
INVESTIGATION REPORT

City of Pensacola, Florida COMPLAINT INVESTIGATION

Issue(s):

Alleged Hostile Work Environment and Retaliation For Protected Reports of Harassment

I. PROCEDURAL BACKGROUND

This report documents a complaint investigation initiated by and conducted on behalf of the City of Pensacola, Florida, hereafter referred to as the City.

- A. On 23 May 2018, the Keith Wilkins, City Assistant Administrator, requested the investigation by a third party HR professional of a hostile work environment complaint filed on 3 May 2018 (Exhibit 1) along with the previous complaint filed 23 March 2018 (Exhibit 2). The complainant was filed by Ms. Laurie Byrne, Asst Constituent Services, Office of the Mayor, City of Pensacola, FL. Ms. Byrne alleged Hostile Work Environment and Retaliation by the City Administrator, Eric Olson. Ms. Byrne also complained about the length of time involved in getting this matter resolved.
- B. A similar charge had been previously filed by Ms. Latasha Buchanan, Constituent Services Administrator, Office of the Mayor, City of Pensacola, on 23 March 2018, also alleging Hostile Work Environment and Retaliation in the same office by Mr. Olson. That charge was filed with the City's HR-EEO and the EEOC.
- C. The complaint investigation was conducted in accordance with City of Pensacola Policy 413.0, Discrimination, Sexual Harassment, Retaliation and Other Inappropriate Behavior Policy (Attachment 1). An experienced HR professional with an extensive public sector background ranging over forty years in HR and EEO, Mr. Roderick Powell, SHRM-SCP, principle of Powell HR Consulting, was selected as the investigator. A copy of his resume is attached (Attachment 2). The investigation commenced on 11 June 2018.
- D. During the week of 11 June 2018, witness interviews were conducted on site by the investigator and pertinent records were received and reviewed through 28 June 2018.

II. INVESTIGATION RECORDS

The investigation records are cited and discussed in Exhibits and Attachments below:

- A. The EEOC Charge of Discrimination, EEO Form 5(11/09) was filed by Ms. Latasha Buchanan against the City of Pensacola, FL, on or about 4 June 2018. Ms. Buchanan alleged that her supervisor, Mr. Eric Olson, City Administrator, is responsible for the existence of a Hostile Work Environment and Retaliation in violation of Title VII, The CRA (Exhibit 3).

B. An investigative review of the EEOC charges was conducted by HR-EEO, Ms. Tracy Walsh, on 23 March 2018 with Ms. Latasha Buchanan and a copy of the Investigative Summary addressing the issues and allegations is attached (Exhibit 2).

C. On 3 March 2018, Ms. Laurie Byrne filed an EEO Complaint (internally) with the City's HR- EEO representative, Ms. Tracy Walsh. The charge of Hostile Work Environment, as previously filed by her supervisor Ms. Latasha Buchanan, was reiterated by Ms. Byrne and a claim of Reprisal based on the fact that she supported her supervisor's previous claims against the City Administrator, Mr. Eric Olson. An additional interview was conducted by EEO, Ms. Tracy Walsh with Ms. Latasha Buchanan on 8 May 2018 to gain additional insights about the concerns expressed by Ms. Byrne. A copy of the Investigative Summary is at Exhibit 1 and Exhibit 4.

D. On 11 June 2018, Ms. Latasha Buchanan was interviewed by the investigator from approximately 1:30-3:30 pm. Ms. Byrne was asked point by point about her allegations and the reasons she believed she was working in a hostile work environment and was now being subjected to retaliation. A copy of the hand written notes from the meeting are at Exhibit 5. Issues raised and conclusions will be addressed in the allegations section.

D. On 12 June 2018, Ms. Laurie Byrne was interviewed by the investigator from approximately 10:00-12:00 noon. Ms. Byrne was asked point by point about her allegations and the reasons she believed she was working in a hostile work environment and was being subjected to retaliation. A copy of the hand written notes from the meeting are at Exhibit 6. Specific issues will be addressed along with conclusions in the allegations section.

E. On 12 June 2018, Ms. Tess Dorilio, Executive Aide to the Mayor, City of Pensacola, was interviewed from approximately 12:00 until 1:15 pm. While Ms. Dorilio is not a charging party nor is she the part of any allegations, she works very closely with the City Administrator's staff and has very useful knowledge regarding work environment and insights into the interpersonal relationships between all the parties involved. In general, Ms. Dorilio believes that Ms. Barr is "protected" by Mr. Olson and is given great latitude in her work and time schedule. Stated that Beth is "not nice" to her, Latasha, or Laurie but Mr. Olson is very nice to Beth. She has not seen or heard anything in office that would indicate why he protects Beth. Mr. Olson also treats Tess poorly, treats her rudely when she requests time off, and tries to monopolize her work time, especially when the Mayor is away from the office. Tess believes that Mr. Olson "did retaliate against Laurie" by cancelling her training course, implementing a new time keeping system, and he continues to watch her work/time very closely. Ms. Dorilio did mention an incident where Latasha supposedly threatened Beth in the bathroom but said there was no proof of it. Additional comments by Ms. Dorilio that have a bearing on any of the allegations or charges will be discussed on an issue-by-issue bases. Copies of the notes from the interview are at Exhibit 7.

F. On 13 June 2018, Mr. Eric Olson, City Administrator, City of Pensacola, was interviewed from approximately 9:30 am until 11:30 am. Mr. Olson was advised that a Hostile Work Environment claim had been made against him along with a charge of

Retaliation. Specific issues raised by Ms. Buchanan and Ms. Byrne were discussed and his position on each item will be discussed in the allegations section. Also the matter involving his Executive Assistant, Ms. Beth Barr and the perception that she has been given special treatment, i.e. relaxed work hours, pay and promotion, customer service skills, and poor relations with staff were discussed. Copies of the notes from the interview are at Exhibit 8.

G. On 13 June 2018, Ms. Beth Barr, Executive Assistant to City Administrator, Mr. Olson, was interviewed from approximately 11:45 - 1:15 pm. Ms. Barr was advised that a Hostile Workplace Environment charge had been filed and that she has been perceived as receiving "special treatment" from the City Administrator by some of her fellow employees. She understood that the charges had been placed against management and specifically against Mr. Olson and defended his integrity and professionalism. Ms. Barr immediately volunteered that she was planning to file a lawsuit against Latasha Buchanan for harassment and that she had been threatened by her. Mentioned a threatening gesture in the bathroom and parking lot (no witness). She went on to allege that Ms. Dorilio and Ms. Byrne would also "bully her" in the office and that now she is afraid of them and just tries to stay away from them. She went on to say that all this "bullying" started when she was reassigned to work directly for Mr. Olson and then subsequently given a promotion to a regular position. She believes Latasha, Laurie, and Tess conspire together against her and are resentful of her promotion. She did admit to a mistake she made regarding pay for a holiday when she was a temp employee. She accused Latasha of not paying her and found out later that temporary employees are not entitled to holiday pay. Not sure she apologized to Latasha for the outbreak. Due to the terrible work environment caused by the three of them, she said she was leaving the City and taking another job in early July. A copy of the notes from the interview are at Exhibit 9. Ms. Barr also provided the investigator a detailed set of bullet points she had been maintaining regarding her work and treatment (Exhibit 10).

F. On 14 June 2008, Mr. Vernon Stewart, Public Information Officer, City of Pensacola, was interviewed from approximately 11:00 - 12:00 noon. Mr. Stewart was advised that a Hostile Workplace Environment and Retaliation charge had been filed against Mr. Olson and he was not the subject of this investigation. Since he had direct knowledge of the individuals involved and had multiple interactions with the Mayor's staff as well as the City Administrator's staff, that his observations regarding the work climate would be very helpful. One issue that came up from meetings with Constituent Services staff was that, following a new website design, that their function was eliminated from the web page. They felt that it was some form of retaliation by Mr. Olson. I asked if he had been directed or asked to eliminate the Constituent Services staff from the web site by Mr. Olson and he said absolutely no. He was unaware of it and said it must have been a simple oversight. He did not understand why the supervisor, Ms. Buchanan, did not simply advise him of the oversight rather than trying to blame Mr. Olson. It could have been easily fixed. When asked about the "hostile environment" on the 7th floor, he said it was mostly due to Laurie's bad attitude and that she specifically dislikes Mr. Olson, Beth Barr, and Rebecca Ferguson (Planning). He went on to say that Laurie often comes to work with a "bad or nasty attitude" and he just stays away from her. Also added that, Laurie, Latasha, and Tess do not like Beth and, in his opinion, are the "reason for the hostile work environment" in the Mayor's office. A copy of the interview notes are at Exhibit 11.

G. On 14 June 2018, Ms. Latasha Buchanan, requested a quick meeting with the investigator. It lasted from 12:15-12:35 pm. She wanted to add a few issues to her concerns. Since Constituent Services was going to be out of the office the week of the Customer Service training in Las Vegas, she requested temporary service help to cover the phones and customer issues. Mr. Keith Wilkins agreed that it may be a good idea to have coverage but Eric Olson said "no, Tess can do it".

Tuesday, 12 June 2018, Mr. Olson announced at the Director's Staff Meeting that HR and Constituent Services were being reassigned to work under the Asst City Administrator, Mr. Keith Wilkins. She felt that this form of announcement might generate negative rumors in regards to "why the staff is moving". Latasha has no issues with reporting to Mr. Wilkins.

Mentioned that Beth is "back-up for Tess when she is out of the office". Today Tess is not getting calls rolled over to her! Copy of notes from meeting are at Exhibit 12.

H. An additional memo from Latasha Buchanan, dated 11 June 2018, was given to HR-EEO and a copy was given by Tracy Walsh, HR-EEO, to the investigator on 14 June 2018 for the record (Exhibit 13). The memo alleges that Beth Barr had advised the Asst City Administrator that, in an incident in the restroom, Latasha "screamed at Beth, got in her face, and was very aggressive". Keith Wilkins also said that "Latasha had physically bumped" her during the incident. Latasha said she would be filing a complaint with HR about the incident (apparently there were no witnesses for either party).

I. Notes to File (Exhibit 14 - undated) by Mr. Keith Wilkins, Asst City Administrator, re: Hostile Workplace Complaint, places the investigation oversight process under the purview of Mr. Wilkins and the City Attorney, Lysia Bowling. A harassment complaint had been filed in February 2018 against Beth Barr but no action had been taken to resolve the matter by the City Administrator, Mr. Olson. An EEOC complaint was filed on or about 4 June 2018 by Ms. Buchanan. A new timekeeping system was installed that included the Mayor's office to better track in/out times. In March 2018, Mr. Olson rescinded approval for Ms. Byrne to attend Customer Service training. On 3 May 2018, Ms. Byrne filed a Retaliation complaint with the HR-EEO office. Also based on a 29 May 2018 discussion with Mr. Olson, the HR Division and Constituent Services were reassigned on 6 June 2018, to Keith Wilkins by Eric Olson (Exhibit 15). The decision to allow Ms. Byrne to attend the Customer Service training, as planned, was communicated to Ms. Buchanan and Ms. Byrne. A request by Ms. Buchanan for Constituent Services to be moved to a different work area was made and the offer by Mr. Wilkins to relocate the staff to the HR cubicles on the 4th floor is under consideration.

III. SUMMARY OF ALLEGATIONS, FINDINGS AND FACTUAL BASIS FOR FINDINGS

A. Allegation 1: Ongoing harassment by Beth Barr against Latasha Buchanan and allegation by Laurie Byrne of special or privileged treatment of Beth Barr by Mr. Olson.

1. **Finding – Allegation of Harassment and Retaliation:** The allegation of harassment based on race against Ms. Barr and privileged treatment by Mr. Olson cannot be completely substantiated as clear and pervasive enough to be illegal based on the evidence at hand. However, there is strong evidence that suggests an event occurred where Ms. Barr threatened Ms. Buchanan over a holiday pay issue. There was no evidence of ongoing threatening behavior by Ms. Barr other than avoidance of interaction, lack of cooperation, and general interpersonal friction between the two. Ms. Barr has counter claimed hostile work environment caused by Ms. Buchanan's threatening gestures. Retaliation by Mr. Olson is seen by the complainant as retribution for filing the complaint. The record does not clearly substantiate the allegation that Olson engaged in behavior that constitutes disparate treatment based on race.

Conclusion - Harassment: A singular incident of harassment does not appear to meet the EEOC criteria for clear and pervasive. Due to lack of timely intervention and corrective action by management, a hostile relationship exists between the parties that must be addressed. **Recommendation:** Ms. Barr should be reprimanded for her threats to Ms. Buchanan. Physical separation of the parties to different floors would help de-conflict the deteriorating relationships.

Conclusion - Retaliation: Management should have acted immediately to report the Hostile Work Environment complaint by Ms. Buchanan to HR-EEO as required by Policy 413.0. The City Administrator should also have moved quickly and decisively to correct the threatening behavior exhibited by Ms. Barr towards her colleague Ms. Buchanan. **Recommendation:** The City Administrator should be formally admonished for his lack of appropriate action to properly address a hostile work environment claim.

- a. An EEOC charge was filed 23 March 2018 based on ongoing harassment of Latasha Buchanan by Beth Barr. Specifically, there was an incident involving Ms. Barr's pay with Ms. Buchanan in which she felt deprived of her holiday pay and blamed it on Latasha. Reportedly, she pointed her finger in her face and told her that "she would have a problem if she messed with her paycheck again". Discussion with Ms. Barr indicated that this event did happen as described and that she did not know at the time that temps would not get holiday pay. When the issue with the threatening behavior and lack of respect for a fellow employee was elevated to Mr. Olson by Latasha, according to internal HR-EEO investigation (Ex 4), Mr. Olson did not meet with the parties to resolve the matter nor did he refer the Hostile Work Environment matter to HR as required by City EEO Policy 413.0.
- b. On 22 March, 2018, Ms. Tracy Walsh met with Ms. Barr to discuss complaints about her phone behavior where Ms. Barr admitted that "she wasn't always

perfect on the phone" with constituents. Additional evidence indicated that she has hung up the phone in the middle of conversations and has displayed "mean spirited" behavior in the office. Training for Ms. Barr in handling difficult phone calls and a reprimand or termination (if additional incidents occur) for her behavior involving the holiday pay incident was recommended.

- c. Ms. Barr has stated that she is afraid of Ms. Buchanan and was threatened by her in a bathroom incident (18 May 2017), pushed her into a wall (29 Aug 2017) and experienced a parking lot "cut off" incident. (30 April 2018) after Latasha learned Ms. Barr was to be made a permanent employee (Exhibit 13).

- 2. **Finding - Allegation of Special Treatment:** The rates of pay between Ms. Byrne and Ms. Barr are different, with Ms. Barr making approximately \$6,500 more annually and could be considered special treatment. A classification study of the two positions should be conducted by HR to determine if the pay rates for the two positions are appropriate based on duties, responsibilities, knowledge, and skills required to successfully perform in each position. Rate of pay is normally driven by market rates for similar positions in similarly situated local governments in the region.

Conclusion - Equal Pay: The relief indicated by Ms. Byrne for "equal pay" should be addressed by HR. **Recommendation:** Corrective action taken to adjust Ms. Byrne's rate of pay if an adjustment is indicated by the analysis and conclusions of HR.

Conclusion - Special Treatment: The allegation of special treatment cannot be clearly supported or denied based on the evidence at hand. However, there is a clear and distinct polarization of staff that exists in the Mayor's Office that must be addressed. The recent reorganization of staff to have HR and Constituent Services reporting to the Assistant City Administrator is widely received by staff as a very positive move in the right direction. **Recommendation:** Physical realignment of staff location, such as placement of HR and Constituent Services on the same floor, would also improve staff unity under the Assistant City Administrator.

- a. The record establishes that Ms. Beth Barr was hired as a temporary employee by the City 9/2016 working in Constituent Services. Mr. Olson subsequently moved Ms. Barr from Constituent Services to a part time temporary position directly reporting to him on 5 December 2016 and then promoted her to a full time permanent position with an annual pay rate of \$41,683.20 on 23 April 2018.
- b. Starting as a temporary employee in this department and subsequently moving to a permanent position is the normal and regular hiring process for the Office of the Mayor.
- c. The allegation of a pay disparity between Ms. Byrne and Ms. Barr is correct. As Constituent Services Asst @ \$35,172.80 yr and Executive Asst to City Administrator @ \$41,683.20, Since these two positions have different job titles and duties, a compensation analysis by HR would be appropriate procedure to determine if the two individuals should be paid at the same or similar rates.
- d. Ms. Byrne alleges special treatment of Ms. Barr by Mr. Olson. Specifics include; Beth has more latitude in tracking her hours and reporting times, she has private office, mail delivery is not timely, including late pay stubs, she is often not

courteous to customers that call in to the office, and that Mr. Olson appears to protect Beth, but not sure why. Feedback from Ms. Buchanan and Ms. Dorilio share this perception. Observations by Mr. Stewart, PIO on the same floor, indicated an opposing view. i.e. that these three employees actively conspire against Ms. Barr and are unfair to her. Ms. Barr stated that she felt threatened by these three employees and that she specifically fears Ms. Buchanan and Ms. Byrne. Ms. Barr admitted she "goes out of her way to avoid contact with them" in the office. This avoidance behavior is apparently seen by other employees as rudeness and unfriendly and sets the stage for ongoing conflict.

- e. Regarding hours worked, Mr. Olson cited many extra hours worked by Ms. Barr and her job skills as to why she was promoted and not based on any bias. He also reported that, due to stressful work environment, that Ms. Barr was planning to leave her employment with the City in July, 2018. He felt like her absence in the future will eliminate much of the office conflict which has manifested itself over the past year of so. During this interim period, Mr. Olson appears to have done little to get the parties together to help defuse the negative feelings that have polarized the office over the past year.

B. **Allegation 3: Disapproval of Customer Service Training - Retaliation:** In December, 2017, Ms. Byrne was approved for Customer Service Training by Mr. Olson. Subsequently, the approval was rescinded by Mr. Olson the week of 16 April 2018. No reason for the disapproval was given and Ms. Byrne believes it was due to retaliation based on her earlier support for Ms. Buchanan's Hostile Workplace complaint.

- 1. **Finding – Allegation 3:** The allegation cannot be clearly substantiated.

Conclusion - Retaliation: Based on the record, there is a relatively direct connection between the time card incident and cancellation of the training. Mr. Olson apparently used this as punishment for Ms. Byrne's absence and timekeeping issues on 28-29 March 2018. A more appropriate action by management would have been a letter of counseling or reprimand as the training conference was already approved and had no relationship to the timekeeping event in question. Relief by the Mayor's office in the form of restoration of the approval of the training for Ms. Byrne has been completed.

- a. On 28 March, Mr. Olson noticed that Ms. Byrne was not at her desk. Ms. Buchanan was out that day and Ms. Olson was not advised that she would be leaving early. She also came in to work late the next morning. Ms. Buchanan checked the timekeeping records and found that PTO was taken for the period in question.
 - Follow-up discussion with Ms. Byrne regarding the timekeeping incident revealed that she did not advise Mr. Olson that she would be out of the office the afternoon of 28 March 2018 and would be coming in late the next morning. Ms. Byrne said that she forgot to mention or list on the schedule the doctor's appointment (Wednesday) and that the PTO taken was perhaps insufficient to cover the total time of absence.
- b. Subsequent to the timekeeping issue, Mr. Olson advised Chief HR Officer, Mr.

Sisson to notify Ms. Byrne that she would not be going to the conference. Mr. Sisson reported that the reason for the cancellation was based on the time card issue (1a above).

- c. Mr. Olson installed a new time keeping system 16 April 2018 for the Mayor's office staff, similar to the system already in place in the HR Office. Mr. Olson called Ms. Buchanan to follow-up and said that the time card issue "was fraud" and this new system will properly track (document) daily time records. He commented that it would no longer be his word against hers (Ms. Byrne).
- d. Ms. Byrne filed a Hostile Workplace Complaint with HR-EEEO on 3 May 2018 citing the cancellation of her pre-approved training course as the primary indication of retaliation.

C. **Allegation 4: New City Website (Purposely) Eliminated Constituent Services - Retaliation** In April-May 2018, Ms. Buchanan noticed that Constituent Services staff was removed from the City's website. She believes it was due to retaliation based on her previously filed Hostile Workplace complaint.

- 1. **Finding – Allegation 4:** The allegation cannot be substantiated.

Conclusion - Retaliation: Based on the interview records and absence of any other proof to substantiate the belief that the new City web site was purposely set up to show that Constituent Services was no longer part of the Office of the Mayor, no basis to support retaliation can be found. **Recommendation:** Corrective action to properly show Constituent Services underway by the PIO be effected as soon as possible.

- a. On 13 June, 2018, Mr. Olson was questioned about the new City website and directly asked if he was aware that Constituent Services had been deleted from the site. When asked if he directed Vernon Stewart (or anyone else) to eliminate Constituent Services for the chart, he said no. He further responded saying that he was totally unaware of this and that it must have been an oversight that could easily be corrected.
- Follow-up discussion with Mr. Vernon Stewart, Public Information Officer (PIO), the staff lead in development of content for the new City web, was interviewed on 14 June 2018. First he was asked if he was aware that Constituent Services was not shown on the new City website. He replied no and that he was surprised that Latasha Buchanan had not immediately informed him of this omission. As follow-up, he was asked if anyone, including Mr. Olson, had in any way directed him or anyone else, to delete Constituent Services from the web site and his answer was no. Mr. Stewart indicated that he would take action to correct the oversight right away.

D. **Allegation 5: Employment of Ms. Barr - Unfair** In September 2016, Ms. Beth Barr was hired as a temporary employee under Constituent Services. She reported to Ms. Buchanan and worked under Laurie Byrne. Mr. Olson took her over to be his assistant, gave her a private office, pay increase, and on 23 April 2018 made her position permanent with benefits. Taking Ms. Barr away from Constituent Services and promoting her was seen as an unfair act by Mr. Olson.

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1. Finding – Allegation 5: The perception of unfairness can be substantiated by the facts but there is no convincing evidence that Ms. Barr's position change was based on unfair treatment or offensive conduct that violates discrimination laws.

Conclusion - Unfair Employment Practice: Based on the interview records, past practice, and absence of any other direct proof to substantiate illegal bias, the City Administrator was acting within his authority to select and promote temporary staff to permanent positions. The major problem with this practice is that new hires are expected to work and perform duties in the areas they were assigned to when brought on board. Rapidly promoting a new hire to a much higher level position and exceeding the pay of the person who she originally worked for (Ms. Byrne), can cause great resentment.

Recommendation: Future new hires in Office of the Mayor should be placed directly in the vacant position (as a temp or permanent hire) that needs to be filled, e.g. Ex Aide to Mayor, Exec Asst to City Administrator, or Constituent Services. The fact that Constituent Services now reports in a different chain to the Asst City Administrator should go a long way in de-conflicting internal hiring and promotion processes in the Mayor's Office.

- a. It is the current practice in the Office of the Mayor to hire new employees to staff position on a temporary basis. Laurie Byrne, Tess Dorilio, and Beth Barr were all hired in as temporary employees and later converted to permanent employees based on job performance.
- b. Ms. Beth Barr was brought on board first as a Landrum Agency employee and subsequently converted to a City Temporary position on 5 Dec 2016 as Executive Assistant to the City Administrator. The original duties she had in Constituent Services stayed with Ms. Buchanan. The loss of the "new hire" through reassignment by Mr. Olson and retention of many of the duties that Ms. Barr would have been doing, led to considerable resentment of Mr. Olson and Ms. Barr by both Ms. Buchanan and Ms. Byrne. Ms. Buchanan reported that she remembers Mr. Olson telling her when they were working on the 2018 City Budget, that Ms. Barr's position should not be added to the organization chart as she was not going to be made permanent. However, On 23 April 2018, Mr. Olson made the position permanent, further alienating the staff. Based on the interviews, the reassignment and conversion to permanent status appeared to be a major catalyst that created continuing hostilities between the parties.
- c. In regards to promotion and pay of Ms. Barr, Ms. Olson cited higher level duties, responsibilities, and qualifications as basis for selection and pay rate. He went on to say that he understands that the Constituent Services staff dislikes Beth but, since she will be leaving employment with the City next month, their conflict with Ms. Barr will go away.
- d. Ms. Barr reported that the primary reason for leaving the City was due to the ongoing conflict with Constituent Services staff.

- E. **Allegation 6: Mr. Olson Cancelled Staff Meetings/Withholds Information - Retaliation** Ms. Latasha Buchanan believes that the cancellation of staff meetings is a form of retaliation. Mr. Olson is also alleged to be keeping information, such as the recycling contract, away from Constituent Services. After Ms. Buchanan filed the Hostile

Workplace Claim, she alleges that Mr. Olson has been very cold towards her.

1. Finding – Allegation 6: There is little doubt that the work environment in the Office of the City Administrator is fraught with stress, suspicion, and major polarization among staff members. To find direct evidence that cancellation of staff meetings and existence of an aloof relationship with CS staff is due to retaliation is difficult to establish. There is no doubt the secretive knowledge regarding the recycling program was withheld from the 311 staff, but it was also withheld from many other key individuals. It wasn't until the newspaper investigated and discovered the fact that City-wide recycling was not being done (even though it appeared to be ongoing) that the information was made known to the public. Again, the perception of reprisal can be substantiated by interviews with staff but there is no convincing evidence that the elements (above) were motivated by a desire for retribution for filing an EEO Claim in violation of discrimination laws.

Conclusion - Retaliation by City Administrator Based on the interview records and absence of any other direct proof to substantiate illegal bias, the City Administrator was acting within his authority to manage the staff and decide what information should and should not be released to the public. Unfortunately, having no information to the contrary, the 311 staff could only respond to questions about recycling based on the information at hand. **Recommendation:** Constituent Services now reports in a different chain of command to the Asst City Administrator, rendering the staff meeting issue and reporting relationships of the past no longer a factor.. A major concern is the ethical responsibility to keep the 311 staff adequately informed. The Asst City Administrator, to avoid loss of trust by the public in City management, must make every effort to provide open and effective communications with the 311 staff for them to be effective and able to respond factually to public inquiries.

- a. In an investigative interview conducted the week of 13 June 2018, Mr. Olson advised that he had cancelled the City Administrator Staff meeting. Asked as to the reason, he said "Latasha can't stand Beth Barr at staff meetings". There is a strong desire on both parts to stay away from each other. Both parties have alleged harassment by the other, so the meeting environment was not positive and conducive to open and meaningful communications. For this reason he considered the process to be not productive and cancelled the meetings.
- b. Ms. Buchanan reports that, after filing her EEOC claim, Mr. Olson has been very cold and doesn't speak to her unless he has pass on something. He often uses notes rather than oral communications. In speaking to other staff members about Mr. Olson's office demeanor, there is general consensus that he is not very open and cordial to staff in general and tends to stay in his office.
- c. In regards to withholding information from Constituent Services about the problematic City recycling program, it appears that very few people knew about the problem with recycling. Apparently, the old contract was discontinued (by the contractor) due to cost efficiency and there was a major gap in coverage before ECUA could (if approved) pick up the service for the City. Recently, the PNJ reported on the story and exposed the fact that City recycling was going to the landfill, causing some constituents to call in to City 311 to complain. The 311 staff had no idea that this was going on and denied the claims until the PIO advised Ms. Buchanan that the program was temporarily defunct. Mr. Olson left

them (and apparently many others) totally out of the loop without explanation.

F. Allegation 7: Mr. Olson Refused to hire Temporary for Constituent Services - Further Retaliation Ms. Latasha Buchanan requested a follow-up meeting (Exhibit 12) with the investigator on 14 June 2018 at 12:15 to discuss other matters that may indicate retaliation by Mr. Olson. Since both staff members from Constituent Services would be away attending Customer Service Training, Ms. Buchanan met with Asst City Administrator, Mr. Wilkins, to request back-up with a temporary employee for the next week. Mr. Olson subsequently denied the request and will direct Ms. Dorilio to cover for them. Ms. Buchanan also believes that Mr. Olson publically announced the realignment of her function to the Asst City Administrator as a way to possibly cause negative rumors as to why this reorganization is happening.

1. **Finding – Allegation 7:** There is no direct evidence indicating that Mr. Olson's failure to provide back-up staff for Constituent Services (in their absence) was based on reprisal and existence of an aloof relationship with CS staff is due to retaliation is difficult to establish. It is normal practice for staff to cover the phones for others when they are out of the office and this occasion only differs from the norm in that they are both out at the same time. After discussion between Mr. Wilkins and Mr. Olson, it was concluded that the workload was such that Ms. Dorilio could handle it for the short period of their absence at the training conference. Announcement of the change in reporting relationships, moving HR and Constituent Services to alignment under the Assistant City Administrator was a normal business process and, such an announcement, is to expected under the circumstances. Again, the perception of possible reprisal is somewhat understandable under the circumstances but no objective evidence was discovered to support such a claim.

Conclusion - No Retaliation by City Administrator Based on the interview records and absence of any other direct proof to substantiate illegal bias, the City Administrator was acting appropriately within his authority to manage the staff resources and communicate staff changes to the appropriate parties in the Office of the Mayor. The idea that someone may want to speculate or generate office rumors as to why this action was announced at the staff meeting and, for that matter, taken by the City Administrator is a matter of conjecture that cannot be proven based on the evidence at hand.

Recommendation: No corrective action for this instance required.

IV. SUMMARY - HOSTILE WORKPLACE COMPLAINT

The City of Pensacola, Florida, is committed to providing workplace free from discrimination, harassment, retaliation, and related inappropriate behavior for all employees. The City's Policy 413.0, Discrimination, Sexual Harassment, Retaliation and Other Inappropriate Behavior Policy, was issued 11 Jan 2018 by Mayor, Ashton J Hayward III and placed in full effect on that date.

An EEOC Charge of Discrimination was filed by Ms. Latasha Buchanan, Constituent Services Administrator, on 4 June 2018 in the City HR Division. The allegation is based on a complaint of Hostile Work Environment and Retaliation and Discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended. The individual charged is Mr. Eric Olson, City Administrator. The EEOC Charge has been forwarded to EEOC for processing and investigation.

On 3 May 2018, a second charge, alleging violation of the City's Policy 413.0, was filed in the City HR Division by Ms. Laurie Byrne, Constituent Services Asst, charging Hostile Work Environment and Retaliation by Mr. Olson.

The Office of the Mayor is to be commended for publishing the Discrimination, Sexual Harassment, Retaliation and other inappropriate behavior Policy, # 413.0, on 1/11/18. It provides an comprehensive policy regarding the City's commitment to providing a workplace free of discrimination in all forms and implements and excellent guidance and procedures for reporting and investigation that helps assure that corrective actions are taken, when appropriate, to assure continued compliance and support for aspects of EEO s referenced in City Policy 413.0.

The City of Pensacola HR-EEO Staff initiated an internal investigation of the initial complaint by Ms. Buchanan on 23 March 2018 and followed-up with a second investigation on the complaint of Ms. Byrne starting 3 May 2018. Both complaints share similar issues and allegations against Mr. Olson, so the City decided to bring in an experienced outside investigator to review both cases and make recommendations for whatever corrective action that may be necessary. Roderick Powell, SHRM-SCP, Powell HR Consulting, an independent third party HR professional, was selected to conduct the investigation. Interviews and case analysis commenced on 11 June 2018.

In summary, the investigation indicated that the Office of the Mayor staff is extremely polarized. Evolving conflicts between staff members have not been immediately and forthrightly addressed; even with they became known to top management. This situation lead to a gradual degradation in communications and ever increasing perception of retaliation and mistrust between Constituent Services staff and the City Administrator and his assistant.

There is little doubt that this represents a caustic work environment. Taken in its totality, indications of a hostile work environment must rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. Based on EEOC guidelines, ~~offensive~~, ~~offensive~~ conduct may include, but not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation,

ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

While there were a number of individual incidents that could be seen as offensive, abusive, or interfering with work processes, the evidence does not appear, at this time, to have risen to the level of being severe and pervasive or illegal. With that said, there are a number very positive corrective actions that have already been taken by management to address perceptions of unfairness in how staff are organized, treated, respected, and communicated with on a regular basis. Implementation of the recommendations herein will further improve the sense of urgency in processing EEO and Hostile Workplace complaints. Diligence and expeditious corrective actions taken by management to assure such incidents are quickly addressed in the future will go a very long way towards de-conflicting any lingering feelings of hostility and reprisal that occurred in the past.

Primary issues, findings and preventive and corrective opportunities by the City are summarized below:

1. Allegation of Harassment and Retaliation

- I. The evidence supports the fact that Ms. Barr threatened Ms. Buchanan in the workplace over the holiday pay issue. Failure by Mr. Olson to timely address Ms. Barr's behavior for a serious event led to a collapse of the working relationship between the two individuals and joint feelings of harassment and animosity.
- II. Mr. Olson failed to take timely corrective action to discipline Ms. Barr, supporting the belief of special privilege.
- III. Mr. Olson failed to immediately report the Hostile Work Environment complaint to HR-EEO as required by Policy 413.0.

IV. Corrective Action Recommended:

Discipline Ms. Barr for the incident involving verbal threatening behavior towards Ms. Buchanan

Admonish Mr. Olson for failure to timely address workplace disputes and failure to promptly report a Hostile Workplace Allegation to HR for investigation in accordance with City Policy.

Grant relief requested by Ms. Buchanan to move Constituent Services to a different floor

2. Allegation of Special Treatment

- I. Special treatment in pay, asserted by Ms. Byrne, can be indicated by fact (Exhibit 16) that although Ms. Barr was hired into the Office of the Mayor at a later date, Ms. Barr

was promoted over her and is paid more than her.

- II. Special treatment in the office of Ms. Barr by Mr. Olson cannot be objectively proven by the facts or interviews conducted. There are conflicting and diametrically opposed views in the office relations regarding who is treated poorly and what is perceived as hostile.

III. **Corrective Actions Recommended:**

Direct HR to conduct a classification and compensation study to determine if the two positions should be paid at the same or similar rates and take any corrective necessary to assure internal pay equity.

Recommend immediate relocation of Ms. Buchanan and Ms. Byrne to a different floor. Note: It is not practical to relocate Ms. Barr's office as the position is a direct report to the City Administrator and needs to be in the immediate proximity of his office on the 7th floor.

3. **Allegation of Retaliation in Disapproval of Customer Service Training for Ms. Byrne**

- I. Ms. Byrne believes that cancellation of her pre-approved Customer Service training course by Mr. Olson was an act of retaliation. Mr. Olson stated that the cancellation was based on an incident that occurred between 27 and 28 March, 2018 and that the decision had nothing to do with retaliation. In effect, he was withdrawing approval due to failure to properly report her absences and falsification of her time card. Since recordkeeping in this office was not tied to electronic time clocks, the City Administrator implemented a biometric time system (similar to HR) to provide better, more objective, tracking of work time and absences.

II. **Corrective Actions Recommended:**

No further action is required. Since no direct evidence could be found tying the disapproval of the training course to retaliation. The Office of the Mayor has already overrode the previous decision and taken corrective action to approve the training class, for Ms. Byrne.

4. **Allegation of Retaliation in Elimination of Constituent Services from Web Site**

- I. Ms. Buchanan indicated that the new City Website did not show the Constituent Services function, indicating that this change may have been due to retaliation by Mr. Olson for her filing an EEOC charge earlier in the year. When questioned, Mr. Olson was completely unaware that Constituent Services was not shown on the new site, indicating it was an oversight.
- II. Interview with Mr. Stewart, PIO, responsible for web site content, also revealed that no one had directed him to omit the Constituent Services function from the site and

that it was an oversight that could be easily corrected. He stated that if Ms. Buchanan had advised him of the oversight that he could have corrected it immediately.

III. Corrective Actions Recommended:

Immediately Restore Constituent Services function to the new City website.

5. Allegation of Unfair Employment of Ms. Barr

- I. Ms. Barr was unfairly promoted by Mr. Olson after being initially hired to assist her in Constituent Services as a temporary employee. Both Ms. Buchanan and Ms. Byrne expressed frustration and some sense of betrayal in losing a new hire that was supposed to be working for them so quickly. Ms. Barr's subsequent promotion and private office was the catalyst for much of the resentment and feelings of unfair treatment that evolved over the past year.
- II. Review of the past practice for hiring staff into the Office of the Mayor reveals that the last three hires, i.e. Ms. Byrne, Ms. Barr, and Ms. Dorilio all were brought in first as temporary employees. No unfair or discriminatory intent was identified.
- III. Mr. Olson needed a qualified Executive Assistant, so he promoted Ms. Barr to this position with an increase in pay and later made her permanent. While legal and a normal route employment (temp-to-perm process) after observing new hires job performance (as temps), "leapfrogging" Ms. Barr's pay and status in the office to a position superior in rank to Ms. Byrne was not well received. While the selection and promotion appear to be executed within HR and EEO guidelines, the results led to significant resentment and friction between the staff. Strongly advise against using a temporary hire in the Office of the Mayor as a "pass through" position in Constituent Services.

IV. Corrective Actions Recommended:

Recommend that the organization chart be amended to show the FTE positions for (1) Executive Aid to the Mayor and (2) Executive Assistant to the City Administrator and the City hire new employees directly into these key staff positions when vacancies occur. NOTE: The current hiring process for the Mayor's Office is fundamentally flawed from the perspective of fairness and equity. Specifically, the current procedure can incite conflict and resentment when and if a "new hire", who basically comes in at the bottom of the structure as a temporary employee, is subsequently promoted over their former colleagues.

6. Retaliation Through Cancellation of Staff Meetings and Withholding Information:

- I. Ms. Buchanan believes that staff meetings were cancelled and important information was withheld from her staff due to retaliation by Mr. Olson. Evidence indicates that the City Administrator's staff meetings were cancelled for staff in an email dated 7 May 2018. The cancellation did not just exclude Constituent Services, but included all his direct reports. Mr. Olson said the reason was based on "lack of positive support" and understanding that Ms. Barr and Ms. Buchanan did not want to be in the room together. Reassignment on 6 June 2018 of Constituent Services and HR to report to the Assistant City Administrator is a positive move and should help rebuild the communications process for staff.
- II. According to Ms. Buchanan, Mr. Olson was not keeping her informed about important community relations matters and cites the failed City recycling program as a key example. Ms. Buchanan (and Ms. Byrne) was defending the City when customers called in to complain about the City not recycling designated waste material. Based on input from Mr. Stewart, he did not know either until Mr. Olson finally advised him, when questioned, of a "problem with the recycling program". This information was apparently "close hold" by Mr. Olson and not even the Public Information Officer was given information about it. While this incident may lead to questions about when and if the public should have been advised about the recycling problem, the information was not just kept solely away from the Constituent Services staff, therefore no basis for retaliation can be substantiated.

III. Corrective Actions Recommended:

No intent to retaliate was discovered when the records and witnesses were questioned about these incidents. However, The Constituent Services staff and others, like the PIO, were put in a conflicting position due to the lack of factual information about the recycling program from Mr. Olson.

Recommend the new supervisor, Mr. Wilkins, make every effort to keep 311 staff informed about key events that impact the quality and accuracy of information needed to keep the public adequately informed about City matters that effect them.

7. Retaliation Mr. Olson Refused to Hire Temporary to Cover Absence:

- I. Ms. Latasha Buchanan requested a follow-up meeting on 14 June 2018 with the investigator to discuss additional incidents that she considered retaliation by Mr. Olson. Since both Constituent Services staff members were going to

be out of the office for training, a temporary employee was requested to cover the office. Mr. Wilkins requested funding for the temporary but Mr. Olson directed Ms. Dorilio to cover their incoming calls while they were out, a normal business procedure for the office.

- II. Mr. Olson's announcement at the Director's meeting stating that Constituent Services and HR will be reporting to the Asst City Administrator was thought by Ms. Buchanan to be done in such a way that rumors among staff may be generated (to try to find out "why" the realignment was done). It is normal protocol for organizational changes to be announced to staff and directors to keep them informed of reporting relationships.

III. Corrective Actions Recommended:

No violations indicated and no corrective action recommended.

Document drafted by:

6.27.18

Roderick L Powell, SHRM-SCP

Date

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HR CONSULTING SERVICES
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Exhibits and Attachments:

- A. Exhibit 1: EEO Complaint filed in HR-EEO Laurie Byrne 3 May 2018
 - B. Exhibit 2: EEO Complaint filed in HR-EEO by Latasha Buchanan 23 March 2018
 - C. Exhibit 3: EEOC Charge of Discrimination Latasha Buchanan 23 March 2018
 - D. Exhibit 4: Interview Notes Latasha Buchanan 8 May 2018
 - E. Exhibit 5: Interview Notes Latasha Buchanan 11 June 2018
 - F. Exhibit 6: Interview Notes Laurie Byrne 12 June 2018
 - G. Exhibit 7: Interview Notes Tess Dorilio 12 June 2018
 - H. Exhibit 8: Interview Notes Eric Olson 13 June 2018
 - I. Exhibit 9: Interview Notes Beth Barr 13 June 2018
 - J. Exhibit 10: Spreadsheet Interactions provided by Beth Barr 13 June 2018
 - K. Exhibit 11: Interview Notes Vernon Stewart 14 June 2018
 - L. Exhibit 12: Follow-up Interview, Ms. Latasha Buchanan, June 14, 2018
 - M. Exhibit 13: Memo Re Bathroom Incident, by Ms. Latasha Buchanan, 11 June 2018
 - N. Exhibit 14: Memo Re Status of Complaints, etc. Mr. Keith Wilkins, Asst City Administrator
 - O. Exhibit 15: Memo Change in Reporting Responsibilities, Mr. Eric Olson, 6 June 2018
 - P. Exhibit 16: Memo Re Pay Rates, Ms. Dorilio, Ms. Barr, and Ms. Byrne dated 21 June 2018
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- 1. Attachment A: City of Pensacola Policy 413.0, Discrimination, Sexual Harassment, Retaliation and Other Inappropriate Behavior Policy, dated 1 Jan 2018
 - 2. Attachment B: Resume of Roderick L Powell, SHRM-SCP

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