FINDINGS OF FACT REPORT
RE: Betsy Spencer, Director
Neighborhood Housing and Community Development
July 1, 2016

1. Introduction

This is a Findings of Fact Report based on an administrative investigation conducted by the Labor Relations Office at the direction of ACM Bert Lumbreras. This Report presents the Investigator's Findings of Fact regarding the concerns listed in Section 5 below, a review of the relevant evidence which either supports or conflicts with each Finding of Fact, and the recommended disposition of each concern addressed.

2. Respondent

Betsy Spencer, Director
Neighborhood Housing and Community Development (NHCD)

3. Investigator

Tom Stribling, Interim Labor Relations Officer

4. Description of the Investigation Process

The investigation utilized personal, face to face interviews with the Respondent and individuals identified as witnesses or persons with knowledge of facts relevant to the investigation. In addition to interviews conducted, the Investigator reviewed numerous documents that were relevant to the investigation.

5. Background

On February 12, 2015, Leroy Bookman, HR Consultant, HRD Employee Relations Division, issued an Investigation Report regarding allegations against a NHCD employee, Steve Ritchie. On July 29, 2015, Respondent Betsy Spencer conducted a pre-disciplinary meeting with Mr. Ritchie. Subsequent to that meeting, Respondent Betsy Spencer expressed concerns to ACM Lumbreras regarding the Findings of Fact and Conclusions reached by Mr. Bookman and contained in his February 12 Report. After additional review, ACM Lumbreras agreed that the investigation supported a finding that Mr. Ritchie had violated the City of Austin's Employee Conduct policy, but did not support a finding of any other alleged policy violations. In November 2015, ACM Lumbreras directed Respondent Betsy Spencer to issue a written reprimand to Mr. Ritchie based on this conduct.

On March 31, 2016, ACM Lumbreras had a phone conversation with Respondent Betsy Spencer. ACM Lumbreras reports that he asked Respondent Betsy Spencer whether she in fact followed through with his directive to issue Steve Ritchie a written reprimand and a strong statement that this type of behavior was not acceptable and would not be tolerated in the future. ACM Lumbreras reports that Respondent Betsy Spencer stated she did not follow through back in November. Respondent Betsy Spencer also reportedly told ACM Lumbreras she had not followed through because of the floods and many other issues came up and she was not able to get it done. ACM Lumbreras reports that he told Respondent Betsy Spencer that he was very concerned about her inaction, that he had given her a clear directive, and this matter should have been addressed already.

On May 6, 2016, ACM Lumbreras provided a memo to Respondent Betsy Spencer which states in part:

> Secondly, I am directing you to meet with me in the next few days. As I have said before, I am surprised and extremely disappointed that you failed without justification and against my direction to administer the written disciplinary memo to Mr. Ritchie, especially since you agreed there were policy violations based on a second review. I was very clear and direct in my instruction at that time, and you agreed that the action was appropriate. In fact, it was the very action you had requested in your earlier memo to me dated August 13, 2015. When you and I discussed this on March 31[s1], you made it clear that you had understood my earlier instruction, and you offered no reasonable excuse for failing to carry it out. It is all the more disappointing that you have continued to refuse to take that action even since our March 31st conversation.

On May 20, 2016, Respondent Betsy Spencer sent an email to ACM Lumbreras. That email states in part:

> Based upon our telephone conversation today, attached is a copy of the reprimand document provided to Steve [Ritchie] on November 9, 2015.

Attached to the email was the following document:

City of Austin

Neighborhood Housing and Community Development
P.O. Box 1088, Austin, TX 78767-1088
(512) 974-3100 • Fax (512) 974-3112 • www.cityofaustin.org/housing

TO: Steve Ritchie, Director of Construction and Development

FROM: Betsy Spencer, Director Neighborhood Housing and Community Development

DATE: November 9, 2015

SUBJECT: Verbal Written Reprimand

This memorandum is a written summary of the reprimand administered today regarding a policy violation of horseplay in the workforce. On July 29, 2015, a Pre-Disciplinary Meeting was conducted regarding an investigative report written by Mr. Leroy Bookman, dated February 12, 2015, concluding that you had violated the City of Austin Personnel Policy regarding Discrimination, Harassment and Sexual Harassment and Employee Conduct. During the Pre-Disciplinary meeting you provided your verbal rebuttal testimony. Subsequently, you provided a copy of a polygraph test, dated August 15, 2015 that substantiates your statement denying claims of sexual harassment.

Based upon your testimony, documentation and further investigation, it has been determined that you have committed a policy vioation involving horseplay in the workplace. As we discussed, this be havior is unacceptable and will not be tolerated.

During the meeting, you requested that the original report by Leroy Bookman be removed from your record, as it drew an inaccurate conclusion. I informed you that I would submit your request to the appropriate personnel.

cc: Employee Relations file

6. Scope of the Investigation - Concerns Reviewed

On June 20, 2016, ACM Lumbreras sent an email to Respondent which stated in part:

> Betsy
>
> I am directing you to come to my office tomorrow afternoon (6/21) at 3:00 PM in order to provide information about the document you sent me on May 20 that you said was the reprimand memo you gave to Steve Ritchie last November 9.
>
> Based on your recent communications to me about this document, I am extremely concerned about it. Despite numerous opportunities to do so, you never told me before our May 6 meeting that you had given Steve any reprimand at all, even though we agreed last year you would do so. In fact, you specifically told me in our March 31 phone call that you did not give Steve any reprimand at all. And in our May 6 meeting, you never said you had given anything in writing to Steve. Then two weeks later, on May 20 you sent me the memo in an email saying you had given it to Steve back on November 9. I am also told that this document wasn't in Steve's personnel file.
>
> In light of my concerns about this document, we have asked Tom Stribling in the Labor Relations Office to interview you about this issue tomorrow afternoon. Please be prepared to discuss with him your knowledge of the following questions: (1) when was the memo actually created; (2) when

and how did you actually give it to Steve; (3) why is the memo not in Steve's personnel file; and (4) why did you not tell me about it in either our March 31 telephone call or our May 6 meeting?

7. Interviews

Tom Stribling, Acting Labor Relations Officer, conducted the following interviews:

Steve Ritchie:

Steve Ritchie was interviewed on June 29, 2016. Mr. Ritchie was shown a copy of the above Verbal Written Reprimand document dated November 9, 2015. Mr. Ritchie was asked if he had ever seen the document prior to this interview. Mr. Ritchie responded: "No."

Mr. Ritchie explained that he did meet with Betsy Spencer on November 9, 2015. The purpose of the meeting was to go over his SSPR. (This is consistent with the City calendars for Mr. Ritchie and Ms. Spencer.) Mr. Ritchie stated that during the meeting, he and Ms. Spencer spoke about the complaint that had been filed against him and investigated by Leroy Bookman with HRD. Mr. Ritchie explained that he had contested Mr. Bookman's findings, that he had taken a polygraph to clear his name, and that he had requested that the report issued by Mr. Bookman be removed from his file. He was told by Ms. Spencer that someone else had reviewed the Bookman investigation, and that as a result of that review Ms. Spencer was not going to sustain a finding of sexual harassment.

Mr. Ritchie further stated that on November 9, 2015, Ms. Spencer gave him a verbal reprimand. When asked what was said he stated he could not remember everything. He did remember that he was told to keep his hands to himself and no more hugs in the workplace. Mr. Ritchie stated that he has since told people that he got a verbal reprimand as a result of the complaint that had been filed against him. Mr. Ritchie said that the complaint was bogus, and he should not have been verbally reprimanded.

Mr. Ritchie stated that Ms. Spencer told him she would follow-up this verbal reprimand with a written document, however she needed to see the review that had been conducted of the Bookman Investigation before she could put it in writing. Mr. Ritchie was asked if Ms. Spencer ever followed-up with anything in writing about this matter. Mr. Ritchie responded: "No."

Mr. Ritchie was again asked if, prior to this interview, had he ever seen or been given the Verbal Written Reprimand document dated November 9, 2015. Mr. Ritchie again replied: "No." Mr. Ritchie was asked if he knew whether this document was in his personnel file, to which he responded that he did not know.

Lateefah Neal-Franks:

Lateefah Neal-Franks is employed as the Human Resources Coordinator for NHCD. Ms. Neal-Franks was interviewed on June 30, 2016. Ms. Neal-Franks was shown a copy of the above Verbal Written Reprimand document dated November 9, 2015, and was asked about her knowledge of the document. Ms. Neal-Franks responded that she initially received the unsigned, unofficial document sometime in May 2016. She received it from Respondent Betsy Spencer. Also in May of 2016, Respondent Betsy Spencer provided Ms. Neal-Franks with the official copy of the memo containing Respondent's initials. Ms. Neal-Franks

identified the above Verbal Written Reprimand document dated November 9, 2015 as a copy of the official document she received from Respondent Betsy Spencer in May 2016.

Ms. Neal-Franks stated that Respondent Betsy Spencer did not give her any instructions regarding the document. Ms. Neal-Franks stated she placed the document in Steve Ritchie's Employee Relations file which is located in her office.

Ms. Neal-Franks stated the she has never seen the document in question before May 2016.

Respondent Betsy Spencer:

Respondent Betsy Spencer was interviewed on June 30, 2016. Respondent recorded the interview using her personal tablet.

Respondent was shown a copy of the above Verbal Written Reprimand document dated November 9, 2015, together with her email dated May 20, 2016 forwarding that document to ACM Lumbreras. Respondent Betsy Spencer stated that she created the Verbal Written Reprimand on her personal tablet on May 20, 2016. Respondent emailed the document to Lateefah Neal-Franks on May 20, 2016 and asked her to print the document so that Respondent could initial the document. Respondent Betsy Spencer confirmed that the above copy of the document contained her initials.

The initialed document was scanned, and sent via email to ACM Lumbreras on May 20, 2016.

As background, Respondent Betsy Spencer stated that on June 26, 2015, she drafted a Memo of Concern addressed to Steve Ritchie. That memo was based on the Investigation Report issued by Leroy Bookman with HRD. The June 26, 2015 Memo of Concern was not given to Mr. Ritchie because ACM Lumbreras changed his mind regarding the Investigation conducted by Mr. Bookman. ACM Lumbreras agreed not to accept the findings regarding Discrimination, Harassment and Sexual Harassment. Respondent Betsy Spencer stated that ACM Lumbreras told her that Steve Ritchie should be disciplined by her [for horseplay] or she would be subject to discipline.

Respondent Betsy Spencer stated that she met with Steve Ritchie on November 9, 2015. In that meeting Respondent issued Mr. Ritchie a verbal reprimand directing him to never again engage the alleged conduct investigated by Mr. Bookman. Respondent also stated that she told Mr. Ritchie that he would get a written reprimand later. Respondent Betsy Spencer stated that she has not provided Mr. Ritchie a written reprimand.

Regarding the Verbal Written Reprimand document dated November 9, 2015, Respondent Betsy Spencer stated that she sent the document to Lateefah Neal-Franks to put in Mr. Ritchie's file. When asked which file she intended the document to be placed in, Respondent stated she did not know. She stated she was not familiar with the HR files.

Respondent Betsy Spencer stated she was not aware if Mr. Ritchie knows about the Oral Written Reprimand dated November 9, 2015. Respondent stated that she has not given Mr. Ritchie a copy of the document, and has not instructed anyone else to do so.

Respondent Betsy Spencer stated that she sent the Verbal Written Reprimand document dated November 9, 2015 to ACM Lumbreras because ACM Lumbreras told her to give him a copy of "either what you have done or what you intend to do".

Respondent Betsy Spencer was questioned about the portion of her email sent to ACM Lumbreras on May 20, 2016 which stated:

> Based upon our telephone conversation today, attached is a copy of the reprimand document ***provided to Steve [Ritchie] on November 9, 2015***. (Emphasis added.)

Respondent stated that her email was not intended to imply that she had given the document to Mr. Ritchie. Respondent stated that she was doing due diligence based on what ACM Lumbreras directed her to do.

At the conclusion of the interview, Respondent Betsy Spencer provided a copy of a polygraph report. Respondent's attorney, Gary Bledsoe, arranged for the polygraph which was conducted by Donald Clendennen on June 29, 2016. The report stated in part:

> During the pre-test interview, Ms. Spencer said she was hired by the City of Austin as Assistant Director of Neighborhood Housing and Community Development in December 2009. Ms. Spencer was eventually named Interim Director and subsequently named as director of the Department.
>
> In the fall of 2010, Steven Ritchie was hired as a consultant and in June 2011 he was hired as the Construction and Development Manager.
>
> After Mr. Ritchie was hired as an employee, someone filed sexual harassment complaints against Mr. Ritchie on behalf of a third party, [redacted]
>
> In conversations Ms. Spencer had with Assistant City Manager Bert Lumberas, based on her knowledge of the persons and events she expressed her concern that Mr. Ritchie may have been falsely accused. According to Ms. Spencer an investigation was initiated which eventually exonerated Mr. Ritchie of the sexual harassment claim but Ms. Spencer had agreed to give Mr. Ritchie a reprimand for "horseplay" which she did on 11/9/2015.
>
> Mr. Ritchie asked Ms. Spencer if the allegation of sexual harassment could be removed from his personnel file because it was not substantiated. Ms. Spencer passed the request on to Mr. Lumberas but received no response until May 6th.
>
> Ms. Spencer said Human Resource Coordinator, Lateefah Neal initiated a complaint against other employees alleging they had created a hostile work environment.
>
> On 3/31/2016 Mr. Lumberas called Ms. Spencer and told her that [redacted] had filed a complaint against her alleging retaliation for her handling of the complaint against Mr. Ritchie. Ms. Spencer said she later learned that [redacted] had filed a similar complaint.
>
> In that same telephone call on 3/31/2016, Mr. Lumberas asked Ms. Spencer if she had given Mr. Ritchie a written reprimand and if she had

told him that he would be fired if "it happened again". Because the eventual facts did not support such a threat, Ms. Spencer said she did not tell Mr. Ritchie he would be fired if the behaviors continued and that this would be contrary to what had been discussed between she and Mr. Lumberas. Ms. Spencer said she thought Mr. Lumberas understood Mr. Ritchie would receive a reprimand.

On 5/6/2016, Ms. Spencer was summoned to Mr. Lumberas' office for what she thought was a routine performance evaluation but rather she was chastised by Mr. Lumberas for her handling of the complaints that were filed against Mr. Ritchie.

On 5/20/2016, Ms. Spencer said she received a request from Mr. Lumberas saying ''send me what you have already given Steve or a draft of what you intend or plan to give to Steve" [regarding the complaint allegations].

Ms. Spencer said by the end of the day on 5/20/2016 she sent Mr. Lumberas a memorandum stating she had given Mr. Ritchie a verbal reprimand, and she attached a copy of written documentation of the verbal written that was dated November 9, 2015 that the (sic) intended to give to close out the verbal written reprimand of that day.

Mr. Lumberas eventually alleged that during their telephone conversation on 3/31/2016, Ms. Spencer had told him that she had not given Mr. Ritchie any reprimand. During the pre-test interview, Ms. Spencer said she told Mr. Lumberas that she had not threatened Mr. Ritchie with termination because the circumstances didn't warrant such a threat but she denied telling him she hadn't reprimanded Mr. Ritchie at all.

Mr. Clendennen constructed and administered a polygraph examination to determine the veracity of Ms. Spencer's claim that on 3/31/2016 she did not tell Mr. Lumberas that she did not give Mr. Ritchie any reprimand and whether on 5/20/2016 she had sent him documentation she intended to provide to Mr. Ritchie of the verbal reprimand she had issued on 11/9/2015.

Using a Modified General Question Test format Mr. Clendennen asked Ms. Spencer the following relevant questions on the polygraph examination:

1. **On March 31, 2016 did you tell Bert Lumberas that you did not reprimand Steven Ritchie at all? Answer: No.**
2. **On May 20, 2016 did you send Bert Lumberas a memo "in the manner he requested" documenting Steven Ritchie's reprimand? Answer: Yes.**

Based on established and accepted numerical evaluation it is Mr. Clendennen's professional opinion that Ms. Spencer's physiological responses on the polygraph examination are consistent with criteria associated with No Deception Indicated (NDI).

8. Findings of Fact

The following findings of fact are based on a preponderance of the credible evidence obtained from the interviews conducted and documentary evidence acquired and reviewed.

(1) On August 13, 2015, Respondent Betsy Spencer informed ACM Bert Lumbreras: "My professional recommendation is to provide Mr. Ritchie with a written reprimand for excessive horseplay."

(2) After August 13, 2015 and prior to November 9, 2015, ACM Lumbreras instructed Respondent Betsy Spenser to issue a written reprimand to Steve Ritchie for violation of the City of Austin's Employee Conduct policy.

(3) On November 9, 2015, Respondent Betsy Spencer issued to Steve Ritchie what each described as a "verbal reprimand" for "horseplay". The reprimand consisted of Respondent informing Steve Ritchie to never again engage the alleged conduct investigated by Mr. Bookman, to "keep his hands to himself and no more hugs in the workplace."

(4) "Horseplay" is not defined or used in either the City of Austin Personnel Policies or the Municipal Civil Service Rules of the City of Austin.

(5) On November 9, 2015, Respondent Betsy Spencer told Steve Ritchie that he that would get a written reprimand for his conduct at a later time.

(6) On several occasions since November 9, 2015, including March 31, 2016, May 6, 2016, May 20, 2016, and June 20, 2016, ACM Lumbreras has made clear his expectation and directive to Respondent Betsy Spencer to issue a written reprimand to Steve Ritchie.

(7) To date, Betsy Spencer has not issued a written reprimand to Steve Ritchie for his conduct.

(8) On or about May 20, 2016, Respondent Betsy Spencer created a document with the subject: "Verbal Written Reprimand". Respondent Betsy Spencer dated the document November 9, 2015. A copy of the document in question is pasted into this report in Section 5 above. (Hereinafter referred to as the "Verbal Written Reprimand" document.)

(9) On or after May 20, 2016, the Verbal Written Reprimand document was placed in Steve Ritchie's "Employee Relations file".

(10) To date, Steve Ritchie has not been provided a copy of the Verbal Written Reprimand document or notified of its existence.

(11) The actions of creating a backdated Verbal Written Reprimand document and placing the document in an Employee Relations file without delivering the document to the affected employee or notifying the affected employee that the document has been placed in their file does not equate to "issuing" a written reprimand to the employee.

(12) On May 20, 2016, Respondent Betsy Spencer forward the Verbal Written Reprimand document to ACM Lumbreras via email to ACM Lumbreras. That email states in part:

Based upon our telephone conversation today, attached is a copy of the reprimand document provided to Steve [Ritchie] on November 9, 2015.

(13) Respondent Betsy Spencer was not truthful when she stated that she had provided the document to Steve Ritchie on November 9, 2015. To the contrary, Respondent Betsy Spencer has never provided the document to Steve Ritchie.

9. Recommended Disposition

A preponderance of the credible evidence substantiates a finding that Respondent Betsy Spencer has violated the following City of Austin policies and it is the investigator's recommendation that the following be classified as ***Founded.***

(1) Insubordination for Respondent's refusal or failure to obey a clear and lawful direction from her supervisor, ACM Lumbreras, to issue a written reprimand to Steve Ritchie.

(2) Dishonesty for Respondent backdating a personnel action, specifically the Verbal Written Reprimand document.

(3) Dishonesty for Respondent falsely stating on May 20, 2016: "attached is a copy of the reprimand document provided to Steve [Ritchie] on November 9, 2015."

(4) Dishonesty for Respondent attempting to "cover up" the true facts surrounding her refusal or failure to issue a written reprimand to Steve Ritchie.

SUMMARY

Please contact me if you have any questions regarding this Report or require any further review in connection with this matter.

/s/ Tom A. Stribling
Tom Stribling, Acting Labor Relations Officer
(512) 974-8515
Tom.Stribling@austintexas.gov