



Pierce County

Office of the Assessor-Treasurer

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DALE WASHAM
Assessor-Treasurer

Ms. McCarthy,

This communication is in response to your letter dated January 22, 2010. I want to express to you my concern in regards to what I believe to be the interfering and undermining of my authority to reorganize the Assessor-Treasurer's office to make it more efficient.

Ms. McCarthy, you and I have a political history as opposing candidates for the elected office of Pierce County Auditor. Years ago, I filed a complaint with the state Public Disclosure Commission against you and you made public derogatory statements against me that were printed in the local newspaper. However, I would like to believe that such past history would not have any effect on our working relationship as elected officials.

A short time after I took office as the elected Pierce County Assessor-Treasurer in January of 2009, the first thing I started to do was trying to reorganize the management and staff in the Assessor-Treasurer's office, to make it more efficient, particularly in light of the fact there were hundreds of thousands of state statute required physical inspections that were not done during the eight years before I took office. Inspections my staff will now have to do because I follow the law. For over a year I have been attempting to reorganize the Assessor-Treasurer's office and make needed management changes to the assessor side of the office. To date, your Human Resource Department Director Betsy Sawyers has blocked much of my efforts to do so.

Ms. McCarthy, you state in your said letter dated January 22, 2010: "...However, you do not have authority to "direct" the Human Resource Director to layoff a particular Career Service employee. That determination is vested with the Human Resources Director..." I disagree with that premise. If I do not have the authority to determine my management staff, then in effect, you will be running the Assessor-Treasurer's office via the Human Resource Director. Which leaves meaningless the fact that the Pierce County citizens voted me into office, to run the Assessor-

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Treasurer's office. You further state in your said letter "... You are correct that the Pierce County Charter §3.10 states, "...however, the Executive shall not have administrative power over any other elected official or their department regarding staff supervision, staff assignments or normal daily operations, except as provided in the Charter. You fail to mention Charter §3.45(3) which states, "[a]ll executive departments shall be subject to the personnel, budgeting, expenditure and any other policies of general application established by the Executive." (Emphasis added)

The Pierce County Code vests responsibility for administration of the Career Service System, of which Ms. Barnes and Ms. O'Brien are members, in me and the Human Resources Director:

3.20.0.10 Responsibility for Administration

A. The Executive shall be responsible for the administration of the County personnel system in accordance with the policies and standards established by ordinance and Code. This Title and Code establish a personnel system for the County which assures recruitment, selection and retention of County employees on the basis of merit; the development of a County Career Service, promotion on the basis of demonstrated ability; and compensation and personnel practices which will keep the County system Competitive.

B. The Human Resources Director, as the Executive's designee, shall be responsible to administer the personnel system and directly related affairs of the County to include collective bargaining; provided that, such role will not infringe upon the authority of the County Executive to exercise supervisory authority on those matters. The Human Resources Director may promulgate Administrative Guidelines (rules) to supplement this Code, provided such Administrative Guidelines shall not be in conflict with the Code. (Emphasis added)

As you are aware, the Human Resources Director has the authority under the Pierce County Administrative Guidelines to determine the order of layoff:

Order of Layoff In the event of a layoff as defined in these Administrative Guidelines the Human Resources Director shall determine the order of layoff within the affected department, by class...

When there is an applicable collective bargaining agreement, the Human Resources Director shall determine and/or apply the order of layoff and other related provisions as stipulated in the respective collective bargaining agreement.

Administrative Guidelines §3.30.030 (emphasis added).

The collective bargaining agreement between Pierce County and Teamsters Local 117 (the bargaining representative for Ms. Barnes and Ms. O'Brien) provides as follows:

When the Employer determines it is necessary to reduce the work force in classifications within a bargaining unit, regular full-time employees will be laid off

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based on ability to do the work without retraining, provided employees with the least seniority will be laid off first when ability is equal.

As Ms. Sawyers explained in e-mails to you on December 29 and 30, 2009, based on the totality of the information - including information learned during meetings with the union - she determined the employees' ability was equal and, based on Ms. Barnes' substantial seniority over Ms O'Brien (more than 10 years), that Ms. Barnes was not the appropriate person in the Administrative Officer classification to be laid off. This was by no means a criticism of Ms. O'Brien's service.

The Human Resources Department has worked hard to provide assistance to you..." I do not agree with you, that the Human Resource Department has worked hard to provide assistance to the Assessor-Treasurer's office. Because of your actions via the Human Resource Department and your statements above from your letter potentially affecting the pending ULP litigation that Sally Barnes is a part of, I felt it would be prudent to have the Assessor-Treasurer office's ULP attorney Mr. Richard H. Wooster review your said letter dated January 22, 2010. The following is the attorney Mr. Richard H. Wooster response letter dated February 5th, 2010, with his legal analysis of your legal argument that you set forth in your said letter dated January 22, 2010.

"Dear Mr. Washam:

I have reviewed the materials submitted between your office and the Human Resources Director, Betsy Sawyer as they relate to the pending Unfair Labor Practice Charge of Sally Barnes and other employees of your Department brought by the Teamsters 117.

I have also reviewed the letter dated January 22, 2010 from County Executive Pat McCarthy to you asserting the Executive's position that you have no authority to determine the abilities of persons in your independently elected Executive Department or whom should be subjected to layoff.

From the stand point of liability exposure under the ULP charge, there is less risk if Sally Barnes is retained than if she is laid off. It will be incumbent upon us to establish that the selection of Sally Barnes for layoff was not motivated by her protected activities of asserting what Ms. Barnes believes her rights to be under the collective bargaining agreement, but was because she lacked the abilities possessed by Ms. O'Brien. Further, you have reported to me that Ms. Barnes was significantly involved in the falsification of records at the office of the Assessor – Treasurer prior to your election. You have shown me a declaration that was signed by her indicating that she had no knowledge of such activities, when it appears that she did have such knowledge. These facts go directly to Ms. Barnes abilities and fitness to be retained. Ms. O'Brien has superior qualifications for the remaining position.

I believe that you have well documented your position that you selected Billie O'Brien for retention in favor of Sally Barnes based upon Ms. O'Brien's superior ability, knowledge, skills and experience in the Treasurer's side of the office where

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you felt an Administrative Officer continued to be needed. Of significant importance is Ms. O'Brien's declaration that establishes the specialized training and experience she holds and the complete lack of such experience of training in Ms. Barnes' background. The layers of management existing in the assessors side of your office did not support retaining an Administrative Officer over the assessors, particularly where Mr. Alberto Ugas, your Deputy Assessor-Treasurer has significant experience with the functions of the appraisers.

However, I am puzzled by the Executive's position agreeing with the Human Resources Director to retain Ms. Barnes rather than Ms. O'Brien in view of Ms. O'Brien's documented superior abilities in the position retained. I am less puzzled by the Executive's assertion that the Charter grants her absolute authority over all aspects of county wide personnel policies, even if that authority exceeds specific charter limitations or would render such limitations meaningless. I believe the position of the Executive undermines our ability to effectively defend the ULP charge as explained below.

The position of the Executive raises two significant concerns. First, under the County Charter who has the authority to run the operations of the Assessor-Treasurer's Office? Secondly, even if that authority is vested with the Pierce County Executive or her designee, the Human Resources Director, is the retention of Ms. Barnes appropriate under the collective bargaining agreement?

My position is that you are the decision making authority (Appointing Authority) under the County Charter and County Code regarding which employee should be retained in a layoff situation and that even if you did not have that authority under the Executive's interpretation of the County Charter and Administrative Guidelines, Ms. O'Brien is the appropriate individual to be retained based upon her ability and the language of the collective bargaining agreement and county administrative guidelines.

Under the County Charter, this issue is not clear because of conflicting provisions. There are provisions of the Charter that seem to clash with the actions being taken by the County Executive.

Specifically, the Charter provides as follows:

Section 3.10 -- Composition and Powers

The executive branch shall be composed of the Executive and all executive departments established by this Charter or by ordinance, and the members of boards and commissions, except boards which have quasi-judicial powers; however, ***the Executive shall not have administrative power over any other elected official or their department regarding staff supervision, staff assignments or normal daily operations, except as provided in the Charter.*** The

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executive branch shall have all executive powers of the County under this Charter. (emphasis added).

The Charter vests in you the administrative power of the Assessor-Treasurer's over all matters related to "staff supervision, staff assignments or normal daily operations, except as provided in the Charter." Since the language that retains your authority was adopted at the same time as the rest of the Charter, it is presumed that the drafters intended that language to have meaning. However, the Executive's interpretation of that provision would render that language meaningless where the Executive and/or the Council acted to adopt rules that conflict with that limitation of Executive authority, but made them rules of general application across all county departments.

The Executive points to the provision of Section 3.45(3) of the Charter that provides: "(3) All executive departments shall be subject to the personnel, budgeting, expenditure and any other policies of general application established by the Executive." Since this language is also included in the County Charter, it could be read as expanding the Executive's authority that is specifically limited under Section 3.10. The issue is whether this conduct of deciding who should be laid off involves a "personnel policy of general application" and if it is a policy of general application, does it conflict with limits on the power of the Executive set forth in the County Charter and/or the County Code? Notwithstanding the limits upon Executive Power they are arguably modified by executive authority granted by the Charter to adopt Executive personnel policies of general application. The scope of the exemption asserted by the Executive would render County Charter Section 3.10's specific limitation on the Executive regarding supervision, staff assignments or normal daily operations of other elected officials meaningless.

Taken to the extreme, the Executive could adopt an administrative guideline that only persons approved by the Office of the Executive may be offered County Employment. In this circumstance, the Executive has adopted the reverse extreme, "Only persons determined by the Executive/Human Resources Director may be laid off." Both actions remove the Elected Officials' authority over the staff supervision, staff assignments and normal daily operations of the Department.

The powers of the Executive are limited by the County Charter and County Code. Statutory interpretation must give meaning to all language of the Charter. The language of the Charter takes superiority over that language of the County Code, which takes superiority over the Administrative Policies adopted by the Executive.

The County Code provides that Administrative Guidelines adopted by Personnel must be consistent with the County Charter: "**3.08.020 Administrative Guidelines. "Administrative Guidelines" means those operational procedures promulgated by the Human Resources Director necessary to implement personnel policies or requirements consistent with this Code, the Charter, State, and Federal law.**"

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Under the County Code, the Executive does not have the authority to adopt policies that are inconsistent with the County Charter.

The Charter addresses limits on the Powers and Duties of the Executive:

Section 3.25 -- Powers and Duties

(1) As Chief Executive Officer, the Executive shall have all the executive powers of the County ***which are not expressly vested in other specific elective offices by this Charter***. The Executive shall have the power:

(g) to assign duties to administrative offices and executive departments ***which are not specifically assigned by this Charter*** or by ordinance.

The logic of the Executive's position is somewhat circular. She acknowledges that Executive Power is limited by the Charter on the management of other elected official's departments, but asserts that if the Executive adopts a policy that eliminates that restriction and makes it a "policy of general application" to all County Departments then the limitation will have no application to the policy adopted by the Executive. That position would render meaningless the Charter restrictions upon the Executive's authority over other elected officials.

The Executive quotes 3.20.010 of the County Code that provides:

A. The Executive shall be responsible for the administration of the County personnel system in accordance with the policies and standards established by ordinance and Code. This Title and Code establish a personnel system for the County which assures recruitment, selection and *retention of County employees* on the basis of merit; the development of a County Career Service; promotion on the basis of demonstrated ability; and compensation and personnel practices which will keep the County system competitive.

B. *The Human Resources Director, as the Executive's designee, shall be responsible to administer the personnel system and directly related affairs of the County to include collective bargaining; provided that, such role will not infringe upon the authority of the County Executive to exercise supervisory authority on those matters. The Human Resources Director may promulgate Administrative Guidelines (rules) to supplement*

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this Code, provided such Administrative Guidelines shall not be in conflict with the Code.

The reference in 3.20.010(B) of the County Code to “provided that, such role will not infringe upon the authority of the County Executive to exercise supervisory authority on those matters” could be read to include the authority of the officials elected to head the elected Executive departments. The County Charter specifically limits the Executive’s authority: ***“the Executive shall not have administrative power over any other elected official or their department regarding staff supervision, staff assignments or normal daily operations, except as provided in the Charter.”*** The Code provision in 3.20.010(A) that “The Executive shall be responsible for the administration of the County personnel system in accordance with the policies and standards established by ordinance and Code...” demonstrates that the County Executive does not have *carte blanche* to adopt any policy the Executive deems fit. That authority is limited by both County Charter and County Code.

The Code limits the Executive’s authority to adopt administrative guidelines to only such policies as do not conflict with the County Charter and the County Personnel Code:

3.08.020 Administrative Guidelines. "Administrative Guidelines" means those operational procedures promulgated by the Human Resources Director necessary to implement personnel policies or requirements consistent with *this Code, the Charter, State, and Federal law.* (emphasis added).

This analysis that the Executive cannot impose its determination upon your specific personnel decisions is supported by further examination of the County’s Personnel Code that designates authority to you as the appointing authority:

3.08.030 Appointing Authority. "Appointing Authority" means persons empowered with lawful authority by ordinance, law or Charter to *appoint and/or remove* employees from positions in the County service, or persons delegated by such Appointing Authority to perform duties which legally may be delegated. Generally, the director of the department is the Appointing Authority. (emphasis added).

For the proposition that your input has no weight in the final decision, the Executive relies upon a provision of the Administrative Guidelines that was not adopted by Ordinance into the County’s Personnel Code or expressly approved by the Charter and appears to conflict with the County Personnel Code provisions referenced above, 3.08.020. The Executive relies upon the following Administrative Guideline:

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3.30.030 Layoffs.

A. Order of Layoff. In the event of a layoff as defined in these Administrative Guidelines the **Human Resources Director shall determine the order of layoff within the affected department, by class. The determination will be based on experience, skill and qualifications to do the work without retraining in order to preserve the most skillful and productive remaining County workforce. In determining the order of layoff, the Human Resources Director shall consider the knowledge, skills, and abilities required of the remaining workforce within the affected department, performance evaluations or other assessments made by the Appointing Authority** or supervisors of employees in the affected class or classes in the affected department, any records of disciplinary actions of employees in the affected classes, **any special skills possessed by the employees which would be of advantage to the County, and any other relevant factor.**

Where there is an applicable collective bargaining agreement, the Human Resources Director shall determine and/or apply the order of layoff and other related provisions as stipulated in the respective collective bargaining agreement...(Emphasis Supplied)

My opinion is that the County Charter and the County Personnel Code limits the ability of the Executive to completely usurp the authority of elected officials to address “**staff supervision, staff assignments or normal daily operations.**” It is my opinion that your determination as the “Appointing Authority” should be afforded greater weight in the final analysis even if my interpretation of the County Charter and County Code is ultimately determined to be incorrect. The County Human Resources Director may have general knowledge regarding minimum job qualifications based upon a position description, but has no demonstrated knowledge of the operational needs of your department. Accordingly, your determination as the “Appointing Authority” should be accorded greater weight and the Human Resources should be required to appropriately support her position for why she is rejecting your subject matter expertise and the detailed documentation regarding the gross disparity in ability of Ms. O’Brien over Ms. Barnes in the performance of the duties of the position retained on the Treasurer’s side of your office.

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The Human Resources Director has not attempted to show how her decision complies with the provisions of the Collective Bargaining Agreement or justifies the retention Ms. Barnes in lieu of Ms. O'Brien in view of the different skill sets established for the two positions of Administrative Officer and the skill sets of the affected employees. Further, my understanding from our discussions is that Ms. Barnes was a relative new comer to a senior management position and Ms. O'Brien had been the Administrative Officer on the Treasurer's side of the operation for seven and a half (7 ½) years.

The Collective Bargaining Agreement addresses the layoff issue in the following language:

7.5 - Layoffs. When the Employer determines it is necessary to reduce the work force in classifications within a bargaining unit, regular full-time employees ***will be laid off based upon ability to do the work without retraining***, provided employees with the least seniority will be laid off first ***when ability is equal***.

For layoff purposes, seniority shall first be based on the amount of continuous service in the bargaining unit. If seniority continues to be equal, seniority shall next be determined based on the amount of continuous service within all operations of County government. If seniority still continues to be equal, the employees to be laid off shall be determined by "drawing lot" from among those employees whose seniority remains equal. No regular full-time employee shall be laid off or demoted while there are temporary or probationary employees serving in the same classification in the same bargaining unit, provided they are fully qualified to do the remaining work required to be performed as determined by the Employer. Employees being laid off shall be given two (2) weeks' notice of layoff. Such two (2) week notice shall not be required in programs where funds are discontinued by state or federal agencies without adequate notice to the Employer.

Bumping rights shall only apply in the employee's present classification and lower classifications in the same series for which the employee is qualified in the bargaining unit to which the employee is presently assigned. Senior part-time employees only have the right to bump full-time employees if they accept the full-time position. Employees being laid off due to a reduction in force shall keep the Employer's Human Resources Department informed of their current address and telephone number.

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7.6 - Seniority List. In the event of a potential layoff within the bargaining unit, the Human Resources Department shall publish a seniority list for layoff purposes in conformance with Article 7.5. In addition, the Human Resources Department will publish a seniority list for all other negotiated purposes in conformance with Article 7.1.

The Human Resources Director does not address how she arrived at her opinion that Ms. Barnes has the “**ability to do the work without retraining,**” or that “**ability is equal**” between Ms. Barnes and Ms. O’Brien in the retained position of Administrative Officer for the Treasurer’s side of the Assessor – Treasurer’s Office. If Ms. Barnes needs any training for the position, she should not have been retained. If Ms. O’Brien’s ability is superior for the position, Ms. O’Brien should have been retained. Ms. Sawyer only properly gets to the discussion of seniority when the “ability is equal” and no retraining is necessary. Yet Ms. Sawyer elevates seniority to the most important criteria and appears to disregard the remaining language of the layoff clause of the Collective Bargaining Agreement.

The County’s Administrative Guidelines define “ability” as it is used in this context:

3.08.012 Ability. Is a composite of:

- A. **Performance of efficient work and services;**
- B. Avoidance and discouragement of waste of materials, time and manpower;
- C. Use of the best efforts of the employee to preserve and protect County property and interest, as set by the County personnel policies;
- D. Prevention and reporting of loss of equipment, tools and materials;
- E. A cooperative and respectful attitude in all contacts with the public;
- F. **Experience relative to performing the job assigned;** and
- G. Other criteria developed by the Pierce County Human Resources Department. (emphasis supplied)

Rather than addressing the criteria set forth in the Collective Bargaining Agreement, Ms. Sawyer has mischaracterized what the Collective Bargaining

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Agreement states. "...because the union contract *only* requires the senior employee to be able to do the work "without retraining""(emphasis supplied) Sawyer E-Mail December 30, 2009. Her assertion is factually incorrect and misconstrues the contract. The Collective Bargaining Agreement invokes a two step process, (1) "ability to do the work without retraining" and (2) determine which employee has the better ability to do the work. Only where "ability is equal" does the consideration of seniority come into play. Ms. Sawyer's interpretation would greatly undermine the County's authority to determine who is retained in a layoff situation and essentially result in a determination that seniority is the sole factor upon which to base the retention decision. In fact, Ms. Sawyer states as such in her e-mail: "...Sally Barnes has the experience, knowledge, skills and abilities to perform the duties of either Administrative Officer position. Ms. Barnes also has a good performance record in her file and *more important*, she is the more senior of the two employees by more than 10 years." (emphasis added).

Ms. Sawyer does not address how Ms. Barnes is able to perform the duties of the position she has never held, Treasurer's Administrative Officer, with or without training or how Ms. Barnes' abilities in that regard are equal to Ms. O'Brien's abilities where Ms. O'Brien has been performing those specific duties for seven and half years and spent her entire County Career on that side of the office. Ms. Sawyer has made no effort to quantify, justify or support her assertion that "Sally Barnes has the experience, knowledge, skills and abilities to perform the duties of either Administrative Officer position."

It is my opinion that the position of the Human Resources Director, Betsy Sawyer undermines our position in the Unfair Labor Practice case before PERC because it will be cited as an example of an attempted adverse employment action on your part against Ms. Barnes. However, you have done your due diligence to address the needs of the office and the abilities of the persons to best meet the needs of the organization. Ms. Sawyer's conclusory analysis of the abilities of the two employees undermines our position because it will be accorded some credence given her significant position of responsibility at the County.

Further, Ms. Sawyer's assessment of Ms. Barnes as having a "good performance record" completely ignores your reports of Ms. Barnes significant role in falsifying official records of the Office of the Assessor – Treasurer regarding physical inspections and submitting such documents to State agencies having oversight over the activities of that office.

Please let me know if I can provide you any additional information. As I have previously discussed with you, my scope of representation is limited to matters that relate to the Unfair Labor Practice charge. I am not permitted under the scope of my representation to advocate on your behalf the positions outlined in this correspondence. However, I continue to believe some of the positions taken by the Human Resources Department and Executive are undermining your position in the ULP case."

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Ms. McCarthy, I agree with Mr. Wooster's legal analysis and I disagree with your conjectures. There are other issues regarding your office whereby I believe you are interfering with the administrative power of the Assessor-Treasurer. However, I will address those issues in a future communication.

Dated February 26, 2010.

Respectfully,
IN GOD I TRUST,

Dale Washam

Attachments:

Ms. McCarthy letter dated January 22, 2010.

Mr. Richard H. Wooster letter dated February 5, 2010.

Cc:

Pierce County Council Members

Betsy Sawyers

Richard Wooster

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