



King County

Records, Elections and Licensing Services Division

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August 26, 2005

Garth Fell
Assistant Superintendent
Elections Section
Records, Elections and Licensing Services Division

Re: **Proposed Two-Week Suspension**

Dear Mr. Fell:

This letter is to notify you that I am proposing to suspend you for two weeks without pay based on your failure to properly oversee the mail ballot satellite operations (MBOS) during the 2004 General Election as set forth below. Those failures resulted in ballots not being processed prior to certification of the election results and in some cases, not at all. Before I make a final determination regarding your suspension, a meeting has been scheduled for you at 4:00 p.m. on September 1, 2005 in my office. This meeting is your opportunity to share with me any additional information or mitigating factors you would like me to consider prior to making a final decision.

As you know, outside investigators were retained to look into absentee ballot processing issues during the 2004 general election, as well as into issues associated with the April 2005 mail ballot election. Their investigation report is complete; a copy of that report is enclosed.

The factual basis for my proposing a two-week suspension is as follows:

A. 93 Unopened Ballots

The investigators determined that during the 2004 general election, MBOS staff failed to follow directives and to follow processes and protocol that would have led to the discovery of the 93 unopened ballots prior to certification. Although the investigators concluded that the initial failure to open the ballots was a result of human error, a number of steps had been put into place to ensure that kind of error would be caught in the process prior to or during tabulation.

The investigators also concluded that MBOS staff failed to ensure an immediate resolution of issues upon discovery of discrepancies during the tabulation process; rather, un-reconciled batches were placed on gem packs for later resolution. Had the ballot discrepancies been reconciled immediately pursuant to regular protocols it is likely that the unopened ballots would have been discovered much earlier in the process. As an assistant superintendent, you should have directed staff to make sure discrepancies were dealt with efficiently and promptly. In addition, you created an "Accountability Spreadsheet" that should have alerted you and other Elections Division staff to discrepancies between the number of ballots in each batch versus the number of tabulated ballots (minus rejected or challenged ballots). You failed to ensure that Ms. Way regularly review the spreadsheet and report errors back to you and as such, several opportunities to discover the discrepancies in the batch count prior to certification of the election were missed. While I appreciate the effort you went to create the spreadsheet in an effort to increase accountability, your failure to follow up on implementation of the spreadsheet is of great concern.

B. No Signature on File Ballots

As you are aware, several no signature on file ballots (NSOF) were improperly processed during the 2004 general election. The failure to process NSOF ballots in the correct manner prior to certification led to significant public distrust of Elections' operations. Votes were not counted in a timely manner and, in some cases not at all. As the Assistant Superintendent in charge of MBOS, you should have done more to ensure that there were appropriate processes and expectations in place for staff to check for signatures that had not been scanned.

On December 13, 2004, Mr. Huennekens was alerted to a discrepancy regarding the number of NSOF ballots just before a canvassing board meeting. You and Ms. Way told Mr. Huennekens that the number of ballots that the DIMS system was reporting was not accurate. The investigators concluded that you failed to follow up to determine the actual number of NSOF ballots.

C. Other Considerations

I am also basing my recommendation for discipline on your failure to timely respond to MBOS staff communications during the 2004 elections. On several occasions when your input and advice was sought by telephone or by e-mail, you either failed to respond to the communication or your communication was not timely. As a result, and despite you putting in various safeguards to prevent mistakes, staff under you made unilateral decisions that negatively impacted the quality of your unit's work and that created significant problems in the administration of the 2004 General Election. As an assistant superintendent one of your most important functions is to assist your staff in fulfilling their responsibilities. While the situation noted above was a significant disappointment, I recognize that since the 2004 General Election your actions and efforts over the past several months have demonstrated a tremendous improvement in communication and involvement in day-to-day operations.

In further contemplation of the disciplinary action I am proposing, I cannot overlook that the investigators noted that you had recently been appointed as assistant superintendent and lacked sufficient experience to appreciate the magnitude and significance of some of the problems during the 2004 general election. While I agree with the investigator's observation, I also believe that that you now have a much better appreciation for what could have and should have been done.

Just prior to the issuance of the investigators' report, I instituted a performance improvement plan for you and several other Elections staff. We have discussed extensively the communication issues during your performance review process. You have demonstrated superior technical knowledge in your role as an assistant superintendent, however, your failure to communicate effectively during the fall of 2004 had a serious impact to the organization. Again, since the implementation of the performance improvement plan, you have taken great strides towards eliminating this deficiency. It will be critical that you continue to do so.

Because of the significant improvements you have made in your role as assistant superintendent since the implementation of your performance improvement plan, including taking hands on responsibility for both critical functions under your management, I am considering holding all or part of the proposed suspension in abeyance. The discipline, if imposed, may be held in abeyance pending completion of the goals and performance measures set forth in the performance improvement plan. Additionally, I will further review the investigative report and revise your performance improvement plan as I deem necessary. Failure to meet all of the performance improvement plan's goals and measures may lead to imposition of all or part of the disciplinary action and any other discipline that I may deem appropriate for that failure.

As a further condition for holding my proposed action in abeyance, I am directing you to complete several communications and leadership courses that I believe will help provide you with the tools to more effectively perform your duties and improve your opportunity for success. I have asked Sherril Huff Menees, Assistant Director, to work with the County's Human Resources Division to identify the appropriate courses and a reasonable schedule in which they should be completed.

The investigative report is the subject of a public disclosure request by the media and will need to be released as soon as possible. While this is the case, I need to take this opportunity to express my expectation that you focus your efforts and attention in preparing for and conducting the fall elections.

You have the right to respond orally or in writing to this proposed disciplinary action. If you choose to respond orally, please attend the meeting as scheduled. If you fail either to participate in this hearing or to submit a written response by the scheduled date of this hearing,

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you will have waived your right to respond and I will make a final decision in this matter on the information provided to date.

Sincerely,

A handwritten signature in cursive script that reads "Dean C. Logan". The signature is written in black ink and is positioned above the printed name.

Dean C. Logan

Enclosure

cc: Personnel File