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# Transcript of Administrative Hearing

**Date:** April 20, 2018

**Case:** Foster -v- Sumner Village

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Transcript of Administrative Hearing  
Conducted on April 20, 2018

1 (1 to 4)

1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1	C O N T E N T S	3
2	FOR MONTGOMERY COUNTY, MARYLAND	2	PAGE	
3	-----x	3	TESTIMONY OF MONIQUE FOSTER	
4	In Re: : Case No.	4	BY MR. SHAFER 17	
5	MONIQUE FOSTER : C-06174	5	BY MR. McCORMICK 73	
6	v. :	6	TESTIMONY OF RUTH GUNN	
7	SUMNER VILLAGE :	7	BY MR. McCORMICK 159	
8	-----x	8	BY MR. SHAFER 188	
9		9		
10		10	E X H I B I T S	
11	HEARING	11	PAGE	
12	Before Hearing Examiner Lynn Robeson	12	COMPLAINANT'S EXHIBITS	
13	Rockville, Maryland	13	1 Emails 46	
14	April 20, 2018	14	RESPONDENT'S EXHIBITS	
15	9:39 a.m.	15	A Personnel Policy Handbook 35	
16		16	B Supplemental Decision 07	
17		17	E Corrective actions 51	
18		18	F Corrective actions 51	
19		19	M Evaluation 41	
20		20	P 52	
21		21	Q Corrective Action Form 56	
22		22	V EEOC Charge of Discrimination 141	
23	Job: 186855	23	W EEOC Letter transferring jurisdiction 157	
24	Pages: 1 - 213	24	X EEOC letter to Mr. Byerly 142	
25	Transcribed by: Molly Bugher	25		
1	A P P E A R A N C E S	1	P R O C E E D I N G S	4
2	FOR CLAIMANT	2	MS. ROBESON: Is the court reporter ready?	
3	JASON M. SHAFER, ESQ.	3	COURT REPORTER: I'm ready.	
4	LEGAL AID BUREAU, INC. MONTGOMERY COUNTY	4	MS. ROBESON: Are the parties ready?	
5	600 Jefferson Plaza, Suite 430	5	MR. SHAFER: I'm signing in.	
6	Rockville MD 20852	6	MS. ROBESON: Okay. Are you Mr. Shafer?	
7	301-637-1059	7	MR. SHAFER: Yes, Your Honor.	
8		8	MS. ROBESON: Come up -- you can come up and sit on the	
9	MONIQUE FOSTER, Claimant	9	side of the table, closest -- as close to the microphone --	
10	6850 Iron Ore	10	All right. I'm calling the case of Monique Foster versus	
11	Elk Ridge, Maryland 21075	11	Sumner Village, HRC case number E-001674 (indiscernible)	
12		12	case number HR 1801. Will the parties identify themselves	
13	FOR RESPONDENT	13	with the record?	
14	KEVIN C. McCORMICK, ESQ.	14	MR. SHAFER: Yes, Your Honor. Jason Shafer for the	
15	WHITEFORD TAYLOR PRESTON	15	complainant.	
16	7 Saint Paul Street	16	MR. MCCORMICK: I'm Kevin McCormick, and I'm for the	
17	Baltimore MD 21202	17	respondent.	
18	410-347-8779	18	MS. GUNN: Ruth Gunn.	
19		19	MS. ROBESON: Okay. That's fine. So did -- one thing	
20	RUTH GUNN, Witness	20	I think I had asked is, do any of the parties want a rule on	
21	9489 Fairfax Boulevard, Apartment 204	21	witnesses during this proceeding?	
22	Fairfax, Virginia 2201	22	MR. SHAFER: A rule meaning --	
23		23	MR. MCCORMICK: Sequestration.	
24		24	MS. ROBESON: Sequestration so the --	
25		25	MR. SHAFER: Oh, witnesses --	

Transcript of Administrative Hearing  
Conducted on April 20, 2018

2 (5 to 8)

<p>5</p> <p>1 MS. ROBESON: Nobody knows with actual testimony is. 2 The other witnesses don't get to hear the testimony of 3 whoever -- that's going on here. 4 MR. SHAFER: Yes, Your Honor. I would prefer 5 sequestration. 6 MS. ROBESON: Okay. We have two venues. We have the 7 library that you were in and we also, if somebody wants to 8 go to the cafeteria. So we will go ahead and do that. The 9 clients, of course, may stay, but if you have -- I don't -- 10 I see a gentleman in the back. I don't know if he is with 11 the board. 12 MR. MCCORMICK: He is. He's president of the board, 13 but Ruth Gunn is going to be my corporate designee. 14 MS. ROBESON: Okay. Well, is the president of the 15 board going to testify? 16 MR. MCCORMICK: Not in our case in chief. I mean, it 17 might be for rebuttal. 18 MS. ROBESON: Well, if you want to reserve him on 19 rebuttal, he's going to have to leave this room while the 20 testimony occurs. 21 MR. MCCORMICK: Okay. That's good. Do you want to do 22 it now? 23 MS. ROBESON: Yes, please. 24 MR. MCCORMICK: Thank you. 25 MS. ROBESON: Ms. Foster, you can come up to the table</p>	<p>7</p> <p>1 board -- the HRC did not find a discrimination case. 2 MR. SHAFER: So strictly limited to the retaliation. 3 MS. ROBESON: The retaliation case, yeah. 4 MR. SHAFER: Okay. 5 MS. ROBESON: So anything else? 6 MR. SHAFER: No. 7 MS. ROBESON: Okay. The way this works colloquially, 8 is our proceeding is more informal than the circuit court's, 9 but it still has some formalities. That means that the 10 testimony is under oath, subject to cross-examination. I'm 11 going to be the hearing examiner. What I do is I take all 12 of the testimony and evidence and then write a recommended 13 decision and order to the HRC. The HRC reviews it on the 14 record. So whatever you have to say, you have to say it 15 here, now. You have the right to, if you disagree, I 16 believe that the HRC permits oral arguments after my 17 recommendation or decision. That's at their discretion. So 18 with that, I just wanted to make sure everybody is clear, 19 the everything that you want to be introduced into the 20 record has to be done today. There is no further 21 opportunity at the HRC to supplement the record. With that, 22 what we generally do, our order of proceeding is opening 23 statements, complainant's case in chief, respondent's case 24 in chief, complainant's rebuttal, and closing statements. 25 Okay. Any other preliminary matters? Okay.</p>
<p>6</p> <p>1 as well. All right. Are there any other preliminary 2 matters? 3 MR. SHAFER: (Indiscernible). Go ahead. 4 MR. MCCORMICK: The only thing I would note for the 5 record as I know we have the decision and order as one of 6 the official exhibits. I don't know whether the 7 supplemental decision in order is attached to that. I would 8 move that that be attached. 9 MS. ROBESON: Oh, into the hearing record. 10 MR. MCCORMICK: That's right. 11 MS. ROBESON: Do you have an objection to that? 12 MR. SHAFER: I don't have an objection to it being 13 attached. 14 MS. ROBESON: Okay. So I'll go ahead -- do you have a 15 copy of the supplemental -- 16 MR. MCCORMICK: I do. 17 MS. ROBESON: I guess I will mark this as Respondent's 18 Exhibit B. That's admitted. Now, any other preliminary 19 matters? 20 MR. SHAFER: Your Honor, just to clarify; so the 21 retaliation case was certified initially. Then we went 22 through all the extra stuff to find out what (indiscernible) 23 discrimination cases. What is the -- what are the issues 24 for just today? 25 MS. ROBESON: Today is the retaliation case because the</p>	<p>8</p> <p>1 MR. SHAFER: I'm sorry. 2 MS. ROBESON: Yeah. 3 MR. SHAFER: There was the issue of the interpretation 4 of retaliation and causation under retaliation in the 5 Montgomery County statutes. 6 MS. ROBESON: Yes. 7 MR. SHAFER: You had asked us to prepare to be able to 8 discuss that. I was just wondering, have we established 9 that Maryland precedent is going to be what (indiscernible) 10 on that? 11 MS. ROBESON: No, that's something I'm giving you an 12 opportunity to look at. I did it -- if you want to address 13 in the supplemental written response, you can do that. 14 MR. SHAFER: Okay. 15 MS. ROBESON: All right. 16 MR. SHAFER: And will there be a timeline for 17 submitting a supplemental? 18 MS. ROBESON: Yes. 19 MR. SHAFER: Okay. 20 MS. ROBESON: And we will do that when we get to the 21 end and see if there are any other loose ends that need to 22 be cleared up. 23 MR. SHAFER: Okay. Thank you. 24 MS. ROBESON: Okay. Anything else? 25 MR. SHAFER: I don't think so.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 MS. ROBESON: Okay. Mr. Shafer, you are up. This is 2 your opening statement if you have one. If you don't, 3 that's fine too. 4 MR. SHAFER: I do. So there is a kind of simplicity in 5 the retaliation case that we are looking at. The simple 6 case is about what the respondent wants you to believe is 7 just a crazy coincidence. For the simple case that we are 8 looking at here, the evidence will show that Ms. Foster was 9 hired full-time on October 14, 2013. That her supervisor 10 was initially Charisse Young and then Ruth Gunn and Revay 11 (phonetic) Proctor. The evidence will further the show that 12 she attempted to bring any issues to her supervisors 13 initially and to her general manager thereafter. And that 14 when those failed, that's when she went to the Board of 15 Directors per what was explicitly delineated within the 16 handbook. The evidence will show that she contacted the 17 Board of Directors and the Board of Directors assisted in 18 getting an evaluation effectuated, but beyond that, did not 19 assist in the stopping of the unjustified treatment that she 20 was experiencing. She was concerned, prior to this, that 21 she would be targeted and harassed for contacting the Board 22 of Directors, and this is what happened, the evidence will 23 show. The evidence will show that's in mid-2015, after an 24 unfair evaluation and multiple writeups in a day and being 25 falsely charged with violations by Ms. Gunn, that Foster had</p>	<p style="text-align: right;">11</p> <p>1 to be that that one day was the day that she got fired. So 2 this simple case, it's about coincidence and what the 3 respondent wants you to believe about that coincidence. And 4 that's what I (indiscernible). 5 MS. ROBESON: Okay. Mr. McCormick. 6 MR. MCCORMICK: We don't believe that there was any 7 evidence establishing any type of retaliation, legal 8 retaliation. As you know, in these cases there's different 9 ways to produce or to get to that end result as to prove 10 your claim. You can do it through a prima facie case or you 11 can do it through direct evidence. If it's a prima facie 12 case, the plaintiff has to show that she engaged in some 13 protected activity. The protective activity is not that I 14 was upset with my boss because my boss was making me do my 15 job, you have to do because of some protected status; race, 16 age, sex, national origin, and that nature. There has to be 17 some adverse action and there has to be a causal link 18 between the adverse action and the engaging in the protected 19 activity. The protected activity could be participation. 20 You filed a charge and you got fired, which is what the 21 plaintiff is arguing right now. It can also be oppositional 22 meaning that I spoke up and I complained about that to 23 someone. But all has to tie back into some protected 24 status. If you have a basic gripe over the fact that my 25 performance review wasn't good enough, I should've gotten a</p>
<p style="text-align: right;">10</p> <p>1 enough. The evidence will show that Ms. Foster was off on 2 July 22, 2015, for a medical appointment, previously 3 scheduled medical appointment for which she had permission. 4 And after her medical appointment, she went to the EEOC 5 office to file a complaint based on the harassment that had 6 taken place. While she was at the EEOC office, the evidence 7 will show that she called two employees who were at the 8 worksite. One of those was Bernadette and one of those was 9 Reggie. The evidence will further show that Ms. Gunn 10 drafted a termination letter dated July 22, 2015, the very 11 same day that Ms. Gunn -- that Ms. Foster had gone to the 12 EEOC office and contacted her fellow employees to explain 13 this is just enough and she had to have something done about 14 this. And that she was provided the letter on her very next 15 day of work, July 25, 2015. The letter provided no reason 16 for termination. The evidence will show that when Ms. 17 Foster finally received that letter and spoke with Ms. Gunn 18 in person, that Ms. Gunn said there was no reason for the 19 termination. The evidence will also show that two days 20 after that, Gunn signed a personnel action sheet that 21 indicated that the reason for termination had to do with 22 performance issues. That was never provided to Ms. Foster. 23 Now, Ms. Foster worked with at the respondent for 649 days. 24 On 648 of those days, Ms. Foster did not go to the EEOC 25 office. On one of those days she did, and it just happened</p>	<p style="text-align: right;">12</p> <p>1 higher grade, that's not the type of protection that you get 2 under the law. But in any event, even if a prima facie case 3 is established, the employer then has an obligation to come 4 in and explain why we did what we did. And as always, we 5 come forward with some evidence, that stands unless the 6 plaintiff can come back and say, wait a minute. It's 7 pretextual, it's not worthy of belief and here's why. Well, 8 in this particular case, our legitimate nonretaliatory 9 reason does hold true. The evidence is going to show that 10 there were performance issues with the plaintiff throughout 11 her time there. Of particular concern was her inability to 12 fill out -- to comply with the company's timekeeping method. 13 Outside of her office, there was a time clock that all 14 employees were expected to clock in and clock out. You have 15 to clock in the morning. You clock out at lunchtime. You 16 clock back in at lunchtime and then you clock out when you 17 go home. And they had the clock there so there would be no 18 question about what time it was that you came to work or 19 when you left and when you came back. For whatever reason, 20 Ms. Foster was -- either didn't want to do it, couldn't do 21 it, or whatever, but she constantly would hand write the 22 time in there. She had been counseled about that. The 23 evidence is going to show she was counseled about in 2014. 24 In fact, the notations in her file show that they actually 25 showed her how to do it so that there was no question. It's</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

4 (13 to 16)

<p>13</p> <p>1 not a comp located process. You take a card, you put it in, 2 you put the time in. It continued and continued and 3 continued. When the -- when Ms. Foster had her performance 4 review, one of the items that was stressed in the 5 performance review was her continued failure to follow the 6 procedures with regard to proper time, recording of her time 7 on the time clock. She had a performance review meeting in 8 May 22, 2015. Item 2, there was a PIP, a performance 9 improvement plan that was attached to her review. Item 2 of 10 that set specifically said you need to work on your 11 timekeeping skills. You need to punch in and punch out like 12 everybody else. So what happened after that? We were hoping 13 that her timekeeping skills would improve because she was 14 just told about it in writing, and she was put on a PIP that 15 said, you need to improve in the specific area. Well, the 16 time cards are going to show that, in the succeeding weeks 17 after that, there were over 80 incorrect entries that were 18 punched in or not punched in by the complainant. What 19 happened was, on 7/22, well actually 7/16, she was given a 20 disciplinary based on the fact that she was given two 21 disciplinaries. One was based on the fact that she didn't 22 properly time -- keep track of her time the way she was 23 supposed to after she had been specifically warned about in 24 May. And she had these 80 incorrect entries on there. So 25 she was given the -- she was given the disciplinary at that</p>	<p>15</p> <p>1 evidence at all that I've seen or that is in the record, 2 that would indicate that anybody in management knew where 3 she was on the day that she was sick, that anyone knew that 4 she was filing an EEOC charge. In fact, the evidence is 5 going to show that the charge that she filed with the EEOC 6 was dated September 3, 2015. That's a long time after the 7 22nd of July. In fact, the evidence is also going to show 8 that the way the charge was filed with the EEOC and then it 9 was set up to, I think was Philadelphia, and then it wound 10 up coming back here to the Montgomery County Office of Human 11 Rights. That official notification didn't come to the 12 company until sometime in February 2016. The testimony 13 today is going to show that there was absolutely no one in 14 management who was aware that she had filed. We don't even 15 know that she filed a charge on that day. I mean, I guess 16 there is going to be testimony, but to date there has been 17 no documentary evidence to show any date that she was at the 18 EEOC office. So there is no retaliation because she filed 19 the charge. The other point I would like to make is with 20 regard to the oppositional aspect of this. She did complain 21 to the Board that she didn't get a performance review. The 22 Board president at the time, was involved to make sure that 23 she did get the performance review. She did get the 24 performance review. She didn't like the results of the 25 performance review, but she got the performance review. And</p>
<p>14</p> <p>1 time. She was given a disciplinary for another issue that 2 came up. Part of her job was to safeguard keys for 3 residents' apartments. This is a condominium and it has 4 almost 400 units. And obviously, when people have 5 maintenance done on it, they need the maintenance people to 6 come in, but you just don't let them come in and go without 7 any type of protocol. They have a procedure that's in place 8 and Monique Foster wasn't able to follow that. On a number 9 of occasions, she allowed mechanics and contractors to enter 10 into residents' homes without telling the resident that so- 11 and-so is coming by this afternoon. In fact, there were 12 complaint letters that were received by the Association 13 where the tenants would come home and find the door open and 14 say, what happened here. And so those were some issues. So 15 she got two disciplines on 7/16. And the hope was, going 16 through progressive discipline, that maybe Monique would get 17 the message that she really needs to keep track of her time 18 and she needs to keep track of the key control issues. That 19 didn't happen. She basically blew up and said, I'm not 20 signing this. I'm not acknowledging this and left. And it 21 was in that interim then from the 16th through the 22nd when 22 it was decided that, in fact, the Association had enough of 23 it. She wasn't adhering to the progressive discipline and 24 she was terminated for it. Now with regards to this issue 25 about filing the EOC complaint, there is no documentary</p>	<p>16</p> <p>1 none of the conversations that she had, and we have her 2 notes here and we will examine it when she testifies, she 3 never, ever raised any issues other than, I think I do a 4 better job. I don't think I'm being treated fairly. I 5 should get more money. Ultimately, she wound up getting a 6 little bit more money as a result of review. It wasn't for 7 the reasons I mentioned earlier for protected status. It 8 was for her own reasons which were, I want more money. I 9 want to be able to say I did a better job. So for all those 10 reasons, we believe that there is no evidence of 11 retaliation. What there is, is evidence of a company that - 12 - or an association that tried very hard to work with her to 13 get her to do what she needed to do; every other employee 14 did. And for whatever reason, she just was unwilling or 15 unable to do that. And ultimately, the straw that broke the 16 camel's back is when she was given the disciplinaries in 17 July and rather than accept them, sign off on it, or just 18 acknowledge them, she stormed out and said, I'm done with 19 this. I don't want to deal with this. And the company 20 decided to terminate her on that basis. That's not 21 retaliation. 22 MS. ROBESON: All right. Mr. Shafer, your case in 23 chief. 24 MR. SHAFER: Yes, Your Honor. Okay. Ms. Foster, we're 25 going to address all the things that we are saying in the</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

5 (17 to 20)

<p>17</p> <p>1 opening here. We will start with kind of your background. 2 Can you state your name for the record? 3 MS. FOSTER: Monique Foster. 4 MS. ROBESON: And address, please. 5 MS. FOSTER: 6850 Iron Ore, Elk Ridge, Maryland 21075. 6 MR. SHAFER: And what was your position with Sumner 7 Village? 8 MS. FOSTER: Service coordinator. 9 MR. SHAFER: And when was your first day as a full-time 10 employee? 11 MS. FOSTER: I started as a temporary employee on 12 August 5 it and then I became a full-time permanent employee 13 August -- I'm sorry -- October 14. 14 MR. SHAFER: October 14? 15 MS. FOSTER: Mm-hm. 16 MR. SHAFER: Okay. 17 MS. ROBESON: Of what year? 18 MS. FOSTER: 2013. 19 MR. SHAFER: Now, just to get into some other basic 20 background, what kind of formal training did you receive? 21 MS. FOSTER: I received no formal training. The person 22 that preceded me in the position, he was quitting the job. 23 He was resigning. So I was just shown kind of what he did 24 day-to-day, from him. There was no instruction manual or 25 anything. We kind of surfed the web and found what we</p>	<p>19</p> <p>1 HVAC going on in her building. I gave her a courtesy call 2 to let her know. Not even a courtesy call, but just ask 3 her, can we arrange to get into her unit because they would 4 have to -- the HVAC technicians would have to go to her unit 5 to do the installation. I called her to ask her, could we 6 arrange that for the following Monday. I called her on a 7 Friday and asked her, could we arrange that for the 8 following Monday. Ms. Dipaulo reported that when she got 9 home that Friday evening, that her door was open and the 10 only thing she had to go by was the message left by me 11 saying that there was an HVAC installation taking place in 12 her building and the technicians need to get into her unit. 13 There is a key log. There was an existing key log when I 14 was there, that when you sign out a key, you write the key 15 number down. We coded them. We didn't put specifically who 16 it belonged to for specific reasons; so that no one could 17 just walk in off the street. So we put a code in. But we 18 would have to sign our names on the log whenever I accessed 19 that key log. I often had questions about it because it was 20 so very unorganized. And very often, maintenance staff, 21 custodians, pretty much anyone that's the very thing that we 22 wanted to avoid happened. 23 MR. SHAFER: I'm sorry. Just to slow down here. 24 MS. FOSTER: I'm sorry. I'm just explaining a little 25 bit.</p>
<p>18</p> <p>1 could. And that was the training. 2 MR. SHAFER: Now, we are talking about training. Were 3 there any kind of particularized software that you had to 4 use in relation to this job? 5 MS. FOSTER: Yeah, the work order system was specific 6 to placing work orders. So there should have been, in my 7 opinion, some type of formal training for that. Or at least 8 an instruction manual. 9 MR. SHAFER: Okay. Let's kind of address one of the 10 things that was brought up kind of directly here. There was 11 an allegation regarding keys, a key issue. Now, can you -- 12 do you know what this was regarding? 13 MS. FOSTER: Yes, that was a particular -- the 14 paperwork that we received was from a particular resident 15 that was -- 16 MR. SHAFER: What was the resident's name? 17 MS. FOSTER: Ms. Dipaulo (phonetic). 18 MR. SHAFER: Ms. Dipaulo. 19 MS. FOSTER: Yes. 20 MR. SHAFER: Okay. 21 MS. FOSTER: In Building 6, what we call Building 6. 22 She was kind of one of those residents that she was always 23 out of town. She was never really home that often because 24 she took care of her parent in another state. So I gave her 25 a call that day. There was installation or something about</p>	<p>20</p> <p>1 MR. SHAFER: It's okay. 2 MS. FOSTER: Yeah, sorry. 3 MR. SHAFER: So you're saying that maintenance staff 4 and custodial staff had access to the keys? 5 MS. FOSTER: Yeah, and they often accessed it. 6 MR. SHAFER: So it was open. It wasn't like a locked 7 case that you had a key for? 8 MS. FOSTER: It was locked, but the key stayed there. 9 MR. SHAFER: The key stayed in -- 10 MS. FOSTER: In the cabinet, yes. 11 MR. SHAFER: Okay. 12 MS. FOSTER: Yes. The key stayed in the cabinet. It 13 wasn't like it was removed and we had to go get the key from 14 somewhere. It was -- it stayed in the cabinet. So in her 15 particular case, the only thing -- I had left for the day 16 when she came up to the office. 17 MR. SHAFER: Okay. Around what time did you make the 18 call? Do you remember? 19 MS. FOSTER: Around 3:00. 20 MR. SHAFER: Around 3:00? 21 MS. FOSTER: Yeah. 22 MR. SHAFER: Okay. Go on. 23 MS. FOSTER: And I had left for the day. I usually 24 left around 4:30. And she came up to the office. She 25 reported that she came up there or she called. I don't know</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

6 (21 to 24)

<p>21</p> <p>1 specifically which one she did. But the only thing she had 2 to go by was my message saying, can we schedule something 3 for Monday. But when she got home, her door was unlocked. 4 No one seemed to know who had given a key and she assumed 5 that the technicians had been in her unit. That's still not 6 -- I'm still not really sure or certain if they had accessed 7 her unit or not. So she -- no one knew who gave her the 8 key, but I ended up getting written up for and that was a 9 write up that I refused to sign because I was not guilty of 10 that. So I felt like I would rather speak with 11 (indiscernible) talk to Ms. Dipaulo. And she later -- 12 MR. SHAFER: Oh, okay. Let's -- 13 MS. FOSTER: Okay. 14 MR. SHAFER: So just so we all understand what happened 15 here, was this a -- whoever was going in to do the 16 maintenance, was this a third-party contractor? Was this -- 17 MS. FOSTER: This was a third-party contractor. 18 MR. SHAFER: Okay. So this was somebody from outside. 19 MS. FOSTER: Yes. 20 MR. SHAFER: Okay. Now you stated that you had called 21 Ms. Dipaulo on Friday to schedule a meeting for Monday. 22 MS. FOSTER: Mm-hm. 23 MR. SHAFER: Just to be clear on that. Okay. So after 24 Monday comes along, what happened after that with Ms. 25 Dipaulo.</p>	<p>23</p> <p>1 door was open? 2 MS. FOSTER: Her complaint was that she got home 3 sometime after 5:00. Around 5:30 or so. 4 MS. ROBESON: On which day? 5 MS. FOSTER: On Friday. 6 MS. ROBESON: Oh, okay. 7 MS. FOSTER: And her door was unlocked. 8 MS. ROBESON: Okay. 9 MS. FOSTER: Yeah. 10 MS. ROBESON: And your testimony is that -- 11 MS. FOSTER: The only thing she -- oh, I'm sorry. 12 MS. ROBESON: Your communication was for Monday. 13 MS. FOSTER: Yes, ma'am. 14 MS. ROBESON: Okay. I'm sorry to interrupt. 15 MR. SHAFER: Oh, not at all, Your Honor. 16 MS. FOSTER: No problem. 17 MR. SHAFER: So she -- the question was, she contacted 18 you and (indiscernible). 19 MS. FOSTER: Yes, she -- 20 MR. MCCORMICK: Objection, hearsay. 21 MS. ROBESON: Well, we are easy-going. I'm going to 22 let it in and give it the weight it deserves unless there is 23 some basis when I hear it, that -- are you talking about a 24 personal discussion or a phone discussion? 25 MS. FOSTER: We discussed -- we discussed the matter.</p>
<p>22</p> <p>1 MS. FOSTER: Ms. Dipaulo actually -- I believe she -- I 2 don't know if she called or who called her or however it 3 went. She called, and she complained that her door was open 4 between Friday and Monday. She waited until Monday again, 5 to come and get some more answers. And Ruth asked her if -- 6 could she put her complaint in writing at that point. She 7 put her complaint in writing and then I guess she also felt 8 the way I felt. She wanted to speak to me directly and she 9 reached out to me directly. 10 MR. SHAFER: So this was -- she reached out to you 11 directly. Was it -- 12 MS. FOSTER: This was on Tuesday, on that following 13 Tuesday. 14 MR. SHAFER: So this was after she had sent the 15 (indiscernible). 16 MS. FOSTER: This is after she had sent her email. 17 MS. ROBESON: Can I stop you for a second? 18 MS. FOSTER: Yes, ma'am. 19 MS. ROBESON: Because I'm getting a little confused. 20 MS. FOSTER: I'm sorry. 21 MS. ROBESON: You say -- your testimony is that you 22 left a message on Friday for Monday. 23 MS. FOSTER: Yes, ma'am. 24 MS. ROBESON: And when did Ms. Dipaulo come? Or 25 according to your testimony, when did she discover that the</p>	<p>24</p> <p>1 We discussed her door being unlocked and everything that 2 happened because she was still searching for answers on why 3 was her door unlocked. And the only thing she had to go by 4 was my message. So she said that she told me she just 5 wanted to know what happened. 6 MS. ROBESON: I think we are going to not go further 7 down that road because it is classic hearsay. I do have 8 some questions about -- you know, I'm going to say the same 9 thing about the email that she originally wrote to Ms. Gunn. 10 So let's not go further down this line of questioning. 11 MR. SHAFER: Your Honor, if I could respond to the 12 objection. 13 MS. ROBESON: Yes. 14 MR. SHAFER: So what Ms. Dipaulo would be saying -- 15 MS. ROBESON: Well, proffering. 16 MR. SHAFER: What she would be proffering, yes, would 17 not be offered for the truth of the matter asserted, not 18 that she was sorry for having implemented Ms. Monique -- or 19 Ms. Foster. It would be offered to demonstrate motive or 20 intent or something along those lines. It's not a matter of 21 demonstrating the fact that she was actually sorry that Ms. 22 Dipaulo was actually sorry for having implicated her. It's 23 being offered for the fact of showing something outside of 24 that context. 25 MS. ROBESON: Oh, you mean that there was a</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

7 (25 to 28)

<p>25</p> <p>1 conversation that Ms. Dipaulo's email wasn't the full story. 2 Is that what you are saying? 3 MR. SHAFER: Well, so if Ms. Dipaulo's proffered 4 statement is that she was sorry for implicating Ms. Foster, 5 then that's not being offered for the truth of the matter 6 that she is sorry for having implicated Ms. Foster. That's 7 been offered for the truth of the matter of saying that she 8 didn't believe that Foster was responsible, or she didn't 9 believe that Foster had the motive to have made this contact 10 on Friday or let somebody in on Friday or something along 11 those lines. Which is not being offered for the truth of 12 the matter asserted. So then it wouldn't be hearsay it 13 wouldn't be the hearsay objection or the hearsay exception. 14 MR. MCCORMICK: I don't understand what he is saying. 15 I mean, they are offering a statement from a person who we 16 have an email, which she made certain representations. He 17 is objecting to -- 18 MR. SHAFER: Now you are (indiscernible) something 19 that's not in the record. 20 MR. MCCORMICK: You are objecting to that email because 21 it's hearsay and now she's getting in to testify. 22 MS. ROBESON: Okay. That's enough. I'm going to -- it 23 is very close to being offered for -- as an exculpatory 24 evidence and not just the fact that -- I mean, Ms. Foster 25 can testify that she had subsequent conversations with Ms.</p>	<p>27</p> <p>1 they were reprimanded. 2 MR. SHAFER: Okay. And -- 3 MS. ROBESON: Was there a procedure for signing the 4 keys out? 5 MS. FOSTER: There weren't procedures for anything in 6 the office, ma'am. 7 MS. ROBESON: Well, just -- 8 MS. FOSTER: It was just kind of 9 MS. ROBESON: Okay. Slow down. 10 MS. FOSTER: Yeah. 11 MS. ROBESON: Slow down. 12 MS. FOSTER: Yeah. 13 MS. ROBESON: I just want to know; was there procedure 14 for signing the keys out? 15 MS. FOSTER: Basically, what we did was, if some -- if 16 there needed to be some work done in a unit, the maintenance 17 staff, and the person is not home and the maintenance staff 18 has to -- the maintenance staff has to access the unit, they 19 would go up to the key log. There was a cabinet that held 20 the keys and you take the key down and you would just sign 21 that key out and write your name on the side that you signed 22 that key out. 23 MS. ROBESON: Okay. 24 MS. FOSTER: So I guess that was the procedure, but it 25 was just kind of a mess.</p>
<p>26</p> <p>1 Dipaulo, but not for the fact that Ms. Dipaulo decided it 2 wasn't her. Okay? 3 MR. SHAFER: Yes, Your Honor. I accept that. Thank 4 you. Okay. So Ms. Foster, do you know of any other 5 employees who had issues with managing the keys properly? 6 MS. FOSTER: It was just -- I mean, we all had access 7 to it. It wasn't restricted to any particular employee. 8 MR. SHAFER: Specifically -- 9 MS. ROBESON: Who is, we? 10 MS. FOSTER: All of the employees. We all had access 11 to the cabinet. 12 MR. SHAFER: And specifically talking about -- do you 13 know of any other specific employee who had been -- who had 14 mishandled the keys? 15 MS. FOSTER: If you're speaking of anyone else that had 16 been reprimanded for misplacing keys or things of that 17 nature, or -- 18 MR. SHAFER: Yeah, that's what I'm asking about. 19 MS. FOSTER: Yeah, I do know of a couple of other 20 employees that were reprimanded for misplacing keys. 21 MR. SHAFER: Okay. Can you explain what happened with 22 those employees? 23 MS. FOSTER: They had signed keys out and when they 24 were -- it what it was time for someone to go and retrieve 25 them, those keys were not there. So they were called in and</p>	<p>28</p> <p>1 MR. SHAFER: So just to get this explicitly on the 2 record, did you give the key to the (indiscernible) 3 contractor? 4 MS. FOSTER: No, I did not. No. 5 MR. SHAFER: Now, what happened with the -- there was 6 an incident related to SWAT equipment. What happened with 7 this? 8 MR. MCCORMICK: Objection, leading. 9 MR. SHAFER: It's background. 10 MS. ROBESON: Basis? 11 MR. MCCORMICK: Leading. 12 MS. ROBESON: Well -- 13 MS. FOSTER: (indiscernible). 14 MS. ROBESON: Can you rephrase? 15 MR. SHAFER: Yes, Your Honor. So Ms. Foster, initially 16 you would report things to the board anonymously, correct? 17 MS. FOSTER: Yes. 18 MR. SHAFER: What was the earliest incident that you 19 recall reporting to the board about? 20 MS. FOSTER: There was an incident where the facilities 21 manager that had been newly hired in July 2014, I want to 22 say. September 11, he came into the office. 23 MS. ROBESON: Who? Okay, so who is that? Is that Mr. 24 Proctor? 25 MS. FOSTER: Mr. Proctor.</p>



Transcript of Administrative Hearing  
Conducted on April 20, 2018

8 (29 to 32)

<p>29</p> <p>1 MS. ROBESON: Okay. Go ahead.</p> <p>2 MS. FOSTER: He came into the office and he had not</p> <p>3 been there all morning and his reason being was he was on</p> <p>4 assignment for Obama over in El Salvador and he was fully</p> <p>5 draped with guns and ammunition on him, in a SWAT uniform.</p> <p>6 He came to the office and showed us all -- showed everyone</p> <p>7 what he had on. When he went into Ruth's office, we kind of</p> <p>8 peeked in because we were startled, and we really couldn't</p> <p>9 believe that it was happening. And Ruth kind of, I guess</p> <p>10 disarmed him I guess. She took the guns and took them and</p> <p>11 stuck them under her desk.</p> <p>12 MR. SHAFER: Okay. And did you complain about this</p> <p>13 activity or report it?</p> <p>14 MS. FOSTER: We all did.</p> <p>15 MR. SHAFER: You all did. So including --</p> <p>16 MS. ROBESON: Well, did you?</p> <p>17 MS. FOSTER: Yes, I did.</p> <p>18 MS. ROBESON: To whom did you report it?</p> <p>19 MS. FOSTER: To the Board. I mentioned it to several</p> <p>20 Board members.</p> <p>21 MR. SHAFER: Okay. There was a lot of talk about</p> <p>22 timecards. So if we could just address that. So what was</p> <p>23 the timecard procedure to your knowledge?</p> <p>24 MS. FOSTER: The timecard issue -- the timecard</p> <p>25 procedure, there was a timecard box on the wall. We were to</p>	<p>31</p> <p>1 supposed to do this? Because things weren't ever a problem</p> <p>2 until they were a problem. So Charisse and I kind of -- we</p> <p>3 spoke about it and then it kind of -- she kind of got away</p> <p>4 from it because she did realize that it was not reflecting</p> <p>5 my true time.</p> <p>6 MR. MCCORMICK: Objection. That's hearsay.</p> <p>7 MS. FOSTER: No, we did. Well, and then with Ruth and</p> <p>8 I, I approached Ruth --</p> <p>9 MS. ROBESON: Just a second.</p> <p>10 MS. FOSTER: I'm sorry.</p> <p>11 MS. ROBESON: Can you rephrase the question as far as -</p> <p>12 -</p> <p>13 MR. SHAFER: Yeah, I think we got a little away from --</p> <p>14 (Crosstalk)</p> <p>15 MS. ROBESON: Let me just explain Ms. Foster, you can't</p> <p>16 testify to something that somebody else said --</p> <p>17 MS. FOSTER: Okay. Understood.</p> <p>18 MS. ROBESON: To --</p> <p>19 MS. FOSTER: Understood.</p> <p>20 MS. ROBESON: To prove the truth of -- you can't say</p> <p>21 Charisse said.</p> <p>22 MS. FOSTER: Right. Understood.</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MS. FOSTER: Okay.</p> <p>25 MR. SHAFER: So I will ask another question. So what</p>
<p>30</p> <p>1 clock in and out. There was the first timecard. I did not</p> <p>2 -- I did rarely use that because I was not sure on how to</p> <p>3 use that, that timecard. That --</p> <p>4 MS. ROBESON: The first of timecard box?</p> <p>5 MS. FOSTER: The box that -- yeah, that was on the</p> <p>6 wall.</p> <p>7 MS. ROBESON: Okay.</p> <p>8 MS. FOSTER: I really was not sure. No one ever told</p> <p>9 me how to use the time. I had never in my life used a</p> <p>10 timecard clock. And we talked about it. Charisse and I,</p> <p>11 who was the first supervisor, we spoke about it a lot. Then</p> <p>12 it really wasn't an issue because then I did explain to</p> <p>13 Charisse that when I come in in the morning -- and so what</p> <p>14 do I do when I come in the morning and I'm stopped in the</p> <p>15 parking lot by one of the residents and it doesn't truly</p> <p>16 reflect my time or when I'm making lunch runs for the entire</p> <p>17 office and my lunch hour is really a half hour. So to me</p> <p>18 and started feeling that -- when she did approach me and</p> <p>19 wanted to talk, it became a problem. It would be -- it</p> <p>20 would always be around the time where I was unhappy about --</p> <p>21 not really unhappy, but I was concerned about something else</p> <p>22 going on in the office that was just inappropriate or</p> <p>23 something being unorganized or; how do I know if I'm doing</p> <p>24 this this way, how do I know that it's being done correctly</p> <p>25 if no one ever comes and say, this is the actual way you're</p>	<p>32</p> <p>1 were your work hours?</p> <p>2 MS. FOSTER: My workhours were 8:00 to 4:30.</p> <p>3 MR. SHAFER: Okay. And you indicated that -- you</p> <p>4 already testified to the instances, things would happen that</p> <p>5 would prevent you from being able to clock in at your real</p> <p>6 time that you started. So you indicated that there was a --</p> <p>7 what would happen at lunch? What was the deal with lunch,</p> <p>8 is my question.</p> <p>9 MS. FOSTER: So the constant in the office is, I would</p> <p>10 go make lunch runs for the entire office. I would go pick</p> <p>11 up lunch for us all.</p> <p>12 MR. SHAFER: So why were their lunch stamps every day</p> <p>13 for in and out for lunch?</p> <p>14 MS. FOSTER: Because I would go and pick up lunch for -</p> <p>15 - so how my going to truly reflect -- if I'm going to pick</p> <p>16 up lunch -- and it wasn't a problem when I would go and pick</p> <p>17 up lunch for everyone. It was -- I'm not sure what made it,</p> <p>18 on the specific occasions, become a problem.</p> <p>19 MR. SHAFER: Ms. Foster, I'm asking you, did you have</p> <p>20 lunch every day? Did you take time off for lunch every day?</p> <p>21 MS. FOSTER: No, a lot of times I did not take lunch</p> <p>22 every day. A lot of times I would eat lunch at my desk and</p> <p>23 then the days that I did, most times because there was</p> <p>24 nowhere for us to like go get -- go eat, I would go make</p> <p>25 lunch runs. Then we would come back, and we would eat at</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

9 (33 to 36)

<p>33</p> <p>1 our desk.</p> <p>2 MR. SHAFER: Okay. Was there a procedure for, like</p> <p>3 safety did come in and somebody stopped to you and you</p> <p>4 didn't get to clock in at the time, was there a procedure in</p> <p>5 place that you were eventually told to rectify this issue to</p> <p>6 get the right time in there?</p> <p>7 MS. FOSTER: Yeah. At some point she did mention --</p> <p>8 MS. ROBESON: Who is she?</p> <p>9 MS. FOSTER: I'm sorry. Ruth Gunn, she did mention if</p> <p>10 there wasn't a punch in time, that I could write it in. So</p> <p>11 I did do that.</p> <p>12 MR. SHAFER: Okay. And what did that start?</p> <p>13 MS. FOSTER: Oh, my gosh. I can't really be specific</p> <p>14 on the date of that.</p> <p>15 MR. SHAFER: If you don't know, you don't know. But if</p> <p>16 you can (indiscernible).</p> <p>17 MS. FOSTER: Yeah, I can't really be specific. I don't</p> <p>18 really know when that began because it just was sporadic.</p> <p>19 MR. SHAFER: Well, can you please describe the</p> <p>20 circumstances of your conversation with Ms. Gunn related to</p> <p>21 this timecard issue?</p> <p>22 MS. FOSTER: I made several attempts on speaking about</p> <p>23 the timecard issue because I would often go in trying to be</p> <p>24 proactive about the situation because I didn't want anything</p> <p>25 to come of it later. I would ask often, how are we going to</p>	<p>35</p> <p>1 MR. SHAFER: Yes. Now, we do have in the record, it's</p> <p>2 Respondent's Exhibit A, the personal policy handbook.</p> <p>3 MS. ROBESON: No, I didn't want to get you off of your</p> <p>4 narrative.</p> <p>5 MR. SHAFER: I understand. Yeah, this is where I was</p> <p>6 heading.</p> <p>7 MS. ROBESON: Okay.</p> <p>8 MR. SHAFER: So on page 10 of exhibit A, it indicates</p> <p>9 that timeclock malfunctions should be reported to the</p> <p>10 management immediately. Now, you indicated there was a</p> <p>11 timeclock they used at first, and that was changes some</p> <p>12 point.</p> <p>13 MS. FOSTER: Mm-hm.</p> <p>14 MR. SHAFER: Can you describe what happened when that</p> <p>15 changed?</p> <p>16 MS. FOSTER: There was some issue going on with that</p> <p>17 timeclock. I'm not really specific or sure what it was, but</p> <p>18 there was some issue with that first -- but the first</p> <p>19 timeclock. Then it was replaced with the newer one.</p> <p>20 MR. SHAFER: Okay. And Exhibit A, it's a Summer</p> <p>21 Village Community Association personal policy handbook. Are</p> <p>22 you aware of -- did you receive the same but when you first</p> <p>23 started?</p> <p>24 MS. FOSTER: I received it. Yes, I received the</p> <p>25 handbook when a starter.</p>
<p>34</p> <p>1 deal with the timecard, because I don't want anything to</p> <p>2 come of this. And I would often be told, don't worry about</p> <p>3 it. Don't worry about it. That was the answer for a lot of</p> <p>4 things. Just write in your time.</p> <p>5 MS. ROBESON: The answer from whom?</p> <p>6 MS. FOSTER: From Ruth.</p> <p>7 MR. SHAFER: Okay. Now --</p> <p>8 MS. ROBESON: Let me -- I hate to interrupt again. I</p> <p>9 gave you all an exhibit list.</p> <p>10 MR. SHAFER: Yeah.</p> <p>11 MS. ROBESON: We are going to admit the stipulated</p> <p>12 exhibits, but I didn't know -- but the other ones are not</p> <p>13 admitted yet. So I didn't know if you're going to introduce</p> <p>14 -- if you still wanted to introduce the photo of Mr.</p> <p>15 Proctor, because that's a disputed exhibit.</p> <p>16 MR. SHAFER: Right. And that's a question -- the</p> <p>17 particular photo that we have, it doesn't have much clarity.</p> <p>18 MS. FOSTER: Well, I have a clearer one.</p> <p>19 MR. SHAFER: We have a clearer one, but I was still</p> <p>20 determining whether I wanted to introduce or offer that.</p> <p>21 MS. ROBESON: All right. Go ahead. I just wanted to</p> <p>22 make sure that everybody knew that what was (indiscernible)</p> <p>23 isn't stipulated is not in the record.</p> <p>24 MR. SHAFER: Yes, Your Honor.</p> <p>25 MS. ROBESON: Okay.</p>	<p>36</p> <p>1 MR. SHAFER: You received a handbook?</p> <p>2 MS. FOSTER: Mm-hm.</p> <p>3 MR. SHAFER: And you know it to be the handbook that we</p> <p>4 have in the exhibit list?</p> <p>5 MS. FOSTER: I'm not sure because they handbook that I</p> <p>6 received really wasn't that thick.</p> <p>7 MR. SHAFER: Okay. And when did you receive the</p> <p>8 handbook?</p> <p>9 MS. FOSTER: I got one when I first started.</p> <p>10 MS. ROBESON: Which handbook? When did you receive</p> <p>11 which handbook?</p> <p>12 MR. SHAFER: When did you receive the first ever?</p> <p>13 MS. FOSTER: I got a -- I got one handbook when I first</p> <p>14 started in October. Then it was modified sometime around --</p> <p>15 I have in my notes. But it was modified shortly after. It</p> <p>16 was in February of 2015.</p> <p>17 MR. SHAFER: February 2015, okay. Now, in the handbook</p> <p>18 that we have here, it specifically indicates that there is a</p> <p>19 policy for when punches are missed, or punches are made in</p> <p>20 error. And that's on page 10.</p> <p>21 MS. FOSTER: Okay.</p> <p>22 MR. SHAFER: Now, did you follow this policy as far as</p> <p>23 that you knew about the policy?</p> <p>24 MS. FOSTER: Yeah. Yeah, I would --</p> <p>25 MR. SHAFER: So what to do, if you got in and you</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

10 (37 to 40)

<p>37</p> <p>1 weren't able to punch in at the right time, what would you 2 do?</p> <p>3 MS. FOSTER: I would specifically go and check with 4 Ruth and ask her, what should I do. And on most occasions, 5 she would tell me just to write the time and on the card. 6 Then I would ask or -- because it became days and days that 7 I did not go to lunch. Like I said, I would do lunch runs 8 here and there, but I would do -- some days I would not go 9 to lunch at all. Some days I did not take breaks at all. 10 So I would always approach her, and she would always promise 11 that we would have a conversation about it, but it never 12 happened.</p> <p>13 MR. SHAFER: Okay. I apologize, Your Honor. I have it 14 all together for both kinds of cases I'm just making sure 15 that I'm not strange from that part of it. Let's shift over 16 to the evaluation.</p> <p>17 MS. FOSTER: Okay.</p> <p>18 MR. SHAFER: So how did the evaluation come about?</p> <p>19 MS. FOSTER: The evaluation came about because, before 20 the previous supervisor -- when the previous supervisor was 21 there, there was so much chaos and conflict in the office. 22 So when she resigned --</p> <p>23 MS. ROBESON: You are talking about Ms. Young</p> <p>24 MS. FOSTER: Ms. Young, yes, ma'am.</p> <p>25 MS. ROBESON: Charisse?</p>	<p>39</p> <p>1 MS. ROBESON: Oh, okay. Go ahead.</p> <p>2 MS. FOSTER: Okay. She wanted us to -- this was the 3 conversation. She had us me in the conference room and she 4 wanted us to assist her with getting the office in order and 5 getting some structure in the office. We totally agreed 6 because it was -- it was just so chaotic. It was just a 7 mess. She told us to write down whatever our suggestions 8 were and what we think should happen and how would help us 9 better -- you know, be better in the office. So moving 10 forward, that's exactly what I did. I'm not sure about 11 anyone else, but that's exactly what I did. I offered 12 suggestions. They were never taken.</p> <p>13 MR. SHAFER: Just the kind of reenter here. So when 14 did --</p> <p>15 MS. FOSTER: (indiscernible) sorry.</p> <p>16 MR. SHAFER: That's okay. When did the evaluation --</p> <p>17 MS. FOSTER: So the evaluation -- so that's what led to 18 the evaluations. My apology again.</p> <p>19 MR. SHAFER: That's all right.</p> <p>20 MS. FOSTER: What led to the evaluations is because I 21 was constant in my approach with just trying to get some 22 type of guidance from my general manager. It just was never 23 happening. So I said --</p> <p>24 MS. ROBESON: Who was your general manager?</p> <p>25 MS. FOSTER: Ms. Gunn.</p>
<p>38</p> <p>1 MS. FOSTER: I didn't know if I could say her name. 2 Sorry. But there was so much --</p> <p>3 MS. ROBESON: Well, I will stop you if you don't --</p> <p>4 MS. FOSTER: Okay.</p> <p>5 MS. ROBESON: Just go slow.</p> <p>6 MS. FOSTER: Okay.</p> <p>7 MS. ROBESON: And don't worry. Don't anticipate, okay?</p> <p>8 MS. FOSTER: Okay. When she was there, there was a lot 9 of conflict in the office. There were a lot of backed up 10 invoices that weren't being paid and just things that it was 11 just so an organized and we were constantly searching for 12 answers on how to get the office in order so that there 13 weren't so many complaints from residents. Because we 14 receive so many complaints from residents that things were 15 just not going well. Their work wasn't being done. They 16 would report. Communications weren't clear. Things were 17 being communicated to them at the very last minute. They 18 were unhappy about that. So when Ms. Young resigned, Ms. 19 Gunn had a meeting with -- it was just Bernadette and I 20 left. She had a meeting with us and she said, going 21 forward, I want you guys to work with me to get the office 22 in order and to --</p> <p>23 MS. ROBESON: Now, can you just -- who is Bernadette?</p> <p>24 MS. FOSTER: Bernadette Thomas was the front desk 25 coordinator.</p>	<p>40</p> <p>1 MS. ROBESON: Oh.</p> <p>2 MS. FOSTER: Ms. Gunn, I'm sorry. So just trying to 3 get some guidance and just trying to -- you know, that's 4 just -- how can we make this better? So I said, let's start 5 with -- because all of the employees never -- they had all 6 complained about not ever receiving a performance 7 evaluation. So I said, and speaking with all my coworkers, 8 let's just try to start their and then maybe we can kind of 9 structure from there as to how we can move forward with the 10 office. I went to Ms. Gunn multiple times, multiple, and it 11 never happened. So then I went to the Board and asked for 12 assistance on getting them. From what I understand, the 13 Board president at the time did enforce that, yes, give the 14 employees their performance evaluation. I was the first one 15 on the list to get mine.</p> <p>16 MR. SHAFER: What date with the evaluation conducted?</p> <p>17 MS. FOSTER: My evaluation was -- was a March 23? Or 18 something like that I believe. March 23, 2015. March 19 -- 19 either the 19th or 23rd. I'm not sure exactly which date. 20 It's in my bag though.</p> <p>21 MR. SHAFER: Okay.</p> <p>22 MS. FOSTER: It's actually in my purse.</p> <p>23 MR. SHAFER: We have respondents exhibit 24 (indiscernible).</p> <p>25 MS. ROBESON: I'm sorry. Which?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

11 (41 to 44)

<p>41</p> <p>1 MR. SHAFER: Respondent's Exhibit M, as in Mary. And 2 that's the evaluation that was conducted. 3 MS. FOSTER: Right. The first evaluation, the reason 4 that I did not agree with the first evaluation, because it 5 just simply was not true, and it was not reflective of the 6 employee that I was. So I did not agree with it. I 7 expressed my disagreement in the meeting with Ms. Gunn and 8 Mr. Proctor. 9 MR. SHAFER: Do remember what score you received for 10 the -- 11 MS. FOSTER: It was 2.76, altogether. 12 MR. SHAFER: All together. Now, the evaluation we have 13 in the record that's dated May 22, 2014 -- 14 MS. FOSTER: It should up in 2015. I have a copy of 15 that as well if you want that one. 16 MR. SHAFER: So no, this is the question here. 17 MS. FOSTER: Oh, okay. 18 MR. SHAFER: So the evaluation that we have in the 19 record was dated May 22, 2014. Is that the correct date of 20 this evaluation? 21 MS. FOSTER: That is totally incorrect. 22 MR. SHAFER: Okay. What is the correct date of this 23 evaluation? 24 MS. FOSTER: I ended up signing the second evaluation 25 on May 22, 2015.</p>	<p>43</p> <p>1 MS. ROBESON: April 2015? 2 MS. FOSTER: Yes, ma'am. We met the -- I never 3 received an evaluation in 2014. 4 MS. ROBESON: Okay. 5 MS. FOSTER: That is incorrect on her part. 6 MS. ROBESON: No Ms. Foster, during this time were you 7 in contact with the Board (indiscernible)? 8 MS. FOSTER: I was in constant contact with the board 9 during this entire time. Yeah, I was in constant contact. 10 There were even reports to me from the Board that we had 11 already come to an agreement and that was not true. So 12 that's all of my emails, because I was in constant contact 13 with them the entire time. 14 MR. SHAFER: Okay. Just so we understand. What was 15 just the general substance of what you talked about with the 16 board? Not the individual things that you said back and 17 forth. 18 MS. FOSTER: Right. 19 MR. SHAFER: What was the substance of what you talked 20 about? 21 MS. FOSTER: The substance is basically what I -- what 22 my overall goal was just to get some type of structure in 23 the office. I had approached Ms. Gunn on multiple occasions 24 per the policy handbook and it wasn't -- not going anywhere, 25 Inc. they just assist with how -- what are some ideas of</p>
<p>42</p> <p>1 MR. SHAFER: Okay. So at this time, it's noted that 2 Ms. Gunn's signature is on the evaluation, but she dated it 3 in 2014. 4 MS. FOSTER: I didn't even have an evaluation in 2014. 5 MR. SHAFER: Okay. Now, you indicated that your 6 overall score was 2.76. 7 MS. FOSTER: That's the second... That's the second 8 evaluation. Oh, okay. Yeah. 9 MR. SHAFER: So it's 2.76. This was a score for the 10 first time that you met and got the evaluation. 11 MS. FOSTER: Yes. 12 MR. SHAFER: And so after you met for the first 13 evaluation, then you met for second evaluation. 14 MS. FOSTER: Yes, I was advised by Mr. Proctor to jot 15 down on the evaluation, what it was that I didn't agree with 16 and we would meet again. We made several appointments to 17 meet again, but they never happened. Then again, it was 18 just ongoing, just being brushed off, brushed off. Then 19 finally, we met for the second evaluation. But the comments 20 really didn't change. The notes that Ms. Gunn had placed in 21 the evaluation didn't really change. She just changed the 22 numbers. So in the second one, the number was just a little 23 bit higher, but the comments were there. So I was still 24 concerned so I did not sign it because we met in April. I 25 kept the evaluation and they didn't --</p>	<p>44</p> <p>1 what we could do just to get some structure and organization 2 in the office because it just looked like this is nine. I 3 mean, as far as assisting me and assisting Bernadette that 4 point. 5 MR. SHAFER: Okay. So as part of the procedure, you're 6 supposed to -- you talked to your supervisor first and tried 7 to go to that part. If that doesn't work, you go to the 8 board, correct? 9 MS. FOSTER: Mm-hm. 10 MR. SHAFER: I have some emails back and forth between 11 you and the board here. Can you take a look at these? 12 MS. ROBESON: Are they marked as an exhibit? 13 MR. SHAFER: Marked as Exhibit 1. 14 MS. ROBESON: Okay. 15 MR. SHAFER: It's complainant's Exhibits 1. So can you 16 just take a look at these and verify that it reflects to 17 your conversation with these board members? 18 MR. MCCORMICK: Your Honor, they haven't been admitted 19 yet. 20 MR. SHAFER: I'm letting -- 21 MS. ROBESON: He's -- 22 MR. MCCORMICK: Okay. 23 MR. SHAFER: Okay. So can you just take a look at 24 these and verify that these are -- to your knowledge, they 25 reflect the true and accurate representation of your</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

12 (45 to 48)

<p>45</p> <p>1 conversation with the Board?</p> <p>2 MS. FOSTER: Yes. Yes, this is my -- these are my</p> <p>3 communications with the Board. Yeah.</p> <p>4 MR. SHAFER: Okay.</p> <p>5 MS. ROBESON: Okay. Are you -- is there further</p> <p>6 foundation you want to lay?</p> <p>7 MR. SHAFER: So around what time were you conversing</p> <p>8 with the Board? What were the dates?</p> <p>9 MS. FOSTER: The first email was March 19, 2015.</p> <p>10 MR. SHAFER: From your -- how -- over what time period</p> <p>11 were you having these conversations with the Board? Was</p> <p>12 this over years? Over months? These particular things that</p> <p>13 you -- that you would --</p> <p>14 MS. FOSTER: Oh, this particular chain start -- that</p> <p>15 lasted a couple of months.</p> <p>16 MR. SHAFER: A couple of months?</p> <p>17 MS. FOSTER: Yeah, because then I was ultimately</p> <p>18 terminated.</p> <p>19 MR. SHAFER: Okay. And who from the board or you</p> <p>20 having this conversation with?</p> <p>21 MS. FOSTER: I spoke with Mr. Harbison who was the</p> <p>22 board president. I initially sent it to --</p> <p>23 MS. ROBESON: Okay. Well, wait a minute. I guess it</p> <p>24 hasn't been omitted yet. Are you still establishing the</p> <p>25 authenticity of the emails or...?</p>	<p>47</p> <p>1 MS. ROBESON: Okay, 11:02.</p> <p>2 MR. MCCORMICK: 11:28.</p> <p>3 MS. ROBESON: Yeah, but she is CC'd on it. Wish your</p> <p>4 email MoniqueLrf@gmail.com?</p> <p>5 MS. FOSTER: Yes, ma'am.</p> <p>6 MS. ROBESON: So I -- I guess I don't think that that</p> <p>7 qualifies as attorney-client privilege.</p> <p>8 MR. MCCORMICK: Okay. Well, to the extent they are</p> <p>9 from Mr. Harbison to her providing certain information and</p> <p>10 everything else, I object on the grounds that it's hearsay.</p> <p>11 MS. ROBESON: I'm going to let it end because it's got</p> <p>12 her email. She testified she received it. I think they are</p> <p>13 sufficiently authenticated to overcome a hearsay objection.</p> <p>14 All right, Mr. shaver, those will be admitted as</p> <p>15 complainant's Exhibit 1.</p> <p>16 MR. SHAFER: Okay. So we had established that you had</p> <p>17 met initially in March for your evaluation. Can you</p> <p>18 describe your initial -- what did you initially say to the</p> <p>19 Board member, Harbison, regarding your evaluations?</p> <p>20 MS. FOSTER: When I asked him, I just went to him and</p> <p>21 just said I'm following protocol. Can you please give me</p> <p>22 some assistance on getting the performance evaluations? He</p> <p>23 had offered to meet with me, but we never actually met.</p> <p>24 MR. MCCORMICK: Objection.</p> <p>25 MS. FOSTER: Oh, because I said what he said.</p>
<p>46</p> <p>1 MR. SHAFER: The foundation, authenticity, yeah.</p> <p>2 MS. ROBESON: Okay. Keep going.</p> <p>3 MR. SHAFER: That's -- I was just getting that. He</p> <p>4 asked me for the foundation.</p> <p>5 MS. ROBESON: I just wanted to make sure.</p> <p>6 MR. SHAFER: Yeah. Okay. So we understand that this</p> <p>7 is a conversation between you and the Board members and</p> <p>8 which Board members and when they were taking place. So I</p> <p>9 would like to offer them as complainant's Exhibit 1.</p> <p>10 MR. MCCORMICK: Your Honor, I'm going to object because</p> <p>11 I don't -- I have what I think it's Exhibit 1, and I because</p> <p>12 maybe 12 pages of different emails from different people. I</p> <p>13 would be happy to go through each one, because some of them</p> <p>14 I do have. There is one in here that is attorney-client</p> <p>15 privilege that is not --</p> <p>16 MS. ROBESON: Which one?</p> <p>17 MR. MCCORMICK: One here that --</p> <p>18 MS. ROBESON: Well, how can it be attorney-client --</p> <p>19 well, go ahead.</p> <p>20 MR. MCCORMICK: Well, there is one here that is dated</p> <p>21 March 23, 2015. It's from John Harbison. It says, dear</p> <p>22 friends, I spoke with (indiscernible) who reported that</p> <p>23 (indiscernible) is their counsel, is their lawyer.</p> <p>24 MS. ROBESON: Can you give me the date of that email?</p> <p>25 MR. MCCORMICK: It's March 23, 2015.</p>	<p>48</p> <p>1 MS. ROBESON: I think it's in one of the emails.</p> <p>2 MS. FOSTER: It's in the email.</p> <p>3 MR. MCCORMICK: Well, it's in there, but --</p> <p>4 MS. FOSTER: It's in the email.</p> <p>5 MR. MCCORMICK: I don't think she can embellish it by</p> <p>6 offering her recollection.</p> <p>7 MS. ROBESON: All right.</p> <p>8 MR. MCCORMICK: (indiscernible) that's fine.</p> <p>9 MR. SHAFER: Now, there is a particular email that's</p> <p>10 dated March 23, 2015. It was sent to you and other Board</p> <p>11 members. Do remember receiving this email?</p> <p>12 MS. FOSTER: Yes, sir.</p> <p>13 MS. ROBESON: Do you -- okay. I have two emails on</p> <p>14 March 23. One is at 11:02. One is at 7:45 PM. Can you</p> <p>15 just identify which email you are referring to?</p> <p>16 MR. SHAFER: Yes. So I'm referring to the email at</p> <p>17 11:28 PM.</p> <p>18 MS. ROBESON: Okay.</p> <p>19 MR. SHAFER: So toward the bottom, there is a</p> <p>20 paragraph. It's right before the bottom. Can you please</p> <p>21 read that paragraph? Is the next to the last.</p> <p>22 MS. FOSTER: (indiscernible) I am puzzled. I'm also</p> <p>23 puzzled?</p> <p>24 MR. SHAFER: Yes.</p> <p>25 MS. FOSTER: I am also puzzled why Monique's latest</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

13 (49 to 52)

<p>49</p> <p>1 email has gone to only about half the Board, where the 2 previous one I believe went to all of us. It's troubling to 3 me too that this matter arises so soon after the 4 circumstances that led to Charisse's departure. 5 MR. SHAFER: Now, the Board member here describe 6 circumstances (indiscernible) recent departure. What does 7 that mean to you? 8 MS. ROBESON: She can testify as to her knowledge of 9 the circumstances that led to Ms. Young's departure. 10 MR. MCCORMICK: Her knowledge. 11 MS. ROBESON: That was your -- 12 MR. SHAFER: Yeah. 13 MR. MCCORMICK: Her knowledge, not what did Harbison 14 say. 15 MR. SHAFER: Right. Just her knowledge. To your 16 knowledge. What does that mean to you? 17 MS. FOSTER: To me, that means that she experienced 18 similar -- she had similar experiences as I did with Ms. 19 Gunn. 20 MS. ROBESON: Can you be more specific? 21 MS. FOSTER: No leadership. No guidance. Just feeling 22 harassed. Feeling belittled. Trying to -- going to someone 23 that's the head of the office and constantly being pushed 24 away, brushed off. Then ultimately... Well, I can speak on 25 that because I guess that's discrimination.</p>	<p>51</p> <p>1 MS. FOSTER: Mm-hm. 2 MR. SHAFER: And what did he say? I can have you read 3 that? 4 MS. ROBESON: Well, it's in the record. 5 MR. SHAFER: So what was your understanding about, 6 referencing that particular email, what was your 7 understanding about what had been lied about? 8 MS. FOSTER: Me signing the performance evaluations. 9 Me signing the second one. 10 MR. SHAFER: Okay. All right. Okay. So there were -- 11 for the end of your tenure, there were two personal action 12 sheets that were provided to you. Now, these are 13 Respondent's Exhibits E and F. 14 MR. MCCORMICK: E and F? 15 MR. SHAFER: Yeah, Respondent's Exhibits. 16 MR. MCCORMICK: You don't want E and F. That's from 17 2014. I mean, that's (indiscernible). 18 MR. SHAFER: Oh, yeah. 19 (Crosstalk) 20 MR. SHAFER: No, you're right. Yeah. 21 MR. MCCORMICK: P and Q is what you want. 22 MR. SHAFER: So it's Respondent's Exhibits P and Q. 23 Those were the most recent ones. Okay. So you receive this 24 corrective action form July 16, 2015. Did you -- do you 25 remember what that was regarding?</p>
<p>50</p> <p>1 MS. ROBESON: Well, just say it and let him -- 2 MS. FOSTER: Yeah. I mean, but see treatment with 3 other people of a different race, specifically Caucasian, 4 she would spend time with them and take time and show them 5 exactly what they need to do, like even closing their office 6 door and spend time with him. We never got that. 7 MR. SHAFER: So -- 8 MS. FOSTER: Spend time with them and like train them 9 MR. SHAFER: Okay. So on April 22 -- we're going to 10 kind of go forward on this back and forth. The emails are 11 in there, so you can look at those as you need to. But 12 going forward, on April 22, 2015, at 10:39 AM, Mr. Harbison 13 sent you an email. It stated that -- my understanding is 14 that you did sign off on your performance review with Ruth. 15 Is that not true? So do you remember this email? 16 MS. FOSTER: Yes, sir. 17 MR. SHAFER: And what did you say in response to the 18 email? 19 MS. FOSTER: I told him it was not true. That I had 20 not signed off on it yet. 21 MR. SHAFER: Okay. And this was as of April 23, 2015. 22 MS. FOSTER: April 22, yeah. Right. 23 MR. SHAFER: Okay. Then again, Exhibit 1, April 23, 24 2015 at 10:32 AM, Mr. Harbison responds to your previous 25 email.</p>	<p>52</p> <p>1 MS. FOSTER: Yeah. That was the time clock thing or 2 something. 3 MR. SHAFER: Okay. And so you receive the documents. 4 How did you respond to the document?? 5 MR. MCCORMICK: Which one? Is that P? 6 MR. SHAFER: P, yeah. It's Exhibit P. 7 MS. FOSTER: How did I respond? 8 MR. SHAFER: Right. When you -- so there were 9 allegations that you had failed the clock in and out 10 regularly. What do you remember -- what was your issue with 11 this personal action (indiscernible)? 12 MS. FOSTER: For me, again, this was after I had 13 approached her about overtime. That was pretty much the 14 tone. Whenever I would have a question about something, I 15 would -- it would just be -- I would be approach for 16 something saying something was incorrectly done or just -- 17 to me, in my -- can I give my opinion? 18 MS. ROBESON: You know what? Can you just explain, 19 subject to objections, can you just -- what do you mean 20 overtime? 21 MS. FOSTER: Well, I would stay late. I would often 22 stay late because again, it was the issue of the backlog of 23 invoices to the point where companies have started not doing 24 business with us because they weren't being paid. Can I 25 explain the procedure with invoices?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

14 (53 to 56)

<p>53</p> <p>1 MS. ROBESON: Yeah, just keep going.</p> <p>2 MS. FOSTER: Oh, okay. So the procedure with invoices</p> <p>3 was, I would -- Ruth would (indiscernible) the invoices when</p> <p>4 they came in. Then she would bring them to me. I would</p> <p>5 pretty much scanned them back to her. Then she was</p> <p>6 responsible for sending them over to the corporate office</p> <p>7 for payment. So it was -- that was the chain. So if I had</p> <p>8 a question about something or -- and then it was -- it</p> <p>9 wasn't -- the issue wasn't raised until had been noticed</p> <p>10 that invoices had not been paid for months and companies</p> <p>11 were pulling out from doing business with Sumner Village.</p> <p>12 So I would -- I was -- at the time, I didn't realize that we</p> <p>13 were in such -- it was really that bad. But I knew it was</p> <p>14 bad. So I would stay late, and I would think I was helping</p> <p>15 Ruth and think I was helping the office by working on these</p> <p>16 invoices. But I wanted to be compensated for staying. I</p> <p>17 have an email from July 13 where I'd sent her, and I've</p> <p>18 asked her about the overtime. Then I was written up for the</p> <p>19 time clock issue after I had approached her on multiple</p> <p>20 occasions. When I asked her, okay, do I need to talk to you</p> <p>21 about the time clock or do I talk to that's because when I</p> <p>22 talked to (indiscernible) at that time, at that moment, he</p> <p>23 was supposed to be my supervisor. So when I went to</p> <p>24 (indiscernible) about the timecard issue, he would submit to</p> <p>25 Ruth. When I would go to Rick to ask her, she would see me</p>	<p>55</p> <p>1 receive the phone calls that the bill had not been paid and</p> <p>2 I would go to check with Ruth to --</p> <p>3 MS. ROBESON: And when did you complain about the</p> <p>4 overtime?</p> <p>5 MS. FOSTER: July 13.</p> <p>6 MS. ROBESON: Of?</p> <p>7 MS. FOSTER: 2015.</p> <p>8 MS. ROBESON: Okay. That helps (indiscernible).</p> <p>9 MS. FOSTER: Over time and also it was retro pay that I</p> <p>10 had put in the email because I was supposed to receive a</p> <p>11 certain amount of retro pay. It was short.</p> <p>12 MS. ROBESON: Why were you supposed to receive retro</p> <p>13 pay?</p> <p>14 MS. FOSTER: Because once I signed off on my</p> <p>15 performance evaluation, the increase, it goes back to</p> <p>16 MS. ROBESON: I see. (indiscernible).</p> <p>17 MS. FOSTER: Yes. Yes.</p> <p>18 MS. ROBESON: Okay.</p> <p>19 MR. SHAFER: Okay. So switching over to Exhibit Q.</p> <p>20 This is a corrective action form dated July 16, 2015. Did</p> <p>21 you sign this corrective action form to your knowledge?</p> <p>22 MS. FOSTER: I'm not sure if I signed it. I don't</p> <p>23 think I signed that one either.</p> <p>24 MR. SHAFER: Okay. Now it cites breaking company</p> <p>25 policies as the violation. It's regarding a key control</p>
<p>54</p> <p>1 back to him. And I'm like, who I talk to, because neither -</p> <p>2 - they were both sent me back and forth to each other. So I</p> <p>3 never get answers. This is why I remained (indiscernible).</p> <p>4 MS. ROBESON: So what was your responsibility vis-à-vis</p> <p>5 the invoices?</p> <p>6 MS. FOSTER: That was actually something that trickle</p> <p>7 down from Charisse's position. It really wasn't even in my</p> <p>8 job description. Again, like I said, I was trying to assist</p> <p>9 in the office with getting some structure and getting those</p> <p>10 bills caught up because the maintenance staff's phones have</p> <p>11 been disconnected because of nonpayment. Power had gone out</p> <p>12 over at one of the condo buildings due to nonpayment. So we</p> <p>13 were in a scramble. We couldn't order things anymore. I</p> <p>14 had to make physical trips to the -- to the supplies.</p> <p>15 MS. ROBESON: Okay. But what was your role as you</p> <p>16 understood it? What was your role as far as getting the</p> <p>17 invoices paid? Were you just to scan them in?</p> <p>18 MS. FOSTER: My role, as I understood it, was she</p> <p>19 brought them to me was, scan these in and they come to her.</p> <p>20 They go to her. Then she makes the last -- the final move</p> <p>21 on getting them over to the corporate office for payment.</p> <p>22 That was what I understood. That was what she explained to</p> <p>23 me.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MS. FOSTER: And there were often days when I would</p>	<p>56</p> <p>1 issue. We already discussed what happened with Ms. Dipaulo.</p> <p>2 MS. FOSTER: Ms. Dipaulo.</p> <p>3 MR. SHAFER: Ms. Dipaulo, we already discussed what</p> <p>4 happened with her. In this particular document it states</p> <p>5 that there was a second key issue and it was related to Mr.</p> <p>6 Ellis. Do you know of the key issue regarding Mr. Ellis?</p> <p>7 MS. FOSTER: No.</p> <p>8 MR. SHAFER: Did you have any...? Do remember providing</p> <p>9 keys to the residence of a Mr. Ellis?</p> <p>10 MS. FOSTER: No.</p> <p>11 MR. SHAFER: Now, at this point, it states that you had</p> <p>12 been warned of key issues previously before having received</p> <p>13 this corrective action form. Is that true?</p> <p>14 MS. FOSTER: That's not true at all.</p> <p>15 MR. SHAFER: Okay.</p> <p>16 MS. ROBESON: Wait a minute. But didn't you get...?</p> <p>17 There was one from Charisse Young.</p> <p>18 MS. FOSTER: About a key?</p> <p>19 MS. ROBESON: Oh, keys. I'm sorry.</p> <p>20 MR. SHAFER: Just the keys.</p> <p>21 MS. ROBESON: Go ahead.</p> <p>22 MS. FOSTER: No, I never --</p> <p>23 (Crosstalk)</p> <p>24 MS. FOSTER: The keys or had issues with keys. I</p> <p>25 didn't really -- the only time I would really deal with the</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

15 (57 to 60)

<p>57</p> <p>1 keys, we would do the HVAC maintenance twice a year. I 2 would pull the keys for them then and set up -- coordinate 3 that entire procedure. But sometimes I would pull the key 4 for maintenance staff or something like that, but very 5 rarely.</p> <p>6 MR. SHAFER: Okay. All right. Let's kind of -- let's 7 shift over and try to get to the date of termination at this 8 point. So you had a doctor's appointment on July 22, 2015. 9 That correct?</p> <p>10 MS. FOSTER: Yes.</p> <p>11 MR. SHAFER: Okay. Can you explain what happened prior 12 to that?</p> <p>13 MS. FOSTER: I had advised Ruth that as well, I had 14 gone and told her that I had a doctor's appointment. 15 Basically, just getting approval to let her know I would be 16 out that morning. That ended up happening because I do not 17 plan to be off that entire day. But what ultimately 18 happened was I was diagnosed with strep throat. There had 19 been sickness in the office. I don't even know how to word 20 it without it being hearsay because I was there.</p> <p>21 MS. ROBESON: Don't you worry about the hearsay.</p> <p>22 MS. FOSTER: I'm sorry. Okay.</p> <p>23 MS. ROBESON: His job a story about the hearsay. And 24 his job is story about hearsay on the other side.</p> <p>25 MS. FOSTER: Okay.</p>	<p>59</p> <p>1 MS. FOSTER: Oh, because he said. Okay.</p> <p>2 MS. ROBESON: Yeah, that's fine. I --</p> <p>3 MS. FOSTER: Strep throat is passed --</p> <p>4 MS. ROBESON: Just a second.</p> <p>5 MS. FOSTER: Oh, I'm sorry.</p> <p>6 MS. ROBESON: That's affirmed. But you can testify 7 what you know of your medical condition.</p> <p>8 MS. FOSTER: Yeah, strep throat is passed -- it can be 9 passed through the air. If you're -- or kissing someone, 10 which I do not do in the mouth. It can be passed in the 11 air, which I was not knowledgeable of, because again, I had 12 never had in my life. The only thing I could go back to was 13 the coworker walking around coughing and coughing. I would 14 complain all the time. I sprayed Lysol. They complain all 15 the time because I sprayed Lysol all the time because she 16 would cough and never cover her mouth. They would complain 17 to me like they are choking on the Lysol.</p> <p>18 MR. SHAFER: Ms. Foster, I --</p> <p>19 (Crosstalk)</p> <p>20 MS. ROBESON: Your objection is relevance?</p> <p>21 MR. MCCORMICK: Well, relevance and hearsay. She is 22 saying people were complaining to her. I mean, yeah.</p> <p>23 (Crosstalk)</p> <p>24 MS. ROBESON: I don't think it's very relevant.</p> <p>25 (Crosstalk)</p>
<p>58</p> <p>1 MS. ROBESON: Well, my coworker had walked around for 2 months.</p> <p>3 MS. ROBESON: It's my job too, counsel.</p> <p>4 MS. FOSTER: Okay.</p> <p>5 MS. ROBESON: I just don't want you to inadvertently 6 withhold when you really don't know if it's hearsay when I'm 7 going to rule, okay?</p> <p>8 MS. FOSTER: Okay.</p> <p>9 MS. ROBESON: My coworker had walked around for at 10 least eight months because she did not have any coverage. 11 She walked around -- any medical coverage, because she was a 12 temporary employee. She walked around for months with a 13 cough and a scratchy throat. Ruth gave her lozenges, pills, 14 all kinds of stuff, all the time. She was never treated. I 15 never in my life had strep throat, ever in my life. So I 16 didn't think was going to be that serious when I went to the 17 doctor. I just thought I was going to get a diagnosis and 18 maybe get a prescription be on my way. I was diagnosed with 19 strep throat. I was definitely upset. I called Ruth and I 20 told her what I had been diagnosed with. That same day, I 21 just felt -- I was just like, something has to give. We 22 need someone to mediate, step in, and help this office 23 because something has to give. I specifically asked my 24 doctor; how do you get strep throat. He said that --</p> <p>25 MR. MCCORMICK: Objection.</p>	<p>60</p> <p>1 MS. FOSTER: I'm sorry. I'm steering off.</p> <p>2 MS. ROBESON: No, I told you to do it.</p> <p>3 MS. FOSTER: Okay.</p> <p>4 MS. ROBESON: So go ahead.</p> <p>5 MR. SHAFER: I was (indiscernible) that as an 6 introduction into the circumstances.</p> <p>7 MS. FOSTER: I'm sorry. Okay. So anyway --</p> <p>8 MR. SHAFER: So we understand that you had the doctor's 9 appointments.</p> <p>10 MS. FOSTER: Yeah.</p> <p>11 MR. SHAFER: That's finished. So what happened after 12 the doctor's appointment?</p> <p>13 MS. FOSTER: I went straight to the EOC office and I 14 was upset. And I called my coworker and I told her where I 15 was going, and I told her why and I told another coworker 16 where I was going. They were both really close with Ruth 17 Gunn. Is that hearsay?</p> <p>18 MR. SHAFER: Which coworkers did you tell?</p> <p>19 MS. FOSTER: Bernadette Thomas who worked in the front 20 office with me and Reggie Starling, he was the security 21 manager.</p> <p>22 MR. SHAFER: And how do you tell them?</p> <p>23 MS. FOSTER: I found them at the job.</p> <p>24 MR. SHAFER: Okay. And what did you say when --</p> <p>25 MS. FOSTER: Because this was still working hours. I</p>



Transcript of Administrative Hearing  
Conducted on April 20, 2018

16 (61 to 64)

<p>61</p> <p>1 informed -- I informed them both that I was on my way to the 2 EEOC to try to file something to get some type of resolution 3 because reaching out to the board is just not resolving 4 issues. 5 MR. SHAFER: Okay. Just to be clear, did you phone 6 them when you're on the way to the EEOC or when you're at 7 the EEOC? 8 MS. FOSTER: When I was there. Yeah, I talked to both 9 of them multiple times. So I talked to the mom away and 10 while I was on my way there. 11 MR. SHAFER: Okay. And the extent of your conversation 12 was -- I me, he said little bit about it, but what was your 13 side of the conversation? What did you say? 14 MS. FOSTER: My side of the conversation was; I'm here. 15 First, it was, I'm on my way. I think one of the times, 16 they may have called me back and we talked about it more; 17 I'm here now the EEOC. I'm waiting to be seen. Then I 18 called when I left; I'm leaving the EEOC now and I have 19 strep throat. I will see you guys in a few days because 20 I've been ordered not to come back to work. 21 MR. SHAFER: Okay. Speaking on that, did you -- and so 22 you were diagnosed with a -- 23 MS. ROBESON: I know. I know. 24 MR. SHAFER: What seemed to be contagious and you still 25 went to the EEOC.</p>	<p>63</p> <p>1 MS. ROBESON: No. 2 MS. FOSTER: No? Okay. 3 MR. SHAFER: It's a nice try. 4 MS. FOSTER: Okay. 5 MR. SHAFER: So -- 6 MS. FOSTER: When I went the first time, I was given 7 the right to sue. 8 MS. ROBESON: No, just stop a minute. 9 MS. FOSTER: Okay. 10 MS. ROBESON: Can you rephrase, in a nonleading way...? 11 Was the point of what the EEOC told her? 12 MS. FOSTER: I guess I was probably just talking. 13 MR. SHAFER: So just so I understand where we are, you 14 are talking about the first time you went to the EEOC? 15 MS. FOSTER: The first time I went to -- 16 MR. SHAFER: Or the time on July 22? 17 MS. FOSTER: Well, the time that I went on this -- yes. 18 Because I'm -- I guess I was responding to him having these 19 different dates or something. Maybe that's when they were 20 notified. 21 MS. ROBESON: Okay. Was the first time you went to the 22 EEOC? 23 MS. FOSTER: I had gone to the EEOC actually, late June 24 or something like that I want to say. Somewhere around that 25 time.</p>
<p>62</p> <p>1 MR. MCCORMICK: Objection. 2 MS. ROBESON: Yeah. 3 MR. SHAFER: I just want to -- I just want her -- 4 MS. ROBESON: No, I know, but you're leading. She 5 already testified I think that it was contagious. So you 6 don't have to say it again. 7 MR. SHAFER: Sure. Okay. 8 MS. ROBESON: Okay. 9 MR. SHAFER: All right. Okay. So you had called them. 10 What did you do while you are at the EEOC? 11 MS. FOSTER: I filled out a claim. Actually, I had 12 gone to the EEOC before that date and that one, they said 13 they didn't -- they weren't going to pursue it. Then he 14 basically told me that I would need to be terminated and he 15 gave me a right to (indiscernible) that day. 16 MR. MCCORMICK: Objection. 17 MS. FOSTER: He gave me a right to (indiscernible) that 18 day. 19 MS. ROBESON: All right. I'm going to let that in just 20 because it doesn't go to the merits of this case and I'm 21 going to let it in. But stay away from the, he told 22 (indiscernible). 23 MS. FOSTER: Okay. Okay. 24 MS. ROBESON: He or she told me (indiscernible). 25 MS. FOSTER: Yes, ma'am. I was told -- can I say that?</p>	<p>64</p> <p>1 MS. ROBESON: Okay. 2 MR. SHAFER: But at this time -- 3 MS. FOSTER: Now, this time, it was the exact same day 4 of my doctor's appointment, which was the 22nd. 5 MR. SHAFER: I mean, so during the first time that you 6 went, just so we understand what happened there, what was 7 the gist of -- 8 MS. ROBESON: What was your understanding of your 9 rights? 10 MS. FOSTER: I guess my point of view and saying it is, 11 I want the first time to just have someone step in to assist 12 us. I was immediately given a right to -- 13 MS. ROBESON: Us? 14 MS. FOSTER: The office. The office I meant. I'm 15 sorry. To assist my workplace. You know, just to -- I 16 don't know if you can -- I didn't know what exactly -- I 17 just wanted some assistance on getting everything better 18 because it was not going like it should have been going. It 19 was not being run properly. It felt very discriminatory, 20 retaliatory. It felt all of those things. I felt harassed. 21 So I filed something. And I was immediately given just a 22 right to sue. 23 MS. ROBESON: Wait. What does that mean? 24 MS. FOSTER: He said that -- 25 MS. ROBESON: What was your understanding?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

17 (65 to 68)

<p>65</p> <p>1 MS. FOSTER: To just go to the court and sue the 2 company. 3 MS. ROBESON: Okay. 4 MS. FOSTER: That was my understanding. I mean, that 5 wasn't my -- my ultimate goal wasn't just to go and try to 6 get money. My goal was to correct the issues and he 7 basically told me -- oh, my gosh. I said it again. I'm 8 sorry. 9 MR. SHAFER: It's all right. Let's shift back to -- 10 okay. You are there on the day of -- 11 MS. FOSTER: (indiscernible). 12 MR. SHAFER: That you -- you went to the doctor and now 13 you are at the EEOC office. So did you sign anything when 14 you were there? 15 MS. FOSTER: Yes, I filled out a complaint. I signed a 16 complaint and here we are. 17 MR. SHAFER: Okay. So you signed the complaint and the 18 new left, and you were offered for a few days, correct? 19 MS. FOSTER: Yeah, I was off for a few days. 20 MR. SHAFER: All right. Because of the strep throat. 21 MS. FOSTER: Yes. 22 MR. SHAFER: So what happened after that? 23 MS. FOSTER: My -- as soon as I got to the office, I 24 set my purse down and Ms. Gunn called me into the conference 25 room. She handed me a termination letter. She was</p>	<p>67</p> <p>1 something or something or other. 2 MR. SHAFER: Labor something, something or other, okay. 3 So just to be very clear, on July 22, 2015, did you know 4 that you had been terminated? 5 MS. FOSTER: No, I did not. 6 MR. SHAFER: On July 23, 2015, did you know you have 7 been terminated? 8 MS. FOSTER: No. 9 MR. SHAFER: Okay. Then we can assume that it just -- 10 MS. FOSTER: And I -- 11 MR. SHAFER: On July 24, 2015, did you know you had 12 been terminated? 13 MS. FOSTER: No. 14 MR. SHAFER: Okay. 15 MS. FOSTER: I called and emailed Ruth after I left the 16 doctor's office. 17 MR. SHAFER: Okay. And just to make sure here that so 18 I'm looking at Respondent's Exhibit R. It's the termination 19 letter. It has already been that's as far as I know. Yeah, 20 stipulated to. 21 MS. ROBESON: Yes. 22 MR. SHAFER: It's already admitted. So this letter, 23 can you please tell me the date that was on this letter? 24 MS. FOSTER: July 22, 2015. 25 MR. SHAFER: And what was the date that you went to the</p>
<p>66</p> <p>1 standing. I was sitting. She said -- she passed me the 2 termination letter. I read the termination letter. I 3 asked, well, was the reason for being terminated? And -- 4 can I say I was told? 5 MR. SHAFER: So Ms. Gunn -- yes, because she is a party 6 (indiscernible). 7 MS. FOSTER: Okay. So Ms. Gunn said, no reason, but 8 don't worry. I won't challenge your unemployment, your 9 unemployment claim. And I said, unemployment claim, I would 10 prefer to stay employed. Can you tell me why am I being 11 terminated? And she just said no reason. This she walked 12 out of the conference room. 13 MR. SHAFER: Okay. Do you know -- did you see -- did 14 you receive the termination letter that day? 15 MS. FOSTER: Yes. 16 MR. SHAFER: And if the termination letter give you 17 reason for termination? 18 MS. FOSTER: No. 19 MR. SHAFER: You have to be careful because sometimes 20 we are talking at the same time when you're answering. 21 MS. FOSTER: Okay. 22 MR. SHAFER: So just make sure I'm done asking for the 23 court reporter, so he can -- 24 MS. FOSTER: Okay. No, he had no explanation and it 25 just said something about being reported to the labor</p>	<p>68</p> <p>1 EEOC office? 2 MS. FOSTER: July 22, 2015. 3 MR. SHAFER: Okay. Okay. Did you actually receive 4 unemployment benefits? 5 MS. FOSTER: Yes, I did. 6 MR. SHAFER: Okay. So the employer did not object 7 based on misconduct or gross misconduct? 8 MS. FOSTER: She didn't answer the phone when they 9 called her. 10 MR. SHAFER: Okay. Your Honor, I would like to offer 11 the picture of Mr. Proctor, in color this time. 12 MS. ROBESON: Did they -- has respondent seen the one 13 that's -- 14 MR. SHAFER: Not the one in color. 15 MS. ROBESON: I think I have the one in color in here. 16 MR. SHAFER: You are ahead of me in. I only have, just 17 horrendous non-color version. 18 MS. ROBESON: What do you have Mr. (indiscernible)? 19 MR. MCCORMICK: I have the black and white, black and 20 white, yeah. A small one like this. This is what I have. 21 MR. SHAFER: Yeah. 22 MS. ROBESON: All right. 23 MR. SHAFER: That's the one I have. 24 MS. ROBESON: That's different from what I have, but... 25 So is there an objection?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

18 (69 to 72)

<p>69</p> <p>1 MR. MCCORMICK: I'm going to object on the basis of 2 relevance. I don't know what it has to do with this case. 3 It's a retaliation case. 4 MS. ROBESON: Well, it's a retaliation -- I think you 5 could make an argument that it goes to animus for the 6 retaliation. 7 MR. MCCORMICK: But if I understand her testimony, this 8 is something from September 11, 2014, or around then. She 9 was terminated a year later. I mean, what -- 10 MR. SHAFER: And that's -- I think that's a fair point. 11 My understanding was that this is supporting of her 12 engagement with the Board and what she did with the Board 13 and that would be protective activity for (indiscernible). 14 MS. ROBESON: Oh, I see. Okay. 15 MR. SHAFER: And so it's that line. 16 MS. ROBESON: That would be -- okay. I'm going to let 17 it in. 18 MR. SHAFER: Okay. Is it okay if I give this one -- 19 MS. ROBESON: Sure. 20 MR. SHAFER: Because I don't know how we make a -- 21 MS. ROBESON: Yeah. 22 MR. MCCORMICK: Your Honor, I just don't understand. 23 Do you have a color copy? 24 MS. ROBESON: I do. 25 MR. MCCORMICK: Oh, okay.</p>	<p>71</p> <p>1 fine. 2 MR. SHAFER: Your Honor, the sticky note is not part of 3 the exhibit. 4 MS. ROBESON: Yeah, I'm going to just -- just in case, 5 for the record, I'm going to take out the photos that I have 6 in here, so we know that we all have the same photo. And 7 I'm going to mark this as complainant's Exhibit 3. And just 8 so you can see it, I think we have the same picture. 9 MR. MCCORMICK: Right. 10 MS. ROBESON: But I'm not going to include in our 11 record. This -- the one that the parties have seen today 12 would be included in the record. All right. 13 MR. SHAFER: Okay. So just pending what the defendant 14 as to say, that's the case in chief for the (indiscernible). 15 MS. ROBESON: All right. Mr. McCarthy. Let's do -- 16 MR. MCCORMICK: It's McCormick, but that's okay. 17 MS. ROBESON: I'm -- 18 MR. MCCORMICK: It's close. 19 MS. ROBESON: I do apologize. I have another ongoing 20 case and the council's name is Kevin McCarthy. 21 MR. MCCORMICK: (indiscernible). 22 MS. ROBESON: So I apologize. 23 MR. MCCORMICK: That's okay. 24 MS. ROBESON: Let's take a 10-minute break. 25 MR. MCCORMICK: That's great.</p>
<p>70</p> <p>1 (Crosstalk) 2 MS. ROBESON: But you know what I don't want to do 3 here, if -- I think what happened is, I'm going to remove my 4 color copy and put that one in. 5 MR. SHAFER: May I approach, Your Honor? 6 MS. ROBESON: And I'm not -- I think what happened is, 7 we pulled it -- yes, you may. We pulled it from the HRC 8 file. There was correspondence between our staff and Mr. 9 Shafer, I believe, about where submitting the exhibits. And 10 Mr. Shafer said on some the exhibits -- you should have been 11 copied on this. This is my recollection. Mr. Shafer said, 12 some of the only copies I have are in the HRC file. We 13 pulled them from the HRC file. 14 MR. SHAFER: That's right. Right. 15 MS. ROBESON: And that's why -- but when we scanned it, 16 apparently it came to you in black and white. 17 MR. MCCORMICK: Yeah. 18 MS. ROBESON: I think what happened was, when our 19 administrative staff -- we sent an email to Mr. Shafer with 20 the exhibits. He said the only copy was in the HRC file. 21 What I'm surmising right now is that the scan that went to 22 both of you was the black and white version, but we had a 23 color version from the HRC file. So I think that's what 24 occurred. 25 MR. MCCORMICK: Okay. As long as you have it, that's</p>	<p>72</p> <p>1 MS. ROBESON: Okay. And then will be back at 11:20. I 2 really do -- there is a Kevin McCarthy. So I have lots of - 3 - 4 MR. MCCORMICK: (indiscernible). 5 MS. ROBESON: Back on the record. Mr. McCormick -- 6 MR. MCCORMICK: Thank you. 7 MS. ROBESON: It's your case in chief. 8 MR. MCCORMICK: I cross her first. 9 MS. ROBESON: Oh, that's right. 10 MR. MCCORMICK: Yeah, okay. 11 MS. ROBESON: You're right. 12 MR. MCCORMICK: Okay. Ms. Foster, you have Exhibit A 13 in front of you. You need a copy? Let me -- Ms. Foster 14 needs a copy. And I want to direct your attention to page 15 10 of the -- of that exhibit. Do you have it? 16 MS. FOSTER: Mm-hm. 17 MR. MCCORMICK: In particular -- on the part it says 18 timecards and records. In the first word to say, timecards 19 are very important. Do you agree with that? It says that 20 there? 21 MS. FOSTER: Mm-hm. 22 MR. MCCORMICK: And it says all employees are required 23 to punch in upon arrival, punch out for lunch, punch back in 24 when lunch is completed, and punch out for the day. Is that 25 right?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 MS. FOSTER: That's what it says, yes.</p> <p>2 MR. MCCORMICK: And that was the policy at some the</p> <p>3 village when you worked there?</p> <p>4 MS. FOSTER: Mm-hm.</p> <p>5 MR. MCCORMICK: (indiscernible).</p> <p>6 MS. ROBESON: Ms. Foster, you have to say yes or no.</p> <p>7 MS. FOSTER: Okay.</p> <p>8 MS. ROBESON: Okay? Because the record doesn't know</p> <p>9 what mm-hm means.</p> <p>10 MS. FOSTER: Okay. Not a problem.</p> <p>11 MR. MCCORMICK: Okay. And it also says here that all</p> <p>12 employees are required to punch in and out. So you weren't</p> <p>13 the only person who was required to punch in and out when</p> <p>14 you went to work, right question mark</p> <p>15 MS. FOSTER: No, I wasn't the only one.</p> <p>16 MR. MCCORMICK: Okay. Other people in the office,</p> <p>17 other hourly employees in the office were required to punch</p> <p>18 in and out as indicated there.</p> <p>19 MS. FOSTER: Yes.</p> <p>20 MR. MCCORMICK: It also says that any missed punches</p> <p>21 made in error, must be initialed by manager before getting</p> <p>22 paid. Is that right?</p> <p>23 MS. FOSTER: That's what it says, yes.</p> <p>24 MR. MCCORMICK: So you couldn't just put your own</p> <p>25 information in a pin and get paid for it. A manager would</p>	<p style="text-align: right;">75</p> <p>1 another exhibit. This is Exhibit B. That's been already</p> <p>2 admitted. (indiscernible) counsel.</p> <p>3 MR. SHAFER: I got it.</p> <p>4 MR. MCCORMICK: Okay. Looking at Exhibit B, that your</p> <p>5 name there isn't it? Monique Foster?</p> <p>6 MS. FOSTER: Yes.</p> <p>7 MR. MCCORMICK: And you printed it and signed it.</p> <p>8 MS. FOSTER: Yes.</p> <p>9 MR. MCCORMICK: And it's dated 10-30-13, right?</p> <p>10 MS. FOSTER: Yes.</p> <p>11 MR. MCCORMICK: That's when you became a permanent</p> <p>12 employee at Sumner Village.</p> <p>13 MS. FOSTER: No, I actually became a permanent employee</p> <p>14 October 14.</p> <p>15 MR. MCCORMICK: October 14. So you were -- were you a</p> <p>16 temporary employee at this time?</p> <p>17 MS. FOSTER: I was permanent, but that's not the date</p> <p>18 to the first day.</p> <p>19 MR. MCCORMICK: Okay. But on this day, on 10-31-13,</p> <p>20 you signed a receipt that you acknowledged getting this</p> <p>21 handbook, right?</p> <p>22 MS. FOSTER: I signed it for October 30.</p> <p>23 MR. MCCORMICK: October 30, right. And you got the</p> <p>24 handbook on October 30.</p> <p>25 MS. FOSTER: Yes.</p>
<p style="text-align: right;">74</p> <p>1 actually have to come in and look at it and approve it.</p> <p>2 MS. FOSTER: That's what this is.</p> <p>3 MR. MCCORMICK: Is that the policy? Isn't that what</p> <p>4 the policy was?</p> <p>5 MS. FOSTER: That's what this book says.</p> <p>6 MR. MCCORMICK: Okay. And also says that falsification</p> <p>7 of timecards and work records are grounds for immediate</p> <p>8 termination, right?</p> <p>9 MS. FOSTER: That's what the book says, yes.</p> <p>10 MR. MCCORMICK: Okay. Now if you look a few more pages</p> <p>11 back, just so I understand... Maybe it's not back. It's</p> <p>12 forward. Look on page 9. Just turn to page 9. Now it says</p> <p>13 up here, department workhours. You see that up at the top?</p> <p>14 MS. FOSTER: Yes.</p> <p>15 MR. MCCORMICK: Okay. And it says -- for</p> <p>16 administrative it says the normal work hours from 8:00 to</p> <p>17 5:00.</p> <p>18 MS. FOSTER: As what it says.</p> <p>19 MR. MCCORMICK: And a one-hour unpaid lunch. Is that</p> <p>20 what your schedule was?</p> <p>21 MS. FOSTER: My schedule was from 8:00 to 4:30.</p> <p>22 MR. MCCORMICK: Okay. And what? You took a half an</p> <p>23 hour unpaid lunch?</p> <p>24 MS. FOSTER: When I could.</p> <p>25 MR. MCCORMICK: Okay. Now on -- I'm going to show you</p>	<p style="text-align: right;">76</p> <p>1 MR. MCCORMICK: And it's the handbook that's exhibit A.</p> <p>2 MS. FOSTER: Possibly.</p> <p>3 MR. MCCORMICK: Is there any reason to think that it's</p> <p>4 not?</p> <p>5 MS. FOSTER: Yeah, because there were multiple copies</p> <p>6 of Sumner Village's handbook.</p> <p>7 MR. MCCORMICK: Okay. Well, take a look at Exhibit A</p> <p>8 again and just look on the first page. In it says right</p> <p>9 over here, approved by the Board of Directors on December</p> <p>10 18, 2013. See that?</p> <p>11 MS. FOSTER: Yes.</p> <p>12 MR. MCCORMICK: Does that refresh your recollection?</p> <p>13 Is this the book that she would have received and signed off</p> <p>14 on?</p> <p>15 MS. FOSTER: Possibly.</p> <p>16 MR. MCCORMICK: Okay. Now I'm going to also show you</p> <p>17 another exhibit, which is been admitted. It's Exhibit C.</p> <p>18 And this, on the top it says (indiscernible) Norman, no</p> <p>19 harassment acknowledgment form. You see that?</p> <p>20 MS. FOSTER: Yes.</p> <p>21 MR. MCCORMICK: Okay. And that's your signature and</p> <p>22 you printed out your name there?</p> <p>23 MS. FOSTER: Yes.</p> <p>24 MR. MCCORMICK: And you did it on October 10, 2013?</p> <p>25 MS. FOSTER: Yes.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

20 (77 to 80)

<p>77</p> <p>1 MR. MCCORMICK: Okay. That was right -- had you been 2 offered the job and you just hadn't started full-time 3 employment? 4 MS. FOSTER: I had been offered, yes. 5 MR. MCCORMICK: Okay. And you decided to accept it. 6 Okay. So this is harassment policy that's in place, right? 7 MS. FOSTER: Yes. 8 MR. MCCORMICK: Did you ever avail yourself of this 9 policy? 10 MS. FOSTER: I'm sorry. Did I what? 11 MR. MCCORMICK: Did you ever file a claim, undertake to 12 follow the procedures set forth in this policy? 13 MS. FOSTER: I filed a claim based on -- we had -- it 14 was a no harassment -- you shouldn't have felt harassed. 15 You should not have been harassed. So that was the basis of 16 my claim. 17 MR. MCCORMICK: Well, who did you file it with? 18 MS. FOSTER: I followed that with the EEOC. 19 MR. MCCORMICK: Okay. But you didn't follow anything 20 with (indiscernible) Norman? 21 MS. FOSTER: No. 22 MR. MCCORMICK: Or with anyone at Sumner Village 23 alleging that you were the victim of any illegal, improper 24 harassment, right? 25 MS. FOSTER: I reported it to the Board.</p>	<p>79</p> <p>1 it's admitted too. Look on page 2. Is that your signature 2 there? 3 MS. FOSTER: Yes. 4 MR. MCCORMICK: Okay. And it's dated 7-29-2014, right? 5 MS. FOSTER: Yes. 6 MR. MCCORMICK: And Charisse Young was your supervisor 7 the time? 8 MS. FOSTER: Yes. 9 MR. MCCORMICK: Okay. And this -- you were issued this 10 corrective action notice because on July 28 -- 11 MS. ROBESON: Are you looking -- excuse me. Are you 12 looking at E or F? 13 MR. MCCORMICK: E. 14 MS. ROBESON: Because what I have doesn't have a 15 signature on it for E. 16 MR. SHAFER: Neither does mine. It doesn't have a 17 signature page. 18 MR. MCCORMICK: It's in there. 19 MS. ROBESON: Well -- 20 MR. MCCORMICK: (indiscernible). 21 MS. ROBESON: Mine has a single page dated -- 22 MR. MCCORMICK: It might be behind that. Actually, if 23 you look behind that, maybe when the copies were made they 24 weren't copied correctly. I hope that that's the case. 25 MS. ROBESON: I don't have -- I don't have -- no, I</p>
<p>78</p> <p>1 MR. MCCORMICK: Okay. But you didn't file this 2 procedure? 3 MS. FOSTER: Was the difference in -- what's your 4 clarification -- 5 MS. ROBESON: Wait. Wait. 6 MS. FOSTER: I'm sorry. 7 MS. ROBESON: You don't get to ask. 8 MS. FOSTER: Oh, okay. To me -- 9 MS. ROBESON: (indiscernible). 10 MR. SHAFER: You can ask to clarify (indiscernible). 11 MS. FOSTER: Okay. Can you clarify what you mean by 12 filing? 13 MR. MCCORMICK: Well, in Exhibit C there is a specific 14 procedure that you can employ if you're complaining about 15 some sort of harassment in the workplace. Did you follow 16 that procedure? 17 MS. FOSTER: I followed -- yes. 18 MR. MCCORMICK: And how did you follow this procedure? 19 MS. FOSTER: I spoke to Ms. Gunn and then I spoke to 20 the Board. 21 MR. MCCORMICK: Okay. 22 MS. FOSTER: Which was -- that was in the -- in the 23 handbook. 24 MR. MCCORMICK: Okay. I'm going to show you another 25 exhibit that's already been marked. It's Exhibit E. And</p>	<p>80</p> <p>1 don't have it. 2 MR. MCCORMICK: In F? 3 MS. ROBESON: In F, no. 4 MR. MCCORMICK: Well, let's see where it is. I have 5 (indiscernible). 6 MS. ROBESON: I have a signature on F, but I don't have 7 a signature on E. 8 MR. MCCORMICK: Well, I think the signature on F should 9 be the one for E, if you look at the date. That might be 10 what happened. July 29, 2014. 11 MR. SHAFER: The signature on F, is on F. It's one 12 page. It doesn't have a signature page. 13 MS. FOSTER: That's a separate -- 14 MS. ROBESON: But it's a different document. You 15 follow what I'm saying? But what I have for E is something 16 about talking on a personal cell phone. Action taken as a 17 supplement to the CAP dated 7-28-14. 18 MR. MCCORMICK: Okay. 19 MS. ROBESON: And that's different from what I have for 20 F. Do you have a signature on F? 21 MR. SHAFER: I have a signature on F because is one 22 page and has her signature. 23 MS. ROBESON: Right. 24 MR. SHAFER: But I don't have another page to E. I just 25 have the front one.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 MS. ROBESON: Oh, you know what? What I do have is</p> <p>2 after -- after, I guess that's G, I have a single page which</p> <p>3 says page 2, 7-29-14.</p> <p>4 MR. SHAFER: Oh, okay. Yeah, they got mixed up.</p> <p>5 MR. MCCORMICK: That's it. That's it. Your Honor, I</p> <p>6 apologize.</p> <p>7 MS. ROBESON: Employee stated she was never properly</p> <p>8 trained on how to use the time clock.</p> <p>9 MR. MCCORMICK: That's right. That's it. It must of</p> <p>10 gotten (indiscernible).</p> <p>11 MS. ROBESON: Okay. So do you have any objection if I</p> <p>12 at that as the second page to F.</p> <p>13 MR. SHAFER: (indiscernible).</p> <p>14 MS. ROBESON: I mean, to E?</p> <p>15 MR. SHAFER: Right. As far as I can tell, that looks</p> <p>16 legitimate. I think that's fine. No objection.</p> <p>17 MS. ROBESON: Okay. I apologize. Keep going.</p> <p>18 MR. MCCORMICK: Okay. No Ms. Foster, so you received</p> <p>19 this morning on July 29, 2014, correct?</p> <p>20 MS. FOSTER: Yes.</p> <p>21 MR. MCCORMICK: Okay. Another is -- if you look at the</p> <p>22 second paragraph, there is specific language. It talks</p> <p>23 about breaks and then also says, please note timecard punch</p> <p>24 demonstration was given on July 29 by the office manager.</p> <p>25 That was --</p>	<p style="text-align: right;">83</p> <p>1 MR. MCCORMICK: Okay. And it also says failure to</p> <p>2 comply with the general standards of the personal policy</p> <p>3 handbook can be viewed as unacceptable conduct, which can</p> <p>4 result in disciplinary action up to and including</p> <p>5 termination. Do you see that?</p> <p>6 MS. FOSTER: Yes.</p> <p>7 MR. MCCORMICK: And you got this form back in 2014, in</p> <p>8 July, right?</p> <p>9 MS. FOSTER: Yes.</p> <p>10 MR. MCCORMICK: And I've got Exhibit F. Do you have a</p> <p>11 copy of Exhibit F? If not, I will give it to you.</p> <p>12 MS. FOSTER: I will take the copy.</p> <p>13 MR. MCCORMICK: Could've done this a little bit better.</p> <p>14 This is a corrective action form dated July 28, which is the</p> <p>15 day before the form we just talked about; 2014. You see</p> <p>16 that?</p> <p>17 MS. FOSTER: Yes.</p> <p>18 MR. MCCORMICK: And your signature is on the bottom</p> <p>19 there?</p> <p>20 MS. FOSTER: Yes.</p> <p>21 MR. MCCORMICK: Okay. And it says on here, is that</p> <p>22 there was a review of your time cards and during payroll</p> <p>23 through June 12 through June 25, it was noted again that</p> <p>24 Monique is not punching in and out as required by the</p> <p>25 personal policy handbook. It says that you only punched out</p>
<p style="text-align: right;">82</p> <p>1 MS. FOSTER: I don't see that.</p> <p>2 MR. MCCORMICK: Do you see that?</p> <p>3 MS. FOSTER: No.</p> <p>4 (Crosstalk).</p> <p>5 MR. MCCORMICK: So on July 29, was that Charisse</p> <p>6 actually shows you how to use the timecard?</p> <p>7 MS. FOSTER: I'm trying to recall. Did she do that</p> <p>8 that day? She showed me, but I don't believe it was on that</p> <p>9 day.</p> <p>10 MR. MCCORMICK: Okay. On page 2, there is language in</p> <p>11 here; it says employee stated she was never properly trained</p> <p>12 on how to use the time clock. Is that your handwriting or</p> <p>13 is that Charisse's?</p> <p>14 MS. FOSTER: That's Charisse's.</p> <p>15 MR. MCCORMICK: Okay. So you told Charisse that I</p> <p>16 didn't know how to do this and so now you got to learn how</p> <p>17 to do it.</p> <p>18 MS. FOSTER: Yes.</p> <p>19 MR. MCCORMICK: The timecard, okay. And at the very</p> <p>20 bottom of the page it says, action taken as a supplement to</p> <p>21 the CAP, which I guess is a corrective action form, dated 7-</p> <p>22 28. Monique's duties in her job description will be</p> <p>23 monitored in addition to the monitoring over timecard</p> <p>24 entries, effective immediately. Do you see that?</p> <p>25 MS. FOSTER: Yes.</p>	<p style="text-align: right;">84</p> <p>1 for lunch on July 14. On July 18, you didn't punch in for</p> <p>2 the entire day. And the 15th, 16th, and 22nd, there was no</p> <p>3 punches. Do you see that?</p> <p>4 MS. FOSTER: Yes.</p> <p>5 MR. MCCORMICK: And then there is another paragraph</p> <p>6 there that basically says, summation of counseling session</p> <p>7 and plan for future, Monique will commit to punching in and</p> <p>8 out according to the personal policy handbook, which states</p> <p>9 in part, all employees are required to function upon</p> <p>10 arrival, punch out for lunch, punch back in when lunch is</p> <p>11 completed, and punch out for the rest of the day. All</p> <p>12 employees must punch in and out on the time clock. Do you</p> <p>13 see that?</p> <p>14 MS. FOSTER: Yes.</p> <p>15 MR. MCCORMICK: So you had a conversation with your</p> <p>16 manager on July 28, 2014, in which he clearly stated what</p> <p>17 was expected with regard to using the time clock, correct?</p> <p>18 MS. FOSTER: Yes.</p> <p>19 MR. MCCORMICK: Okay. And according to this, as is</p> <p>20 action taken, that Monique will be placed on a 30-day</p> <p>21 probationary period to monitor her timecard entries</p> <p>22 effective immediately. Do you see that?</p> <p>23 MS. FOSTER: Yes.</p> <p>24 MR. MCCORMICK: So you were put on probation for 30</p> <p>25 days in July 2014 because of your timekeeping issues.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

22 (85 to 88)

<p>85</p> <p>1 MS. FOSTER: Well, that's what the letter says.</p> <p>2 MR. MCCORMICK: Well, is that what happened?</p> <p>3 MS. FOSTER: That's what the letter says.</p> <p>4 MR. MCCORMICK: Okay. It also says that Monique had</p> <p>5 been made aware that she is to use the morning and afternoon</p> <p>6 breaks, lunch breaks, or allot for time before her scheduled</p> <p>7 work time to handle personal matters, get refreshments or</p> <p>8 food, et cetera. Do you see that?</p> <p>9 MS. FOSTER: Yes.</p> <p>10 MR. MCCORMICK: Were you accused of missing time</p> <p>11 because you're going out to get refreshments or food?</p> <p>12 MS. FOSTER: No, I was not accused of missing time for</p> <p>13 those -- when I did that because I did it for the office. I</p> <p>14 got everyone food.</p> <p>15 MR. MCCORMICK: Okay. Now if you look at the second</p> <p>16 page of this exhibit, it's the timecard this dated July 12,</p> <p>17 2014, to July 25, 2014. Do you see that?</p> <p>18 MS. FOSTER: Yes.</p> <p>19 MR. MCCORMICK: And that's your timecard, right?</p> <p>20 That's your name up there?</p> <p>21 MS. FOSTER: Yes.</p> <p>22 MR. SHAFER: I'm sorry. Which exhibit are we on?</p> <p>23 MS. ROBESON: I think it's G.</p> <p>24 MR. SHAFER: We moved on to G?</p> <p>25 MR. MCCORMICK: No, this should be F.</p>	<p>87</p> <p>1 12-13?</p> <p>2 MR. MCCORMICK: Okay.</p> <p>3 MS. ROBESON: To seven -- the timecard for the pay</p> <p>4 period 7-12-14 to 7-25-14. Then when we get to Ms. Gunn's</p> <p>5 testimony, she can lay the basis for switching it around.</p> <p>6 MR. MCCORMICK: Okay. Ms. Foster, can you look at the</p> <p>7 timecard we just described as 7-12?</p> <p>8 MS. FOSTER: Yes.</p> <p>9 MR. MCCORMICK: Okay. Now, as I read this, on the</p> <p>10 first line is a Monday I guess. You clocked in at 7:57.</p> <p>11 Right?</p> <p>12 MS. FOSTER: Yes.</p> <p>13 MR. MCCORMICK: Is that right? And then you clocked</p> <p>14 out at some point I can't read, but you clocked out. And</p> <p>15 then you came back in at 1:26 PM, right?</p> <p>16 MS. FOSTER: Yes.</p> <p>17 MR. MCCORMICK: And then there is a handwritten number</p> <p>18 there, 4:30. Do you see that?</p> <p>19 MS. FOSTER: Yes.</p> <p>20 MR. MCCORMICK: Did you write that in there?</p> <p>21 MS. FOSTER: No.</p> <p>22 MR. MCCORMICK: Okay. Who wrote that in there?</p> <p>23 MS. FOSTER: That's Ruth's in writing.</p> <p>24 MR. MCCORMICK: Okay. And Ruth was your supervisor</p> <p>25 that time?</p>
<p>86</p> <p>1 MS. FOSTER: This is something (indiscernible) behind</p> <p>2 that.</p> <p>3 MR. MCCORMICK: (indiscernible).</p> <p>4 MS. ROBESON: Well, I have it as a -- I have time cards</p> <p>5 as an attachment to G.</p> <p>6 MR. SHAFER: Right. That's what I have. Is that was</p> <p>7 supposed to be with F?</p> <p>8 MR. MCCORMICK: That should be very F. I'm sorry.</p> <p>9 MS. ROBESON: Wait a minute. You are saying that the</p> <p>10 time -- I have G as a letter, as an email from I guess Ms.</p> <p>11 Young to Ms. Foster about time cards.</p> <p>12 MR. MCCORMICK: That's right.</p> <p>13 MS. ROBESON: But you are saying that the timecard</p> <p>14 should be part of the corrective action?</p> <p>15 MR. MCCORMICK: Yes.</p> <p>16 MS. ROBESON: Well --</p> <p>17 MS. FOSTER: (indiscernible) timecard.</p> <p>18 MR. MCCORMICK: There is one timecard. There's just</p> <p>19 one timecard. I believe the correct place is behind F.</p> <p>20 MS. ROBESON: Well --</p> <p>21 MS. FOSTER: Yeah.</p> <p>22 MS. ROBESON: Do you have an objection if I put it --</p> <p>23 was it part of -- well, I can't ask you. Why don't we just</p> <p>24 -- at this point, when Ms. Gunn comes to testify, she can</p> <p>25 clarify it. Why don't we just refer to the timecard as 7-</p>	<p>88</p> <p>1 MS. FOSTER: Yes. I guess.</p> <p>2 MR. MCCORMICK: Okay. So that's what the policy</p> <p>3 referred to his --</p> <p>4 MS. FOSTER: Actually, no. She wasn't my supervisor.</p> <p>5 Charisse was my supervisor.</p> <p>6 MR. MCCORMICK: Okay. Well, why would -- was Ruth</p> <p>7 working there at the time?</p> <p>8 MS. FOSTER: Yes.</p> <p>9 MR. MCCORMICK: What was her position?</p> <p>10 MS. FOSTER: General manager.</p> <p>11 MR. MCCORMICK: Okay. Does she have the authority to</p> <p>12 sign your timecard if it needed to be fixed?</p> <p>13 MS. FOSTER: I assume so. She wrote it down.</p> <p>14 MR. MCCORMICK: Okay. And when it shows that 4:30, is</p> <p>15 this a situation where a Monday you clocked in in the</p> <p>16 morning, you clocked in and out at lunchtime, and then you</p> <p>17 just left, and you never clocked out at the end of the day?</p> <p>18 MS. FOSTER: It looks like I did not clock in on</p> <p>19 Tuesday and Wednesday, but I did clock out. But I clocked</p> <p>20 out on the incorrect line it looks like to me.</p> <p>21 MR. MCCORMICK: Okay. So the first day you may have</p> <p>22 left without clocking in. So the 4:30 I had to be put in</p> <p>23 because that's what you told Ruth was the time that you</p> <p>24 left, right?</p> <p>25 MS. FOSTER: Well, no. I may have -- it doesn't -- I</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 don't know what time I left that day. That was the time 2 that she was giving me. She was just allotting me my normal 3 workday. 4 MR. MCCORMICK: Okay. But that was done after the day 5 in question, right? I mean, it wasn't done on Monday, 6 right? Because you are already gone. 7 MS. FOSTER: I'm not sure what day -- it may have been 8 done on -- when she was doing payroll. 9 MR. MCCORMICK: Okay. And this is go to the rest. On 10 Tuesday and Wednesday, there is no clock in or clock out in 11 the morning or for lunch times, right? 12 MS. FOSTER: Right. Yes. 13 MR. MCCORMICK: So Tuesday and Wednesday, it just shows 14 that you left at 4:30, but it doesn't show when you came in. 15 MS. FOSTER: Yes. 16 MR. MCCORMICK: Okay. And on Thursday, you clocked in 17 and 7:51 and then you clocked out at 4:37, but there is no 18 entry for lunch breaks, right? 19 MS. FOSTER: I probably didn't take any. 20 MR. MCCORMICK: Okay. Well, you didn't put anything on 21 it is said no lunch break, did you? 22 MS. FOSTER: No, I didn't. 23 MR. MCCORMICK: Okay. And then there is a question 24 here; 7-18 with these question marks. Did you write that 25 there?</p>	<p style="text-align: right;">91</p> <p>1 we just reviewed? 2 MS. FOSTER: I've never disputed timecard issues. I've 3 never disputed that. I just had concerns that they never 4 reflected my actual times in and out of the office and that 5 they only were an issue when they were an issue because what 6 do I clock in and out when I go and make these runs for the 7 office and on being written up after I've made a run for the 8 entire office. So it was always a conflict with -- and so I 9 never disputed the timecard issue. 10 MR. MCCORMICK: Okay. 11 MS. FOSTER: So I'm just not understand the -- 12 MR. MCCORMICK: Okay. I'm going to show you another 13 exhibit, which is not been stipulated to, but I'm going to 14 show it to you and then ask you to identify it and I'm going 15 to move for submission. 16 MS. ROBESON: What is that marked? 17 MR. MCCORMICK: It's Exhibit G, which I believe is an 18 email that was sent to Monique from Charisse on June 18, 19 2014. Do you recognize this document? 20 MS. FOSTER: Yes. 21 MR. MCCORMICK: Okay. Did you get this from Charisse 22 on or around June 18, 2014? 23 MS. FOSTER: Yes. 24 MR. MCCORMICK: Okay. And I would move to submission. 25 MS. ROBESON: Mr. Schaefer, do you have any objections?</p>
<p style="text-align: right;">90</p> <p>1 MS. FOSTER: I'm not sure if I wrote them or if Ruth 2 wrote them. 3 MR. MCCORMICK: Okay. Is it fair to say that on that 4 day, if it is 7-18, you did in clocking in the morning, you 5 didn't clock out for lunch, you didn't clock back in for 6 lunch, and you didn't clock out we went home, right? 7 MS. FOSTER: No. 8 MR. MCCORMICK: Okay. And then if you follow down for 9 the entries for the next week, again, you just have the 10 clock in in the morning, at least on most of the days. And 11 you have the clock out in the evening, but you don't have 12 lunch breaks in and out, right? 13 MS. FOSTER: No. 14 MR. MCCORMICK: And you were supposed to do that, 15 right? 16 MS. FOSTER: Yeah. 17 MR. MCCORMICK: Okay. Who wrote the eights on the side 18 here? 19 MS. FOSTER: I'm not sure if I wrote them or Ruth wrote 20 them? 21 MR. MCCORMICK: Okay. 22 MS. FOSTER: Those actually look like Charisse's 23 handwriting. 24 MR. MCCORMICK: Okay. Would you agree that your 25 timecard for these days didn't comply with the policy that</p>	<p style="text-align: right;">92</p> <p>1 MR. SHAFER: I mean, Charisse is in here to be able to 2 authenticate it. 3 MS. ROBESON: Well, did you receive this email? 4 MS. FOSTER: I can't say that they didn't adjust it. 5 MS. ROBESON: I'm going to let the email in because I 6 have no... It says, C Young. Who was the office 7 administrator? 8 MS. FOSTER: Maybe Ms. Gunn can answer that. 9 MS. GUNN: That was the email for the -- 10 MS. ROBESON: Not yet. 11 MR. MCCORMICK: OH, okay 12 MS. FOSTER: The thing about that also, is after Ms. 13 Young left, there was access to her computer and her email. 14 MS. ROBESON: Okay. 15 MS. FOSTER: So there (indiscernible). 16 MR. SHAFER: Sorry. I mean, it's from 2014. It's 17 Charisse's name is on it. As always Ms. Foster recognizes 18 what's in it, then I think that's sufficient for me. I know 19 there are some limitations not having Charisse here and not 20 being able to get everybody for this kind of situation. 21 MS. ROBESON: I'm going to admit it. I think with 22 money's name in it, that's enough. Was -- where did you get 23 it? Was this part of the business record? 24 MR. MCCORMICK: It's part of her personnel file. Yes, 25 it's in the personnel file.</p>



Transcript of Administrative Hearing  
Conducted on April 20, 2018

24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 MS. ROBESON: I'm going to admit it.</p> <p>2 MR. SHAFER: Okay.</p> <p>3 MR. MCCORMICK: Okay. Ms. Foster, you would agree that</p> <p>4 apparently around June 18, 2014, you received yet another</p> <p>5 email from Charisse who was your manager?</p> <p>6 MS. FOSTER: What was the date? I'm sorry.</p> <p>7 MR. MCCORMICK: June 18, 2014, you received an email</p> <p>8 indicating that you needed to punch in upon arrival, punch</p> <p>9 out for lunch, punch back in when it's completed, right?</p> <p>10 MS. FOSTER: Yeah, that's the date of this. Yeah.</p> <p>11 MR. MCCORMICK: Okay. Then she says if you happen to</p> <p>12 miss a punch, you have to bring it to her the same day so</p> <p>13 that she can, I guess as Ms. Young, can fill in the missed</p> <p>14 time and initial it accordingly, correct?</p> <p>15 MS. FOSTER: Yeah, that's what it says.</p> <p>16 MR. MCCORMICK: Okay. So is it fair to say that as far</p> <p>17 back as June 2014, you are having issues and being</p> <p>18 questioned about how you completed your timesheets?</p> <p>19 MS. FOSTER: Yeah, it's fair to say that. It's also</p> <p>20 fair to say that I've made as I approached often on how do</p> <p>21 we resolve the discrepancies.</p> <p>22 MR. MCCORMICK: Okay. Let's take a look at Exhibit L.</p> <p>23 Can you look at L? Do you have that in front of you? Or</p> <p>24 here, I will give you a copy.</p> <p>25 MS. FOSTER: Sure.</p>	<p style="text-align: right;">95</p> <p>1 MR. MCCORMICK: Oh, that eights and the eighth and a</p> <p>2 half's.</p> <p>3 MS. FOSTER: Those -- that's not my handwriting.</p> <p>4 MR. MCCORMICK: Well, if you weren't -- if you didn't</p> <p>5 work that she didn't take off for lunch, you would be</p> <p>6 entitled to get paid for, right?</p> <p>7 MS. FOSTER: I absolutely should have.</p> <p>8 MR. MCCORMICK: And did you go and complain and say,</p> <p>9 where's my money?</p> <p>10 MS. FOSTER: Yes, I did.</p> <p>11 MR. MCCORMICK: Did you get it?</p> <p>12 MS. FOSTER: No, I did not.</p> <p>13 MR. MCCORMICK: Okay. And if I look at the next page,</p> <p>14 we have the same issue again where you clock in the morning</p> <p>15 and you don't clock in and out for lunch time and there's a</p> <p>16 few missing times here, right?</p> <p>17 MS. FOSTER: On the next page. Let's see.</p> <p>18 MR. MCCORMICK: The next page. The first date is --</p> <p>19 MS. FOSTER: Missing times, yeah, I recommend.</p> <p>20 MR. MCCORMICK: You wrote them in, but they weren't</p> <p>21 initialed, where they?</p> <p>22 MS. FOSTER: She didn't initial them.</p> <p>23 MR. MCCORMICK: Okay. And the procedure is to be</p> <p>24 initialed, right?</p> <p>25 MS. FOSTER: When I hand them to her, that's what she</p>
<p style="text-align: right;">94</p> <p>1 MR. MCCORMICK: Now, these are your timecard, right?</p> <p>2 MS. FOSTER: Yes.</p> <p>3 MR. MCCORMICK: And just for the record, the first one</p> <p>4 is for the period of... The one to the right since January 10,</p> <p>5 2015, to January 23, 2015. And the want to the right since</p> <p>6 December 27, 2014, to 1-9-15. It looks like it's beginning</p> <p>7 of the calendar year 2015, correct?</p> <p>8 MS. FOSTER: Yes.</p> <p>9 MR. MCCORMICK: Okay. And I'm looking at the first one</p> <p>10 here and I see over on the left here, there is an entry, 9-</p> <p>11 18. Do you see that? On the first line?</p> <p>12 MS. FOSTER: Yes.</p> <p>13 MR. MCCORMICK: Okay. Then there is no out, there is</p> <p>14 no in. Then there is an out at 5:27. Do you see that?</p> <p>15 MS. FOSTER: Yes.</p> <p>16 MR. MCCORMICK: Okay. So is it fair to say on these --</p> <p>17 on this timecard and on both of them that are on here, you</p> <p>18 didn't follow the procedure of clocking in and out for lunch</p> <p>19 time. Is that --</p> <p>20 MS. FOSTER: I didn't take a lunch.</p> <p>21 MR. MCCORMICK: Okay. Well, if you didn't take a lunch</p> <p>22 then -- okay. Well, why didn't you put more time down on</p> <p>23 there? You worked as your schedule was 8:00 --</p> <p>24 MS. FOSTER: That's not my handwriting. The lines at</p> <p>25 the end, that's not my handwriting.</p>	<p style="text-align: right;">96</p> <p>1 said the procedure was.</p> <p>2 MR. MCCORMICK: I see. (indiscernible).</p> <p>3 MR. SHAFER: (indiscernible) the second timecard here</p> <p>4 actually does have an initial at the bottom. I just wanted</p> <p>5 to make sure that clear. The bottom line.</p> <p>6 MS. ROBESON: Wait. Which timecard are you at?</p> <p>7 MR. SHAFER: It's page 2. This is timecard 1-24-15.</p> <p>8 MR. MCCORMICK: You're correct. There is one down here</p> <p>9 on the bottom.</p> <p>10 MS. ROBESON: Oh, I see.</p> <p>11 MR. MCCORMICK: This is the timecard that's 1-24-15 and</p> <p>12 it's the very -- the one entry at the bottom, is that</p> <p>13 response initials?</p> <p>14 MS. FOSTER: Yes.</p> <p>15 MR. MCCORMICK: Okay.</p> <p>16 MS. FOSTER: It says RG.</p> <p>17 MR. MCCORMICK: Okay. Now I noticed also, if you go up</p> <p>18 the line a little bit, that you did get some overtime on</p> <p>19 this particular timecard. And I'm talking about the one</p> <p>20 that's dated 1-24-15 and 2-6-15. So I think you got almost</p> <p>21 2 hours of overtime, correct?</p> <p>22 MS. FOSTER: Yes, that's what it says.</p> <p>23 MR. MCCORMICK: Okay. Now, let's take a look at the</p> <p>24 . The next -- not line, but the next set of timecards.</p> <p>25 This one, he begins on the left side. If 3-7-15. Then</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

25 (97 to 100)

<p>97</p> <p>1 there is another one from 2-21-15. Do you see those?</p> <p>2 MS. FOSTER: Yes.</p> <p>3 MR. MCCORMICK: Okay. Now, on this one here, looking</p> <p>4 at the left I see that there is handwritten in there, no</p> <p>5 lunch, no lunch, no lunch, no lunch.</p> <p>6 MS. FOSTER: That's my handwriting.</p> <p>7 MR. MCCORMICK: Okay. Well, why did you start writing</p> <p>8 no lunch, no lunch, no lunch here and not but no lunch on</p> <p>9 the other timecards we've looked at?</p> <p>10 MS. FOSTER: Probably just trying to -- just for my own</p> <p>11 record-keeping because I had began to keep records of the</p> <p>12 timecards for myself.</p> <p>13 MR. MCCORMICK: Okay. But --</p> <p>14 MS. FOSTER: And when I would request -- when I would</p> <p>15 make -- when I would go and make notes and say I did not</p> <p>16 take a lunch and what I'd be approved for overtime.</p> <p>17 MR. MCCORMICK: Okay. Well --</p> <p>18 MS. FOSTER: And then it wasn't really -- it became --</p> <p>19 it didn't really become -- it wasn't a really big deal that</p> <p>20 they did and after a while.</p> <p>21 MR. MCCORMICK: Okay. Well, on this one it shows that</p> <p>22 on this first when you got 7.25 hours of overtime.</p> <p>23 MS. FOSTER: Yeah.</p> <p>24 MR. MCCORMICK: You see?</p> <p>25 MS. FOSTER: Yeah.</p>	<p>99</p> <p>1 8:00, I guess.</p> <p>2 MS. FOSTER: Yes.</p> <p>3 MR. MCCORMICK: You didn't clock in that one either.</p> <p>4 MS. FOSTER: Yes. And at the bottom, that's Ruth's</p> <p>5 handwriting, the tally of the totals.</p> <p>6 MR. MCCORMICK: Okay. Because she was doing the</p> <p>7 payroll.</p> <p>8 MS. FOSTER: Yes.</p> <p>9 MR. MCCORMICK: But she is relying on your numbers here</p> <p>10 to come up with those numbers, right?</p> <p>11 MS. FOSTER: But she could have initialed though at</p> <p>12 that time.</p> <p>13 MR. MCCORMICK: Excuse me?</p> <p>14 MS. FOSTER: That was the time that she could have</p> <p>15 initialed. Was I supposed to --</p> <p>16 MR. MCCORMICK: Well, I --</p> <p>17 MS. ROBESON: Don't ask questions.</p> <p>18 MS. FOSTER: Oh, okay. I'm sorry.</p> <p>19 MR. MCCORMICK: Well, I'm trying to ask you as to --</p> <p>20 the process as I understand it is you're supposed to use the</p> <p>21 time clock the punch in and punch out.</p> <p>22 MS. FOSTER: Right. Understand that.</p> <p>23 MR. MCCORMICK: And if you don't, then you're supposed</p> <p>24 to have -- someone else has to initially before you can get</p> <p>25 paid. And I don't see any -- on this one, I don't see any</p>
<p>98</p> <p>1 MR. MCCORMICK: And on the next when he got 11.5 hours</p> <p>2 of overtime, correct?</p> <p>3 MS. FOSTER: Yes.</p> <p>4 MR. MCCORMICK: And on both of these, you have just</p> <p>5 interest in here that are handwritten in, right?</p> <p>6 MS. FOSTER: Yes.</p> <p>7 MR. MCCORMICK: And no -- now come on this one, if you</p> <p>8 look at the timecard 2-21-15, and I guess it would be a</p> <p>9 Saturday.</p> <p>10 MS. FOSTER: Yes.</p> <p>11 MR. MCCORMICK: It shows that you came in at 9:00 on</p> <p>12 that Saturday.</p> <p>13 MS. FOSTER: Yes.</p> <p>14 MR. MCCORMICK: And then you left at 12:58.</p> <p>15 MS. FOSTER: Yes.</p> <p>16 MR. MCCORMICK: But you didn't clock in at 9:00.</p> <p>17 MS. FOSTER: Right.</p> <p>18 MR. MCCORMICK: You wrote it in.</p> <p>19 MS. FOSTER: Yes.</p> <p>20 MR. MCCORMICK: Okay. Why did you write it in and not</p> <p>21 clock in?</p> <p>22 MS. FOSTER: I don't know. I don't know why didn't</p> <p>23 clock in the day.</p> <p>24 MR. MCCORMICK: Okay. And if you go down a little bit</p> <p>25 further, you see there is another one where you wrote in</p>	<p>100</p> <p>1 initials on here.</p> <p>2 MS. FOSTER: I understand that. That's why I was</p> <p>3 saying that, after a while when they were to initially in,</p> <p>4 when Ms. Gunn wasn't initialing the timecard, I pushed for</p> <p>5 my overtime because I was there, and I was doing the work.</p> <p>6 But if she didn't initial it, I didn't -- sometimes they</p> <p>7 would give me overtime. Sometimes they wouldn't.</p> <p>8 MR. MCCORMICK: Okay. Well --</p> <p>9 MS. FOSTER: So I never knew when I was going to get</p> <p>10 it.</p> <p>11 MR. MCCORMICK: On these cards we've just looked at</p> <p>12 that show overtime, is it your contention that you didn't</p> <p>13 get paid the overtime?</p> <p>14 MS. FOSTER: No, it says that I did on there.</p> <p>15 MR. MCCORMICK: Okay. So you did get paid the</p> <p>16 overtime.</p> <p>17 MS. FOSTER: Sometimes I did. Sometimes I didn't.</p> <p>18 MR. MCCORMICK: Okay. Well, I'm not going to go --</p> <p>19 MS. FOSTER: There is no initials on here, but I got</p> <p>20 the overtime.</p> <p>21 MR. MCCORMICK: Okay. I'm not going to go through all</p> <p>22 of these because they all suffer from the same maladies</p> <p>23 where some have no lunch indicated there. All of them have</p> <p>24 different entries for when you came in, not on to the time</p> <p>25 clock. But let's focus on an area -- if you scroll down --</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

26 (101 to 104)

<p>101</p> <p>1 I should have numbered these, but I want to look at the 2 timecard on the right -- on the left side, it's 5-30, 2015. 3 Everybody there? 4 MS. ROBESON: Hold on one second. 5 MS. FOSTER: Again, there is no -- there are no 6 initials, but I got overtime (indiscernible). 7 MR. MCCORMICK: There is no question. 8 MS. ROBESON: Wait. Wait. Let me get there, please. 9 Okay. I'm there. 10 MR. MCCORMICK: Okay. So these are two timecards. 11 This is the first one. If you look on the right side, it's 12 5-16. Then the next period is 5-30, right? 13 MS. FOSTER: Yes. 14 MR. MCCORMICK: Okay. And if you go through these, 15 almost on every line there is an error and you didn't follow 16 the procedures with regard to clocking in and clocking out 17 the way you're supposed to, correct? 18 MS. FOSTER: Yes. 19 MR. MCCORMICK: Okay. So when you put -- like on the 20 first line up here on the left, you came in at 8:05. Then 21 it says 12:00, 12:30. You wrote that in. That sure 22 handwriting, right? 23 MS. FOSTER: Yes, that's my handwriting. 24 MR. MCCORMICK: Okay. And on the next day, you wrote 25 that you came in at 8:00. Right?</p>	<p>103</p> <p>1 came in at 7:54. But every one of the other entries, it's 2 missing information that had to be written in by hand. 3 Right? 4 MS. FOSTER: Right. Yes. 5 MR. MCCORMICK: Okay. And you wrote that in, right? 6 MS. FOSTER: And my position on a lot of the ones where 7 I wrote in the time, some of those days, I was probably 8 really, really busy or something. 9 MR. MCCORMICK: Oh, okay. 10 MS. FOSTER: So I can't really -- 11 MR. MCCORMICK: Okay. And on this one over here, I 12 guess it's a Monday. This is the timecard that starts 6-13. 13 It's Monday. It says you came in at 7:02. 14 MS. FOSTER: (indiscernible). 15 MR. MCCORMICK: Then it has you leaving at 9:30. 16 MS. FOSTER: Yes. 17 MR. MCCORMICK: What happened there? Do you remember? 18 MS. FOSTER: I do not. 19 MR. MCCORMICK: Okay. 20 MS. FOSTER: Oh, I remember. That was 9:30 AM. 21 MR. MCCORMICK: Okay. Well, shouldn't that 9:30 AM and 22 put in the morning slot? 23 MS. FOSTER: That's the out slot for being out for the 24 day. 25 MR. MCCORMICK: But what I'm asking --</p>
<p>102</p> <p>1 MS. FOSTER: Yes. 2 MR. MCCORMICK: Okay. Then you have your lunch break 3 at 1:59. Now, when you came in at 8:00, or below that you 4 came in 8:15, what happened? Did you come in the building 5 8:00 and you just forgot to clock it in or did you come in 6 the building after 8:00? 7 MS. FOSTER: I honestly, I know I -- if I wrote that I 8 was there at 8:00, I was at my -- I was there. I was at 9 work at 8:00. What could have possibly -- what always, 10 always happened, I would always get stopped by -- because of 11 my position as the service coordinator and I spoke with 12 residents a lot about issues, they always stopped me in the 13 hallway or stopped me on the way into the building. So if I 14 wrote that I was there 8:00, I was there at 8:00. 15 MR. MCCORMICK: But how close for you to the timecard 16 that you could have punched in? 17 MS. FOSTER: I probably wasn't at the timecard box for 18 me to clock in. 19 MR. MCCORMICK: Okay. Let's take a look at the next 20 page. This covers the period of time between June 13, 2015, 21 all the way through July 10, 2015. You see that? 22 MS. FOSTER: Yes. 23 MR. MCCORMICK: Okay. And this is another one where I 24 don't -- I'm looking to see -- oh, there is one entry that's 25 done according to the policy. That's the Tuesday were you</p>	<p>104</p> <p>1 MS. FOSTER: Yeah. There was no morning or evening 2 slot. 3 MR. MCCORMICK: (indiscernible). 4 MS. FOSTER: There was no morning -- you can -- I can 5 come to work at 5:00 PM and it could go in the first line if 6 that's my first time of entry. 7 MR. MCCORMICK: Okay. Well what -- you came in and 8 7:02 in the morning, right? 9 MS. FOSTER: Yes. 10 MR. MCCORMICK: And then there is, right next to it -- 11 MS. FOSTER: I probably came in early because I was 12 leaving early for the day. 13 MR. MCCORMICK: Okay. Right next to it though, there 14 was a block that says out. 15 MS. FOSTER: Yes. 16 MR. MCCORMICK: And there is nothing in there. 17 MS. FOSTER: Because that would be for lunch. 18 MR. MCCORMICK: Oh, okay. Well, the other line says 19 afternoon. 20 MS. FOSTER: Okay. 21 MR. MCCORMICK: And you put 9:30. 22 MS. FOSTER: Okay. 23 MR. MCCORMICK: 9:30 is not the afternoon. 24 MS. FOSTER: It's not, but I just put my out time for 25 the day.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

27 (105 to 108)

<p>105</p> <p>1 MR. MCCORMICK: Okay. And then we look at another one, 2 the last one I'm going to look at right now. And this is 3 one toward the end of your tenure. It's dated 7-11-15 to 7- 4 24-15. You see that? 5 MS. FOSTER: Yes. 6 MR. MCCORMICK: Okay. Now, I look at it -- I see... I 7 guess it starts on Saturday, Sunday. Is that the work week? 8 How it works? Saturday, Sunday? So Saturday, Sunday, 9 Monday would be the 13th I guess. You hand wrote all that 10 time in, right? 8:00, 12:30, 1:00. 11 MS. FOSTER: Yes. 12 MR. MCCORMICK: And Tuesday, you hand wrote in your 13 lunch time. 14 MS. FOSTER: Yes. 15 MR. MCCORMICK: And Wednesday you hand wrote in the 16 time you came to work. 17 MS. FOSTER: Yes. 18 MR. MCCORMICK: And Thursday you hand wrote your lunch 19 time as you did on Friday, right? 20 MS. FOSTER: Yes. 21 MR. MCCORMICK: Okay. And then let's see; on Monday, 22 you did it the way you're supposed to. And Tuesday, you had 23 to add that you had to put in the time for lunch, but I see 24 this one is initialed. Is that an initial on the side 25 there?</p>	<p>107</p> <p>1 MR. MCCORMICK: (indiscernible). But there's numbers 2 here, eight, five, eight, five, eight and eight 3 (indiscernible). 4 MS. FOSTER: I didn't write that either. 5 MR. MCCORMICK: Okay. You didn't write it. Okay. 6 That's fine. 7 MR. SHAFER: (indiscernible) I'm sorry. What -- did we 8 -- did you imply that the first block was not signed off 9 with initials? 10 MS. ROBESON: Well, you get a chance to redirect. 11 MR. SHAFER: Right. Okay. 12 MS. ROBESON: So let him finish. 13 MR. SHAFER: I just wanted to (indiscernible). 14 MS. ROBESON: I saw the same thing. So go ahead Mr. 15 McCormick (indiscernible). 16 MR. MCCORMICK: Okay. Let me -- I think it's Exhibit 17 M. You should have a copy of it. If not, I will give you 18 one. This was the performance evaluation form that you 19 testified about earlier, correct? 20 MS. FOSTER: Yes. 21 MR. MCCORMICK: Okay. And just to make it clear, the 22 date that's on there that was signed 5/22/14, it's off by a 23 year, right? 24 MS. FOSTER: Yes. 25 MR. MCCORMICK: It was actually 5/22/14. But you are -</p>
<p>106</p> <p>1 MS. FOSTER: Yes. 2 MR. MCCORMICK: So it was initialed, right? 3 MS. FOSTER: Yes. 4 MR. MCCORMICK: And that was the 21st I think. 5 MS. FOSTER: Yes. 6 MR. MCCORMICK: And when was your last day working 7 there? 8 MS. FOSTER: It was the 21st actually. 9 MR. MCCORMICK: Okay. So the 21st was the day that you 10 -- that was when you -- 11 MS. FOSTER: It was my last day being -- well, I came 12 in on the 25th. 13 MR. MCCORMICK: You came in on the 25th, but she got 14 the letter when you came in. 15 MS. FOSTER: Yes. 16 MR. MCCORMICK: And the new left on that, right? 17 MS. FOSTER: Yes. 18 MR. MCCORMICK: So this is your final pay, right? 19 MS. FOSTER: Yes. 20 MR. MCCORMICK: And so you were paid, it says here, 21 16S. That's 16 sick hours, right? You see that underneath. 22 Is that -- 23 MS. FOSTER: I didn't write that. 24 MR. MCCORMICK: Okay. You didn't write that, okay. 25 MS. FOSTER: No.</p>	<p>108</p> <p>1 - 2 MS. FOSTER: No, it was 5-22-15. 3 MR. MCCORMICK: '15, okay. Sorry. Okay. I'm having 4 problems here. But your testimony was that this is actually 5 the second evaluation. That you had an earlier one that you 6 had problems with. 7 MS. FOSTER: In March. 8 MR. MCCORMICK: You didn't believe was -- 9 MS. FOSTER: Yes. 10 MR. MCCORMICK: Yeah. And that's when you contacted 11 the board and you complained that you needed that she wanted 12 someone to help you get it reviewed. 13 MS. FOSTER: My actual request was for -- for the 14 second one, my actual request was for the board president to 15 sit in on the meeting because I was afraid that Ms. Gurn 16 would lose her composure. 17 MR. MCCORMICK: Okay. But that didn't happen. And you 18 ultimately did have another -- 19 MS. FOSTER: It happened in the first meeting. 20 MR. MCCORMICK: Okay. But ultimately, you did have a 21 review and add your comments made to as what you thought was 22 appropriate and not appropriate, right? 23 MS. FOSTER: Yes, sir. 24 MR. MCCORMICK: And the score went from a 2.76, I think 25 you said, up to a 3.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

28 (109 to 112)

<p>109</p> <p>1 MS. FOSTER: To a 3.0, yes, sir.</p> <p>2 MR. MCCORMICK: 3.0. And that generated an increase in</p> <p>3 your pay.</p> <p>4 MS. FOSTER: Yes, sir.</p> <p>5 MR. MCCORMICK: Okay. And your pay went from \$15.00 to</p> <p>6 \$17.00, think.</p> <p>7 MS. FOSTER: Yes.</p> <p>8 MR. MCCORMICK: Okay. And that's one of the reasons</p> <p>9 why you wanted that performance review to reflect what you</p> <p>10 thought you were doing in the work, right?</p> <p>11 MS. FOSTER: Yes.</p> <p>12 MR. MCCORMICK: Okay. Now, when you went through this,</p> <p>13 you had a chance to write comments on here. These are the</p> <p>14 ones you wrote, right?</p> <p>15 MS. FOSTER: Yes.</p> <p>16 MR. MCCORMICK: Hand written on page 2. And nobody</p> <p>17 said you couldn't do that, right?</p> <p>18 MS. FOSTER: No, I was actually advised to do it by my</p> <p>19 supervisor because --</p> <p>20 MR. MCCORMICK: Oh, okay. And then on --</p> <p>21 MS. ROBESON: Wait. When you say your supervisor --</p> <p>22 MS. FOSTER: At this time, (indiscernible) Proctor was</p> <p>23 my supervisor.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MS. FOSTER: But Ruth did the evaluation.</p>	<p>111</p> <p>1 actually presented itself, it just did not happen.</p> <p>2 MR. MCCORMICK: Okay. Now on page 5, there is a</p> <p>3 section 7. It's a development plan. Do you see that?</p> <p>4 MS. FOSTER: Yes.</p> <p>5 MR. MCCORMICK: Okay. And this is an area where --</p> <p>6 things that you need to improve on, I guess is what it says.</p> <p>7 They expect progress to be achieved. Do you see that?</p> <p>8 MS. FOSTER: Yes.</p> <p>9 MR. MCCORMICK: Okay. The second item in there, what</p> <p>10 does it say? Improve accuracy of payroll time records. You</p> <p>11 see that?</p> <p>12 MS. FOSTER: Yes.</p> <p>13 MR. MCCORMICK: And it has 90 next to it. What is</p> <p>14 that? 90 days to try and get your --</p> <p>15 MS. FOSTER: This -- that wasn't explained to me. I</p> <p>16 honestly didn't know what the 90 -- what the 90 -- 90 days,</p> <p>17 90 months. I never was -- it never was explained to me.</p> <p>18 MR. MCCORMICK: And it says, action steps for</p> <p>19 achievement. It says clock in and out at the beginning and</p> <p>20 end of the shifts. Lunch breaks should be taken away from</p> <p>21 your desk and timecard punched in and out. Do you see that?</p> <p>22 MS. FOSTER: Yes.</p> <p>23 02:15:02</p> <p>24 MR. MCCORMICK: And it says the measure of success</p> <p>25 would be that the time will not coworkers will know when</p>
<p>110</p> <p>1 MR. MCCORMICK: And at the time, Ruth was the general</p> <p>2 manager, right?</p> <p>3 MS. FOSTER: She was the general manager.</p> <p>4 MR. MCCORMICK: Okay. Now, on page 6 -- sorry, on page</p> <p>5 4, you wrote some areas of development. And this is your</p> <p>6 handwriting on the side here where you said I like Ruth is</p> <p>7 our general manager. We have spoken on several occasions</p> <p>8 about communications and structure within the office.</p> <p>9 MS. FOSTER: Yes.</p> <p>10 MR. MCCORMICK: This is your handwriting, correct?</p> <p>11 MS. FOSTER: This is my handwriting, yes.</p> <p>12 MR. MCCORMICK: Ruth and I have agreed to work on</p> <p>13 improving communication and structure in the office. We</p> <p>14 have agreed to discuss his suggestions to improve the</p> <p>15 overall workflow of the office. Wrote that, right?</p> <p>16 MS. FOSTER: Yes.</p> <p>17 MR. MCCORMICK: Okay. That's a pretty upbeat comment</p> <p>18 for you to make to Ruth based on what you testified about,</p> <p>19 isn't it?</p> <p>20 MS. FOSTER: Yes.</p> <p>21 MR. MCCORMICK: So were you feeling happy that you</p> <p>22 finally got your review squared away?</p> <p>23 MS. FOSTER: I was absolutely optimistic because of the</p> <p>24 conversation. When I did have a conversation, there was a</p> <p>25 promise to work together to get things done. But when it</p>	<p>112</p> <p>1 you're available, and when you can actually take a break,</p> <p>2 right?</p> <p>3 MS. FOSTER: Yes.</p> <p>4 MR. MCCORMICK: And you, on page 6, you signed this,</p> <p>5 didn't you?</p> <p>6 MS. FOSTER: Yes.</p> <p>7 MR. MCCORMICK: Okay. You didn't date it though, why?</p> <p>8 MS. FOSTER: Now, I dated -- my copy has a date on it.</p> <p>9 I don't know why what you have doesn't have a date on it.</p> <p>10 MR. MCCORMICK: Oh, okay. What years was dated on --</p> <p>11 MS. FOSTER: (Indiscernible) 5/22/15.</p> <p>12 MR. MCCORMICK: '15, okay.</p> <p>13 MS. FOSTER: Yes.</p> <p>14 MR. MCCORMICK: That's when you got the review.</p> <p>15 Okay. Now how did you -- what did you think of this</p> <p>16 section 7? Did you think that that was something you needed</p> <p>17 to pay attention to and follow?</p> <p>18 MS. FOSTER: Yes. This was in May. And yes. And we</p> <p>19 still, like some of the stuff -- we would have</p> <p>20 conversations, but the action just did not -- did not meet</p> <p>21 the conversation.</p> <p>22 MR. MCCORMICK: Okay. Okay, so that was 5/22 when you</p> <p>23 had the review, right?</p> <p>24 MS. FOSTER: Yes. That's like information that first</p> <p>25 block that says information will be available to load in the</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

29 (113 to 116)

<p>113</p> <p>1 field the link. That was my job, but ever did it because it 2 was kept from me. So there were a lot of discrepancies. 3 MR. MCCORMICK: Okay. Now, I want to direct your 4 attention to Exhibit P. This is a corrective action form, 5 July 16, 2015. And this is the one that references timecard 6 problems, right? 7 MS. FOSTER: Yes. 8 MR. MCCORMICK: Okay. And that's your handwriting on 9 the bottom? 10 MS. FOSTER: Yes. 11 MR. MCCORMICK: Where you say, I spoke with Ruth 12 regarding concerns on my timecard. I asked what to do. 13 Ruth advised me to write the time in. The discrepancy with 14 my supervisor continues to exist. Ruth says Reeve is my 15 supervisor, he says he has nothing to do with the front 16 office. Okay. So you were given this, I think your 17 testimony was, on July 16? 18 MS. FOSTER: Yes. 19 MR. MCCORMICK: Okay. And you refused to sign? 20 MS. FOSTER: Yes. 21 MR. MCCORMICK: And why? 22 MS. FOSTER: Because again, because of the 23 discrepancies. Whenever I will go -- and when I would go to 24 have a conversation at this point of my tenure, I would try 25 to have a -- I mean it was ongoing. Whenever I would go to</p>	<p>115</p> <p>1 MR. MCCORMICK: Oh, you did. Okay. Well, I tallied up 2 those numbers and I found 80 numbers. 3 MS. FOSTER: No, no. 4 MR. MCCORMICK: 80 days. 5 MS. FOSTER: You -- 6 MR. MCCORMICK: Okay. I'll, I'll withdraw it. 7 MS. FOSTER: You're not testifying. It was a question. 8 MR. MCCORMICK: I'll withdraw it. So your opinion is 9 that those records -- 10 MS. FOSTER: The -- it was improvement. A lot of that 11 handwriting was not my handwriting. 12 MR. MCCORMICK: Okay. 13 MS. FOSTER: That's not my responsibility to -- when I 14 -- everything the at the end of the day approved by Ruth. 15 Everything -- it's not my responsibility to make sure that 16 Ruth initials my time card after I give it to her. 17 MR. MCCORMICK: Is it -- 18 MS. FOSTER: Does not come back to me so -- 19 MR. MCCORMICK: Is Ruth -- 20 21 THE WITNESS: So I have no knowledge whether she signs 22 it or not 23 Q: isn't your responsibility to use the time card 24 like everyone else? 25 <b>A: It was my responsibility but the times that I --</b></p>
<p>114</p> <p>1 have a conversation, conversations weren't -- they were 2 comfortable conversations. They were kind of hostile at 3 this point. And I had -- right after I sent an email on 4 July 13 speaking about money, I'm being written about the 5 timecard again, which I have approached so many times about 6 how do we resolve this. And then I'm told to go talk to 7 Revay. And Revay says don't talk to me, I have nothing to 8 do with the front office. Go talk to Ruth. Go talk to 9 Revay, go talk to Ruth. So there was just a constant 10 discrepancy. 11 MR. MCCORMICK: Well, wouldn't you agree that the time 12 entries from May 22 up until July seeing, weren't complying 13 with what company policy was, right? 14 MS. FOSTER: And that was why I want to conversation as 15 to how do we resolve for I'm retaliated against. Like you 16 are compiling these things to retaliate when you're angry 17 about me reporting things that are not right in office. 18 MR. MCCORMICK: Well, but I'm just focused on, on May 19 22nd you were told that one of your action items was to 20 improve your time keeping. 21 MS. FOSTER: I -- from what I -- 22 MR. MCCORMICK: To make sure that you punched in and 23 punch out. 24 MS. FOSTER: From what I thought there was a big 25 improvement.</p>	<p>116</p> <p>1 Q: And you didn't do that. 2 <b>A: -- didn't -- but the times that I did not -- that</b> 3 <b>I wrote the time in and she did not initial it, that's not</b> 4 <b>my -- it does not make it back to me. That's her</b> 5 <b>responsibility to make sure that she initials it.</b> 6 Q: Okay. 7 <b>A: And as you could see yourself, on some of the</b> 8 <b>ones that I was given the overtime that's not my</b> 9 <b>handwriting, that's Ruth's handwriting at the bottom. She</b> 10 <b>didn't initial on those. So there was always a constant</b> 11 <b>discrepancy.</b> 12 Q: Okay. Let's look at Exhibit Q. this is another 13 corrective action Form that you were given on July 16th, 14 2015, right? 15 <b>A: Yes.</b> 16 Q: And this is one where you didn't -- you refused 17 to sign as well, right? 18 <b>A: Yes. You have a copy for me?</b> 19 Q: Oh, I'm sorry. Yeah. I thought you had one. 20 I've got copies. 21 <b>A: I probably do, but I have to dig for it. Oh,</b> 22 <b>(Of this is the Ms. Dipaulo thing.</b> 23 Q: The key policy, right? This is the one with not 24 following the key policy, right? 25 Q: And you just decided you weren't going to sign</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

30 (117 to 120)

<p>117</p> <p>1 it, right?</p> <p>2 <b>A: Yeah because it wasn't reflective -- it wasn't</b></p> <p>3 <b>true.</b></p> <p>4 Q: Okay. Well, by signing it does that mean that</p> <p>5 it's true or does it just mean that you received it?</p> <p>6 MS. FOSTER: In -- it depends on -- that's an opinion.</p> <p>7 MR. MCCORMICK: No. Well take a look at Page 2 of this</p> <p>8 exhibit. It says right here, "Employees signature on this</p> <p>9 document only indicates receipt of the form." Do you see</p> <p>10 that?</p> <p>11 MS. FOSTER: On which page?</p> <p>12 MR. MCCORMICK: Page 2. Right above the hand writing</p> <p>13 where somebody said refused to sign. Doesn't it say that?</p> <p>14 MS. FOSTER: Yeah, I see it. Yes.</p> <p>15 MR. MCCORMICK: So signing it just means that you got</p> <p>16 it. It doesn't mean that I agree with it, right?</p> <p>17 MS. FOSTER: Okay. Yeah.</p> <p>18 MR. MCCORMICK: And in fact you have -- there's a space</p> <p>19 here where you could respond if you wanted to, right?</p> <p>20 Employee --</p> <p>21 MS. FOSTER: By this date -- --</p> <p>22 MR. MCCORMICK: Employees proposed solution to the</p> <p>23 problem. Couldn't you have filled it in and said this is</p> <p>24 not true. I need to do this?</p> <p>25 MS. FOSTER: By this date it was very clear to me that</p>	<p>119</p> <p>1 MR. MCCORMICK: Okay. What I want to direct your</p> <p>2 attention to is the last page of that, according to what I</p> <p>3 have, and I know it's an exhibit somewhere else, it's a</p> <p>4 charge of discrimination. Do you see that?</p> <p>5 MS. FOSTER: Yes.</p> <p>6 MR. MCCORMICK: Okay.</p> <p>7 MS. ROBESON: Wait, I don't. This is T?</p> <p>8 MR. MCCORMICK: I think it's T and it should be --</p> <p>9 MS. ROBESON: And which page?</p> <p>10 MR. MCCORMICK: It should be towards the last part of</p> <p>11 it. It's the -- the cover letter is from the Office of</p> <p>12 Human Rights and it's in closing the charge of</p> <p>13 discrimination.</p> <p>14 MS. ROBESON: Do you have a -- well, I have T.</p> <p>15 February 29, can you direct exactly what phrase you're</p> <p>16 looking at?</p> <p>17 MR. MCCORMICK: Well let me see the prehearing</p> <p>18 submission I have. It's the charge of discrimination. I</p> <p>19 mean it shows it somewhere else.</p> <p>20 MS. ROBESON: Although, I see. Okay. I see it. Okay.</p> <p>21 I apologize. Go ahead.</p> <p>22 MR. MCCORMICK: Okay. This is a charge of</p> <p>23 discrimination, correct?</p> <p>24 MS. FOSTER: Yes.</p> <p>25 MR. MCCORMICK: And it's a date is September 1, 2015,</p>
<p>118</p> <p>1 I was being retaliated against.</p> <p>2 MR. MCCORMICK: Do you -- you don't deny that Ms.</p> <p>3 Depapaplo --</p> <p>4 MS. Robeson: Ms. Dipaulo.</p> <p>5 MR. MCCORMICK: D Apollo.</p> <p>6 MS. FOSTER: Her name is misspelled in the write up.</p> <p>7 MR. MCCORMICK: Okay.</p> <p>8 MS. FOSTER: It's actually Ms. Dipaulo.</p> <p>9 MR. MCCORMICK: Ms. Dipaulo.</p> <p>10 MS. FOSTER: The P is supposed to be an i.</p> <p>11 MR. MCCORMICK: Okay. So you don't deny that she did</p> <p>12 complain to the management about that?</p> <p>13 MS. FOSTER: She did complain.</p> <p>14 MR. MCCORMICK: And she wrote a letter complaining</p> <p>15 about it?</p> <p>16 MS. FOSTER: She complained, yes.</p> <p>17 MR. MCCORMICK: Okay.</p> <p>18 MS. FOSTER: She didn't know who left her door open was</p> <p>19 her complaint.</p> <p>20 MR. MCCORMICK: Okay. So let me ask you a few more</p> <p>21 questions here. This one, yeah. I want to show you, this</p> <p>22 is exhibit T I believe. And it's a letter that is to the</p> <p>23 company -- the company. To Summer Village from the Office</p> <p>24 of Human Rights dated February 29, 2016. Do you have that?</p> <p>25 MS. FOSTER: Yes.</p>	<p>120</p> <p>1 right? Is that the date down there?</p> <p>2 MS. FOSTER: Yes.</p> <p>3 MR. MCCORMICK: Okay. Now you testified earlier that</p> <p>4 you signed a charge of discrimination on July 22, 2015.</p> <p>5 MS. FOSTER: That's not what I said.</p> <p>6 MR. SHAFER: Objection. You're using to terms</p> <p>7 interchangeably that are different --</p> <p>8 MS. FOSTER: Yeah. That's --</p> <p>9 MR. SHAFER: -- In the parlance of discrimination</p> <p>10 lawsuits. There's a</p> <p>11 MR. MCCORMICK: Well let me --</p> <p>12 MS. ROBESON: Okay.</p> <p>13 Mr. Shafer: That's completely another charge.</p> <p>14 MR. MCCORMICK: Let me, okay --</p> <p>15 MS. ROBESON: You have a chance for redirect. So make</p> <p>16 a note and bring it up on redirect.</p> <p>17 Mr. Shafer: Okay.</p> <p>18 MR. MCCORMICK: You would agree that this is dated</p> <p>19 September 1, 2015, correct?</p> <p>20 MS. FOSTER: Yeah, but I actually filed my claim on</p> <p>21 7/22.</p> <p>22 MR. MCCORMICK: Do you have anything that supports</p> <p>23 that?</p> <p>24 MS. FOSTER: My original claim, I didn't give you my</p> <p>25 original claim</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

31 (121 to 124)

<p>121</p> <p>1 (Crosstalk)</p> <p>2 MS. ROBESON: You mean your claim with the EEOC?</p> <p>3 MS. FOSTER: Yes.</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MR. MCCORMICK: Is it your proffer that you have a</p> <p>6 document that says that you filed an EEOC claim on --</p> <p>7 MS. FOSTER: My hand written -- I actually have my</p> <p>8 handwritten claim but I don't have it with me today.</p> <p>9 MR. MCCORMICK: And that says that you filed a claim on</p> <p>10 7/22?</p> <p>11 MS. FOSTER: Yes.</p> <p>12 MR. MCCORMICK: Okay. Now you also said that that was</p> <p>13 the day that you were sick, and you went to the doctor and</p> <p>14 you found out you had strep throat, right?</p> <p>15 MS. FOSTER:</p> <p>16 MS. FOSTER: Yes, sir.</p> <p>17 MR. MCCORMICK: Okay and then you went to the EEOC and</p> <p>18 you call two of your coworkers?</p> <p>19 Ms. Foster: Yes, I did.</p> <p>20 MR. MCCORMICK: Okay. Did you tell those coworkers to</p> <p>21 tell anyone at Sumner Village management that you were</p> <p>22 filing EEOC claims?</p> <p>23 MS. FOSTER: I didn't specifically tell them to tell</p> <p>24 anyone.</p> <p>25 MR. MCCORMICK: Okay. Do you know in fact whether or</p>	<p>123</p> <p>1 an affidavit from anybody that can verify what you're saying</p> <p>2 that those individuals told Ms. Gunn that you were at the</p> <p>3 EEOC office filing a charge of discrimination?</p> <p>4 MS. FOSTER: Again, the actual witness was supposed to</p> <p>5 come. I have her text message in my phone regarding her not</p> <p>6 being able to show up, and a picture of the car being</p> <p>7 damaged from the car accident.</p> <p>8 MR. MCCORMICK: Okay.</p> <p>9 MS. FOSTER: She was supposed to come today.</p> <p>10 MR. MCCORMICK: Okay. But she's not here.</p> <p>11 MS. FOSTER: Right.</p> <p>12 MR. MCCORMICK: Okay. And you don't have a statement</p> <p>13 from or an affidavit or anything else?</p> <p>14 MS. FOSTER: Now because she was going to actually come</p> <p>15 and --</p> <p>16 MR. MCCORMICK: Okay. Okay. Let me ask just a few</p> <p>17 more questions.</p> <p>18 So you were discharged in 7/22/15, right?</p> <p>19 MS. FOSTER: Yes.</p> <p>20 MR. MCCORMICK: And I understand you got unemployment</p> <p>21 benefits?</p> <p>22 MS. FOSTER: Yes.</p> <p>23 MR. MCCORMICK: And the unemployment benefits were</p> <p>24 approximately \$330 a week?</p> <p>25 MS. FOSTER: Yes.</p>
<p>122</p> <p>1 not either one of those individuals told Ruth?</p> <p>2 MS. FOSTER: Yeah.</p> <p>3 MR. MCCORMICK: You know that?</p> <p>4 MS. FOSTER: Yes.</p> <p>5 MR. MCCORMICK: And how do you know that?</p> <p>6 MS. FOSTER: We talked about it.</p> <p>7 MR. MCCORMICK: Okay. And you didn't get an affidavit</p> <p>8 from them are a statement from them?</p> <p>9 MS. FOSTER: No. One was supposed to come today but</p> <p>10 was in a car accident.</p> <p>11 MR. MCCORMICK: Okay. Okay. So what we have now is</p> <p>12 your testimony, hearsay testimony as to what they may have</p> <p>13 said.</p> <p>14 MS. FOSTER: (Indiscernible) question.</p> <p>15 MS. ROBESON: Okay. I've given you leeway --</p> <p>16 MR. MCCORMICK: I know.</p> <p>17 MS. ROBESON: -- But --</p> <p>18 MR. MCCORMICK: So you don't have any documentary</p> <p>19 evidence that's admissible that would verify that Ms. Gunn</p> <p>20 knew --</p> <p>21 MS. ROBESON: Well, she can't make the -- I get where</p> <p>22 you're going. She can't make the determination that it's</p> <p>23 admissible or not.</p> <p>24 MR. MCCORMICK: Okay. Well, do you have any</p> <p>25 documentary evidence in the form of a letter, a statement,</p>	<p>124</p> <p>1 MR. MCCORMICK: You got that for 26 weeks?</p> <p>2 MS. FOSTER: Yes.</p> <p>3 MR. MCCORMICK: Okay. Did you, at any time, ever tell</p> <p>4 Ruth or anybody else in management at Sumner Village that</p> <p>5 you had filed an EEOC charge before you were terminated?</p> <p>6 MS. FOSTER: Anyone in management, just Reggie</p> <p>7 Starling.</p> <p>8 MR. MCCORMICK: Who?</p> <p>9 MS. FOSTER: He's a manager. Reginald Starling.</p> <p>10 MR. MCCORMICK: He's the security manager?</p> <p>11 MS. FOSTER: Yes.</p> <p>12 MR. MCCORMICK: Okay. And what did you tell him?</p> <p>13 MS. FOSTER: I told him I was at EEOC filing a</p> <p>14 discrimination and retaliatory claim.</p> <p>15 MR. MCCORMICK: And I may have asked this, and if I</p> <p>16 did, I apologize, do you have any --</p> <p>17 MS. FOSTER: I don't have anything from him, no.</p> <p>18 MR. MCCORMICK: -- Evidence from him saying that he</p> <p>19 told Ms. Gunn that --</p> <p>20 MS. FOSTER: No, I don't have anything from him.</p> <p>21 MR. MCCORMICK: Okay. So you have no evidence at all</p> <p>22 that would --</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. MCCORMICK: Okay. Yeah. Withdrawn. I withdraw</p> <p>25 it.</p>



Transcript of Administrative Hearing  
Conducted on April 20, 2018

32 (125 to 128)

<p>125</p> <p>1 MS. ROBESON: I get it.</p> <p>2 MR. MCCORMICK: Let's see. Now, there was a lot of</p> <p>3 testimony offered about the case where the keys are kept in</p> <p>4 the office.</p> <p>5 MS. FOSTER: Yes.</p> <p>6 MR. MCCORMICK: That was your responsibility to</p> <p>7 maintain that wasn't it?</p> <p>8 MS. FOSTER: No, it was not.</p> <p>9 MR. MCCORMICK: Oh, okay. If I could just have a</p> <p>10 minute to -- I think I'm --</p> <p>11 MS. ROBESON: Sure.</p> <p>12 MR. MCCORMICK: Okay. (Indiscernible) go outside for a</p> <p>13 second?</p> <p>14 MS. ROBESON: Mm-hm.</p> <p>15 MR. MCCORMICK: I think we're done.</p> <p>16 MS. ROBESON: All right. Redirect.</p> <p>17 MR. SHAFER: Thank you, Your Honor. So we are going to</p> <p>18 turn to the employee personnel handbook, that's Respondent's</p> <p>19 Exhibit A. I think we are on -- okay. So Respondents</p> <p>20 Exhibit A, Page 10, this was brought up during cross, Ms.</p> <p>21 Foster. Can you please read, it looks like it's about the</p> <p>22 middle of the paragraph, it says "Any missed punches" under</p> <p>23 timecards, records?</p> <p>24 OFFICER: "Any missed punches or punches made in error</p> <p>25 must be initialed by a manager before pavement for those</p>	<p>127</p> <p>1 authorize your own payment?</p> <p>2 OFFICER: No.</p> <p>3 MR. SHAFER: So that had to go through Ms. Gunn or Ms.</p> <p>4 Young or Mr. Proctor?</p> <p>5 OFFICER: Ms. Gunn.</p> <p>6 MR. SHAFER: Ms. Gunn?</p> <p>7 OFFICER: Mm-hm.</p> <p>8 MR. SHAFER: So Ms. Gunn had to approve every single</p> <p>9 timecard that you filled out?</p> <p>10 OFFICER: Yes.</p> <p>11 MR. SHAFER: And as far as you know she approved all of</p> <p>12 them?</p> <p>13 OFFICER: Yes.</p> <p>14 MR. SHAFER: Okay. Now you had testified previously</p> <p>15 that Ms. Gunn had told you to fill in your own hours</p> <p>16 OFFICER: Yes. If I didn't punch.</p> <p>17 MR. SHAFER: Okay. Was that before -- when was that</p> <p>18 around? Was that before March of 2015?</p> <p>19 OFFICER: There was -- when Ruth and I spoke about --</p> <p>20 Ruth really didn't say anything to me about the timecard,</p> <p>21 yes, until after March. Yeah.</p> <p>22 MR. SHAFER: If you don't remember the actual time then</p> <p>23 you don't have to --</p> <p>24 OFFICER: Yeah, she did, Ruth didn't say anything to</p> <p>25 me. She never said anything to me about the punches until</p>
<p>126</p> <p>1 hours worked can be made."</p> <p>2 MR. SHAFER: Okay. So the hours that were shown to you</p> <p>3 in your card said that happened to have -- and they were</p> <p>4 written in instead of punched in.</p> <p>5 OFFICER: Yes.</p> <p>6 MR. SHAFER: Did you receive payment for those hours?</p> <p>7 OFFICER: Some of them I did, and some of them I did</p> <p>8 not.</p> <p>9 MR. SHAFER: I'm just talking about your regular hours.</p> <p>10 OFFICER: Oh, yeah, my regular hours, yes.</p> <p>11 MR. SHAFER: So you received regular payment for your</p> <p>12 regular hours?</p> <p>13 OFFICER: Yes.</p> <p>14 MR. SHAFER: And that wasn't hampered by the fact that</p> <p>15 you had written them in or whether they had initials or no</p> <p>16 initials?</p> <p>17 OFFICER: No. Okay. Now as far as I understand this,</p> <p>18 this says that that must be initialed by a manager before</p> <p>19 pavement for those hours worked can be made. That seems</p> <p>20 pretty dire, pretty serious, pretty straightforward.</p> <p>21 OFFICER: Yes.</p> <p>22 MR. SHAFER: So am I to understand that despite that</p> <p>23 you still got paid for those hours?</p> <p>24 OFFICER: Yes.</p> <p>25 MR. SHAFER: Okay. Now just to clarify, can you</p>	<p>128</p> <p>1 after March 2015.</p> <p>2 MR. SHAFER: Okay. Because just so we understand,</p> <p>3 prior to that Ms. Young was your supervisor?</p> <p>4 OFFICER: Sheet -- yes.</p> <p>5 MR. SHAFER: Okay.</p> <p>6 OFFICER: And then Revay.</p> <p>7 MR. SHAFER: And then Revay, right. Okay. And to</p> <p>8 clarify on -- it's L are the time cards, right? So we're</p> <p>9 switching to L, Respondent's Exhibit L. And I am looking at</p> <p>10 the next-to-last timecard so on -- you were shown</p> <p>11 Respondent's Exhibit L. And on this timecard dated 7/11/15</p> <p>12 to 7/24/15 the first chunk of hours they have a number of</p> <p>13 written in --</p> <p>14 OFFICER: Entries, yeah.</p> <p>15 MR. SHAFER: -- Entries, correct?</p> <p>16 OFFICER: Yes.</p> <p>17 MR. SHAFER: Do you notice whether Ms. Gunn actually</p> <p>18 put her initials by that?</p> <p>19 OFFICER: Her handwriting is -- everything you see to</p> <p>20 the right of where it says over time, that column, all of</p> <p>21 that is her handwriting as well as her initials. Yeah.</p> <p>22 MR. SHAFER: Okay. Now those initials, do you</p> <p>23 understand them to be just for like that one-time entry for</p> <p>24 Tuesday were what do you understand those to be initialing?</p> <p>25 OFFICER: To me it looks like, I guess since this was</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

33 (129 to 132)

<p>129</p> <p>1 my last timecard that was for that entire week. And then at 2 the bottom she wrote in the 825, 825, and then the last 3 three days she gave me the last three days on the last 4 timecard. 5 MR. SHAFER: Okay. So just to be clear. You recognize 6 Mrs. Gunns' initials on this timecard? 7 OFFICER: Yes. 8 MR. SHAFER: Thank you. Okay. And so just to clarify 9 this issue, when you went to the EEOC office and you signed 10 a complaint at the EEOC office did that look identical to 11 the charge of discrimination that we have in the record? 12 OFFICER: No. The actual complaint is all handwritten. 13 MR. SHAFER: So at that time at the EEOC office, you 14 had to handwrite a narrative? 15 OFFICER: Yes. 16 MR. SHAFER: And that was what the initial complaint 17 was at the EEOC? 18 OFFICER: Yes. 19 MR. SHAFER: And what we have today in front of us, 20 this is the charge -- 21 OFFICER: Yes. 22 MR. SHAFER: -- With your signature that was -- that 23 you later 24 OFFICER: 25 OFFICER:</p>	<p>131</p> <p>1 handwritten copy. I can't remember if I had to come back or 2 how that whole process -- or did I have to return something 3 to them the very first time. I'm not really -- I can't 4 really recall what happened. 5 MS. ROBESON: Okay. 6 OFFICER: But I did walk in on the 22nd and filled out 7 a handwritten complaint, which I actually do have a copy of 8 that, but not in here. 9 MR. SHAFER: Okay. I believe that's my redirect, Your 10 Honor. 11 MS. ROBESON: Recross? 12 MR. McCORMICK: Just one. Did I hear you correctly, 13 you said that you have a copy of the handwritten EEOC 14 statement, but you didn't bring it today? 15 MS. FOSTER: I didn't. It's actually -- it's in the 16 car. 17 MR. McCORMICK: Did you provide it in discovery in this 18 case? 19 MS. FOSTER: I don't think that I -- I don't believe I 20 did. 21 MR. McCORMICK: Is there reason why you didn't? I mean 22 I propounded discovery requests asking for that type of 23 information and I didn't get it. 24 MS. FOSTER: The handwritten copy? 25 MR. McCORMICK: Yeah.</p>
<p>130</p> <p>1 OFFICER: (Indiscernible) it was later mailed out. 2 MR. SHAFER: Sorry I was -- 3 MS. ROBESON: It is leading. 4 MR. SHAFER: Oh, I'll withdraw that. 5 Ms. Foster, how did you receive this charge of 6 discrimination? 7 OFFICER: I received this copy by mail. 8 MR. SHAFER: By mail. 9 OFFICER: Yes. 10 MR. SHAFER: And how did you -- how did this document 11 come to have your signature on it? 12 OFFICER: I think I had to return something, I'm not 13 sure. 14 MR. SHAFER: And did you return it by mail or in 15 person? 16 OFFICER: The first set of things that I sent them, I 17 think by mail. And then everything else I hand delivered. 18 MS. ROBESON: The first set of what things? 19 OFFICER: I'm trying to recall. I did a handwritten 20 copy which was my complaint. 21 MS. ROBESON: Wait, are you talking about the EEOC 22 thing? 23 OFFICER: Yeah. Yeah. 24 MS. ROBESON: Okay. 25 OFFICER: When I went in on the 22nd I did a</p>	<p>132</p> <p>1 MS. FOSTER: Of the complaint or the charge? 2 MR. McCORMICK: No. Whatever you said that you filled 3 out on 7/22 I've never seen a copy of anything like that. 4 And I asked for that in discovery and I didn't get anything 5 because I thought I was produced everything that was out 6 there. 7 MS. FOSTER: Okay. So maybe I misunderstood and 8 thought that this reflected my dates or reflected -- 9 MS. ROBESON: When you say this, what are you referring 10 to? 11 MS. FOSTER: The charge of discrimination or the charge 12 of -- 13 MS. ROBESON: With the Human Rights -- 14 MS. FOSTER: Yes. 15 MS. ROBESON: -- With Montgomery County? 16 MS. FOSTER: Yes. Yes, ma'am. I was under the 17 impression -- well, I understood it to be that you needed 18 the documents showing what was issued to me. 19 MR. McCORMICK: I -- 20 MS. FOSTER: This is just for the charge of 21 discrimination. 22 MS. ROBESON: When you say this -- 23 MS. FOSTER: Oh yeah, it's for retaliation. 24 MS. ROBESON: -- The HRC complaint? 25 MS. FOSTER: Yes, ma'am. No, the -- I went to EEOC and</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

34 (133 to 136)

<p>133</p> <p>1 they sent it to HRC.</p> <p>2 MS. ROBESON: Okay. And then what happened?</p> <p>3 MS. FOSTER: HRC is handling the case.</p> <p>4 MS. ROBESON: Okay. Did they send you this complaint</p> <p>5 here?</p> <p>6 MS. FOSTER: No. Everything I received initially came</p> <p>7 from EEOC's office.</p> <p>8 MS. ROBESON: I'm sorry. I'm confused. Walk me</p> <p>9 through it. And I'm going to let everybody redirect because</p> <p>10 I'm not clear on what happened.</p> <p>11 MS. FOSTER: When I walked in on -- when I walked -- I</p> <p>12 initially filed my claim with the EEOC on 7/22/2015.</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MS. FOSTER: Okay. Which I hand wrote everything.</p> <p>15 MS. ROBESON: Right. I received information by mail</p> <p>16 that I had to return to them.</p> <p>17 MS. ROBESON: To EEOC?</p> <p>18 MS. FOSTER: To EEOC, yes, ma'am.</p> <p>19 MS. ROBESON: Okay. All right.</p> <p>20 MS. FOSTER: Then I also received -- I received the</p> <p>21 determination. I received more information from EEOC, but</p> <p>22 then I also received information from EEOC that they were</p> <p>23 transferring the case.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MS. FOSTER: So now that's who now holds the case.</p>	<p>135</p> <p>1 flexibility on rebuttal and not being stuck to the documents</p> <p>2 you submitted in your prehearing statement. So let's</p> <p>3 continue and we will see what, and when you can produce, and</p> <p>4 we'll make a ruling at that time if you have it, whether it</p> <p>5 can come in. All right. So -- and you may have -- do you</p> <p>6 have your interrogatories with you?</p> <p>7 MR. McCORMICK: I don't know if I have them with me,</p> <p>8 but I know I asked for all of those type of documents.</p> <p>9 MS. ROBESON: All right. Well --</p> <p>10 MR. McCORMICK: I didn't -- when we have a lunch break</p> <p>11 or something I'll look and find it. Okay. So is -- do you</p> <p>12 have more --</p> <p>13 MR. McCORMICK: I just have a few more questions. Ms.</p> <p>14 Foster, where did you go to the EEOC? What office did you</p> <p>15 go to?</p> <p>16 MS. FOSTER: In Baltimore.</p> <p>17 MR. McCORMICK: You went up to Baltimore --</p> <p>18 MS. FOSTER: Yes.</p> <p>19 MR. McCORMICK: -- To file your charge. Okay. Do you</p> <p>20 live up in the Baltimore area?</p> <p>21 MS. FOSTER: Near, not far.</p> <p>22 MR. McCORMICK: Okay. Okay. This is not on my list</p> <p>23 but I'm going to mark it as Respondents Exhibit V, I think.</p> <p>24 MS. ROBESON: The is the HRC supplemental DNO.</p> <p>25 MR. McCORMICK: Oh, okay.</p>
<p>134</p> <p>1 MS. ROBESON: Okay. But you never provided the</p> <p>2 original EEOC charge to Mr. McCormick?</p> <p>3 MR. SHAFER: And that's just --</p> <p>4 MS. ROBESON: Just a second.</p> <p>5 MR. SHAFER: I'm sorry. That could come back</p> <p>6 (indiscernible)</p> <p>7 MS. ROBESON: Okay. So do you agree that you never</p> <p>8 provided the EEOC charge to Mr. McCormick?</p> <p>9 MS. FOSTER: The charge -- the top of this page says</p> <p>10 charge.</p> <p>11 MS. ROBESON: The handwritten -- no, I wasn't requested</p> <p>12 the handwritten copy.</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MS. FOSTER: That wasn't ever requested me.</p> <p>15 MS. ROBESON: All right. Mr. McCormick --</p> <p>16 MS. FOSTER: Can I?</p> <p>17 MS. ROBESON: Yes, ma'am</p> <p>18 MS. FOSTER: If I can be more clear. I never received</p> <p>19 a request for my hand-written complaint. I received a -- we</p> <p>20 received the request for the charge. So --</p> <p>21 MS. ROBESON: I see. Okay. Well, it's not in the</p> <p>22 record yet. So if you can produce it we can argue more.</p> <p>23 You have some work -- well this isn't even before me. I</p> <p>24 your testimony on what happened. We don't have the document</p> <p>25 itself right now. The question is you do have more</p>	<p>136</p> <p>1 MS. ROBESON: So is it W?</p> <p>2 MR. McCORMICK: I think. I can't -- I'm struggling.</p> <p>3 MS. ROBESON: Is that bad?</p> <p>4 MR. McCORMICK: Let's try W, that works.</p> <p>5 MS. ROBESON: Okay before I -- you can mark it as W and</p> <p>6 show it to Mr. Shafer. Mr. Shafer, let's take a five-minute</p> <p>7 break. You can take a look at what -- what is it that you</p> <p>8 are proffering?</p> <p>9 MR. McCORMICK: I'm -- it's a notice that we've got of</p> <p>10 a charge of discrimination from the Baltimore Field office</p> <p>11 dated September 3rd. And I want to know whether she got a</p> <p>12 copy of this.</p> <p>13 MS. ROBESON: Okay. I'm going to take a five-minute</p> <p>14 break. You look it over and see if you have any objections</p> <p>15 to it coming in. So we're going to go off the record.</p> <p>16 (OFF THE RECORD)</p> <p>17 (ON THE RECORD)</p> <p>18 MS. ROBESON: All right. We're back on the record.</p> <p>19 Did you get a chance to review the proposed exhibit?</p> <p>20 MR. SHAFER: Yes, Your Honor. And first I'd like to</p> <p>21 say this wasn't actually provided to me in response to my</p> <p>22 document request. I haven't seen this before. But it's</p> <p>23 just acknowledging --</p> <p>24 MS. ROBESON: What is this? What is it again?</p> <p>25 MR. SHAFER: It's a notice of charge of discrimination</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

35 (137 to 140)

<p>137</p> <p>1 that went to the employer. So it was acknowledging that --</p> <p>2 MS. ROBESON: Oh, I see.</p> <p>3 MR. SHAFER: Yeah, it went straight to the employer.</p> <p>4 So I -- it's a just -- it's postdated after Ms. Foster had</p> <p>5 received her charge, or signed her charge. And it's what</p> <p>6 they sent to the employer after a charge has been filed. It</p> <p>7 doesn't have any bearing on the initial complaint. It</p> <p>8 doesn't have any significance or relevance related to</p> <p>9 anything else. I'm not sure what the relevance is but --</p> <p>10 MR. McCORMICK: Well, I think the relevance is a couple</p> <p>11 of things. One, what it says here is that at least as of</p> <p>12 September 3, 2015, as I read it, it says a perfected charge,</p> <p>13 EEOC Form 5, will be mailed to you once it's been received</p> <p>14 from the charging party. Place of harm, Bethesda Maryland.</p> <p>15 So my question to Ms. Foster was did she get a copy of this?</p> <p>16 MS. FOSTER: Uh-huh, no.</p> <p>17 MS. ROBESON: Okay. What I'm going to do, if you have</p> <p>18 your charge, your complaint, in your car I'm going to defer</p> <p>19 ruling on this until we see if you have your complaint</p> <p>20 because it's -- both -- I think what you're saying is it</p> <p>21 goes to the timing of when she performed the action. So I'm</p> <p>22 going to defer ruling on this. I'll give you -- if -- when</p> <p>23 we see what you have I'll give you each an opportunity to</p> <p>24 cross. But until that time I'm reluctant to let one thing</p> <p>25 in and not the other. So -- and neither one was provided,</p>	<p>139</p> <p>1 MS. FOSTER: I mean I'm sorry. What I -- what I</p> <p>2 submitted to the EEOC.</p> <p>3 MS. ROBESON: You gave Mr. McCormick?</p> <p>4 MS. FOSTER: I didn't give anything directly to him.</p> <p>5 MS. ROBESON: You gave it to Mr. Shafer?</p> <p>6 MS. FOSTER: Yes.</p> <p>7 MS. ROBESON: And Mr. Shafer, did you give it to Mr.</p> <p>8 McCormick?</p> <p>9 MR. SHAFER: So I provided what I had. When it came to</p> <p>10 the -- of that particular document I'm not sure why it</p> <p>11 wasn't part of the document that I received. I don't know</p> <p>12 what -- like the --</p> <p>13 MS. ROBESON: So you're saying you never got it from</p> <p>14 Ms. Foster?</p> <p>15 MR. SHAFER: Well, I don't know where the document came</p> <p>16 from. Now as far as I understand it because the EEOC</p> <p>17 directly -- and the HRC as far as I understood, directly</p> <p>18 sent the documents to you and your organization, I think</p> <p>19 that there might have been something in that that I thought</p> <p>20 that anything related to the EEOC process would have been</p> <p>21 included in those documents. So I should have followed up</p> <p>22 to make sure that all of them were in there but I --</p> <p>23 MS. ROBESON: Okay. What I'm going to do is see what's</p> <p>24 in our file.</p> <p>25 MR. SHAFER: Okay. I'm going to defer --</p>
<p>138</p> <p>1 as I understand it, in discovery. So at this stage I'm</p> <p>2 going to defer ruling on this until we see what Ms. Foster</p> <p>3 has to produce.</p> <p>4 MR. SHAFER: Fair enough. Yes, Your Honor.</p> <p>5 MR. McCORMICK: Judge, you asked me to look for my</p> <p>6 request for documents and I didn't have it, but my client</p> <p>7 did. And question two was, all documents which Foster</p> <p>8 maintains support any of the claims Foster hasn't made in</p> <p>9 her charge against Sumner. Response, complainant submitted</p> <p>10 responsive documents to the EEOC and has requested their</p> <p>11 return. Copies will be provided when they are returned to</p> <p>12 the complainant's control. Three, all documents which</p> <p>13 Foster maintains support her claim that Sumner retaliated</p> <p>14 against her in violation of the Montgomery County code.</p> <p>15 Response, complainant submitted responsive documents to the</p> <p>16 EEOC and has requested their return. Copies will be</p> <p>17 provided when they are returned to complainant's control.</p> <p>18 MS. ROBESON: So were they returned to your control?</p> <p>19 MS. FOSTER: The -- all of the copies?</p> <p>20 MS. ROBESON: Yes.</p> <p>21 MS. FOSTER: I had to request them, yes.</p> <p>22 MS. ROBESON: Okay. But you didn't follow up and</p> <p>23 provide them?</p> <p>24 MS. FOSTER: I gave him what I submitted.</p> <p>25 MS. ROBESON: Wait, wait.</p>	<p>140</p> <p>1 MR. McCORMICK: No.</p> <p>2 MS. ROBESON: - do you have any cross-examination other</p> <p>3 than on this issue? And I do understand why this is an</p> <p>4 important issue. I'm going to defer her that until you can</p> <p>5 provide what you have and over lunch I'm going to look at</p> <p>6 the EEO -- or the -- excuse me, EEOC file. Or the, uh --</p> <p>7 Human Rights Commission file and see if there's anything in</p> <p>8 there. All right. But just because they provide it to us</p> <p>9 doesn't mean well, Mr. McCormick could've come in and looked</p> <p>10 at it, but we'll see. I'd like to know what we're talking</p> <p>11 about before we rule on this because it is important. All</p> <p>12 right. Did you have any more cross of Ms. Foster?</p> <p>13 MR. McCORMICK: If I could have a second, Your Honor.</p> <p>14 Well, I'll hold off -- well, no, I guess I should ask for</p> <p>15 now if I'm going to ask her, right? What are we up to, Z?</p> <p>16 MS. ROBESON: Now, X.</p> <p>17 MR. McCORMICK: X. that's an easy one. A couple more.</p> <p>18 I can do the easy ones.</p> <p>19 MR. SHAFER: That's why I like numbers.</p> <p>20 MR. McCORMICK: Yeah, I know it's (indiscernible)</p> <p>21 MS. ROBESON: Okay. For purposes of identification on</p> <p>22 my, I'm going to call V, EEOC notice of charge of</p> <p>23 discrimination.</p> <p>24 MR. McCORMICK: I'm going to show you what I marked as</p> <p>25 X. I believe in prayer.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

36 (141 to 144)

<p>141</p> <p>1 MR. SHAFER: Yeah, thank you.</p> <p>2 MR. McCORMICK: And I just -- I want to just ask you</p> <p>3 Ms. Foster, down in the bottom there's a CC, and it has your</p> <p>4 name there. Did you get this letter from the EEOC Baltimore</p> <p>5 Field office on January 12 or sometime after that?</p> <p>6 MS. FOSTER: I think I never received this. I think I</p> <p>7 ended up, once I followed up, they gave it to me when I came</p> <p>8 in -- they came in here and they gave it to me.</p> <p>9 MR. McCORMICK: So you did receive that at some point?</p> <p>10 MS. FOSTER: I did get it at some point, yeah. To let</p> <p>11 me know that it had been redirected.</p> <p>12 MR. McCORMICK: I move that it be admitted.</p> <p>13 MS. ROBESON: Why?</p> <p>14 MR. McCORMICK: Because it shows some of the history of</p> <p>15 the claim that she claims she filed and it was sent to</p> <p>16 Sumner on January 12, 2016. And there's no hint to this</p> <p>17 letter that there was a charge filed on July 22.</p> <p>18 MS. ROBESON: Well, they don't say when the charge was</p> <p>19 filed. Do you -- what do you think?</p> <p>20 MR. SHAFER: I -- as far as I can tell it's irrelevant</p> <p>21 to the question. I mean it's well after -- it's related to</p> <p>22 the transfer of the workload. And if it had any bearing --</p> <p>23 MS. ROBESON: Well, you know what, I'll let it in.</p> <p>24 (Indiscernible) the EEOC notice of charge is not in yet.</p> <p>25 And you can certainly cross on whether it's definitive or</p>	<p>143</p> <p>1 don't have them in my file because you're not required to</p> <p>2 file them with us. So if we need to admitted as an exhibit</p> <p>3 we will.</p> <p>4 MR. McCORMICK: I've got. All right.</p> <p>5 MS. ROBESON: All right.</p> <p>6 MR. SHAFER: Can I, just for purposes of my</p> <p>7 interrogatories, or my request for production of documents,</p> <p>8 can I do the same?</p> <p>9 MS. ROBESON: Yes. Absolutely.</p> <p>10 MR. SHAFER: Thank you.</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MS. ROBESON: With that were off the record. Wait. Go</p> <p>13 back on the record. You've got to -- I realize that I'm not</p> <p>14 100 percent sure I swore in Ms. Foster. So can you raise --</p> <p>15 just out of abundance of caution, can you raise your right</p> <p>16 hand. Do you solemnly affirm under penalties of perjury</p> <p>17 that the statements you made and will make at this</p> <p>18 proceeding are the truth, the whole truth, and nothing but</p> <p>19 the truth?</p> <p>20 MS. FOSTER: Yes.</p> <p>21 MS. ROBESON: Okay. Thank you. Now we're off the</p> <p>22 record.</p> <p>23 (OFF THE RECORD)</p> <p>24 (THE RECORD)</p> <p>25 MS. ROBESON: Back on the record. And did the parties</p>
<p>142</p> <p>1 not. Arguably it's relevant but -- so I'm going to mark</p> <p>2 this as Respondents X 1/12/16 letter from EEOC to Mr. Byers.</p> <p>3 okay. That I will let in but this EEOC form dated September</p> <p>4 3 I'm going to wait till Ms. Foster has a chance to see what</p> <p>5 she has. I will look at the original HRC file and see</p> <p>6 what's in there.</p> <p>7 MR. McCORMICK: Okay.</p> <p>8 MS. ROBESON: I don't recall seeing a handwritten note,</p> <p>9 but I'll look. Okay. So do you have any further cross</p> <p>10 MR. McCORMICK: Not right now.</p> <p>11 MS. ROBESON: Okay. Do you have any redirect?</p> <p>12 MR. SHAFER: Just relating to what was the second cross</p> <p>13 now, right?</p> <p>14 MS. ROBESON: Yeah. What -- I don't to deal with the</p> <p>15 issue right now of the admissibility of W.</p> <p>16 MR. SHAFER: Right. Okay. I can't even specifically</p> <p>17 remember what was on the second cross.</p> <p>18 MS. ROBESON: Okay. It was mostly about that.</p> <p>19 MR. SHAFER: Yeah so, all the for that.</p> <p>20 MS. ROBESON: Okay. So what we're going to do is we're</p> <p>21 going to take a lunch until 2:00, and Ms. Foster, please</p> <p>22 tell us what you have with regard to your EEOC com --</p> <p>23 whatever it's called. Complaint. If you do have a copy,</p> <p>24 I'm not going to do it now, but if you do have a copy of</p> <p>25 your interrogatories keep those around because you know I</p>	<p>144</p> <p>1 have an opportunity -- I did place in the HRC file because</p> <p>2 there were some questions about what was and wasn't in it.</p> <p>3 Everybody have the opportunity to review that?</p> <p>4 MR. McCORMICK: I did.</p> <p>5 MR. SHAFER: In the process. We just received it.</p> <p>6 MS. ROBESON: Okay.</p> <p>7 MR. SHAFER: And I just --</p> <p>8 MS. ROBESON: Do you need a few more minutes?</p> <p>9 MR. SHAFER: Just a couple of minutes, and I'll read</p> <p>10 through it.</p> <p>11 MS. ROBESON: Okay. I'll be back at 2:10, then and --</p> <p>12 how much time do you think you need?</p> <p>13 MR. SHAFER: Just five minutes I think will be</p> <p>14 sufficient.</p> <p>15 MS. ROBESON: Okay. Well, I'll be back at 2:10.</p> <p>16 MR. SHAFER: Okay.</p> <p>17 (OFF THE RECORD)</p> <p>18 (ON THE record)</p> <p>19 MS. ROBESON: We're back on the record. Are you</p> <p>20 finished, Mr. Shafer?</p> <p>21 MR. SHAFER: I sure am.</p> <p>22 MS. ROBESON: Okay. So we are done, I believe, as far</p> <p>23 as we know right now with your cross-examination, correct?</p> <p>24 MR. McCORMICK: That's correct.</p> <p>25 MS. ROBESON: Do you want to proceed with your case in</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

37 (145 to 148)

<p>145</p> <p>1 chief or do you want to resolve this issue with the --</p> <p>2 whether or not you -- did you find the documentation in your</p> <p>3 car as to when you filed the complaint with the EEOC?</p> <p>4 MS. FOSTER: No. But it actually was, when I had</p> <p>5 earlier reported that I had gone to them previously before I</p> <p>6 was terminated --</p> <p>7 MS. ROBESON: Yeah, that was in June or something?</p> <p>8 MS. FOSTER: No. Actually it was that day that I had</p> <p>9 gone to the doctor and they dismissed and issued a right to</p> <p>10 sue. And I just my date that. I apologize. And then I had</p> <p>11 to go back.</p> <p>12 MS. ROBESON: Okay. So --</p> <p>13 MS. FOSTER: But we found that in their notes.</p> <p>14 MS. ROBESON: If it's all right with you, Mr.</p> <p>15 McCormick, I'd like to -- so the you have some chance to</p> <p>16 cross-examine, I'd like to get her testimony in on this.</p> <p>17 And then you'll be able to cross-examine and then we can go</p> <p>18 to your case in chief.</p> <p>19 MR. MCCORMICK: Sure. That's fine.</p> <p>20 MS. ROBESON: Okay. Ms. Foster, can you please run a</p> <p>21 story when you visit the EEOC and when you talked to your</p> <p>22 coworkers --</p> <p>23 MS. FOSTER: Yes.</p> <p>24 MS. ROBESON: -- At Sumner Village.</p> <p>25 MS. FOSTER: The day that I had gone was the day that I</p>	<p>147</p> <p>1 MS. ROBESON: And exactly what that date was that?</p> <p>2 MS. FOSTER: -- Straight to court. That was back in</p> <p>3 July.</p> <p>4 MS. ROBESON: And do you recall the date? July --</p> <p>5 MS. FOSTER: That I received the note of --</p> <p>6 MS. ROBESON: The day you went to the doctor.</p> <p>7 MS. FOSTER: It was the 22nd.</p> <p>8 MS. ROBESON: Yeah. Okay. And was that day you see</p> <p>9 you made the phone call?</p> <p>10 MS. FOSTER: Yes, ma'am.</p> <p>11 MS. ROBESON: Okay. And just as long happened after</p> <p>12 that.</p> <p>13 MS. FOSTER: And then when I return to that Monday is</p> <p>14 when I got termination letter. When I reached back out to</p> <p>15 EEOC I had to go -- I had to come in and do a new claim</p> <p>16 after being terminated. So that was why I got my dates</p> <p>17 mixed up. And we --</p> <p>18 MS. ROBESON: So when you say Monday you mean, what</p> <p>19 Monday? The one immediately after --</p> <p>20 MS. FOSTER: I actually when I --</p> <p>21 MS. ROBESON: -- The?</p> <p>22 MS. FOSTER: Exactly what happened was more -- I was</p> <p>23 off work that Wednesday.</p> <p>24 MS. ROBESON: Yes.</p> <p>25 MS. FOSTER: And ordered by the doctor to not come</p>
<p>146</p> <p>1 had gone to the doctor's office. And that was the day that</p> <p>2 I spoke to them.</p> <p>3 MS. ROBESON: With who?</p> <p>4 MS. FOSTER: With the coworkers.</p> <p>5 MS. ROBESON: The coworkers.</p> <p>6 MS. FOSTER: The initial findings they dismissed that</p> <p>7 one. And --</p> <p>8 MS. ROBESON: Did -- can -- I don't understand what you</p> <p>9 mean by they dismissed -- you mean they --</p> <p>10 MS. FOSTER: That was in there --</p> <p>11 MS. ROBESON: -- The EEOC dismissed it?</p> <p>12 MS. FOSTER: The EEOC dismissed it and gave me a right</p> <p>13 to see you. They mailed it to me though.</p> <p>14 MS. ROBESON: A right to sue. Do you have that</p> <p>15 document with you?</p> <p>16 MS. FOSTER: I don't -- no. I didn't even any of that</p> <p>17 was --</p> <p>18 MS. ROBESON: Relevant?</p> <p>19 MS. FOSTER: Relevant, yeah. I didn't think so.</p> <p>20 MS. ROBESON: Okay. So -- okay. So they sent you</p> <p>21 something that said you could --</p> <p>22 MS. FOSTER: Yes, ma'am.</p> <p>23 MS. ROBESON: -- I think your testimony was you could</p> <p>24 take it to court?</p> <p>25 MS. FOSTER: Yes. To just go --</p>	<p>148</p> <p>1 back through the rest of the week.</p> <p>2 MS. ROBESON: I see.</p> <p>3 MS. FOSTER: And then when I returned to work on Monday</p> <p>4 is when I was immediately called given the termination</p> <p>5 letter.</p> <p>6 MS. ROBESON: And what did you do as far as the EEOC?</p> <p>7 MS. FOSTER: I went back to the EEOC.</p> <p>8 MS. ROBESON: That day?</p> <p>9 MS. FOSTER: Not that -- not on the 25th, no, I did</p> <p>10 not. No ma'am.</p> <p>11 MS. ROBESON: Okay. So when did you go back to the</p> <p>12 EEOC?</p> <p>13 MS. FOSTER: It probably was a month later I went back</p> <p>14 and refiled.</p> <p>15 MS. ROBESON: Mr. Schaefer, do you have any questions?</p> <p>16 MR. SHAFER: Yes, Your Honor. There is a document in</p> <p>17 the HRC file that specifically corroborates this testimony.</p> <p>18 I'm not sure, because have to go through you to get the</p> <p>19 chain of custody to be able to admit that document. Well,</p> <p>20 the file is the -- I mean it's an official file.</p> <p>21 MR. SHAFER: Right. So --</p> <p>22 MS. ROBESON: You're allowed to look at it because you</p> <p>23 you're the complainant. You're parties.</p> <p>24 MR. SHAFER: So what I'm looking at, and I don't know</p> <p>25 if we had means of being able to make copies, what I'm</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

38 (149 to 152)

<p>149</p> <p>1 looking at is intake notes. They are dated September 2, 2 2015. And they have a charge number and then down here in 3 the middle it has information. So I would like to offer 4 this into evidence. I don't know if it's -- 5 MR. McCORMICK: Then maybe I should take a look at it. 6 I'm going to object to it because it includes a lot of 7 extraneous information that's not in the case anymore if you 8 want to -- I mean I'll stipulate that what it says here is 9 that charging party filed previous charges against 10 (indiscernible) Norman and Sumner Village which were 11 dismissed. It doesn't say when. It doesn't say when they 12 were filed when they were dismissed but I'll stipulate that 13 there were previous charges filed without a date. But the 14 rest of it all goes into the issues about things that are 15 not relevant to this hearing. 16 MR. SHAFER: Well, I mean I have to -- so the 17 objections in is that it's related to discrimination as 18 well? 19 MR. McCORMICK: Well there's a narrative in the all 20 about the parts of the case that are not going to be 21 adjudicated I mean if what you want -- I mean I'll agree 22 with and stipulate that according to that document Ms. 23 Foster had filed a previous claim the EEOC. 24 MS. ROBESON: As of the date of that document. 25 MR. McCORMICK: Which is in September.</p>	<p>151</p> <p>1 will HR's document. 2 MR. SHAFER: The charge of discrimination from 3 September 1? 4 MS. ROBESON: Yes. 5 MR. SHAFER: That's in the file? 6 MS. ROBESON: Yes. It may be in that -- let me take 7 that document. Usually we have the charge -- I may not need 8 it. Hold on one second. Okay. That's the EEOC charge 9 number. Ms. Foster -- well, let's do this. Ms. Foster, 10 take a look at this. Now, what do you know -- did you visit 11 -- was that a visit to HR, or was that a visit to the EEOC? 12 MS. FOSTER: This is EEOC. We don't -- we didn't have 13 an HR. 14 MS. ROBESON: I mean the Human Rights Commission. 15 MS. FOSTER: Oh no, this is EEOC. 16 MS. ROBESON: Well, can I see it back? So what will 17 you stipulate to? 18 MR. McCORMICK: I'll stipulate that she filed a charge 19 or did something with the EEOC prior to the charge that 20 we're litigating over now. 21 MS. ROBESON: But you won't stipulate that -- you won't 22 stipulate that she filed the charges the morning before she 23 was discharged? 24 MR. McCORMICK: That's right. 25 MS. ROBESON: And why -- so why should I not admit this</p>
<p>150</p> <p>1 MS. ROBESON: I was the date of the document? 2 MR. SHAFER: September 2, 2015. Will you also 3 stipulate that it's recorded? That she filed those charges 4 the morning before she was discharged? 5 MR. McCORMICK: No. I won't stipulate to that. I 6 don't know where that came from. 7 MR. SHAFER: I mean that's relevant. 8 MR. McCORMICK: Well, it might be relevant, but that's 9 hearsay. I don't know who wrote that up. The dates -- I 10 thought we were talking about the dates. And mine too was 11 consistent with what I have for this exhibit, which is 9/3, 12 which says that she filed something, and a perfected charge 13 will be mailed when she sends it back. So -- 14 MS. ROBESON: Well, this is an official file of the 15 OHR. 16 MR. McCORMICK: Well, maybe it is but that's from the 17 EEOC by somebody who we don't even know who wrote it. 18 MS. ROBESON: Well, I guess I'm a dark because I 19 haven't seen it. So let me see it. I thought it was -- I 20 misunderstood what it was. No. This is from OHR's file. 21 MS. FOSTER: (Indiscernible) 22 MS. ROBESON: Can you not talk for a minute? Isn't 23 there a charge number in -- we have in our file the original 24 complaint? I don't know if it has a charge number on it 25 because the charge number would tell us whether this is a</p>	<p>152</p> <p>1 document? 2 MR. McCORMICK: Well, I don't know who wrote it. I 3 don't know where the source of that information came from. 4 And it's being offered for the truth of it. 5 MS. ROBESON: So it's not authenticated? 6 MR. McCORMICK: No. I have no idea -- I've never seen 7 it before today so -- 8 MS. ROBESON: Now what I could do is leave the record 9 open if you want to get a copy from the CCOC. 10 MR. SHAFER: A copy of that specific document? 11 MS. ROBESON: Yeah. 12 MR. SHAFER: And then -- I mean I've had difficulty 13 getting anything from them before, but this I think we'll be 14 able to do. 15 MS. ROBESON: That would solve the -- 16 MR. SHAFER: Yeah. 17 MS. ROBESON: -- Authenticity problem. 18 MR. McCORMICK: Well, I mean I would object to -- I 19 mean it's kind of late in the game. I mean this case has 20 been floating around for a year almost. 21 MS. ROBESON: Yeah, but this file has been here the 22 whole time -- 23 MR. McCORMICK: I know. 24 MS. ROBESON: -- With this in it. So -- 25 MR. McCORMICK: I'm not offering it. I mean I'm</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

39 (153 to 156)

<p>153</p> <p>1 willing to make a stipulation as to what she said which is I 2 filed a charge and it was dismissed. That's fine. I'll do 3 that. I mean I'll stipulate to that. But I'm not going to 4 stipulate to everything else that's in there. I mean that 5 whole paragraph at the top has to do with the part of the 6 case that's not here anymore.</p> <p>7 MS. ROBESON: Well, that can be redacted.</p> <p>8 MR. SHAFER: I would agree to redact that paragraph.</p> <p>9 MS. ROBESON: It doesn't -- I mean the redaction 10 doesn't matter because I'm not going to consider it because 11 that goes to the discrimination claim. What the real thing 12 is is whether it backs up the credibility of the weight of 13 Ms. Foster's testimony as to when she complained. Right now 14 the only thing we have in the record is her verbal 15 testimony. This is consistent with her verbal testimony.</p> <p>16 MR. McCORMICK: Yes, Your Honor.</p> <p>17 MS. ROBESON: Do you have any other objections as far 18 as this document because we can get the document from the 19 EEOC.</p> <p>20 MR. McCORMICK: Well I -- we're going to get the same 21 document. I mean is it going to -- are we going to have 22 background information as to who prepared it? How it was 23 prepared?</p> <p>24 MS. ROBESON: Well how about this. Is this what you 25 told the EEOC?</p>	<p>155</p> <p>1 with me. But I'm not sure it really adds anything because 2 it's only documentation that that's what you said. It 3 doesn't stand for the truth that that's what happened. It's 4 only documenting what she said.</p> <p>5 MR. SHAFER: That will make it --</p> <p>6 MS. ROBESON: Do you follow --</p> <p>7 MR. SHAFER: Non-hearsay. Right.</p> <p>8 MS. ROBESON: Right.</p> <p>9 MR. SHAFER: So that would make it admissible because 10 it's not -- right?</p> <p>11 MS. ROBESON: No.</p> <p>12 MR. McCORMICK: No.</p> <p>13 MR. SHAFER: And so are we just on an authentication 14 objection? Is that where we are?</p> <p>15 MS. ROBESON: I'm saying that I'm not sure it's as 16 crucial because it simply states that her story had changed.</p> <p>17 MR. SHAFER: Well that's until the -- so where you give 18 --</p> <p>19 MS. ROBESON: I could be wrong. Can I see it again?</p> <p>20 MR. SHAFER: Yes, of course.</p> <p>21 MS. ROBESON: I try not to consider anything that's not 22 in the record. So this -- I guess it's of the date of 23 September 2nd.</p> <p>24 MR. SHAFER: And two EEOC case numbers that are not -- 25 that are different case numbers, they were dismissed.</p>
<p>154</p> <p>1 MS. FOSTER: Is what what I -- sorry.</p> <p>2 MR. SHAFER: Do you want me to?</p> <p>3 MS. ROBESON: Take that back --</p> <p>4 MS. FOSTER: The statement at the top you're saying? 5 That only means that that's what she told the CCOC -- the 6 EEOC. We also have a CCOC board here that we do hearings 7 in. That only states that that's what she told the 8 investigators. So --</p> <p>9 MS. FOSTER: Yeah, yes, I told them this. Yeah and I 10 wrote this in my complaint in this case.</p> <p>11 MS. ROBESON: And where is that?</p> <p>12 MS. FOSTER: The -- I mean this stuff right here.</p> <p>13 MS. ROBESON: Oh, and the charging document in this 14 case?</p> <p>15 MS. FOSTER: Yeah, it's all in this -- and this is the 16 same stuff. This is the same stuff that I complained about 17 before.</p> <p>18 MS. ROBESON: Okay. I guess because -- I'm not sure of 19 the way, how relevant that is because it's saying the same 20 thing -- it's only a representation that she hasn't changed 21 her story. And I don't think there's any discussion here 22 about whether she's changed her story. That's her story. 23 So I think that we're not going to let it in right now. If 24 you want to go back and tell us a blow-by-blow what happened 25 and make sure that you get it on the record, that's fine</p>	<p>156</p> <p>1 MS. ROBESON: Oh, I see what you're saying. Oh I get 2 it. Okay. Well, you can get it -- what I'll do is I will 3 let it be in if you can authenticate it. Which means you 4 have to have a -- request it from the EEOC and get it back 5 with something telling us that it's from the EEOC because 6 Mr. McCormick's right. I mean this is just -- this could be 7 from anything.</p> <p>8 MR. SHAFER: Well that's why I asked about a chain of 9 custody that we would be able to go through that. But I 10 completely understand the situation. So I'll attempt to get 11 the document direct from the EEOC with support.</p> <p>12 MS. ROBESON: I mean I don't want to further delay the 13 trial, but this was in there.</p> <p>14 MR. SHAFER: (Indiscernible)</p> <p>15 MS. ROBESON: Yeah. And then I'll take that file back 16 if you're finished with it. All right. Now, are we ready 17 to move on?</p> <p>18 MR. McCORMICK: Just one question, what about my W?</p> <p>19 MS. ROBESON: Well, if I let that in, I will let the W 20 in.</p> <p>21 MR. McCORMICK: Okay.</p> <p>22 MS. ROBESON: Wait, let me see the W again. Pardon me. 23 I just want to make sure. Okay, here it is. Okay. I have 24 it and that it does say US Equal Employment Opportunity 25 Commission. So I will let that in. And I'm also letting in</p>



Transcript of Administrative Hearing  
Conducted on April 20, 2018

40 (157 to 160)

<p>157</p> <p>1 the January 12th letter which was X. All right. All right. 2 Now, are you ready to proceed, Mr. McCormick? 3 MR. McCORMICK: Yes, I am. Want to swear her? 4 MS. ROBESON: Yes. Please raise your right hand. Do 5 you solemnly affirm under penalties of perjury that the 6 statements you're about to make are the truth, the whole 7 truth and nothing but the truth? 8 MS. GUNN: I do. 9 MS. ROBESON: Please state your name and address for 10 the record. 11 MS. GUNN: Ruth Gunn. 9489 Fairfax Boulevard, 12 Apartment 204, Fairfax, Virginia 2201 13 MR. McCORMICK: Okay. Ms. Gunn, where you employed? 14 MS. GUNN: Well, right now I'm employed with 15 (indiscernible) Norman at White Hall Condominium at 4977 16 Battery Lane. 17 MR. McCORMICK: Okay. Did you ever work for Sumner 18 Village? 19 MS. GUNN: Yes, I did. 20 MR. McCORMICK: When did you work for Sumner Village? 21 MS. GUNN: For five years starting in August 2011 and 22 until October 15, 2016. 23 MR. McCORMICK: And what was your position when you 24 were at Sumner Village? 25 MS. GUNN: General manager.</p>	<p>159</p> <p>1 MS. GUNN: Doing their budget. 2 MR. McCORMICK: Did you supervise a number of 3 employees? 4 MS. GUNN: I did. 5 MR. McCORMICK: And did you supervise the complainant 6 in this case? 7 MS. GUNN: For a period of time correct, yes. 8 MR. McCORMICK: Okay. Now in reviewing -- what you've 9 heard the -- you've sat through the testimony this morning 10 on all these different issues that were addressed. One of 11 the items I want to ask you about how does the key box work 12 at the office? 13 MS. GUNN: Okay. There's the name and it has a 14 reception area and then there are two smaller offices all 15 that. And on the wall inside before you go into the small 16 offices there is a lock box hanging on the wall with the 17 keys, that are coded in random order. And on the front of 18 it is hanging a clipboard with a form that has space to put 19 in the date, the key that is taken out, who has taken out 20 the key, the time that it is taken out, and then when the 21 key comes back to the person returning it and the time is 22 recorded on the. 23 MR. McCORMICK: Okay. Neighborhoods and testimony this 24 morning about a Donna Dipaulo who had some issues with 25 someone entering her unit?</p>
<p>158</p> <p>1 MR. McCORMICK: Can you briefly describe the size of 2 Sumner Village? How many units does it have? 3 MS. GUNN: It's 395 units made up of two condominium 4 complexes and one homeowners association which covered the 5 amenities and some of the site. 6 MR. McCORMICK: Okay. Now as general manager what -- 7 can you briefly describe what your duties were? 8 MS. GUNN: My duties were to act as effectively a 9 manager for the company to make sure that everything was 10 being done. The maintenance was being done, the employees 11 were hired and directed. I hired some of the staff, 12 including the office manager, and some of the other 13 employees. They hired some of their subordinates with my 14 approval. 15 MR. McCORMICK: Okay. 16 MS. GUNN: Met with the board and it took care of 17 getting the contracts and all that. 18 MR. McCORMICK: Did you supervise -- 19 MS. ROBESON: What do you mean getting the contracts? 20 MS. GUNN: Getting -- going out and getting proposals 21 and -- 22 MS. ROBESON: Oh, I see. 23 MS. GUNN: -- Evaluating them and bringing them to them 24 to decide. 25 MS. ROBESON: Okay.</p>	<p>160</p> <p>1 MS. GUNN: Yes. 2 MR. McCORMICK: Can you describe for us what that 3 incident was about? 4 MS. GUNN: The units are stacked, a four-story 5 building. All of the HVAC closets, air-conditioning, 6 heating units are stacked. The compressors were all on the 7 top, so when something was replaced you had, in a lower 8 unit, you had to go all the way up through everyone's HVAC 9 closet to run the new wiring for the new unit. Units were 10 being installed on Building 6 and also on Building 2 so the 11 contractor from (indiscernible) Metcalf, Neil, was there on 12 Friday to -- 13 MS. ROBESON: Friday, what Friday? 14 MS. GUNN: The Friday that Ms. Dipaulo's unit was left 15 unlocked. 16 MS. ROBESON: Okay. 17 MS. GUNN: And he came in, got the keys, went over to 18 go through the units to make sure he was able to tell his 19 staff how they were going to run the wiring up to the roof 20 and whether any additional holes needed to be done. That's 21 what was going on. 22 MR. McCORMICK: Okay. I'm going to show you Exhibit H. 23 MS. ROBESON: Is this stipulated to? 24 MR. McCORMICK: No, this one isn't, Your Honor. 25 MR. McCORMICK: And Ms. Gunn, I'm showing you H, do you</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

41 (161 to 164)

<p>161</p> <p>1 recognize this?</p> <p>2 MS. GUNN: Yes, I do.</p> <p>3 MR. McCORMICK: What is it?</p> <p>4 MS. GUNN: It is the email from Donna Dipaulo about the</p> <p>5 fact that she came home on Friday night, found her front</p> <p>6 door unlocked and questioned that the security and they went</p> <p>7 and checked on the lockbox records, the keys, and there were</p> <p>8 no notations that her keys were taken out. Her keys were</p> <p>9 subsequently found on the floor of the office next to the</p> <p>10 reception desk where there is a mail slot. So that -- the</p> <p>11 keys were returned to the lockbox by security.</p> <p>12 MR. McCORMICK: And did you investigate as to how the</p> <p>13 keys were found on the floor?</p> <p>14 MS. GUNN: I did. And I knew that the contractor was</p> <p>15 preparing to do the work and I contacted him, spoke with</p> <p>16 him, he told me that --</p> <p>17 MS. ROBESON: Well wait --</p> <p>18 MS. GUNN: -- I can't say what he said, I know.</p> <p>19 MR. McCORMICK: Okay.</p> <p>20 MS. GUNN: He was given the keys by someone in the</p> <p>21 office. They were not signed out.</p> <p>22 MR. McCORMICK: Okay. And is this the memo that Ms.</p> <p>23 Dipaulo sent to you on June 30th at 9:45?</p> <p>24 MS. GUNN: Yes.</p> <p>25 MR. McCORMICK: Your Honor, I move that this be</p>	<p>163</p> <p>1 MR. McCORMICK: We've heard a lot of redundant stuff</p> <p>2 today, I don't think it is.</p> <p>3 MR. SHAFER: Might be possible.</p> <p>4 MS. ROBESON: Well, are you going to, I guess my -- he</p> <p>5 can -- I would like to know about the investigation but I</p> <p>6 don't -- if this is leading back to the hearsay of the guy</p> <p>7 that was in the unit then we can't go there.</p> <p>8 MR. McCORMICK: No, but I think I can ask her about</p> <p>9 what did she do to investigate this, and what did she</p> <p>10 observe in the course of her investigation.</p> <p>11 MS. ROBESON: Okay. We could try that.</p> <p>12 MR. McCORMICK: So I don't want any hearsay statements</p> <p>13 from what anybody told you.</p> <p>14 MS. GUNN: Okay.</p> <p>15 MR. McCORMICK: What did you do to verify this</p> <p>16 complaint?</p> <p>17 MS. GUNN: I contacted the contractor and asked how he</p> <p>18 had obtained the keys to the unit. And that there had been</p> <p>19 a complaint from the resident that the door was unlocked.</p> <p>20 MS. ROBESON: Okay. And I take it that's not</p> <p>21 consistent with the policy you just described?</p> <p>22 MS. GUNN: No.</p> <p>23 MR. McCORMICK: Did you come to some conclusion as to</p> <p>24 who on your staff might have been responsible for allowing</p> <p>25 the key to go out of the office?</p>
<p>162</p> <p>1 admitted.</p> <p>2 MR. SHAFER: So --</p> <p>3 MS. ROBESON: Mr. Schafer, do you have an objection?</p> <p>4 MR. SHAFER: Yeah. I'm going to object on hearsay</p> <p>5 grounds and prejudice versus probative value. I don't -- I</p> <p>6 mean it was specifically asked for by Ms. Gunn, and there's</p> <p>7 a lot in here that would have to go through and get some</p> <p>8 kind of a hearsay ruling on.</p> <p>9 MS. ROBESON: Well, I guess what's and not hearsay I</p> <p>10 guess is the fact that she complained.</p> <p>11 MR. SHAFER: Right.</p> <p>12 MS. ROBESON: But there's stuff in here like the</p> <p>13 quotation of the voicemail, it's almost like double hearsay</p> <p>14 because she's not here to authenticate it. I mean you're --</p> <p>15 so I -- I'm not going to let this in because, you know, if</p> <p>16 you want to testify as to the fact that she made a complaint</p> <p>17 that's fine. But this has things that she heard and she's</p> <p>18 not here to testify.</p> <p>19 MR. McCORMICK: Fair enough. Ms. Gunn, I take it that</p> <p>20 Ms. Dipaulo, complained about what happened?</p> <p>21 MS. GUNN: Yes, she did.</p> <p>22 MR. McCORMICK: And did you conduct any investigation</p> <p>23 to verify whether her complaint was valid?</p> <p>24 MR. SHAFER: Objection, redundant. Don't we already</p> <p>25 have that in evidence?</p>	<p>164</p> <p>1 MS. GUNN: I did based on the information the</p> <p>2 contractor gave me.</p> <p>3 MR. McCORMICK: Okay. And that person is?</p> <p>4 MS. GUNN: That's hearsay -- well --</p> <p>5 MR. McCORMICK: No.</p> <p>6 MS. GUNN: Okay. Who did I talk to? I talked to Neil</p> <p>7 from (indiscernible) Metcalf.</p> <p>8 MR. McCORMICK: Okay. I don't want to know what Neil</p> <p>9 said.</p> <p>10 MS. GUNN: Okay.</p> <p>11 MR. McCORMICK: But based on all your investigation,</p> <p>12 did you come to some conclusion as to who on your staff</p> <p>13 might have been responsible for the key?</p> <p>14 MS. GUNN: Yes.</p> <p>15 MS. ROBESON: Well, was there any other investigation</p> <p>16 besides talking to the contract?</p> <p>17 MS. GUNN: Well no one else had given the keys out.</p> <p>18 MS. ROBESON: Who -- and who --</p> <p>19 MS. GUNN: Bernadette was in the office also.</p> <p>20 MS. ROBESON: But that's also hearsay.</p> <p>21 MS. GUNN: Right.</p> <p>22 MS. ROBESON: So nobody's here --</p> <p>23 MS. GUNN: So nobody else.</p> <p>24 MS. ROBESON: -- To confirm. Your conclusions were</p> <p>25 based on input from two other people, correct?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

42 (165 to 168)

<p>165</p> <p>1 MS. GUNN: Correct.</p> <p>2 MS. ROBESON: Neither of whom is here today.</p> <p>3 MS. GUNN: Yes.</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MR. McCORMICK: Okay.</p> <p>6 MS. ROBESON: I don't think we -- you know, unless you</p> <p>7 have something else. You have the -- you have the testimony</p> <p>8 that the complaint was made.</p> <p>9 MR. McCORMICK: Right. Okay. I'm going to show you</p> <p>10 Exhibit C. This is the (indiscernible) Norman no harassment</p> <p>11 policy.</p> <p>12 MS. GUNN: Yes.</p> <p>13 MR. McCORMICK: You've seen that, you're familiar with</p> <p>14 that policy?</p> <p>15 MS. GUNN: Yes.</p> <p>16 MR. McCORMICK: At any time during her tenure did Ms.</p> <p>17 Foster ever invoked this policy to (indiscernible) --</p> <p>18 MS. GUNN: Not to my knowledge.</p> <p>19 MR. McCORMICK: So she never made any complaints of any</p> <p>20 specific harassment behavior pursuant to that policy?</p> <p>21 MS. GUNN: No.</p> <p>22 MS. ROBESON: Well, wait a minute. I don't understand.</p> <p>23 Did she ever talk to you about the problem she was -- she</p> <p>24 never talked to you about the problems she was having in the</p> <p>25 office? Is that what you're saying?</p>	<p>167</p> <p>1 working we have a timeclock there. They've had one for a</p> <p>2 long, long time.</p> <p>3 MR. McCORMICK: Okay. Now what -- mechanically how</p> <p>4 does it work when somebody comes -- tell me what you're</p> <p>5 supposed to do.</p> <p>6 MS. GUNN: You have a rack next to it with time cards</p> <p>7 for each individual. They come, they take their card. They</p> <p>8 drop it in the slot. It touches, they take the card out,</p> <p>9 they put it back in the timecard rack.</p> <p>10 MR. McCORMICK: And are the timecard supposed to be</p> <p>11 kept in that rack --</p> <p>12 MS. GUNN: Yes, they are.</p> <p>13 MR. McCORMICK: -- At all times? Why?</p> <p>14 MS. GUNN: So that they don't get lost. So that they</p> <p>15 are there when payroll needs to be done at the end of the</p> <p>16 pay. They're all there.</p> <p>17 MR. McCORMICK: Who's required to use the time clock?</p> <p>18 MS. GUNN: Anybody who is not salaried.</p> <p>19 MR. McCORMICK: Okay. Was Ms. Foster required to use a</p> <p>20 timeclock?</p> <p>21 MS. GUNN: Yes.</p> <p>22 MR. McCORMICK: Did she follow the procedures for</p> <p>23 clocking in and out from when she came in to work and when</p> <p>24 she went out to lunch and came back?</p> <p>25 MS. GUNN: Not on a regular basis.</p>
<p>166</p> <p>1 MS. GUNN: (Indiscernible)</p> <p>2 MS. ROBESON: I don't know what you mean by of</p> <p>3 discrimination.</p> <p>4 MR. McCORMICK: Well, what I'm -- the policy</p> <p>5 specifically talks about harassment based on race, color,</p> <p>6 religion, gender, national origin, age, disability or any</p> <p>7 other status protected by law. Did Ms. Foster ever raise</p> <p>8 any of those issues with you pursuant to this policy?</p> <p>9 MS. GUNN: No.</p> <p>10 MS. ROBESON: Okay. Now I understand.</p> <p>11 MR. McCORMICK: Now there was a lot of discussion about</p> <p>12 the time cards that we went over. And unfortunately, I'm</p> <p>13 going to give you the time cards again. This is Exhibit L</p> <p>14 and I'm going to ask you some questions about the time</p> <p>15 cards. First off, I understand from the complainant said</p> <p>16 there's a timecard punch machine right outside the office,</p> <p>17 or her office?</p> <p>18 MS. GUNN: Yes.</p> <p>19 MR. McCORMICK: Okay. And why does the company have --</p> <p>20 why do you have a timeclock like that?</p> <p>21 MS. GUNN: We have a timeclock they are so that we can</p> <p>22 validate the time that people come in. People work</p> <p>23 different shifts and there's not always somebody else</p> <p>24 around. So to make sure that they are being paid</p> <p>25 appropriately, and we know who was actually on the property</p>	<p>168</p> <p>1 MR. McCORMICK: Okay. Now, what -- is there a</p> <p>2 procedure if someone forgets to clock in or clock out and I</p> <p>3 have to go back and record their time? How do they -- how</p> <p>4 are you supposed to do that?</p> <p>5 MS. GUNN: The employees are supposed to bring their</p> <p>6 card to a supervisor and have a supervisor sign their card</p> <p>7 for them.</p> <p>8 MR. McCORMICK: At the time they put the number down?</p> <p>9 MS. GUNN: Mm-hm.</p> <p>10 MR. McCORMICK: So if someone were to fill in the time</p> <p>11 at a later date like two or three days later that wouldn't</p> <p>12 be appropriate?</p> <p>13 MS. GUNN: They could take it to their supervisor and</p> <p>14 if their supervisor had witnessed when they left they would</p> <p>15 sign the timecard.</p> <p>16 MR. McCORMICK: Okay. Now had you ever talk to Ms.</p> <p>17 Foster about the need to comply with the company policy with</p> <p>18 regard to punching in and punching out per policy?</p> <p>19 MS. GUNN: Yes.</p> <p>20 MR. McCORMICK: Did you talk to her one time or more</p> <p>21 than one time?</p> <p>22 MS. GUNN: Multiple times on a regular basis.</p> <p>23 MR. McCORMICK: And --</p> <p>24 MS. GUNN: I posted a notice next to the timecard also</p> <p>25 stating that everybody needed to punch in and out. It was</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

43 (169 to 172)

<p>169</p> <p>1 put by that time clock. It was also put by the time clock 2 in the shop. And the time cards needed to stay in their 3 slots. 4 MR. McCORMICK: Okay. Did -- were there any employees 5 who took the time cards out of the slots? 6 MS. GUNN: Only Bernadette who was actually not on our 7 payroll at that time. She was a temp and she reported her 8 time through the temp agency, so she would use the timecard 9 to keep track of her hours and then she would take it in, 10 fill it in on what she submitted to the temp agency, and 11 they would send that to me. The other timecards were all 12 left in the slot, except when at the end of the pay. 13 Security would, and pull all of his time cards and take them 14 and told them up and bring -- the supervisor would bring 15 them back to me. And maintenance would come and pull theirs 16 at the end of the pay period and total theirs and return 17 them to me. 18 MR. McCORMICK: Okay. Did you ever have any problems 19 with Ms. Foster taking timecards out of the slot and bring 20 them home? 21 MS. GUNN: Frequently during a period of a couple of 22 months her timecard was not in the slot. 23 MR. McCORMICK: Did you talk to her about that? 24 MS. GUNN: Yes, I did. 25 MR. McCORMICK: And what did she --</p>	<p>171</p> <p>1 Thursday. Are those your initials? 2 MS. GUNN: Yes, it is. 3 MR. McCORMICK: Okay. Well, what does this represent? 4 MS. GUNN: We had just had a conversation about 5 timecards again. It was part of the performance improvement 6 plan that (indiscernible) would be clocking in and out and 7 she was not doing it on a regular basis. On Thursday 8 morning of that week I came in at 7:30. Her timecard was in 9 the slot. I took a copy of the timecard at that time. 10 Missing punches were Monday, Tuesday, and Wednesday. 11 MS. ROBESON: Wait. Which -- I'm sorry. Which one did 12 -- 13 MS. GUNN: The one on the right. 14 MS. ROBESON: -- You -- okay. 15 MS. GUNN: The one on the right was a photograph -- a 16 Xerox copy of the timecard at 7:30 a.m. The timecard on the 17 left is what was turned in for payroll. 18 MS. ROBESON: Okay. 19 MR. McCORMICK: Okay. So what was added -- so what 20 you're saying is on Thursday morning which in this is all 21 her timecard would show? 22 MS. GUNN: Yes. 23 MR. McCORMICK: And it should have had Monday, Tuesday, 24 Wednesday? 25 MS. GUNN: Mm-hm.</p>
<p>170</p> <p>1 MS. ROBESON: When was that? 2 MS. GUNN: It was -- can I see the dates on some of the 3 writeups? 4 MR. McCORMICK: Oh. 5 MS. GUNN: Please? 6 MR. McCORMICK: That's -- 7 MS. GUNN: That's the July ones? 8 MR. McCORMICK: That's the July ones. 9 MS. GUNN: It would've been earlier in the year 10 probably the winter and spring of 2015. 11 MR. McCORMICK: And what did you tell her? 12 MS. GUNN: I told her that her timecard needed to 13 remain there because that was the time record and if it was 14 lost then we wouldn't have any record of the time. 15 MR. McCORMICK: Okay. I want to direct your attention 16 to the last page on this exhibit. 17 MS. GUNN: Well, you gave me several. 18 MR. McCORMICK: I have more. 19 MS. GUNN: Okay. The last page of the exhibit. 20 MS. GUNN: Mm-hm. 21 MR. McCORMICK: Okay. And this is a document, so the 22 record is clear, on the right-hand side and has a timecard 23 with a few entries, with the time 7/11/15 to 7/24/15. And 24 to the left there is the same timecard, or the same date. 25 Now I'm going to ask you: Up here it says 7:30 a.m.</p>	<p>172</p> <p>1 MR. McCORMICK: Okay. And then when it was ultimately 2 tallied up for payment Monday, Tuesday, and Wednesday was 3 filled in by hand? 4 MR. McCORMICK: 5 MS. GUNN: Mm-hm. 6 MR. McCORMICK: Okay. Okay. Is that in accordance 7 with policy? 8 MS. GUNN: No. 9 MR. McCORMICK: When somebody went -- you see these 10 handwritten numbers in here, 8:00, 12:30, 1:00, is anybody 11 verifying that that's the time the person checked in? 12 MS. GUNN: No. 13 MR. McCORMICK: Okay. And these numbers were prepared 14 by Ms. Foster, right? 15 MS. GUNN: That appears the one on the left? To be her 16 handwriting. 17 MS. ROBESON: The one on the left? 18 MR. McCORMICK: The one on the left. 19 MS. GUNN: The one on the left, yes. 20 MR. McCORMICK: Okay. And was this note on here? Is 21 this your handwriting? It says time added to card 1 to 3 22 days later? 23 MS. GUNN: Mm-hm. 24 MR. McCORMICK: And what are you referring to? 25 MS. GUNN: The fact that the timecard was filled in</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

44 (173 to 176)

<p>173</p> <p>1 after the fact.</p> <p>2 MR. McCORMICK: Okay. So that she was adding</p> <p>3 information for Monday and Tuesday and Wednesday --</p> <p>4 MS. GUNN: Yes.</p> <p>5 MR. McCORMICK: -- Some time after Thursday?</p> <p>6 MS. GUNN: Mm-hm</p> <p>7 MR. McCORMICK: Maybe like on Thursday or Friday?</p> <p>8 MS. GUNN: I didn't check it again after that until the</p> <p>9 payroll was totaled up.</p> <p>10 MR. McCORMICK: Did you talk to her about that?</p> <p>11 MS. GUNN: No. I just put this one back there because</p> <p>12 I -- and this was the reason that she got the final writeup</p> <p>13 that she refused to sign.</p> <p>14 MR. McCORMICK: Let me show you that.</p> <p>15 MS. ROBESON: And what was the final writeup?</p> <p>16 MS. GUNN: The writeup where -- regarding the key</p> <p>17 control, and it was on this --</p> <p>18 MR. McCORMICK: Well, I'm going to show you Exhibit P.</p> <p>19 MS. ROBESON: Okay. I see.</p> <p>20 MR. McCORMICK: Is that exhibit P?</p> <p>21 MS. GUNN: Yes.</p> <p>22 MR. McCORMICK: Okay. And is this -- this is a</p> <p>23 corrective action form that you prepared for her?</p> <p>24 MS. GUNN: Yes.</p> <p>25 MR. McCORMICK: For the complainant?</p>	<p>175</p> <p>1 gave this to Monique on July 16th?</p> <p>2 MS. GUNN: Yes.</p> <p>3 MR. McCORMICK: What was her reaction?</p> <p>4 MS. GUNN: Her reaction was that she did not sign it,</p> <p>5 and she left.</p> <p>6 MR. McCORMICK: Okay. Let me just show you Exhibit M</p> <p>7 which is a performance review. This is, as I understand it,</p> <p>8 is the revised, or --</p> <p>9 MS. GUNN: Correct.</p> <p>10 MR. McCORMICK: -- The second version of a performance</p> <p>11 review.</p> <p>12 MS. GUNN: That is correct.</p> <p>13 MR. McCORMICK: The first one was generated sometime in</p> <p>14 March and then there were revisions to it and changes and</p> <p>15 this is the one that ultimately was signed, right?</p> <p>16 MS. GUNN: Yes.</p> <p>17 MR. McCORMICK: On the last page here that's your</p> <p>18 signature, right?</p> <p>19 MS. GUNN: Yes, it is.</p> <p>20 MR. McCORMICK: And it says 5/22/14, but that's not</p> <p>21 correct is it?</p> <p>22 MS. GUNN: That, no. It was in '15, 5/22/15.</p> <p>23 MR. McCORMICK: Okay. So it was the handwritten</p> <p>24 version of a typo?</p> <p>25 MS. GUNN: Yes.</p>
<p>174</p> <p>1 MS. GUNN: Yes.</p> <p>2 MR. McCORMICK: Okay. Well, why don't you walk me</p> <p>3 through and tell me why you prepared this and what happened.</p> <p>4 MS. GUNN: I prepared this because this had been an</p> <p>5 ongoing issue of keeping accurate time records and that it</p> <p>6 was part of the performance improvement plan that had been</p> <p>7 conveyed to Monique when her review was completed. And it</p> <p>8 was something that was not happening. It was causing</p> <p>9 payroll to have to be delayed sometimes because I didn't</p> <p>10 have the timecard, or the timecard was not completely filled</p> <p>11 out. And I did not feel that an effort was being made to</p> <p>12 follow up on something she had committed to do on her</p> <p>13 review. It's an important part of the job to be putting</p> <p>14 your time down properly and as an employer we are</p> <p>15 responsible for paying the people for the hours that they</p> <p>16 are working. And if they are not reporting the hours that</p> <p>17 they are working properly with the procedure that's in very</p> <p>18 easy of take the timecard, drop it in the machine and put it</p> <p>19 back in the slot, that's jeopardizing our records.</p> <p>20 MS. ROBESON:</p> <p>21 MR. McCORMICK: Now there's some writing on the bottom</p> <p>22 of this form. It says I spoke with Ruth. Whose writing is</p> <p>23 that?</p> <p>24 MS. GUNN: That's not mine. I believe it's Monique's.</p> <p>25 MR. McCORMICK: Okay. Now -- do you remember when you</p>	<p>176</p> <p>1 MR. McCORMICK: Okay. And is that Monique signature</p> <p>2 here or --</p> <p>3 MS. GUNN: Yes, it is.</p> <p>4 MR. McCORMICK: Okay. And you went over this review</p> <p>5 with her, right?</p> <p>6 MS. GUNN: Yes, I did. We will read through this</p> <p>7 section here on the developmental plan of what was supposed</p> <p>8 to happen and what the timing of that was supposed to be.</p> <p>9 MR. McCORMICK: Okay. And you're talking about on Page</p> <p>10 5?</p> <p>11 MS. GUNN: Page 506 which lists the different goals</p> <p>12 that there were to be obtained and the 90 days at which we</p> <p>13 were going to check back and see that progress had been</p> <p>14 made.</p> <p>15 MR. McCORMICK: And specifically with regard to the</p> <p>16 second item in there, improve accuracy of payroll time</p> <p>17 records?</p> <p>18 MS. GUNN: Yes.</p> <p>19 MR. McCORMICK: Did you have a specific conversation</p> <p>20 with Ms. Foster about that item?</p> <p>21 MS. GUNN: Yes, I did. And the timecard --</p> <p>22 MS. ROBESON: I'm sorry. Where are you on this one?</p> <p>23 MS. GUNN: I --</p> <p>24 MS. ROBESON: Are you on the performance, the May</p> <p>25 performance evaluation?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

45 (177 to 180)

<p>177</p> <p>1 MR. McCORMICK: Yes. It's page 5 of 6?</p> <p>2 MS. ROBESON: Oh, okay. I'm sorry. All right. I see</p> <p>3 it. Thanks.</p> <p>4 MR. McCORMICK: Okay.</p> <p>5 MS. GUNN: Mm-hm. We specifically discussed clocking</p> <p>6 in and clocking out at the beginning and the end of the</p> <p>7 shifts and for lunch and that she should take her break away</p> <p>8 from her desk. There was a library or a conference room</p> <p>9 where the employees could go and eat. And that way they</p> <p>10 would not be disturbed, and they could take their lunch</p> <p>11 break without being disturbed and we would know that they</p> <p>12 were away from their desk on their lunch break.</p> <p>13 MR. McCORMICK: You heard testimony earlier this</p> <p>14 morning from the complainant that she, on occasion, or</p> <p>15 regularly would be going out on lunch breaks to pick up</p> <p>16 lunch for everybody in the office. Is that true?</p> <p>17 MS. GUNN: There were several occasions when we did do</p> <p>18 that, and at times the person that went to get lunch was not</p> <p>19 -- the time was not subtractive for them. And we would get</p> <p>20 together a group order so everybody -- a half hour -- they</p> <p>21 like half hour breaks because then they could go home</p> <p>22 earlier, or work an 8 ½ hour day instead of the 9 hours.</p> <p>23 And so we would put the orders together, call them in and</p> <p>24 people would take turns going to get it. Monique did it a</p> <p>25 lot of the times. Frequently my credit card with -- went</p>	<p>179</p> <p>1 disciplinary on the time clock, Exhibit P?</p> <p>2 MS. GUNN: Because it had enough time to demonstrate</p> <p>3 that she was going to start clocking in and out and</p> <p>4 recording her time properly. And it was, by the time clock</p> <p>5 cards it was indicated that she was not going to do it.</p> <p>6 MR. McCORMICK: Okay. Now you heard the testimony</p> <p>7 earlier this morning. Had she been counseled about the need</p> <p>8 to take care of her time cards prior to you talking to her</p> <p>9 about it?</p> <p>10 MS. GUNN: Yes.</p> <p>11 MR. McCORMICK: Okay.</p> <p>12 MS. GUNN: Her previous supervisor, Charisse Young who</p> <p>13 was the office manager wrote her up with my knowledge about</p> <p>14 failing to clock in and out.</p> <p>15 MR. McCORMICK: Okay. And it didn't improve?</p> <p>16 MS. GUNN: It didn't improve.</p> <p>17 MR. McCORMICK: Okay. Now I'm directing your attention</p> <p>18 to Exhibit 2, which is a corrective action form that's dated</p> <p>19 7/16/15. Can you tell me the circumstances of why this form</p> <p>20 was prepared?</p> <p>21 MS. GUNN: This this is the key control issue of not</p> <p>22 logging on the key log when keys were out and there were two</p> <p>23 individuals that were both involved in the (indiscernible)</p> <p>24 project which Monique was coordinating, notifying the owners</p> <p>25 and making sure that they were aware that somebody was</p>
<p>178</p> <p>1 with and bought lunch for the office because we had projects</p> <p>2 we were working on.</p> <p>3 MR. McCORMICK: Now when Monique would take time like</p> <p>4 that to go get lunches which she write in the card, "no</p> <p>5 lunch break"?</p> <p>6 MS. GUNN: Sometimes she would. Sometimes she didn't.</p> <p>7 MR. McCORMICK: Okay. Now after you had your</p> <p>8 conversation with her about the need to improve on her</p> <p>9 efficiency with recording her time, did she say anything?</p> <p>10 Respond in any way?</p> <p>11 MS. GUNN: She agreed to do it as part of the</p> <p>12 performance plan and the review. That this was something</p> <p>13 that needed to be worked on.</p> <p>14 MR. McCORMICK: And this review took place on May 22?</p> <p>15 MS. GUNN: Yes.</p> <p>16 MR. McCORMICK: And following May 22nd and continuing</p> <p>17 for the next couple of weeks did you see any marked</p> <p>18 increase in her ability to keep track of her time using the</p> <p>19 time clock?</p> <p>20 MS. GUNN: No, I did not.</p> <p>21 MR. McCORMICK: Did you see a decrease in her</p> <p>22 performance?</p> <p>23 MS. GUNN: It appears from looking at the time cards</p> <p>24 individually, yes that it was getting worse.</p> <p>25 MR. McCORMICK: Okay. And why did you issue this</p>	<p>180</p> <p>1 coming in their units for the units below to run the lines</p> <p>2 through their units for the units below. The keys went out</p> <p>3 to the contractor and the keys were not logged out.</p> <p>4 MR. McCORMICK: Well, there's a reference here to a Mr.</p> <p>5 Ellis. Who is that?</p> <p>6 MS. GUNN: That is one of the other owners. He lives</p> <p>7 in Building 2, the other building that the work was going on</p> <p>8 in.</p> <p>9 MR. McCORMICK: And what was his circumstance?</p> <p>10 MS. GUNN: He was at home -- or he got a call from his</p> <p>11 son saying that he had gotten a voicemail that somebody was</p> <p>12 going in there and the sun, I believe, was actually in the</p> <p>13 residence at the time when the contractor walked in, and let</p> <p>14 himself in with a key.</p> <p>15 MR. McCORMICK: And was Mr. Ellis concerned or upset</p> <p>16 about that?</p> <p>17 MS. GUNN: He was very concerned about it. Very upset.</p> <p>18 MR. McCORMICK: Okay. And is it there -- how did you -</p> <p>19 - did you conclude that there was one particular employee on</p> <p>20 your staff that allow that to happen?</p> <p>21 MS. GUNN: Yes, I did.</p> <p>22 MR. McCORMICK: And how did you come to that</p> <p>23 conclusion?</p> <p>24 MS. GUNN: Based on my investigation and speaking with</p> <p>25 contractor who had the keys.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

46 (181 to 184)

<p>181</p> <p>1 MR. McCORMICK: Okay. Now, did there come a time when</p> <p>2 you decided that you needed to terminate Ms. Foster?</p> <p>3 MS. GUNN: I did. When she refused to sign her</p> <p>4 corrective action forms for the failure to punch in and out</p> <p>5 and maintain her timecard and for the issue with the key</p> <p>6 control. That the performance that had been requested in</p> <p>7 her performance appraisal was not occurring and that it was</p> <p>8 not going to occur, and it was time to call an end to this.</p> <p>9 MR. McCORMICK: Were you upset over the way that she</p> <p>10 handled the receipt of the disciplines on 7/16/15? Did it</p> <p>11 bother you?</p> <p>12 MS. GUNN: It made me feel that she was being</p> <p>13 insubordinate because it was documentation of the facts on</p> <p>14 the time cards, that she had not followed the proper policy</p> <p>15 to clock in and clock out. And it wasn't a single instance.</p> <p>16 It wasn't a I forgot, and kind of, can you please sign my</p> <p>17 card. It was almost like a flagrant, I'm not going to do</p> <p>18 it.</p> <p>19 MR. McCORMICK: Okay. I'm going to show you what's a</p> <p>20 marked as Exhibit S. And this is stipulated.</p> <p>21 MS. ROBESON: Thank you.</p> <p>22 MR. McCORMICK: You're welcome. Do you recognize this</p> <p>23 form, Ms. Gunn?</p> <p>24 MS. GUNN: Yes, it is.</p> <p>25 MR. McCORMICK: Did you prepare it?</p>	<p>183</p> <p>1 unless everybody has it handy. Do you have it?</p> <p>2 MR. SHAFER: Yeah.</p> <p>3 MS. ROBESON: I have it.</p> <p>4 MR. McCORMICK: You have it?</p> <p>5 MS. ROBESON: Yeah.</p> <p>6 MR. McCORMICK: Now, this is dated July 22nd?</p> <p>7 MS. GUNN: Yes.</p> <p>8 MR. McCORMICK: Okay. Did you prepare it on July 22nd?</p> <p>9 MS. GUNN: Yes, I did.</p> <p>10 MR. McCORMICK: Okay. Or the complainant?</p> <p>11 MS. GUNN: When she returned to work, which would have</p> <p>12 been on the following Monday.</p> <p>13 MR. McCORMICK: Okay. So by July 22nd you had decided</p> <p>14 that she needed to go?</p> <p>15 MS. GUNN: Yes.</p> <p>16 MR. McCORMICK: Okay. In making that decision did you</p> <p>17 consult with anyone else? Or did you talk to anybody else</p> <p>18 about making the decision or was it years alone?</p> <p>19 MS. GUNN: I'm trying to remember. This is several</p> <p>20 years ago. But I generally communicated with the HR</p> <p>21 department and my supervisor at (indiscernible) Norman on</p> <p>22 something like this.</p> <p>23 MR. McCORMICK: Okay. But by the 22nd you had decided</p> <p>24 that you needed to part ways with Ms. Foster, right?</p> <p>25 MS. GUNN: Right.</p>
<p>182</p> <p>1 MS. GUNN: Yes, I did.</p> <p>2 MR. McCORMICK: That your signature?</p> <p>3 MS. GUNN: Mm-hm.</p> <p>4 MR. McCORMICK: And it's a dated 7/27/15?</p> <p>5 MS. GUNN: Mm-hm.</p> <p>6 MR. McCORMICK: And why did you prepare it?</p> <p>7 MS. GUNN: This was the termination form that we needed</p> <p>8 to turn in to take Monique off of the payroll and payout her</p> <p>9 final vacation and sick time. And to document the fact that</p> <p>10 she wasn't no longer an employee and the reason for the</p> <p>11 termination.</p> <p>12 MR. McCORMICK: Okay. I noticed in this box it's an</p> <p>13 involuntary termination?</p> <p>14 MS. GUNN: That's right.</p> <p>15 MR. McCORMICK: And there's an explanation for -- did</p> <p>16 you write that in there?</p> <p>17 MS. GUNN: I did.</p> <p>18 MR. McCORMICK: And are these the reasons why you took</p> <p>19 the action?</p> <p>20 MS. GUNN: Yes, it is.</p> <p>21 MR. McCORMICK: Okay. Now you also prepared a</p> <p>22 termination letter for Ms. Foster, correct?</p> <p>23 MS. GUNN: Yes.</p> <p>24 MR. McCORMICK: And that's Exhibit R. and I'm going to</p> <p>25 give it to you in a second. I will give it to everybody</p>	<p>184</p> <p>1 MR. McCORMICK: Now in the latter there were some</p> <p>2 questions raised about whether or not you offered Ms. Foster</p> <p>3 any rationale or justification for why you were taking the</p> <p>4 action.</p> <p>5 MS. GUNN: I had been directed when I prepared</p> <p>6 termination letters not to put any reason in there to just</p> <p>7 state the fact of what they were going to be paid to, when</p> <p>8 their last day of work was and let it go at that. And that</p> <p>9 information on the COBRA would be coming to them. We do not</p> <p>10 give the reasons out at termination.</p> <p>11 MR. McCORMICK: Okay.</p> <p>12 MS. ROBESON: Who told you to do that?</p> <p>13 MS. GUNN: Our HR office.</p> <p>14 MS. ROBESON: Who's our?</p> <p>15 MS. GUNN: (indiscernible) and Norman. I was an</p> <p>16 employee of (indiscernible) and Norman..</p> <p>17 MS. ROBESON: I see.</p> <p>18 MS. GUNN: I was not an employee of Sumner Village.</p> <p>19 MS. ROBESON: Okay.</p> <p>20 MR. McCORMICK: Now when you had your discussions with</p> <p>21 Ms. Foster on 7/16 about the two disciplines you issued, did</p> <p>22 you, at any point, tell her that her job was in jeopardy if</p> <p>23 she didn't comply?</p> <p>24 MS. GUNN: It's on the bottom of the form.</p> <p>25 MR. McCORMICK: Okay.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

47 (185 to 188)

<p>185</p> <p>1 MS. ROBESON: Which form?</p> <p>2 MS. GUNN: The --</p> <p>3 MR. McCORMICK: This is P. Exhibit P, and can you read</p> <p>4 to me where --</p> <p>5 MS. GUNN: Failure to maintain an accurate record of</p> <p>6 time worked is a violation of company policy which can</p> <p>7 result in termination of employment.</p> <p>8 MR. McCORMICK: And that was provided to her on 7/16?</p> <p>9 MS. GUNN: Mm-hm.</p> <p>10 MR. McCORMICK: And the other disciplinary form with</p> <p>11 regard to the key cards, or the key cards, what does it say</p> <p>12 there? I think it's (indiscernible).</p> <p>13 MS. GUNN: "Further instances of failure to provide</p> <p>14 notice to residents about the need for access to their</p> <p>15 residence according to the Sumner Village policy, or failure</p> <p>16 to properly log out keys will result in further disciplinary</p> <p>17 action, which can include termination of employment."</p> <p>18 MR. McCORMICK: Okay. And these -- both of these forms</p> <p>19 were provided to her on that day, 7/16?</p> <p>20 MS. GUNN: Yes.</p> <p>21 MR. McCORMICK: Did she take copies with her?</p> <p>22 MS. GUNN: I don't recall.</p> <p>23 MR. McCORMICK: But you --</p> <p>24 MS. GUNN: Normally I take multiple copies and give</p> <p>25 them a copy and I allow people to take a copy with them to</p>	<p>187</p> <p>1 MR. McCORMICK: Okay.</p> <p>2 MS. GUNN: I think it was in 2015, the end of 2015 so</p> <p>3 it probably would have been after this September notice.</p> <p>4 MR. McCORMICK: So it --</p> <p>5 MS. GUNN: The September thing that was in the file.</p> <p>6 MR. McCORMICK: Okay. I'm looking for it here.</p> <p>7 MS. GUNN: I'm thinking it was almost December when we</p> <p>8 got it, end of November or December when we received it.</p> <p>9 MR. McCORMICK: Okay. And prior to that certainly</p> <p>10 prior to the decision to terminate her you had no knowledge</p> <p>11 of that?</p> <p>12 MS. GUNN: No.</p> <p>13 MR. McCORMICK: Did any employees at Sumner Village, in</p> <p>14 particular the two individuals who were identified by the</p> <p>15 plaintiff, or the complainant, did any of them ever tell you</p> <p>16 that the complainant was going to file an EEOC charge? Or</p> <p>17 had filed an EEOC charge?</p> <p>18 MS. GUNN: No.</p> <p>19 MR. McCORMICK: Okay. I have nothing further.</p> <p>20 MS. ROBESON: Cross-examination?</p> <p>21 MR. SHAFER: Yes, Your Honor. Okay, Ms. Gunn.</p> <p>22 MS. GUNN: Yes.</p> <p>23 MR. SHAFER: Now you indicated in your testimony that</p> <p>24 Ms. Foster had never brought up anything relating to</p> <p>25 discrimination to you, correct?</p>
<p>186</p> <p>1 write their comments and to return it to me if they feel</p> <p>2 that they want to make comments, and don't feel comfortable</p> <p>3 sitting there writing them right then, they can take it with</p> <p>4 and return it in a day or two.</p> <p>5 MR. McCORMICK: Did she say that's what she wanted to</p> <p>6 do?</p> <p>7 MS. GUNN: I don't recall.</p> <p>8 MR. McCORMICK: Okay. Now there were -- you heard</p> <p>9 testimony earlier today about when Ms. Foster filed a</p> <p>10 complaint with the EEOC. At any time prior to make the</p> <p>11 decision to terminate her were you aware that she had -- or</p> <p>12 was intending to file a claim with the EEOC?</p> <p>13 MS. GUNN: No.</p> <p>14 MR. McCORMICK: Okay. Do you know when Sumner Village</p> <p>15 got official version -- news of the filing of the complaint?</p> <p>16 MS. GUNN: The dates -- when the letters were received</p> <p>17 in the mail.</p> <p>18 MR. McCORMICK: Okay. Letters --</p> <p>19 MS. GUNN: There was a notice that said it had been --</p> <p>20 a claim had been filed and it -- I think was from Baltimore.</p> <p>21 And I provided that to the attorney. That was my first</p> <p>22 notice.</p> <p>23 MR. McCORMICK: Is this Exhibit X?</p> <p>24 MS. GUNN: No. This is the one on the transfer so this</p> <p>25 came after.</p>	<p>188</p> <p>1 MS. GUNN: At the time of her first review that she was</p> <p>2 very unhappy with she brought up, at that time, the</p> <p>3 situation with Susan McDonald. So that was at her first --</p> <p>4 MS. ROBESON: Wait. Okay, the situation was Susan</p> <p>5 McDonald, isn't that a --</p> <p>6 MR. McCORMICK: That's part of the discrimination case,</p> <p>7 Your Honor.</p> <p>8 MS. ROBESON: Yeah, but you brought it -- you raised</p> <p>9 the issue in your question. So I'm going to let it in on</p> <p>10 cross-examination. What was the situation with Susan</p> <p>11 McDonald?</p> <p>12 MS. GUNN: The - Susan was the grounds manager and she</p> <p>13 normally worked outdoors. And during the winter instead of</p> <p>14 her having very little to do because it was winter time, she</p> <p>15 was helping out in the office. And she was sharing an</p> <p>16 office with Monique and the three of us were in there</p> <p>17 talking and Susan was saying how excited that she was to be</p> <p>18 able to be inside, to be able to dress up and be part of, as</p> <p>19 she said it, and office monkey because that's what she did</p> <p>20 back when she was in New York and worked in offices about 10</p> <p>21 or 15 years before that. And I didn't respond to the</p> <p>22 comment, and didn't even -- I didn't take it as anything</p> <p>23 other than she just thought that she was -- that she was</p> <p>24 glad to be there and be inside and be with people and be</p> <p>25 doing this for a period of time. Nothing was said at that</p>



Transcript of Administrative Hearing  
Conducted on April 20, 2018

48 (189 to 192)

<p>189</p> <p>1 time. Nothing was said later until Susan was actually -- I 2 think she may have already given her notice to move to San 3 Diego, and Monique was getting a review, and at that time, 4 Monique brought up the comment. That she thought that was a 5 negative comment and that I should have done something about 6 it.</p> <p>7 MS. ROBESON: Any --</p> <p>8 MR. SHAFER: So she did bring up something that --</p> <p>9 about discrimination that she was concerned about.</p> <p>10 MS. GUNN: That she felt that it was an offensive 11 comment. Had the comment come up and Susan -- and it had 12 been, she could have said something to Susan at the time. 13 She could've said something to me at the time. She could 14 have said something to me privately later. But she did not. 15 She waited until she was getting her review, which she was 16 not happy with.</p> <p>17 MR. SHAFER: Well, so on my, this line of questioning 18 was simply --</p> <p>19 MS. ROBESON: Wait, which review?</p> <p>20 MS. GUNN: The first one.</p> <p>21 MS. ROBESON: Is that review --</p> <p>22 MS. GUNN: The one in --</p> <p>23 MS. ROBESON: -- In the record?</p> <p>24 MS. GUNN: No.</p> <p>25 MS. ROBESON: The first one?</p>	<p>191</p> <p>1 MS. ROBESON: Okay. Go ahead.</p> <p>2 MR. SHAFER: So just to be clear. On direct you 3 explicitly said that you had never heard anything from 4 Foster about discrimination. And right now you're saying 5 that actually you did. It was during the review, the annual 6 review in March.</p> <p>7 MS. GUNN: It was not discrimination. It was a comment 8 that she found offensive.</p> <p>9 MR. SHAFER: So the -- the office monkey --</p> <p>10 MS. ROBESON: Well -- okay. Keep going.</p> <p>11 MR. SHAFER: Sorry. So the office monkey comment that 12 she found racially insensitive, you're saying that that was 13 not related to discrimination?</p> <p>14 MS. GUNN: The way it was stated to me, she said it was 15 an offensive comment just as if somebody had said something 16 else to someone that was offensive. A sexually offensive 17 comment or something like that. It was a comment that she 18 found to be offensive. And it -- I would address it with 19 Susan had to Susan still been there. She was not there 20 anymore.</p> <p>21 MR. SHAFER: Okay. So I just -- I guess I don't 22 understand how the term office monkey would be generally 23 offensive, as opposed to part to particularly offensive.</p> <p>24 MS. GUNN: I'm not distinguishing that. I'm saying 25 that she didn't bring it up as a problem so that -- early</p>
<p>190</p> <p>1 MS. GUNN: No, because I threw that review away because 2 we -- I thought we had resolved the issue of my looking at 3 her list of things that she was doing and what she thought 4 she did really well, and I went back, and I redid her 5 review.</p> <p>6 MS. ROBESON: So what was --</p> <p>7 MS. GUNN: So the first review went away. She kept a 8 copy of it. I did not. I threw it away.</p> <p>9 MS. ROBESON: Okay. Was it -- was the overall rating 10 under?</p> <p>11 MS. GUNN: It was the 2.7. It was the rating that was 12 the 2.7.</p> <p>13 MS. ROBESON: And then you increased it to a three I 14 think?</p> <p>15 MS. GUNN: Yes. Yes to a satisfactory rating. She was 16 just slightly below satisfactory, and it went up to a 17 satisfactory.</p> <p>18 MS. ROBESON: And that was based on what?</p> <p>19 MS. GUNN: That was based on her communicating to be 20 some things that she thought that I wasn't aware of about 21 what she was doing in her job.</p> <p>22 MS. ROBESON: What's three? Is that a satisfactory?</p> <p>23 MS. GUNN: Satisfactory, mm-hm. And the majority --</p> <p>24 MS. ROBESON: What's the highest?</p> <p>25 MS. GUNN: Five.</p>	<p>192</p> <p>1 that she was offended by it for me to do something. I 2 didn't even think of it as an issue. My son is half black, 3 I'm married to a black man. And I called -- you know, he 4 was -- we refer to all the little kids in the family of my 5 sisters and everything is you little monkey. And it never 6 occurred to me that it was a racially insensitive thing 7 until Monique brought it up during her review. And then 8 it's okay, I didn't know. You didn't say anything.</p> <p>9 MR. SHAFER: Okay. That's a -- I mean that's your 10 answer. I'll -- so is it true that Ms. Foster didn't work 11 for Lichtman and Norman, that's true?</p> <p>12 MS. GUNN: True.</p> <p>13 MR. SHAFER: Okay. And so the Lichtman and Norman 14 policy regarding harassment would apply to her?</p> <p>15 MS. GUNN: It would apply to her, yes. Because she 16 could have gone to my supervisor and complained.</p> <p>17 MR. SHAFER: But --</p> <p>18 MS. GUNN: I had a community manager who supervised me 19 on that site and she could have gone to the community 20 manager at Lichtman and Norman and complained.</p> <p>21 MR. SHAFER: So at Summer Village she had a certain 22 policy that she followed from the handbook when it came to 23 harassment or any kind of problems. She had that option, or 24 she had the option of going with Lichtman and Norman's 25 policy?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

49 (193 to 196)

<p>193</p> <p>1 MS. GUNN: Right.</p> <p>2 MR. SHAFER: Okay. So just to turn to the Sumner</p> <p>3 Village personnel policy handbook, that's Exhibit A. Okay.</p> <p>4 So -- you have that in front of you by any chance? Sorry.</p> <p>5 MR. McCORMICK: It would be (indiscernible)</p> <p>6 MS. GUNN: I think I do someplace.</p> <p>7 MS. ROBESON: What page?</p> <p>8 MR. SHAFER: It's Page 10.</p> <p>9 MS. GUNN: Okay.</p> <p>10 MR. SHAFER: Okay so we previously read it but isn't it</p> <p>11 true that any missed -- it states in the handbook any missed</p> <p>12 punches or punches made in error must be initialed by</p> <p>13 manager before payment for those hours work can be made. Is</p> <p>14 that true?</p> <p>15 MS. GUNN: Yes. That's what it says.</p> <p>16 MR. SHAFER: Did Ms. Foster get paid for the hours that</p> <p>17 she worked? Or did you withhold those?</p> <p>18 MS. GUNN: I did not withhold them.</p> <p>19 MR. SHAFER: Okay. Now when it comes to the time cards</p> <p>20 here, that's Exhibit L. And we're going to go to the last</p> <p>21 one where you made the comparison.</p> <p>22 MS. GUNN: Mm-hm.</p> <p>23 MR. SHAFER: So the dates on that one, 7/11/15 to</p> <p>24 7/24/15. Now, despite your concerns related to the timecard</p> <p>25 is that your -- are those your initials by each one of the</p>	<p>195</p> <p>1 you've got initials for that one?</p> <p>2 MS. GUNN: Yes. I have one initial over on the side.</p> <p>3 MR. SHAFER: Okay. So all of manual entries were</p> <p>4 initialed by you on this timecard?</p> <p>5 MS. GUNN: No.</p> <p>6 MR. SHAFER: I'm sorry which --</p> <p>7 MS. GUNN: I initialed the total of the time. I did</p> <p>8 not -- and I initialed the Tuesday at the bottom, 7:55.</p> <p>9 MR. SHAFER: So this -- was --</p> <p>10 MS. GUNN: That's for the lunch, the missed lunch</p> <p>11 punch. The rest of that is just totaling the timecard.</p> <p>12 MR. SHAFER: Okay. So I'm missing the significance</p> <p>13 then of the caret. Is that what my problem is?</p> <p>14 MS. GUNN: Yes.</p> <p>15 MR. SHAFER: Okay. So that doesn't actually --</p> <p>16 MS. GUNN: Mean that I'm initialing all those punches.</p> <p>17 No.</p> <p>18 MR. SHAFER: No, despite the --</p> <p>19 MS. GUNN: Right.</p> <p>20 MR. SHAFER: -- Size of the -- okay. But it is a</p> <p>21 practice, it was part policy for -- if a card was manually</p> <p>22 entered then the supervisor would initial it?</p> <p>23 MS. GUNN: Yes, if it was brought to us to be signed.</p> <p>24 MR. SHAFER: Right.</p> <p>25 MS. GUNN: I didn't go to the timecard rack and sign</p>
<p>194</p> <p>1 manual entries?</p> <p>2 MS. GUNN: Yes.</p> <p>3 MR. SHAFER: Okay and it was policy if it was --</p> <p>4 MS. ROBESON: You're on 7/11 to 7/24?</p> <p>5 MR. SHAFER: Yeah. It's at the very last one, Your</p> <p>6 Honor.</p> <p>7 MS. ROBESON: Yeah, okay.</p> <p>8 MS. GUNN: Yes, I initialed at the top by the 7:30. I</p> <p>9 initialed under the timecard's added one to three days later</p> <p>10 and I initialed for the total of 40 hours plus of the 2.25</p> <p>11 hours of overtime on -- that she was paid for that week.</p> <p>12 It's not an individual initial for all of those times. It's</p> <p>13 an initial for -- that I did that, totaled that timecard.</p> <p>14 MR. SHAFER: I'm sorry. So the timecard that has all</p> <p>15 the entries and it --</p> <p>16 MS. GUNN: Mm-hm.</p> <p>17 MR. SHAFER: You've got your initials to the right of</p> <p>18 the top block, right?</p> <p>19 MS. GUNN: Yes. That means that was the total for that</p> <p>20 week.</p> <p>21 MR. SHAFER: And you've got a little kind of caret</p> <p>22 looking thing that encompasses the entire block. Is that</p> <p>23 correct?</p> <p>24 MS. GUNN: Yes.</p> <p>25 MR. SHAFER: Okay. And then the one on the bottom</p>	<p>196</p> <p>1 timecards that were not brought to me.</p> <p>2 MR. SHAFER: Right. Okay. Now just to be clear, as</p> <p>3 per the policy it was pretty straightforward that if they</p> <p>4 weren't completed properly then they weren't to be paid,</p> <p>5 correct?</p> <p>6 MS. GUNN: It is.</p> <p>7 MR. SHAFER: Does that mean that you were in violation</p> <p>8 of policy and signing these cards?</p> <p>9 MS. GUNN: I was trying to resolve it in another manner</p> <p>10 by doing the counseling's with Monique to give her the</p> <p>11 opportunity to start to record your time properly instead of</p> <p>12 not paying her because her timecard was not sign well, I</p> <p>13 understand that, but -- so in the policy handbook you don't</p> <p>14 have that latitude. But maybe through practice you have</p> <p>15 that latitude.</p> <p>16 MS. GUNN: Through practice and as a general manager I</p> <p>17 had the ability to work with employees to try and improve</p> <p>18 their performance without terminating them.</p> <p>19 MR. SHAFER: Okay. Let's see. We're going to look at</p> <p>20 the annual review. That's Exhibit M. And we're going to go</p> <p>21 back to, I think it was Page 5. Page 5 has the development</p> <p>22 plan.</p> <p>23 MS. GUNN: Yes.</p> <p>24 MS. ROBESON: This is M?</p> <p>25 MR. SHAFER: M as in Mary. And will you please, Ms.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

50 (197 to 200)

<p>197</p> <p>1 Gunn, read the sentence above all the boxes? The first 2 sentence on the page. 3 MS. GUNN: The first sentence on the -- on which page? 4 Oh the back? 5 MR. McCORMICK: Page 5. 6 MR. SHAFER: Page 5, right. 7 MS. GUNN: "Supervisors and employees need to work 8 together on at least two areas of development based on 9 identified areas of development. The progress achieved 10 would be evaluated at the time of the next review." 11 MR. SHAFER: Okay and so the timeline for the improved 12 actually of payroll time records was 90 days, correct? 13 MS. GUNN: Correct. 14 MR. SHAFER: Thank you. And Ms. Foster was terminated 15 prior to the expiration of that 90 days, is that correct? 16 MS. GUNN: Yes. 17 MR. SHAFER: Thank you. Okay. We're going to go to Q. 18 So is Q the corrective action form -- will you please -- do 19 you have it in front of you? I'm sorry. 20 MS. GUNN: I do now, yes. 21 MR. SHAFER: Okay. So the corrective action form, just 22 under the date it states, "date of the problem". What is 23 the -- what is the word after date of the problem? 24 MS. GUNN: Ongoing. 25 MR. SHAFER: Ongoing. Okay. Am I on Q or --</p>	<p>199</p> <p>1 MR. SHAFER: So that's pretty general. 2 MS. GUNN: There were two people in the office who 3 could have given out keys. They were both present during 4 both of the conversations and it was to make sure that they 5 were aware of signing out the keys, no matter if it was an 6 emergency or not and -- 7 MR. SHAFER: So the thing that I'm asking is, this 8 indicates that it's an ongoing problem. It says that she 9 has been warned before and it provides just kind of general 10 averments that she has heard about this before. My question 11 is it was Ms. Foster, because there's nothing else in the 12 record that states that she had violated this policy prior 13 to this corrective action form. So was it actually ongoing 14 and had she been warned before of her violation of this key 15 policy? 16 MS. GUNN: Yes. There were missing signatures for keys 17 that were checked out for HVAC projects. There were keys 18 that were not signed out that were given out for a balcony 19 project and that was ongoing. And those keys were issued to 20 the contractors by Monique. 21 MR. SHAFER: And none of which made it into the record. 22 And none of which created a corrective action form? 23 MS. GUNN: Now because at the time this came up I had 24 been away from the property for over a year, so I did not 25 have access to paper records where they were keeping track</p>
<p>198</p> <p>1 (indiscernible) yeah, okay. So in the middle of the page it 2 states that has the employee been warned of this or a 3 similar problem -- I'm assuming before, before this time. 4 Not like this time when it's on the page, but I'm assuming 5 that it's asking whether they have been warned it before. 6 MS. GUNN: Yes. 7 MR. SHAFER: And what is the answer to that one? 8 MS. GUNN: It's under the if yes, how. Maintaining key 9 control measures -- 10 MR. SHAFER: No. I'm sorry. I mean what's the answer 11 to that one sentence -- is yes or no chosen? 12 MS. GUNN: It was not chosen. But I answered under 13 yes. 14 MR. SHAFER: I think yes is bolded out. Isn't it true 15 that it's bolded out? 16 MS. GUNN: Yeah. It looks like it is. It could have 17 been on the -- it was done on the computer and then printed 18 out. 19 MR. SHAFER: Right. And I see what you're saying that 20 if you have something other, if yes, how, then that 21 obviously answering yes, yeah. Okay. So the reasons or the 22 methods of how she was previously warned about this issue, 23 has been discussed is the end of that sentence under that 24 period has been discussed with office staff several times. 25 MS. GUNN: Mm-hm.</p>	<p>200</p> <p>1 of who signed out the keys. 2 MR. SHAFER: Okay. So none of those incidences we can 3 see were referenced in this corrective action form, correct? 4 MS. GUNN: No. No. 5 MR. SHAFER: Okay. And I'm sorry, I'm just verifying, 6 making sure that I didn't miss -- and so just to be clear, 7 you did not challenge your unemployment benefits based on 8 misconduct or gross misconduct? 9 MS. GUNN: Correct. 10 MR. SHAFER: Okay. I believe -- all right I believe I 11 don't have any more questions. 12 MS. ROBESON: All right. I have a few that were raised 13 by his cross-examination. On the timesheet, and I think 14 it's Exhibit L, the timesheet 7/11/15 to 7/24/15. And the 15 one on the right says Thursday, 7:30 a.m. 16 MS. GUNN: That's correct. That's the same Thursday -- 17 MS. ROBESON: Can you provide a date for that Thursday? 18 MS. GUNN: Well, 11 of -- 19 MS. ROBESON: The 25th, I think, was the Monday she got 20 back. 21 MS. GUNN: Four -- you start on a Saturday, right? 22 Fourteenth, 15, 16. It would have been the 16th, right? 23 Isn't that what you have? 24 MR. McCORMICK: No. That's -- you start on a Saturday, 25 right?</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

51 (201 to 204)

<p>201</p> <p>1 MS. GUNN: We started on a Saturday. Oh, okay. So</p> <p>2 Saturday --</p> <p>3 MR. McCORMICK: Saturday, Sunday, Monday, Tuesday --</p> <p>4 MS. GUNN: So that's it the 11th, 12th, 13th, 14th,</p> <p>5 15th, 16th. It would have been the 16th; 7/16.</p> <p>6 MS. ROBESON: So you wrote that the day you gave her</p> <p>7 the corrective action form? Is that correct?</p> <p>8 MS. GUNN: Yeah.</p> <p>9 MS. ROBESON: Okay. And then -- so you gave her the</p> <p>10 corrective action form on 7/16. You decided to fire her on</p> <p>11 7/22, correct?</p> <p>12 MS. GUNN: Mm-hm.</p> <p>13 MS. ROBESON: Now the corrective action form -- and</p> <p>14 when, according to you, when were the incidences of the key</p> <p>15 lost? The -- not controlling the key.</p> <p>16 MS. GUNN: (Indiscernible)</p> <p>17 MS. ROBESON: Give Ms. Dipaulo --</p> <p>18 MS. GUNN: And Mr. Ellis, and that was on June 30th.</p> <p>19 MS. ROBESON: And Mr. Ellis --</p> <p>20 MS. GUNN: Same day.</p> <p>21 MS. ROBESON: Both were 6/30?</p> <p>22 MS. GUNN: Yes, because it was the same project.</p> <p>23 MS. ROBESON: So then you gave her the CAC, or what</p> <p>24 ever --</p> <p>25 MS. GUNN: Mm-hm.</p>	<p>203</p> <p>1 MS. GUNN: Yes.</p> <p>2 MS. ROBESON: And then 7/22 which was six days later</p> <p>3 you decided to terminate her.</p> <p>4 MS. GUNN: Yes. I hadn't gotten the signed corrective</p> <p>5 action form back with her comments on it.</p> <p>6 MS. ROBESON: You had not?</p> <p>7 MS. GUNN: I had not. No.</p> <p>8 MS. ROBESON: But she was sick.</p> <p>9 MS. GUNN: No, she was in the office four days after</p> <p>10 that. She was there --</p> <p>11 MS. ROBESON: I thought she went out on --</p> <p>12 MS. GUNN: -- Thursday, Friday --</p> <p>13 MS. ROBESON: -- Or 7/22. Wait, let me just -- I'm not</p> <p>14 challenging you.</p> <p>15 MS. GUNN: No, okay.</p> <p>16 MS. ROBESON: I'm just trying to get this straight.</p> <p>17 Okay. Sometimes when you try to read it from the transcript</p> <p>18 and people use he or she it's not as clear.</p> <p>19 MS. GUNN: Right. Okay.</p> <p>20 MS. ROBESON: Okay. So she was in the office 7/16.</p> <p>21 MS. GUNN: Yes.</p> <p>22 MS. ROBESON: And that's when you checked the timecard.</p> <p>23 Is that what generated the corrective action notice?</p> <p>24 MS. GUNN: Yes. Yes.</p> <p>25 MS. ROBESON: And did you meet that day?</p>
<p>202</p> <p>1 MS. ROBESON: -- On 7/16. And then she was in the</p> <p>2 office between 7/16 and -- when did you go out with the</p> <p>3 strep throat, 7/22?</p> <p>4 MS. FOSTER: Yes, ma'am.</p> <p>5 MS. ROBESON: So you went in the office on 7 -- you</p> <p>6 were out of the office on 7/22, which is the day you checked</p> <p>7 her timecard when she was out of the office. Correct?</p> <p>8 MS. GUNN: No, it was the next -- a week later that she</p> <p>9 was out of the office.</p> <p>10 MS. ROBESON: Oh, I'm sorry. And you checked the</p> <p>11 timecard on 7/22? The same day you did --</p> <p>12 MS. GUNN: (Indiscernible)</p> <p>13 MS. ROBESON: I'm just -- (crosstalk) I just need a</p> <p>14 timeline.</p> <p>15 MS. GUNN: Okay.</p> <p>16 MS. ROBESON: The two key incidents were 6/30/15,</p> <p>17 correct?</p> <p>18 MS. GUNN: Correct.</p> <p>19 MS. ROBESON: Okay.</p> <p>20 MS. GUNN: July 16 I checked the timecard. That was</p> <p>21 the Thursday and did the writeups.</p> <p>22 MS. ROBESON: Okay. So the 16th was the corrective</p> <p>23 action form.</p> <p>24 MS. GUNN: Correct.</p> <p>25 MS. ROBESON: And checking the timecard.</p>	<p>204</p> <p>1 MS. GUNN: Yes.</p> <p>2 MS. ROBESON: Okay. Then -- and then when did she</p> <p>3 leave because of the strep throat?</p> <p>4 MS. GUNN: That was the next week on Wednesday. She</p> <p>5 did not come in.</p> <p>6 MS. ROBESON: And that was 7/22?</p> <p>7 MS. GUNN: Correct.</p> <p>8 MS. ROBESON: Which is also the day you decided to fire</p> <p>9 her?</p> <p>10 MS. GUNN: Yes.</p> <p>11 MS. ROBESON: Now, what happened in those six days?</p> <p>12 MS. GUNN: In those six days there had been no response</p> <p>13 to making any changes on the punching in or punching out</p> <p>14 because she had not -- she refused to acknowledge the</p> <p>15 communication. And even though it was not the full 90 days</p> <p>16 there was a very strong indication that she had no intention</p> <p>17 of following up with the timecard policy. And what people</p> <p>18 write on their timecard I was responsible to pay them, so</p> <p>19 that -- they needed to punch in and punch out. And</p> <p>20 everybody else, who was hourly, was doing it. All of the</p> <p>21 other employees were doing it.</p> <p>22 MS. ROBESON: Okay. But -- and when did you receive</p> <p>23 the -- you received the complaints about the keys on June</p> <p>24 30th?</p> <p>25 MS. GUNN: Mm-hm.</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

52 (205 to 208)

<p>205</p> <p>1 MS. ROBESON: Okay. All right.</p> <p>2 MS. GUNN: And I did -- I was doing the investigation</p> <p>3 during that time to find out exactly where the keys were and</p> <p>4 how they had gotten there.</p> <p>5 MS. ROBESON: Okay. Now, I'm going to give him -- Mr.</p> <p>6 Shafer, a chance to cross -- or to cross-examine his</p> <p>7 questions from my questions. And then I'll give you a</p> <p>8 chance to redirect.</p> <p>9 MR. McCORMICK: Okay.</p> <p>10 MR. SHAFER: Your -- you know, I think it's pretty</p> <p>11 clear.</p> <p>12 MS. ROBESON: Okay.</p> <p>13 MR. SHAFER: Yeah. Go ahead.</p> <p>14 MR. McCORMICK: I have nothing further.</p> <p>15 MS. ROBESON: I guess the only -- I'm still struggling</p> <p>16 with this one thing. So I'm going to ask you.</p> <p>17 MS. GUNN: Mm-hm.</p> <p>18 MS. ROBESON: I mean you gave her a satisfactory</p> <p>19 evaluation in May. So you kind of went from 0 to 60 in two</p> <p>20 months. And she got a -- did I hear from your questioning</p> <p>21 earlier this morning she got an increase during that time?</p> <p>22 MS. GUNN: Her job responsibilities had changed during</p> <p>23 that time. She initially was hired just to be the service</p> <p>24 center coordinator. And just take care of the maintenance</p> <p>25 tickets. We offered the homeowners the ability to have</p>	<p>207</p> <p>1 more questions. Questions based on my questions?</p> <p>2 MR. SHAFER: No follow-up, Your Honor.</p> <p>3 MS. ROBESON: Redirect?</p> <p>4 MR. McCORMICK: None.</p> <p>5 MS. ROBESON: Okay. Ms. Foster, you have rebuttal.</p> <p>6 Art -- you finished your case in chief Mr. --</p> <p>7 MR. McCORMICK: Yes.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. SHAFER: Yes. Your Honor, can I have a moment to</p> <p>10 confer with my client?</p> <p>11 MS. ROBESON: Certainly.</p> <p>12 MR. SHAFER: I will be very brief.</p> <p>13 MS. ROBESON: Yeah, I'll leave, and you can -- well you</p> <p>14 --</p> <p>15 MR. SHAFER: We'll be going out.</p> <p>16 MS. ROBESON: Tell them when it -- we'll go off the</p> <p>17 record.</p> <p>18 (OFF THE RECORD)</p> <p>19 (ON THE RECORD)</p> <p>20 MS. ROBESON: All right. We're back on the record.</p> <p>21 MR. SHAFER: Just very briefly, Your Honor. Ms.</p> <p>22 Foster, you heard testimony that Ms. Gunn stated that her</p> <p>23 reason for terminating you was related to performance. Why</p> <p>24 do you believe that you were terminated?</p> <p>25 MS. FOSTER: Clear retaliation. Basically all I heard</p>
<p>206</p> <p>1 light bulbs changed and things like that, small maintenance</p> <p>2 tasks done in their units. And so her job was to get those</p> <p>3 calls from the owners and to dispatch the technicians. If</p> <p>4 there were leaks that were affecting multiple units to do</p> <p>5 that. And she started to -- when Charisse left she was</p> <p>6 starting to work with the payables, the accounts receivable</p> <p>7 as they -- accounts Payable as they come in and do that.</p> <p>8 That (indiscernible) the coding and the scanning and things</p> <p>9 like that. So that was part of when she got the first</p> <p>10 review she came in with a list of things that she said these</p> <p>11 are things that I'm doing and why I think I should get more</p> <p>12 money. And she had not been given a raise since she got</p> <p>13 there. And I said okay. Point taken. You brought it to my</p> <p>14 attention --</p> <p>15 MS. ROBESON: Okay.</p> <p>16 MS. GUNN: -- That you are doing additional duties and</p> <p>17 so you should get more money.</p> <p>18 MS. ROBESON: Is that -- is the job description --</p> <p>19 that's not admitted? Okay.</p> <p>20 MS. GUNN: So that's why --</p> <p>21 MS. ROBESON: All right.</p> <p>22 MS. GUNN: -- And that's why I gave her more money</p> <p>23 because she was actually doing -- she had more</p> <p>24 responsibilities for her job.</p> <p>25 MS. ROBESON: Okay. Questions based -- I won't ask any</p>	<p>208</p> <p>1 today was about the timecard, the time clock. And my</p> <p>2 position and the role that I played was -- it outweighed the</p> <p>3 time clock many times and many days over. So it was clear</p> <p>4 retaliation for being in touch with the board and being in</p> <p>5 touch with the EEOC to get issues resolved.</p> <p>6 MR. SHAFER: Okay. Thank you, Your Honor.</p> <p>7 MS. ROBESON: Did Ms. Gunn give you a time frame in</p> <p>8 which you had to get back -- you had to give her back those</p> <p>9 corrected -- corrective action forms?</p> <p>10 MS. FOSTER: Never.</p> <p>11 MS. ROBESON: All right.</p> <p>12 MS. FOSTER: That wasn't her suggestion. That's</p> <p>13 objection actually came from Revay.</p> <p>14 MS. ROBESON:</p> <p>15 MS. ROBESON:</p> <p>16 MS. ROBESON:</p> <p>17 MS. ROBESON:</p> <p>18 MS. ROBESON:</p> <p>19 MS. ROBESON:</p> <p>20 MS. ROBESON: What suggestion?</p> <p>21 MS. FOSTER: For me to -- if I didn't agree with what</p> <p>22 was being said to just make some notes on it and request a</p> <p>23 second meeting or something, that was Revay's suggestion.</p> <p>24 That didn't come from her. Revay Crocker.</p> <p>25 MS. ROBESON: Well, there is a signature for your -- I</p>

Transcript of Administrative Hearing  
Conducted on April 20, 2018

53 (209 to 212)

<p>209</p> <p>1 mean there is a line for your signature on the form.</p> <p>2 MS. FOSTER: Right. Yes, ma'am.</p> <p>3 MS. ROBESON: So you refused to sign?</p> <p>4 MS. FOSTER: Yes, ma'am because I did not give those</p> <p>5 keys out.</p> <p>6 MS. ROBESON: Okay. And -- okay. All right. Do you</p> <p>7 have any questions of Ms. Foster?</p> <p>8 MR. McCORMICK: No.</p> <p>9 MS. ROBESON: Okay. Anything else?</p> <p>10 MR. SHAFER: That's all we have, Your Honor.</p> <p>11 MS. ROBESON: All right. I have -- you have two</p> <p>12 choices. I can leave the record open to get a copy of the</p> <p>13 document from the EEOC, or -- and, if you wish you can defer</p> <p>14 closing statements until that. You can submit written</p> <p>15 closing statements at that time. Or, you can make closing</p> <p>16 statements today and wait if the document comes await that</p> <p>17 to make your closing statements.</p> <p>18 MR. McCORMICK: I would prefer to defer it only because</p> <p>19 one of the issues you're going to want to hear us one is the</p> <p>20 but-for motivating factor standard.</p> <p>21 MS. ROBESON: I -- okay.</p> <p>22 MR. McCORMICK: Which we're going to write on anyway.</p> <p>23 So --</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MR. SHAFER: And that makes sense to me too, Your</p>	<p>211</p> <p>1 \$50.</p> <p>2 MR. McCORMICK: Ten business days is going to push it</p> <p>3 up to May. Do you want to go by the end of May to have the</p> <p>4 briefing done?</p> <p>5 MS. ROBESON: Now, 10 business days -- let's see, 10</p> <p>6 business days.</p> <p>7 MS. GUNN: Today's the 20th.</p> <p>8 MS. ROBESON: Oh yeah, May 1st. Right, on May 1st.</p> <p>9 MR. McCORMICK: Yeah. So can we pick a date toward the</p> <p>10 end of May for the briefing and then we would brief the</p> <p>11 causation standard and will have this resolved and --</p> <p>12 MR. SHAFER: Yeah, I think that's a date that works for</p> <p>13 me too, Your Honor.</p> <p>14 MS. ROBESON: We could do the 21st if that's not -- I</p> <p>15 don't have my -- a calendar that -- is that Memorial Day?</p> <p>16 Do you know?</p> <p>17 MR. McCORMICK: I think Memorial Day maybe after that.</p> <p>18 MS. ROBESON: I would assume it's the 28th. But --</p> <p>19 MR. SHAFER: Yeah, it's the 28th is Memorial Day.</p> <p>20 MS. ROBESON: Okay. So what I'll say is closing</p> <p>21 statements are due on May 21st. So the CCOC exhibit is due</p> <p>22 on May 7th -- I mean the EEOC.</p> <p>23 MR. SHAFER: Right.</p> <p>24 MS. ROBESON: When you do too many different types of</p> <p>25 cases at one time -- I'm beginning to mix together. Okay.</p>
<p>210</p> <p>1 Honor.</p> <p>2 MS. ROBESON: Okay. So what we'll do today is I'm</p> <p>3 going to adjourn the hearing. I'm going to leave the record</p> <p>4 open solely for receipt of the document, if it comes, from</p> <p>5 the EEOC. And so how long? Do you have any guesstimate of,</p> <p>6 you know, I don't want to leave it open for six months?</p> <p>7 MR. SHAFER: I completely understand. I mean I'm going</p> <p>8 to go to the office physically and try to get it, you know,</p> <p>9 day of. But I think two weeks is reasonable, and I think I</p> <p>10 should be able to resolve it by then.</p> <p>11 MS. ROBESON: Okay. So two weeks from today would be</p> <p>12 May 4th. I'll tell you what, let me make it do on May 7th</p> <p>13 because I'm going to be gone May 4th and my clock starts</p> <p>14 running. So May 7th it will be due.</p> <p>15 MR. SHAFER: Okay.</p> <p>16 MS. ROBESON: How long do you think you need for -- I'm</p> <p>17 going to let that document, on May 7th but then give you --</p> <p>18 do you need additional time to do your closing</p> <p>19 statements?</p> <p>20 MR. McCORMICK: Will we be able to get the transcript?</p> <p>21 And how fast can we get --</p> <p>22 MS. ROBESON: You will have the transcript within 10</p> <p>23 business days. Unless one of the parties wants to put a</p> <p>24 rush. I can't get a rush order on it, but it's \$50, and we</p> <p>25 don't pay for the rush order. So it's 10 business days or</p>	<p>212</p> <p>1 So that is due on 5/7. The document from EEOC and then the</p> <p>2 closing statements will be due on 5/21. Okay. And I have</p> <p>3 45 days. So the record will close on 5/21. I have 45 days</p> <p>4 to write a recommendation to the HRC. We try not to use the</p> <p>5 whole time. This time, at least, I can't really start until</p> <p>6 I get the transcript but, you know, there is some lead time,</p> <p>7 so we will try not to use the entire 45 days, but that is</p> <p>8 (indiscernible) and you will be notified when I issue my</p> <p>9 report and recommendation. Okay. Then, you can follow</p> <p>10 through. We transfer the files; my jurisdiction leaves us,</p> <p>11 and you can follow through with the HRC as to what the next</p> <p>12 actions are. Okay?</p> <p>13 MR. SHAFER: Okay.</p> <p>14 MS. ROBESON: All right. And we publish it online too.</p> <p>15 So it will be on our website. We publish all our decisions</p> <p>16 online. Thank you.</p> <p>17 MR. SHAFER: Thank you, Your Honor.</p> <p>18 MS. FOSTER: Thank you.</p> <p>19 (Off the record 3:48 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

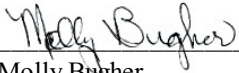
Transcript of Administrative Hearing  
Conducted on April 20, 2018

54 (213 to 216)

213

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I, MOLLY BUGHER, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Molly Bugher

DATE: May 1, 2018