



King County

Records, Elections and Licensing Services Division

Department of Executive Services
King County Administration Building
500 Fourth Avenue, Room 553
Seattle, WA 98104-2337

206-296-1540 Fax 206-296-0108
TTY Relay: 711

August 26, 2005

HAND-DELIVERED

Nicole Way
[REDACTED]
[REDACTED]

RE: Notice of Proposed Termination

Dear Ms. Way:

This letter is to notify you that I am proposing to terminate you from your position as an Administrator I for neglect of duty pursuant to King County Code section 3.12.270. Specifically, you failed to follow directives 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 termination, a meeting has been scheduled for you at 4:00 p.m. on August 31, 2005 in the labor relations conference room in the Human Resources Division (located in Room 450 of the County's Administrative Building). 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, you and other Elections employees were placed on Administrative leave in April of 2005 after several voters reported that they did not receive a ballot in their ballot package for the April election. Outside investigators were retained to look into this issue, as well as into issues associated with absentee processes in the 2004 General Election. You remained on leave until the investigators' final report was delivered and until I could review the report and make the appropriate personnel decisions. The investigation report is complete; a copy of that report is enclosed.

The factual basis for my proposing your termination is as follows:

A. 93 Unopened Ballots

The investigators determined that during the 2004 General Election, you failed to follow directives and to assign staff to tasks 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. Your failure to follow established protocols and follow directives in this matter substantially contributed to 93 voters not having their vote counted in the General Election.

The investigators found that then-Superintendent Bill Huennekens had directed you to assign staff to perform the tasks of taking the empty outer envelopes from the counting process, checking for unopened ballots, and bundling and labeling the opened outer envelopes. The investigators found you disagreed with his decision to stop having party observers perform these tasks and as a result you failed to consistently assign staff to perform these functions. Mr. Huennekens' directive was lawful and appropriate and you did not have discretion to ignore it. In addition, you made your disagreement with Mr. Huennekens' directive known to your subordinates. As a supervisor, I expect you to comply with a legal and reasonable directive such as the one Mr. Huennekens gave you with regard to assigning elections staff to complete these tasks.

The investigators found that you placed significantly less importance on these tasks and instead placed your focus and priorities on processing a high volume of ballots per day. I acknowledge that during an election, all of the staff is under a great deal of pressure because of the intense media scrutiny with our work. However, no one in Elections management has ever directed or suggested to you that it is more important to process high volumes of ballots at the expense of accuracy. I am aware that you have completed the Secretary of State's certification courses where accuracy in the count is stressed as the most important part of the elections process. I trusted that as a fourteen year employee, a certified elections administrator and a supervisor, you would have accuracy, not expediency, as your primary concern. It is clear from the investigators findings that this was not the case.

The investigators also concluded that you 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. Finally, your supervisor created an "Accountability Spreadsheet" that would have alerted you to discrepancies between the number of ballots in each batch versus the number of tabulated ballots (minus those rejected or challenged ballots). You instructed Robin Blake, an employee you assigned to enter data into the spreadsheet, to stop calling such discrepancies to your attention and failed to review the spreadsheet yourself on a regular basis. Your failure to take advantage of information readily available resulted in another missed opportunity to discover the discrepancies in the batch count prior to the election's certification.

B. No Signature on File Ballots

Shortly before the May 2004 election, Mr. Huennekens directed you to stop the practice of counting ballots with no signature on file (NSOF) without taking certain steps, including reviewing the voter's original registration card, to verify the voter's signature. Mr. Huennekens' directive was appropriate and reasonable. In following that directive in the spring

2004 elections, you had staff compare ballots with no signatures on file with the actual registration cards. In the 2004 General Election you failed to assign staff to do that task. You stated you relied on certain assurances given by Mr. Webb during an October 2004 staff meeting. The investigation revealed that your assertion was simply not credible. It further found that you were aware or clearly should have been aware of the context of that October 2004 discussion. Even if you were not, you directed staff contrary to the instruction given to you by Mr. Huennekens. Instead, you directed staff to set the NSOF ballots aside, resulting in their eventual discovery during the hand recount.

You were then assigned to retrieve these ballots from the security cage and did so without verifying you had retrieved all challenged ballots in the NSOF category. When asked by me at a meeting regarding the discrepancy in the numbers of NSOF ballots between what was retrieved from the cage and those reported in the Data Information Management System (DIMS), you stated, without any apparent alarm or concern, that more ballots must have been left in the security cage. This statement was particularly troubling given you had repeatedly assured your supervisor and others that you had retrieved all of the problem ballots.

Your failure to ensure the NSOF ballots were processed in the correct manner prior to certification led to significant public distrust of Elections' operations. The failure to retrieve all of the NSOF ballots in a timely fashion once the problem was discovered only increased the level of distrust. Your failure to appreciate the seriousness of the problem and to consider further investigation of the NSOF issues is part of a pattern of performance which you exhibited that was revealed by the investigators. This pattern included a failure to thoroughly evaluate issues, to have the foresight necessary to anticipate and to address problems as well as an inability to prioritize the work of the absentee balloting unit. You failed to ensure complete accountability of all ballots throughout the process. In short, your performance has indicated a lack of the critical skills necessary to supervise an important elections' process. The result has been that Elections' operations have been hampered and votes were not counted in a timely manner and, in some cases not at all, pursuant to established protocols.

With respect to the 2005 mail ballot process, the investigators found a significant number of errors for an election involving only 915 registered military and registered service ballots. There appeared to be little quality control over the April 2005 mail ballot process. This is unacceptable to me under any circumstance, but especially in the current environment where any error by the Elections Section staff continues to erode public trust of our operations, and thus ultimately their faith in our elections system.

The investigation also revealed several communications issues that I find extremely troubling. You have publicly indicated a mistrust of the DIMS system. However, you took no affirmative steps to attempt to understand the system or to work collaboratively with co-workers to solve perceived discrepancies in the system. You also consciously ignored a staff member's concerns about important issues in the DIMS system, namely Robin Blake. You failed to bring Ms. Blake's concerns forward to management and made no attempt to do any critical assessment of her concerns. In addition, you instructed Ms. Blake to stop bringing issues related to the data to your attention. Instructing a subordinate to stop alerting you to problems is completely

Nicole Way
August 26, 2005
Page 4 of 4

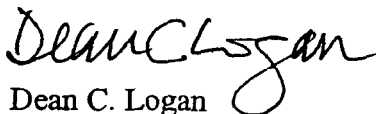
unacceptable for any supervisor, especially one in charge of a critical part of the elections system.

Your actions make clear that you cannot remain in your position. It is for each of these reasons and for the your deliberate disregard of directives as well as the other significant issues outlined in the attached report, that I am considering terminating you from employment for neglect of duty as authorized by King County Code section 3.12.270.

You have the right to respond orally or in writing to this proposed action and to have your union representative assist you in that response. If you choose to respond orally, please attend the above mentioned meeting as scheduled. You may have your union representative present if you so desire; it is your responsibility, however, to contact her and arrange for her attendance. If you fail either to participate in this hearing or to submit a written response by the scheduled date of this hearing, you will have waived your right to respond and I will make a final decision in this matter on the information provided to date.

The investigative report is the subject of a public disclosure request by the media and will need to be released as soon as possible.

Sincerely,


Dean C. Logan
Director

Enclosure

cc: Betty Sorbo, Business Representative, Teamsters Local 117
Personnel File