

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

THERESA HUSSEY-ROGERS,
Appellant

v.

**CITY OF SOMERVILLE
DEPARTMENT OF PUBLIC
WORKS,**
Respondent

Case No.: D-07-232

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on September 25, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 28, 2008. No comments were received by the Commission from either party. Although the Commission voted to adopt the findings of fact, it voted not to adopt the recommended decision of the Magistrate.

As part of the decision, the Magistrate concludes that: "I do not find that either the Appointing Authority or Mr. Buckley were manipulating the underlying course of events involving Ms. Hussey-Rogers' conduct on May 8, 2007 to retaliate against her for her past complaints regarding her working conditions. I do not find these prior events had anything to do with the imposition of this one day suspension." This conclusion is not supported by the findings of fact.

Based on the findings of fact and a review of the record, the Commission finds that the course of events leading up to the Appellant's suspension are too close in time and are too interrelated: indicating bias or prejudice towards Ms. Hussey-Rogers.

Before April 19, 2007, the Appellant had prevailed in an MCAD action against the Appointing Authority, which was ordered to provide her with a ladies room. On *April 19, 2007*, she met with Superintendent Antonelli, Mr. Buckley's supervisor, after Mr. Buckley refused to allow her to work on a holiday that would have paid her two and a half times her normal pay. Mr. Antonelli awarded her four hours pay. On *April 23, 2007*, her next day at work, she arrived to find that her desk had been moved into the men's locker room. The photos of her daughter serving in the armed forces in Iraq had been removed from her wall, and were spread across her desk. Mr. Buckley explained that her desk had been moved

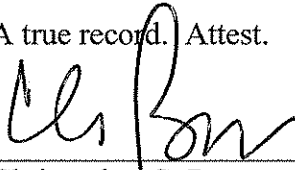
because the Sewer Division room was going to be painted. Hers was the only furniture that was moved. At the time of the DALA hearing on May 14, 2008, the Sewer Division room had yet to be painted. Finding #22. The Commission finds Mr. Buckley's behavior in this instance to be very disturbing. The Appointing Authority's apparent failure to discipline Mr. Buckley for behavior is concerning.

Mr. Antonelli's decision to grant Ms. Hussey-Rogers four hours pay was later overturned, and a grievance hearing was scheduled for May 8, 2008. The Commission does not choose to speculate on the relationship between the Appellant and Mr. Buckley at that time, and whether he chose not hear her when she attempted to inform her of the grievance hearing - initiated by his refusal to allow her to work holiday hours. The Commission, however, finds that due to the course of events as outlined above, sufficient animus existed on the part of Mr. Buckley against Ms. Hussey-Rogers, a fifteen year employee whom he had supervised for ten years. Given this background, neither Mr. Buckley nor the Appointing Authority displayed an unprejudiced mind, exercised common sense or followed the rule of law in its treatment of Ms. Hussey-Rogers in regard to the disciplinary action that is the subject of the instant appeal.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *allowed*.

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Henderson, [Marquis -- NO], Stein and Taylor, Commissioners) on September 25, 2008.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Valerie A. McCormack, Esq. (for Appellant)

Matthew J. Buckley, Esq. (for Appointing Authority)

Shelly Taylor, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

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July 28, 2008

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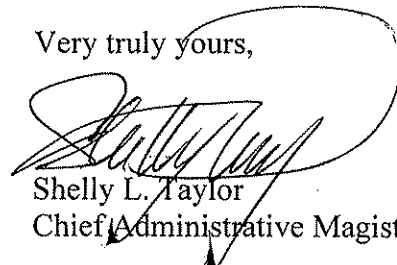
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CIVIL SERVICE COMMISSION

Re: *Theresa Hussey-Rogers v. City of Somerville Department of Public Works*
Docket No. CS-08-310

Dear Attorneys McCormack, Buckley and Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Very truly yours,


Shelly L. Taylor
Chief Administrative Magistrate

SLT/das
Enclosure

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Theresa Hussey-Rogers,
Appellant

v.

Docket Nos. D-07-232/
CS-08-310 (DALA)

City of Somerville-Dept. Public Works,
Appointing Authority

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Administrative Magistrate:

Sarah H. Luick, Esq.

RECOMMENDED DECISION

Pursuant to G. L. c. 31, §§42 and 43, the Appellant, Theresa Hussey-Rogers, is appealing the August 1, 2007 decision of the Appointing Authority, the City of Somerville, imposing a one day suspension without pay. (Ex. 5) The appeal was timely filed. (Ex. 3) The Appellant claims the Appointing Authority hearing was not timely held, and that no timely decision issued. She also challenges the merits of the one day suspension. (Exs. 1, 2, 3 & 4.) A hearing was held for the Civil Service Commission on May 14, 2008, at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, 4th Floor, Boston, MA 02114.

Various documents are in evidence. (Exs. 1 – 15) Three (3) tapes were used.

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The Appointing Authority presented the testimony of the Appellant's supervisor, Thomas Buckley, and Somerville Department of Public Works Commissioner Stanley M. Koty. The Appellant testified on her own behalf. The parties filed pre-hearing memoranda. ("A") Both parties made closing arguments.

FINDINGS OF FACT

Based on the evidence presented and the testimony of the above named witnesses, I make the following findings of fact:

1. Theresa Hussey-Rogers works as a Special Heavy Motor Equipment Operator within the City of Somerville Department of Public Works (DPW). She has worked for the DPW for about fifteen years. Her direct supervisor within the DPW Sewer Division has been Thomas Buckley. She is not a foreman. Mr. Buckley's direct supervisor has been Carol Antonelli, the Water and Sewer Superintendent. They all have worked under the DPW Commissioner, Stanley M. Koty. (Testimony)

2. Mr. Buckley has now retired, but had about thirty-eight years of service with the DPW Water and Sewer Division. He supervised Ms. Hussey-Rogers for about ten years. Mr. Koty and Ms. Antonelli continue in their same positions as does Ms. Hussey-Rogers. (Testimony)

3. In and around April-May 2007, Ms. Hussey-Rogers' regular job assignment was to use the large catch basin truck to clean the sewers. This truck follows the street sweeper truck. Her hours are 7:30 AM to 4:00 PM, Monday through Friday. She is entitled to two twenty minute coffee breaks, and a lunch period. A sign-in sheet is used. Mr. Buckley made the job assignments. The City of Somerville has only one catch basin truck, and Ms. Hussey-Rogers drove it. (Testimony)

4. When assigned to the catch basin truck, Ms. Hussey-Rogers has had a routine workday permitted by Mr. Buckley and by the DPW, that lets her work through her lunch period and leave work at 3:00 PM. This arrangement benefits the DPW because she can continue to follow the street sweeper truck without the interruption of the lunch period. She did not have to seek permission each day to work through her lunch period and leave at 3:00 PM. Her routine is also to take her two coffee breaks on these workdays. (Testimony)

5. Ms. Hussey-Rogers has been subject to a collective bargaining agreement (CBA). She was not a member of the union bargaining committee or a union officer in April-May 2007. The CBA at Article IV, "Time Off-Union Business," allows a union member to attend his/her own grievance hearing:

One Association officer, one member of the Grievance Committee and the grievants, ... shall be allowed time off for negotiations and/or conferences on grievances or other disputes arising between the parties to this Agreement with City officials without loss of pay or benefits and without the requirement to make up said loss of time provided that their Department Head is notified in writing twenty-four hours before such negotiations and/or conferences take place, what City officials they are meeting with, and approximately how long they will be away from work. (Ex. 13)

This written notice can be waived by the Department Head in cases of emergencies "or other unusual circumstances," but Article IV states this waiver should "not become standard practice." (Ex. 13. Testimony.)

6. The CBA at Appendix B, "Prior Practices," incorporated into the CBA a number of practices, including:

Two twenty-minute coffee breaks per day for all employees whose coffee breaks are not otherwise specified in the contract, provided however that a full day is worked. (Ex. 13)

7. There is a DPW practice followed in regard to an employee union member leaving work duties to attend a grievance hearing or such other union meeting as set forth in the CBA at Article IV, or to attend a medical or dental appointment, and whether or not the employee can also leave work early that day upon returning to duties once the hearing, meeting or appointment is over. Permission to do that is generally denied, and the employee has to work until 4:00 PM. (Testimony)

8. On or about May 4, 2007, Ms. Hussey-Rogers gave or made an attempt to give, a verbal notice to Mr. Buckley, that she had a union grievance hearing on May 8, 2007. Grievance hearings occur during the workday at the Annex Building and usually are held during the lunch period. She did not make sure that he heard her notice. On May 7, 2007, she again gave or tried to give another verbal notice of the May 8, 2007 grievance hearing to Mr. Buckley, but again did not make sure he heard her. (Exs. 13 & 15. Testimony.)

9. Giving twenty-four hour advance notice, even if just verbal, of attending a union meeting or union grievance hearing is viewed by DPW managers as consistent with the CBA requirements. (Ex. 15. Testimony.)

10. On May 8, 2007, Mr. Buckley felt that Ms. Hussey-Rogers would be working until 3:00 PM, because she would be working through her lunch period with the catch basin truck, or if she did not work through the lunch period, that she would be working until 4:00 PM. He did not recall or had never heard her verbal notice about attending the grievance hearing on May 8, 2007. On May 8, 2007, the two of them did not hold a discussion about when she would stop work for the day, including no

discussion about the grievance hearing and her intention to also leave work at 3:00 PM.
(Ex. 9. Testimony.)

11. Ms. Hussey-Rogers never made any notation on her May 8, 2007 sign-in sheet that she was going to or did attend the grievance hearing. She did not indicate on the sign-in sheet any absence for union business for any period of time on May 8, 2007. She did not list on the sign-in sheet that she was working through her two coffee breaks. She never made a written request to Mr. Buckley or to anyone else within the DPW seeking permission to attend the grievance hearing, and never addressed how long it would last. She left work at 3:00 PM on May 8, 2007 without talking to Mr. Buckley to clear with him if it was alright for her to leave then because she had attended a grievance hearing over her lunch period. She knew that what she had done that day was not the same arrangement that was approved of: working through her lunch period and leaving at 3:00 PM. (Ex. 15. Testimony.)

12. On May 8, 2007, Mr. Buckley drove by the location, the Annex Building where union grievances and other union business is conducted. He was on his way to an appointment and was not checking up on Ms. Hussey-Rogers whereabouts. At 11:50 AM, he saw the catch basin truck parked outside the Annex. He did not see Ms. Hussey-Rogers inside the truck. He made another drive by the Annex at 12:50 PM. He again saw the catch basin truck, but Ms. Hussey-Rogers was not inside it. At this time he felt she had not worked through her lunch period to be entitled to leave work at 3:00 PM.
(Ex. 9. Testimony)

13. Mr. Buckley later became aware that Ms. Hussey-Rogers left work on

May 8, 2007 at 3:00 PM after bringing the truck to the garage where she washed it off and left it for repairs. She had not seen Mr. Buckley before leaving work. (Ex. 9.

Testimony.)

14. Mr. Buckley wrote a note about Ms. Hussey-Rogers' conduct on May 8, 2007 to his direct supervisor, Superintendent Carol Antonelli. He did this because he felt she had not done a full day's work by leaving at 3:00 PM. He wrote:

I was driving down Thurston Street to respond to a complaint and I noticed the E 7 catch basin cleaner parked on Evergreen Ave. at 11:50 am. Theresa Hussey was not in the truck. I drove by a second time at 12:45 and she was not in the truck. I later found that Theresa was at a grievance meeting at the Annex at 12:00. Theresa never informed me that she had a hearing. The SMEA contract requires that the employee inform the Foreman or Superintendent of a hearing with 24 hours notice. The Superintendent may waive the 24-hour notice.

I gave Theresa permission to work through her lunch hour to get caught up on the catch basin cleaning and leave at 3:00 pm. At 2:30 Theresa brought the truck into the yard, washed it and then left it in the highway garage for repairs. Theresa did not work through her lunch hour as we agreed upon and left early. I view these actions as insubordinate. I strongly feel that Theresa stole city time. (Ex. 9)

15. Mr. Buckley would not have granted Ms. Hussey-Rogers permission to leave work at 3:00 PM if she had not worked over her lunch period, and was instead at a grievance hearing. He would have required her to work until 4:00 PM as per the existing DPW practice. (Testimony)

16. Ms. Hussey-Rogers was not informed that she was facing possible discipline for her conduct on May 8, 2007, until she received a letter dated May 16, 2007 from DPW Commissioner Stanley Koty imposing a one day suspension without pay for violating the CBA at Article IV regarding time off for union business and pursuant to

Article XXIV on disciplinary procedures. He referred to information he received from Mr. Buckley to support the discipline. He noted:

You and your Foreman agreed that you would work through your lunch and you would leave early at 3:00 pm. Instead of working through your lunch as agreed upon, you attended a hearing. You did not inform your Foreman or Superintendent that you had a scheduled hearing and would not be able to work through your lunch. You brought the sewer truck into the yard at 2:30 pm, washed it and brought it to the garage for repairs at 3:00 pm. You should have worked until 4:00 pm on this day. You are cited for unauthorized use of time. (Ex. 4)

17. Ms. Hussey-Rogers was provided with her appeal rights. She filed a memorandum of May 17, 2007 with Somerville Mayor Joseph A. Curtatone, seeking a hearing on her suspension. She asked that it be scheduled after May 28, 2007 because she was going to be on vacation in Florida and would not be back until then. She filed another request for hearing with Mayor Curtatone dated June 19, 2007 noting that she had never received a response to her first request for a hearing. She had copied Somerville Director of Personnel Richard D. Tranfaglia on these letters. By letter of July 6, 2007, Mr. Tranfaglia gave her notice that she had a hearing scheduled for July 19, 2007. (Exs. 6, 7 & 8.) In response to why the hearing had not been scheduled earlier, he wrote:

Please note that when you appeared in person to my office on May 17, 2007 and submitted your written request for said hearing; you also informed me that you would contact me upon your return from Florida to schedule a date for said hearing.

In lieu of the fact that I have now heard from you, I am now scheduling this hearing (Ex. 8)

18. Before she had a hearing date, on July 2, 2007, Ms. Hussey-Rogers filed

an appeal of the one day suspension with the Civil Service Commission. She claimed a denial of due process by not receiving a hearing on the one day suspension. She also appealed the merits of the suspension. The Civil Service Commission acknowledged receipt of this claim and assigned her a docket number. (Exs. 1 & 2.)

19. The Appointing Authority hearing was held July 19, 2007. At it Ms. Hussey-Rogers did not state that she had told Mr. Buckley she would be leaving at 3:00 PM on May 8, 2007 because she would be working through her two twenty minute coffee breaks to make up for the time she would be at her grievance hearing. She did not state that she felt attending the grievance hearing took the place of working through her lunch period. (Testimony)

20. Ms. Hussey-Rogers provided a written statement dated July 19, 2007 in connection with her hearing. In it she refuted Mr. Buckley's assertion that she had not given him notice about going to her grievance hearing on May 8, 2007. She argued that she gave him that notice on May 4 and again on May 7, 2007, by relying on what she found she had written in her personal "Daily log book" (which are the copies of each workday's sign-in sheets containing her notes on the back of them). She further set forth in this written statement that Mr. Buckley gave the impression in his complaint letter on his observations of her May 8, 2007 conduct that it was an "unusual or a one time deal that I would work through my lunch and leave at 3:00 when in fact this has been the practice for years." (Exs. 10 & 15.)

21. In this same statement, Ms. Hussey-Rogers set forth prior incidents that she claimed demonstrated that this action by Mr. Buckley was a retaliation against her. (Ex. 10. Testimony.)

22. On April 19, 2007, Ms. Hussey-Rogers met with Superintendent Antonelli over a grievance she had regarding Mr. Buckley's failure to grant her the right to work on a holiday to receive overtime pay when it would have been two and one half times her normal pay. That resulted in Superintendent Antonelli agreeing with her and awarding her four hours of pay, although this was overturned, which is why she had a grievance hearing on May 8, 2007. After the April 19, 2007 meeting with Superintendent Antonelli, she next worked on April 23, 2007. Upon arriving at work the door lock to the Sewer Division had been changed and her desk had been moved into the mens' locker room. Also, photos of her daughter, who had been serving in the U.S. Military in Iraq, had been removed from the wall above the desk and were spread out on her desk in the locker room. She felt Mr. Buckley was retaliating against her. He explained the desk had to be moved because the Sewer Division room was going to be painted and a sitting room built. Ms. Hussey-Rogers did not believe this. No other desks or personal items had been moved besides her things. None of this work has yet been done. In the past, she had complained about having no ladies room to use. She ended up filing a complaint with the Massachusetts Commission Against Discrimination (MCAD) over this. She eventually received a ladies room to use. (Ex. 10. Testimony.)

23. After the hearing on her one day suspension, Ms. Hussey-Rogers was allowed to file additional arguments and statements of union members in support of her position that the one day suspension was not justified. She filed these on July 26, 2007. She noted how "a number of questions ... [at the hearing] went unanswered." She noted that besides "Foreman Buckley's false statement, no other evidence was presented to

support this suspension.” In her written argument she claimed retaliation based on her prior complaints. (Ex. 12)

24. The statements from the union members confirmed the claim “that the practice of Unit B employee’s going to a grievance or bargaining meeting is to give a simple verbal notification and not a written one.” (Ex. 11)

25. The decision of the Appointing Authority was dated August 1, 2007, and affirmed the one day suspension without pay. Mr. Tranfaglia found that Ms. Hussey-Rogers “failed to notify” Mr. Buckley “as required,” about attending the grievance hearing and about leaving work early. He “found no substance to the allegations [of being retaliated against by] ... the Sewer Foreman, Thomas Buckley.” Following her receipt of this letter, Ms. Hussey-Rogers filed a second appeal with the Civil Service Commission on August 2, 2007. She asserted that she was challenging the merits of the suspension as well as contending she failed to receive a timely Appointing Authority hearing and timely issued decision. (Exs. 3 & 5)

Conclusion and Recommendation

G. L. c. 31, § 42 Claim

In order to prevail in a claim made pursuant to G. L. c. 31, § 42, the Appellant must prove a violation or violations of the requirements found in G. L. c. 31, §41, as well as prove prejudice as a result of the violation(s). Ms. Hussey-Rogers claims that the Appointing Authority failed to timely provide her with an Appointing Authority hearing, and that after she received her hearing, she did not receive a timely decision.

A five day or under suspension without pay can be issued without an Appointing Authority hearing held first. But, Section 41 requires:

Within twenty-four hours after imposing a suspension ... the person authorized to impose the suspension shall provide the person suspended ... with a written notice stating the specific reason or reasons for the suspension and informing him that he may, within forty-eight hours after the receipt of such notice, file a written request for a hearing before the appointing authority on the question of whether there was just cause for the suspension. If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request. Whenever such hearing is given, the appointing authority shall give the person suspended a written notice of his decision within seven days after the hearing.

By letter of May 16, 2007, Ms. Hussey-Rogers was informed of her one day suspension without pay and given her right to seek a just cause hearing about it before her Appointing Authority. The next day, May 17, 2007, she wrote a letter seeking this hearing, requesting that the hearing be postponed until she returned from vacation. She wrote a second request for hearing letter on June 19, 2007, alleging that her prior request had been "either ignored or disregarded." (Ex. 7) In reaction, Personnel Director Tranfaglia responded to her in writing by letter of July 6, 2007, that a hearing was scheduled for July 19, 2007.

This course of events shows that no hearing was scheduled within five days of the second request for hearing of June 19, 2007, when Ms. Hussey-Rogers was back from vacation and made it clear that she wanted the hearing. The hearing was not scheduled until July 19, 2007. This does show a violation of Section 41.

Once the Appointing Authority hearing was held, Ms. Hussey-Rogers filed further arguments and statements from union members to persuade her Appointing Authority that there was no justification for the one day suspension. These documents were filed post-hearing on July 26, 2007. Thereafter, the Appointing Authority issued its decision

on August 1, 2007. This was a timely issued decision once the record closed. There is no merit to Ms. Hussey-Rogers's contention that it was not timely issued. No violation of Section 41 has been shown.

Section 42 calls for a showing of prejudice in order to prevail on a claim involving a Section 41 violation. In pertinent part Section 42 reads:

If the [civil service] commission finds that the appointing authority has failed to follow such [Section 41] requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

Ms. Hussey-Rogers has not demonstrated that she was prejudiced by the failure of the Appointing Authority to schedule a hearing for her within five days following receipt of the June 19, 2007 request for a hearing. I credit the account of what Personnel Director Tranflagia wrote in his July 6, 2007 letter to her, that she was to make a renewed request for a hearing once she returned from her vacation to explain why it was not scheduled by June 19, 2007. No evidence was presented that she was not able to fully provide her side of the story at her Appointing Authority hearing due to the delay in scheduling it. She was even given time post-hearing to file further arguments and statements in support of her position.

For these reasons, I recommend that the Civil Service Commission dismiss the Section 42 claims.

Section 43 Claim on the Merits

According to Ms. Hussey-Rogers, Mr. Buckley knew by and before May 8, 2007, that she would be attending her grievance hearing that day. She points to the writings she made on her personal daily log entries on the back sides of sign-in sheets (Ex. 15), to be

confirmation of her testimony that she told Mr. Buckley on May 4 and May 7 that she wanted to attend her grievance hearing on May 8. But, those writings do not include how she also asked and/or received permission to leave work early on May 8, 2007. Ms. Hussey-Rogers also never told Mr. Buckley that she wanted to work through her two twenty minute coffee breaks to make up her time while at her grievance hearing in order to leave work at 3:00 PM. She never entered any of this information on her sign-in sheets for May 8, 2007.

I do not find Ms. Hussey-Rogers' efforts at giving notice to Mr. Buckley on May 4 and 7, 2007 about her intention to attend the grievance hearing and then to still leave work at 3:00 PM on May 8, 2007, were adequately, properly, or effectively made to Mr. Buckley. I do not believe she worked through her two coffee breaks that day as a way to make up the time she spent at the grievance hearing to still leave work at 3:00 PM. If she had worked through her coffee breaks she would have provided that information in her defense at her Appointing Authority hearing, verbally or in writing. Also, those two breaks may or may not have covered the full time she attended her grievance hearing to permit her to leave work at 3:00 PM.

I found Mr. Buckley to be credible in his testimony that he did not know Ms. Hussey-Rogers was going to a grievance hearing during her lunch period on May 8, 2007. I find his testimony is supported by his note to his superiors about his observations of Ms. Hussey-Rogers' conduct on May 8, 2007, including how he did not expect to see the catch basin truck at the Annex Building around lunch time. I do not believe he engineered this account to retaliate against Ms. Hussey-Rogers.

I found the testimony of Mr. Koty and Mr. Buckley, both DPW supervisors, to be

credible concerning the established practice of not allowing an early release from work on days when the employee attends a union meeting, or medical or dental appointment. I conclude Ms. Hussey-Rogers, as a fifteen year DPW employee working ten years under Mr. Buckley's supervision, was aware of this practice.

A verbal communication where Ms. Hussey-Rogers would have made clear to Mr. Buckley what she was seeking to do on May 8, 2007, would have been adequate notice. The Appointing Authority did not discipline her for failing to provide a written request to attend the grievance hearing and then to leave work early. I conclude that when she knew she had not provided adequate notice to Mr. Buckley, she decided to still leave work early as though there was no difference between her working through her lunch period and leaving work early, and attending her grievance hearing and leaving work early. I do not find either the Appointing Authority or Mr. Buckley were manipulating the underlying course of events involving Ms. Hussey-Rogers' conduct on May 8, 2007 to retaliate against her for her past complaints regarding her working conditions. I do not find these prior events had anything to do with the imposition of this one day suspension.

For these reasons, I recommend that the Civil Service Commission affirm the one day suspension without pay.

DIVISION OF ADMINISTRATIVE
LAW APPEALS

Sarah H. Luick
Sarah H. Luick, Esq.
Administrative Magistrate

DATED: *7/28/08*