.m.

The minutes were prepared by the Recording Secretary. Minutes approved on May 25, 2022.

/s/ Mike Hellon, Chair