DATE: March 6, 2020, Business Meeting  
TIME: 9:00 AM  
PLACE: Conference Room 157  
County Government Center – 70 W. Hedding Street, 1st Floor  
San Jose, CA 95110  

AGENDA  

In compliance with the Americans with Disabilities Act and the Brown Act, those requiring accommodations in this meeting should notify the Clerk of the Personnel Board no less than 24 hours prior to the meeting at (408) 299-5001, or TDD (408) 993-8272.  

Please note: To contact the Commission and/or to inspect any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to all or a majority of the Board of Supervisors (or any other commission, or board or committee) less than 72 hours prior to that meeting, visit our website at http://www.sccgov.org or contact the Clerk at (408) 299-5001 or 70 W. Hedding Street, 10th Floor, San Jose, CA 95110, during normal business hours.  

Persons wishing to address the Commission on a regularly scheduled item on the agenda are requested to complete a request to speak form and give it to the Deputy Clerk. (Government Code Section 54953.3.) Individual speakers will be called by the Chairperson and are requested to limit their comments to two minutes. Groups of speakers on a specific item are asked to limit their total presentation to a maximum of twenty minutes for each side of the issue.  

COMMUTE ALTERNATIVES: The Board of Supervisors encourages the use of commute alternatives including public transit, bicycles, carpooling, and hybrid vehicles.  

For public transit trip planning information, contact the VTA Customer Service Department at (408) 321-2300 Monday through Friday between the hours of 6:00 a.m. to 7:00 p.m., and on Saturday from 7:30 a.m. to 4:00 p.m. Schedule information is also available on the web at www.vta.org.  

Bicycle parking racks are available in the James McEntee, Sr., Plaza in front of the County Government Center building. If this Board or Commission does not meet in the County Government Center, please contact VTA for related routes.  

Opening  

1. Call to Order/Roll Call.  

2. Public Comment.  

This item is reserved for persons desiring to address the Board on any matter within the subject matter jurisdiction of the Board that is not on this agenda. Members of the public who wish to address the Board on any item not listed on the agenda should complete a request to speak form and give it to the Deputy Clerk. The Chairperson will call individuals to speak in turn.  

Speakers are limited to the following: three minutes if the Chairperson or designee determines that five or fewer persons wish to address the Board; two minutes if the Chairperson or designee determines that between six and fourteen persons wish to address the Board; and one minute if the Chairperson or designee determines that fifteen or more persons wish to address the Board.
The law does not permit Board action or extended discussion of any item not on the agenda except under special circumstances. If Board action or response is requested, the Board may place the matter on a future agenda.

### Regular Agenda

3. Minutes Approval:
   - Approve minutes of the January 24, 2020 Appeal Hearing.
   - Approve minutes of the January 31, 2020 Business Meeting.

   - Hari Kunamneni - Hearing on January 24, 2020

5. Receive verbal report from Office of Labor Relations.


7. Discuss pilot process for reviewing the five oldest remaining unheard suspension and termination appeals.
   - Dismissal, Demotion, Probationary Release Appeals:
     i. Armando Murillo - Filed May 15, 2017
     ii. John Dam - Filed December 21, 2017
     iii. Albert Lagos - Filed March 13, 2018
     iv. Sara Pacheco - Filed September 7, 2018
     v. Shaneel Prasad - Filed November 13, 2018
   - Suspensions Appeals:
     i. Felicia Houston - Filed May 31, 2018
     ii. D18-16-9716 - Filed October 29, 2018
     iii. D17-16-9711 - Filed December 31, 2018
     iv. Alan Travasso - Filed January 12, 2019
     v. Angelo Brown - Filed January 15, 2019

8. Discuss pending hearing schedule/appeal backlog. (ID# 100581)

### Adopt Findings of Fact

9. Adopt Findings of Fact for Lavonne Wallace. (Held from December 13, 2019, Item No. 17)

10. Adopt Findings of Fact for Brian Becker. (ID# 100587)

11. Adopt Findings of Fact for John King. (ID# 100584)
Verbals Reports

12. Announce Personnel Board decisions, if any, on disciplinary actions.
13. Receive report from County Counsel.
15. Receive correspondence.

Appeal Hearing(s)

16. Convene hearing to consider the appeal of Elena Moreno relating to dismissal from the Santa Clara Valley Health and Hospital System.
17. Announce that the appeal of Elena Moreno will be discussed in Closed Session.
18. Recess to Closed Session to consider the appeal of Elena Moreno pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.
19. Reconvene meeting to announce actions, if any, taken during Closed Session regarding the appeal of Elena Moreno.
20. Convene hearing to consider the appeal of Elizabeth Bendanillo relating to suspension from the Probation Department.
21. Announce that the appeal of Elizabeth Bendanillo will be discussed in Closed Session.
22. Recess to Closed Session to consider the appeal of Elizabeth Bendanillo pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.
23. Reconvene meeting to announce actions, if any, taken during Closed Session regarding the appeal of Elizabeth Bendanillo.

Adjourn

24. Adjourn to the next business meeting on Friday, March 13, 2020 at 9:00 a.m. in Conference Room 157, County Government Center, 70 West Hedding Street, San Jose.
DATE: January 24, 2020, Appeal Hearing
TIME: 9:00 AM
PLACE: Conference Room 157
County Government Center – 70 W. Hedding Street, 1st Floor
San Jose, CA 95110

MINUTES

Opening

1. Call to Order/Roll Call.

Vice Chairperson O’Neal called the meeting to order at 9:20 a.m. A quorum was present.

<table>
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<tr>
<th>Attendee Name</th>
<th>Title</th>
<th>Status</th>
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<tr>
<td>Martin Alvarez</td>
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<tr>
<td>William Anderson</td>
<td>Chairperson</td>
<td>Absent</td>
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<tr>
<td>Linda Castaldi</td>
<td>Member</td>
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<tr>
<td>Susan Murphy</td>
<td>Member</td>
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<tr>
<td>Denis O’Neal</td>
<td>Vice Chairperson</td>
<td>Present</td>
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2. Public Comment.

No public comments were received.

Appeal Hearing(s)

3. Convene hearing to consider the appeal of Hari Kunamneni relating to a suspension from the Technology Services Solutions Department.

Convened hearing at 9:20 a.m.

4. Announce that the appeal of Hari Kunamneni will be discussed in Closed Session.

Vice Chairperson O’Neal announced that the appeal of Hari Kunamneni would be discussed in Closed Session.

5. Recess to Closed Session to consider the appeal of Hari Kunamneni pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.

Recessed to Closed Session at 4:45 p.m. with Members Castaldi, Murphy, and O’Neal present.
6. Reconvene meeting to announce actions, if any, taken during Closed Session regarding the appeal of Hari Kunamneni.

Reconvened at 5:00 p.m. Vice Chairperson O'Neal announced the Board voted unanimously to reduce the final disciplinary action of Hari Kunamneni from a five-day suspension to a three-day suspension.

Adjourn

7. Adjourn to the next business meeting on Friday, January 31, 2020 at 9:00 a.m. in Conference Room 157, County Government Center, 70 West Hedding Street, San Jose.

Vice Chairperson O'Neal adjourned the meeting at 5:00 p.m.

Respectfully submitted,

Nancy Guerrero
Deputy Clerk
DATE: January 31, 2020, Business Meeting  
TIME: 9:00 AM  
PLACE: Conference Room 157  
County Government Center – 70 W. Hedding Street, 1st Floor  
San Jose, CA 95110

MINUTES

Opening

1. Call to Order/Roll Call.

Chairperson Anderson called the meeting to order at 9:13 a.m. A quorum was present.

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<tr>
<td>Martin Alvarez</td>
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<tr>
<td>William Anderson</td>
<td>Chairperson</td>
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<tr>
<td>Linda Castaldi</td>
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<td>Susan Murphy</td>
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<tr>
<td>Denis O'Neal</td>
<td>Vice Chairperson</td>
<td>Present</td>
<td></td>
</tr>
</tbody>
</table>

2. Public Comment.

No public comments were received.

Regular Agenda

3. Minutes Approval:

a. Approve minutes of the November 22, 2019 Appeal Hearing.

3.a RESULT: APPROVED [4 TO 0]  
MOVER: Susan Murphy, Member  
SECONDER: Denis O'Neal, Vice Chairperson  
AYES: Anderson, Castaldi, Murphy, O'Neal  
ABSENT: Alvarez

b. Approve minutes of the December 13, 2019 Business Meeting.

3.b RESULT: APPROVED [4 TO 0]  
MOVER: Susan Murphy, Member  
SECONDER: Denis O'Neal, Vice Chairperson  
AYES: Anderson, Castaldi, Murphy, O'Neal  
ABSENT: Alvarez
c. Approve minutes of the December 18, 2019 Appeal Hearing.

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<tr>
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<tr>
<td>SECONDER:</td>
<td>Denis O'Neal, Vice Chairperson</td>
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<tr>
<td>AYES:</td>
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<td>ABSENT:</td>
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d. Approve minutes of the December 19, 2019 Appeal Hearing.

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e. Approve minutes of the December 20, 2019 Appeal Hearing.

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<td>AYES:</td>
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   a. Brian Decker - Hearing on November 22, 2019

   Mitchell Buellesbach, Principal Labor Relations Representative, Employee Services Agency, advised that Findings of Fact for Brian Decker remain in progress.

5. Receive verbal report from Office of Labor Relations.

   Mr. Buellesbach provided an update relating to the labor negotiations with the various labor unions. He also reported that Lisa Dumanowski, Director of Labor Relations, retired in November 2019 and Matthew Cottrell is the Interim Director until the position is permanently filled.

   Member Murphy inquired whether there are disciplinary actions reported in the newly acquired hospitals. Aimee Logan, Deputy County Counsel, informed the Board that most employees are likely still in their probationary period. Member Murphy requested that Administration provide to the Board a presentation relating to "just culture" and what it represents to the County, who is trained on the topic, and the context in which it should be considered.

   5 RESULT: RECEIVED

Taken out of order after Item No. 7.

Member Murphy reported that the Subcommittee discussed various topics including a no contest proposal; default hearing process; website content; scheduling pilot; and, a continuance management proposal. Member Murphy also reported that the Subcommittee is in the process of finalizing written materials on these topics for Board consideration, and items identified for future discussion include the role of the Clerk of the Board; the identification of materials that can be provided to Board Members prior to meeting; a process for settling concurrent appeals; a settlement conference process; Board composition requirements; and, the development of performance measures.

6 RESULT: RECEIVED

7. Discuss pilot process for reviewing the five oldest remaining unheard suspension and termination appeals.

Taken out of order after Item No. 5.

a. Dismissals, Demotion, Probationary Release Appeals:

i. Albert Lagos - Filed March 13, 2018
   Ms. Logan stated the Lagos appeal is ready for scheduling.

ii. Elena Moreno - Filed June 26, 2018
   Ms. Logan stated the Moreno appeal is ready for scheduling.

iii. Sara Pacheco - Filed September 7, 2018
   Ms. Logan stated the Pacheco appeal is ready for scheduling.

iv. Shaneel Prasad - Filed November 13, 2018
   Ms. Logan informed the Board that the Prasad appeal is not ready for scheduling.

v. Matthew Rosso - Filed December 13, 2018
   Ms. Logan informed the Board that the Rosso appeal is not ready for scheduling.

Ms. Logan also informed the Board that the Eddie Orozco appeal is tentatively scheduled for March 13, 2020; the Armando Murillo appeal is tentatively scheduled for March 20, 2020; the John Dam appeal has not been rescheduled; and, the Elena Moreno and Sara Pacheco appeals are ready for scheduling.
b. Suspension Appeals:

i. Diana Vasquez - Filed October 19, 2018
   Mr. Buellesbach proposed consolidating Ms. Vasquez's two appeals.

ii. D18-16-9716 - Filed October 29, 2018
   Mr. Buellesbach informed the Board that the confidential appeal can potentially be settled and advised that he will provide an update at the next meeting.

iii. Elizabeth Bendanillo - Filed November 6, 2018
   Mr. Buellesbach informed the Board that the Bendanillo appeal was tentatively scheduled for April 3, 2020. Jaime Gonzalez, Contract Enforcement Specialist, Service Employees International Union Local 521, informed the Board that Ms. Bendanillo is leaving the country March 6, 2020 and will request a continuance until her return in October 2020, if her appeal is not scheduled prior to the travel date.

iv. D17-16-9711 - Filed December 31, 2018
   Mr. Buellesbach proposed a tentative appeal date of April 3, 2020.

v. Alan Travasso - Filed January 12, 2019
   Teresa Moran, Labor Relations Representative, Labor Relations, stated the Travasso appeal is ready for scheduling.

Greta Hansen, Assistant County Counsel, reported that she will draft correspondence to the representatives in Labor Relations, County Counsel, and the various unions explaining the Board's expectation to attend Personnel Board business meetings and provide information on any matters listed on this section of the agenda.

8. **Discuss pending hearing schedule/appeal backlog.** (ID# 100193)

   Taken out of order after Item No. 6.

   The Board confirmed calendars through May 2020.

   Member Murphy advised that her attendance is tentative for April 24, 2020 and May 29, 2020.

   Chairperson Anderson advised that he is unable to attend on April 10, April 17, April 24, and May 1, 2020.

   Member Castaldi advised that she is unable to attend on April 10 and April 17, 2020.
Chairperson Anderson directed the Clerk of the Board to contact Member Alvarez regarding his availability for the months of February through May 2020 and relay the information to Labor Relations representatives.

### Adopt Findings of Fact

9. **Adopt Findings of Fact for Lavonne Wallace.** (Held from December 13, 2019 Personnel Board Committee meeting, Item No. 17)

   Ms. Hansen advised that the Findings of Fact for Lavonne Wallace will be presented for consideration at the next business meeting.

| 9 RESULT: | NO ACTION TAKEN |

10. **Adopt Findings of Fact for Patricia Mendez.** (ID# 100195)

   Adopted as amended to remove Steve Cushing on page 1, line 16 and include Sue Murphy.

| 10 RESULT: | ADOPTED AS AMENDED [4 TO 0] |
| MOVER:     | Linda Castaldi, Member |
| SECONDER:  | Susan Murphy, Member |
| AYES:      | Anderson, Castaldi, Murphy, O'Neal |
| ABSENT:    | Alvarez |

### Verbal Reports

11. **Announce Personnel Board decisions, if any, on disciplinary actions.**

   No decisions were made.

12. **Receive report from County Counsel.**

   Ms. Hansen informed the Board that additional support will be provided by the Office of the County Counsel to increase the timeliness of deliverables. She also informed the Board that once it is determined that video conference technology can be installed in Conference Room 157, she will conduct a legal analysis on video conferencing during hearings.

13. **Make announcements.**

   No announcements were made.

14. **Receive correspondence.**

   No correspondence was considered.

### Appeal Hearing(s)

15. **Convene hearing to consider the appeal of John King relating to suspension from the Santa Clara Valley Health and Hospital System.**
Convened hearing at 10:30 a.m. with Members Anderson, Castaldi, Murphy, and O'Neal present.

16. Announce that the appeal of John King will be discussed in Closed Session.

Chairperson Anderson announced that the appeal of John King would be discussed in Closed Session.

17. Recess to Closed Session to consider the appeal of John King pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.

Recessed to Closed Session at 2:25 p.m., with Members Anderson, Castaldi, Murphy, and O'Neal present.

18. Reconvene meeting to announce actions, if any, taken during Closed Session regarding the appeal of John King.

Reconvened at 3:00 p.m. Chairperson Anderson announced that the Board voted 3-1, with Member Alvarez absent, to reduce the final disciplinary action of John King to three days, with Member O'Neal dissenting in favor of a reduction to a one-day suspension.

Adjourn

19. Adjourn to the next hearing on Friday, February 7, 2020 at 9:00 a.m. in Conference Room 157, County Government Center, 70 West Hedding Street, San Jose.

Chairperson Anderson adjourned the meeting at 3:10 p.m.

Respectfully submitted,

Nancy Guerrero
Deputy Clerk
DATE: March 6, 2020
TO: Personnel Board
FROM: John P. Mills, Director, Employee Services Agency
SUBJECT: Pending Hearing Schedule/Appeal Backlog

RECOMMENDED ACTION
Discuss pending hearing schedule/appeal backlog.

ATTACHMENTS:
- January 2020 Appeals (PDF)
- 2020 Personnel Board Meeting Schedule (PDF)
February 20, 2020

TO: Personnel Board
Agency/Department Heads
Employee Organizations

FROM: Matthew Cottrell
Interim Labor Relations Director

SUBJECT: Status of Appealed Disciplinary Actions for the Period Ending January 31, 2020

Attached are two lists of all disciplines that have been appealed and are pending before the Personnel Board. The first shows appealed dismissals, demotions and probationary releases that are before the Personnel Board. The second is a list of all appealed suspensions.

Employees with peace officer or custodial officer status are shown with case numbers as the law requires privacy for these employees.

The information is provided to keep the Personnel Board, each department, and employee organizations apprised of the docket of cases.

If you have any questions or suggestions, please contact the Labor Relations Department at (408) 299-5820.

Attachment
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**SUMMARY**

Scheduled dismissals/demotions/probationary releases: 3
Unscheduled dismissals/demotions/probationary releases: 22
Total listed: 25

1 = Scheduled to be heard by Personnel Board
2 = Scheduled to be heard by Suspension Panel
5 = Heard, Personnel Board decision pending
6 = Hearing continued, date to be rescheduled
7 = Hearing extended, additional date(s) to be scheduled
8 = Scheduled to be discussed

P = Primary
B = Back-up

Prepared by the Labor Relations Department
<table>
<thead>
<tr>
<th>Name</th>
<th>Status</th>
<th>Date</th>
<th>Department</th>
<th>Union</th>
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<td>Probation</td>
<td>521</td>
<td>16 Hour</td>
<td>11/6/18</td>
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<td>D17-16-9711</td>
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<td>521</td>
<td>120 Hour</td>
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<tr>
<td>Travasso, Alan</td>
<td>B</td>
<td>5/1/20</td>
<td>SSA</td>
<td>521</td>
<td>40 Hour</td>
<td>3/7/19</td>
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<tr>
<td>Brown, Angelo</td>
<td>B</td>
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<td>521</td>
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<td>1/15/19</td>
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<tr>
<td>Servin, Carlos</td>
<td>P</td>
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<td>SCVHHS</td>
<td>521</td>
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<td>1/23/19</td>
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<td>521</td>
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<td>Ledesma, Patricia</td>
<td>1) B</td>
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<td>SSA</td>
<td>521</td>
<td>40 Hour</td>
<td>3/7/19</td>
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<td>Pham, Hai (Heidi)</td>
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<td>Probation</td>
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<td>D18-92-0516</td>
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<td>Bravo, Sandra</td>
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<td>Delgadillo, Jess</td>
<td>B</td>
<td>2/28/20</td>
<td>Roads</td>
<td>521</td>
<td>160 Hour</td>
<td>4/22/19</td>
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<td>Ruiz Esparza, Diego</td>
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<td>6/4/19</td>
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<td>Dowling, Evan</td>
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<td>B</td>
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<tr>
<td>Tran, Loc</td>
<td>B</td>
<td>2/28/20</td>
<td>EH</td>
<td>521</td>
<td>160 Hour</td>
<td>8/2/19</td>
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<td>8/19/19</td>
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<td>9/30/19</td>
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<td>11/22/19</td>
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<td>D19-16-1187</td>
<td>B</td>
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<td>Probation</td>
<td>1587</td>
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<td>1/17/20</td>
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<td>SCVHHS</td>
<td>CEMA</td>
<td>80 Hour</td>
<td>2/1/20</td>
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</tbody>
</table>

**SUMMARY**

Scheduled Suspensions: 4
Unscheduled Suspensions: 20
Total Suspensions Listed: 24

1 = Scheduled to be heard by Personnel Board
2 = Scheduled to be heard by Suspension Panel
3 = Scheduled to be heard by Hearing Officer
4 = Heard by Hearing Officer, recommended decision pending
5 = Heard, Personnel Board decision pending
6 = Hearing continued, to be rescheduled
7 = Hearing extended; additional date/s to be scheduled
8 = Requesting Suspension Panel

P = Primary
B = Back-up

Prepared by the Labor Relations Department
Personnel Board Proposed 2020 Meeting Schedule

Meetings are held at 9:00 a.m. in Conference Room 157, 1st Floor, County Government Center, 70 West Hedding Street, San Jose.

*Note: Due to construction, all meetings in July will be held in the Lower Level Conference Room (LLCR), County Government Center, 70 West Hedding Street, San Jose.

| Jan 3, 2020 - No Meeting (New Year’s Day, 1/1) | Aug 7, 2020 - Appeal Hearing |
| Jan 10, 2020 - Business Meeting – Murphy absent | Aug 14, 2020 - Business Meeting |
| Jan 17, 2020 - No Meeting (MLK Day, 1/20) | Aug 21, 2020 - Appeal Hearing |
| Jan 24, 2020 - Appeal Hearing – Alvarez/Anderson absent | Aug 28, 2020 - Appeal Hearing |
| Jan 31, 2020 – Appeal Hearing – Alvarez absent | |
| Feb 7, 2020 - Appeal Hearing – Alvarez absent | Sep 4, 2020 - No Meeting (Labor Day, 9/7) |
| Feb 14, 2020 – No Meeting (President’s Day, 2/17) | Sep 11, 2020 - Business Meeting |
| Feb 21, 2020 – No Meeting – Appeal Withdrawn | Sep 18, 2020 - Appeal Hearing |
| Feb 28, 2020 – Business Meeting | Sep 25, 2020 - Appeal Hearing |
| Mar 6, 2020 - Appeal Hearing | Oct 2, 2020 - Appeal Hearing |
| Mar 13, 2020 - Business Meeting | Oct 9, 2020 - No Meeting (Columbus Day, 10/12) |
| Mar 20, 2020 - Appeal Hearing | Oct 16, 2020 - Business Meeting |
| | Oct 30, 2020 - Appeal Hearing |
| Apr 3, 2020 - Appeal Hearing – Alvarez tentative | Nov 6, 2020 - Appeal Hearing |
| Apr 10, 2020 - No Meeting - cancelled | Nov 13, 2020 - No Meeting (Veterans Day, 11/11) |
| Apr 17, 2020 – Business Mtg – Anderson/Castaldi absent | Nov 20, 2020 - Business Meeting |
| Apr 24, 2020 - Appeal Hearing – Anderson absent | Nov 27, 2020 - No Meeting (Thanksgiving, 11/26) |
| Murphy tentative | |
| May 1, 2020 - Appeal Hearing – Anderson absent | Dec 4, 2020 - Appeal Hearing |
| May 8, 2020 - Business Meeting | Dec 11, 2020 - Business Meeting |
| May 15, 2020 - Appeal Hearing | Dec 18, 2020 - Appeal Hearing |
| May 29, 2020 - Appeal Hearing – Murphy tentative | |
| June 5, 2020 - Appeal Hearing | |
| June 12, 2020 - Business Meeting | |
| June 19, 2020 - Appeal Hearing | |
| June 26, 2020 - Appeal Hearing | |
| July 3, 2020 - No Meeting (Independence Day, 7/4) | |
| July 10, 2020 - Business Meeting (Location LLCR) | |
| July 17, 2020 - Appeal Hearing (Location LLCR) | |
| July 24, 2020 - Appeal Hearing (Location LLCR) | |
| July 31, 2020 - Appeal Hearing (Location LLCR) | |
DATE: March 6, 2020

TO: Personnel Board

FROM: Nancy Guerrero, Board Clerk II

SUBJECT: Findings of Fact - Becker

RECOMMENDED ACTION
Adopt Findings of Fact for Brian Becker.

ATTACHMENTS:
- Findings of Fact - Becker - Draft (PDF)
COUNTY OF SANTA CLARA PERSONNEL BOARD
SUSPENSION APPEAL HEARING

Brian Becker,  )  Case No. D16-01-6852
Appellant  )
vs.  )
County of Santa Clara,  )
Technology Services and Solutions  )
(TSS)  )
Respondent  )

FINDINGS OF FACT

Procedural Statement

This matter came on for a hearing before the Santa Clara County Personnel Board on Friday, November 22, 2019. A quorum of the Board, consisting of William Anderson, Martin Alvarez, Susan Murphy, and Denis O’Neal, was present to hear the appeal. Appearing on behalf of the County was Karen Garza, Labor Relations Representative, and Patrick Deely, Information Technology Manager. Appellant Brian Becker was provided notice of the hearing via certified mail on November 4, 2019.

Due to Mr. Becker’s failure to appear at the hearing, the Board asked the County to proceed with prima facie showing of cause for discipline pursuant to Section 10.6 of the Santa Clara County Personnel Board Rules of Procedures. The County made that prima facie showing of cause to support the request that Mr. Becker’s appeal of the suspension be denied. The Board accepted the County’s documents into evidence and unanimously rendered a default decision against Mr. Becker, upholding the suspension.

The Board notified Mr. Becker in writing of its default decision. The Board’s notice advised Mr. Becker that he must file a written request for relief with the Board within fifteen calendar days from the date of mailing of the written noticed if he wished to seek relief from the default decision. Becker failed to submit such a request.
Statement of Facts

Consistent with its common custom and practice, the County, as the prevailing party, submitted the following findings of facts and conclusions, which the Board hereby adopts. These findings and conclusions are based on the documentary evidence and sworn testimony at the November 22, 2019 hearing before the Board.

1. The County hired Mr. Becker as an Information Technology Field Support Specialist on October 2001. In 2015 Mr. Becker had a string of egregious incidents that resulted in his 160-hours suspension.

2. In 2015 the Technology Services and Solutions (TSS) Department went through a reorganization that reallocated Mr. Becker from the Fleet and Facilities Department to TSS. It was in May 2015 that Mr. Becker began displaying unacceptable and incomprehensible behavior. Mr. Becker walked off his job on two occasions without notifying anyone. Mr. Becker refused to accept assignments from his supervisors and failed to report at his assigned time and place of work.

3. Mr. Deely, Mr. Becker’s supervisor, was a witness to many of Mr. Becker’s intolerable and offensive behavior. Mr. Deely gave Mr. Becker the County’s resources that help employees if they are going through difficult times. Mr. Becker displayed disrespect and dissatisfaction about the Department by insulting and intimidating colleagues. Several employees witnessed Mr. Becker acting belligerent and was asked by Mr. Deely to leave the work site. Following this incident Mr. Becker was placed on a mandatory Leave of Absence pending a fit for duty assessment.

4. In June 2016, Mr. Becker was cleared to return to work as a result of the fit for duty and was given another opportunity to improve his behavior. Mr. Becker began reporting to Socorro Sweet, Assistant IT Customer Services Manager, who gave Mr. Becker clear expectations including daily one-on-one meetings. Mr. Becker stopped attending the daily scheduled one-on-ones with no notification to anyone. Mr. Becker continued to ignore management’s directives and maintained threatening behavior by raising his voice to the point of intimidation while using foul language.

5. Mr. Becker never showed resentment or took responsibility for any of his actions. Mr. Becker’s intimidating and threatening behavior put undue stress on other employees and management, including Mr. Deely and Ms. Sweet.

6. Based on the totality of Mr. Becker’s behavior, Mr. Deely concluded that Mr. Becker violated:

Violation of Merit System Rules, Article 11:

a. Section A25-301(a) (1) “Violation of the County Charter, merit system rules and regulations, and written and published departmental rules and policies which do not conflict with this article.”
b. Section A25-301(a) (2) “Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.”

c. Section A25-301 (a) (5) “Refusal to accept a reasonable and proper assignment from an authorized supervisor; insubordination.”

d. Section A25-301 (a) (9) “Failure to maintain satisfactory and harmonious working relationships with the public and other employees.”

e. Section A25-301 (a) (10) “Absent without leave.”

f. Section A25-301 (a) (11) “Habitual pattern of failure to report for duty at the assigned time and place.”

7. Mr. Becker was notified of the Skelly hearing in a Recommended Disciplinary Action letter that was sent via certified mail and hand delivered. Mr. Becker appeared at the hearing with his representative Teresa Andrews, SEIU Local 521 Steward.

8. Based on the charging letter, and after considering Mr. Becker’s statements and additional documents, the hearing officer upheld the 160-hour recommended suspension.

**Conclusion**

Based on the evidence established by witness testimony and the documentary evidence presented at the hearing, the four Board members present at the hearing unanimously determined that the County established by a preponderance of evidence that Appellant Brian Becker violated the following County Merit System Rules:

a. Section A25-301(a) (1) “Violation of the County Charter, merit system rules and regulations, and written and published departmental rules and policies which do not conflict with this article.”

b. Section A25-301(a) (2) “Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.”

c. Section A25-301 (a) (5) “Refusal to accept a reasonable and proper assignment from an authorized supervisor; insubordination.”

d. Section A25-301 (a) (9) “Failure to maintain satisfactory and harmonious working relationships with the public and other employees.”

e. Section A25-301 (a) (10) “Absent without leave.”

f. Section A25-301 (a) (11) “Habitual pattern of failure to report for duty at the assigned time and place.”

The Board unanimously voted to uphold the suspension.

**Further Action**

The Board hereby advises Appellant, Brian Becker, that he may seek judicial review of this Board decision by filing a petition for writ of mandate pursuant to California Code of Civil Procedure Section 1094.5. The writ petition must be filed with a court of competent jurisdiction no later than
the 90th day following the date on which the Board decision becomes final (California Code of Civil Procedure section 1094.6). The Board decision becomes final when it is mailed by first class mail, postage prepaid, including a copy of a certificate of mailing to the party seeking any such writ.

Date: ____________________

________________________________________
William Anderson
Chairperson, Santa Clara County Personnel Board
DATE: March 6, 2020
TO: Personnel Board
FROM: Nancy Guerrero, Board Clerk II
SUBJECT: Adopt Findings of Fact - King

RECOMMENDED ACTION
Adopt Findings of Fact for John King.

ATTACHMENTS:
• Findings of Fact - King - Draft (PDF)
FINDINGS OF FACT

PROCEDURAL STATEMENT

On Friday, January 31, 2020, Appellant John King’s appeal of a 40-work hour suspension came before the Santa Clara County Personnel Board after having been previously continued from the February 8, 2019 and April 26, 2019 calendars. A quorum of the Board consisting of Chair William Anderson, Denis O’Neal, Linda Castaldi, and Susan Murphy were present to hear the matter on the original calendar of February 8, 2019 and on the extended calendar of January 31, 2020. Board member Linda Castaldi was absent for the April 26, 2019 calendar.

Teresa Moran, Labor Relations Representative, appeared on behalf of the County. Jaime Gonzalez, SEIU Local 521 Contracts Enforcement Specialist, appeared on behalf of Appellant John King (hereafter “King”). Both, Teresa Moran and Jaime Gonzalez, were present for all three calendared hearing dates: February 8, 2019, April 26, 2019, and January 31, 2020.
Consistent with its common custom and practice, the following findings of fact and conclusions were submitted by the County, as the prevailing party, and are hereby adopted by the Board.

STATEMENT OF FACTS

On September 28, 2017, the Santa Clara County Health & Hospitals System (the “County”) issued King a recommended disciplinary action of a 5-work day (40 work hour) suspension from his position as Janitor with the Environmental Services Department. The recommended disciplinary action letter was issued by Barry Calayag, Environmental Services Department Supervisor, for violations of Merit System Rules, Article II, Section A25-301 (a)(1) – Violation of the County Charter, Merit System Rules and Regulations, and written and published departmental rules and policies which do not conflict with this article; and Section A25-301 (a)(9) – Failure to maintain satisfactory and harmonious working relationships with the public and other employees.”

Subsequently, on October 16, 2017, the County conducted a Skelly hearing. After reviewing the charging letter and documentary evidence, Skelly Officer Abel Hernandez upheld the recommended suspension of forty (40) work hours. Mr. Hernandez issued the Notice of Final Disciplinary Action – Hearing Officer’s Decision on December 12, 2017. King served the 5 workday (40-work hour) suspension from January 7, 2018 through January 12, 2018.

By letter dated December 19, 2017, Jaime Gonzalez, Contract Enforcement Specialist, SEIU Local 521, appealed the suspension on King’s behalf, in accordance with the collective bargaining agreement between the County of Santa Clara and SEIU Local 521, Article 6, Section 6.5 (f) and Santa Clara County Charter Section 708(c). SEIU’s appeal was filed timely.

FINDINGS

The Board finds the following based upon both documentary and testimonial evidence submitted at the hearing:

1. King has been employed permanently as a Janitor with the Environmental Services Department for the County, since February 2009. At the time of King’s discipline, he had been a County employee for nine (9) years, he was assigned to work the graveyard shift (11pm to 7:30am), and his duties included, but were not limited to, cleaning, sweeping and mopping floors, dusting and polishing wood work, furniture and metal work; maintaining restrooms in a clean and sanitary condition, removing trash from the hospital, or assignment to a project crew or designated area...
to clean, or the performance of a combination of duties, and that he “get along with others,” among other things.

2. On September 28, 2017, King’s supervisor Barry Calayag, issued a recommended disciplinary action notice for a 5-work day suspension (40 work hours), that cited a failure to maintain satisfactory and harmonious working relationships with the public and other employees, as the basis for the 5-day suspension recommendation. Specifically, the recommended discipline cited incidents on March 4, 2017, March 12, 2017, March 18, 2017, April 5, 2017, and May 2, 2017, during which King exhibited aggressive, disrespectful, and unprofessional behavior towards his supervisors in repeatedly questioning his assignments although the nature of his assignments were explained to him multiple times.

3. On December 19, 2017, Skelly Officer Abel Hernandez upheld the recommended suspension of 5 workdays (40 work hours). King served the 40 work-hour suspension from January 7, 2018 through January 12, 2018.

4. Ms. Poonam Erry, Assistant Director, Environmental Services, testified that she received reports from King’s supervisors regarding his failure to maintain harmonious work relationships. Those reports included one incident where King threw his keys at his supervisor Rochelle Thomas. In addition, Ms. Erry testified that she witnessed another incident between King and then-director Sam Okenyi, where King became so argumentative and aggressive that the department stopped just short of calling Protective Services to intervene. Ms. Erry also testified that on a separate occasion, when King demanded to speak with her, he interrupted a closed-door meeting she was having with another employee and entered the office without the courtesy of a knock on the door. Ms. Erry escorted King to her office, where she tried to allay King’s concerns to no avail. King appeared angry and upset and he subsequently left the room abruptly.

5. With respect to King’s work assignment, Ms. Erry also testified that King voluntarily gave up his bid assignment at the Downtown Clinic, where there were complaints that he would disappear during assigned work hours. King ultimately requested to float at VMC, where he remained at all times relevant. She also testified that the reason for not placing King elsewhere at VMC, other than 4Med, was that when he was placed in areas like office locations, King could not be located during regular work hours. Ms. Erry testified that in her opinion, the 5-workday suspension was appropriate because these were longstanding issues with King, with no evidence of improvement despite coaching, mentoring, counseling, and low-level progressive discipline.
Finally, Ms. Erry testified that King was told multiple times, by his supervisors and by her, why he was placed at 4Med during his float assignments.

6. Barry Calayag, one of King’s direct supervisors during the relevant time period, and author of the recommended disciplinary action, testified that King was “challenging, provoking, and loud” during interactions that involved shift assignments, and that only King conducted himself and spoke to Calayag in a disrespectful, challenging, provoking, and loud tone. Mr. Calayag testified that when standing within two feet of King, he would become challenging and take intimidating posture towards Mr. Calayag, in front of other staff members, thereby impacting the entire EVS dynamic and impacting patient care due to delay in getting assignments out. Mr. Calayag also stated that on each of the five (5) incidents (March 4, 2017, March 12, 2017, March 18, 2017, April 5, 2017, and May 2, 2017) that culminated in an investigatory interview on May 9, 2017, King either raised his voice, took an aggressive attitude, hollered, repeatedly asked, “why” he was being placed in a particular assignment in a challenging tone, was expressly warned to stop his aggressive tone towards his supervisors, and was counseled to change his attitude towards his supervisors.

7. Further, Mr. Calayag testified that management attempted to accommodate King’s request for a different assignment but meetings towards that end were unproductive, due to King’s disruptive behavior. Mr. Calayag also testified that he had answered King’s questions about “why” he was placed in a particular assignment several times. In addition, Mr. Calayag testified he based his recommended discipline on King’s entire record and opined the level of discipline – five (5) workdays (40 work hours), was appropriate.

8. Mr. Lazaro Arreola, another one of King’s supervisors during the relevant time period in 2017, testified that he had a “fair” relationship with King because Mr. Arreola could not predict when King would become aggressive. Mr. Arreola confirmed via testimony that King stated during his May 9, 2017 investigative interview that he had been disrespectful and would continue to be disrespectful towards his supervisor Barry Calayag. Additionally, Mr. Arreola testified that King’s attitude was aggressive and disrespectful towards his supervisors every day and that he [Mr. Arreola] had never met another County employee with as bad an attitude as King’s.

9. Ms. Rochelle Thomas, the third of King’s three (3) supervisors at EVS testified that she was the PM shift manager for approximately three (3) to four (4) years and supervised King at his request because he did not get along with the other supervisors. Ms. Thomas testified that she recalled the May 9, 2017 investigative interview and that she asked King why he continuously
showed aggressive and negative attitude towards his supervisors. Ms. Thomas recalled a separate incident (date uncertain) during which she gave King an assignment and he used profanity towards her. Ms. Thomas testified that she did not discipline King for the use of profanity towards her at that time, because she wanted to give him an opportunity to correct his behavior through counseling and mentoring. Ms. Thomas also testified that out of an approximate 300-person staff at EVS, King was the only employee that displayed this level of disrespect and unharmonious behavior towards his supervisors. Ms. Thomas described King as combative, angry, and hostile. Finally, Ms. Thomas testified that the 5-day suspension was more than appropriate, and that based on her experience, the suspension should have been set at a higher level.

10. King, through testimonial evidence, denied the accuracy or legitimacy of the charges against him. King denied that he raised his voice, that he used profanity, and he also denied that he was disrespectful, aggressive, or combative in his interactions with supervisors. King further testified that he had never disappeared from assigned areas during scheduled work hours.

11. The County met its burden of proof in demonstrating that it had just cause to suspend King from his position as Janitor with the Environmental Services. The Board upheld unanimously (4-0), the following:

a. Merit System Rules, Article II:
   i. Section A25-301 (a)(1) – Violation of the County Charter, Merit System Rules and Regulations, and written and published departmental rules and policies which do not conflict with this article; and
   ii. Section A25-301 (a)(9) – Failure to maintain satisfactory and harmonious working relationships with the public and other employees.

12. The Board held (3-1) that the 5-day (40 work hour) suspension be reduced to 3-days (24 work hours).

CONCLUSION

The parties presented testimonial and documentary evidence regarding King’s 5 (five) workday (40-hour) suspension. The Personnel Board deliberated in closed session on the matter of King’s appeal. On January 31, 2020, the Personnel Board announced its decision in this case.

In a unanimous 4-0 vote, the Board upheld the County’s charges against King, as follows:
a. Merit System Rules, Article II:
   i. Section A25-301 (a)(1) – Violation of the County Charter, Merit System Rules and Regulations, and written and published departmental rules and policies which do not conflict with this article.
   ii. Section A25-301 (a)(9) – Failure to maintain satisfactory and harmonious working relationships with the public and other employees.

b. In a 3-1 vote, the Board reduced the five (5)-workday suspension to three (3) workdays (24 work hours).

**FURTHER ACTION**

The Board hereby advises Appellant, John King, that he may seek judicial review of this Board decision by filing a petition for writ of mandate pursuant to California Code of Civil Procedure § 1094.5. The writ petition must be filed with a court of competent jurisdiction no later than the 90th day following the date on which the Board decision becomes final (California Code of Civil Procedure § 1094.6). The Board’s decision becomes final when it is mailed by first-class mail, postage prepaid, including a copy of a certificate of mailing to the party seeking any such writ.

DATED: February ___, 2020

___________________________________________
William Anderson
Chair, Santa Clara County Personnel Board