



City of Spokane

July 13, 2011

Jeff Harvey
Spokane, WA

Via Hand Delivery

RE: Termination of Employment

Dear Mr. Harvey,

This matter came before the Chief of Police and City Administrator after you had an encounter with a Fish and Wildlife Officer that resulted in your being charged with the crime of Obstructing a Law Enforcement Officer in violation of RCW 9A.76.020.

On January 22, 2011, you were stopped by Fish and Wildlife Officer Spurbeck to investigate a report from a citizen that you and/or your boys were hunting after hours. Officer Spurbeck's police report and the Internal Affairs investigation yielded the following information:

1. You exited your vehicle in an aggressive and argumentative manner;
2. By your actions and demeanor, you threatened Officer Spurbeck sufficiently for him to request backup;
3. You failed to obey Officer Spurbeck's commands;
4. You physically blocked the officer from contacting the occupants of the vehicle;
5. You had to be placed in an escort hold and physically moved away from the vehicle;
6. You attempted to hinder Officer Spurbeck's investigation and prevent him from speaking to the young people in your vehicle;
7. In the Administrative Review Panel (ARP) report it is stated that Officer Spurbeck commented that your actions put the Spokane Police Department in a bad light;
8. In the ARP report it is stated that "the witness statements to this incident appear rehearsed";
9. The story made local television and print media news that was unfavorable to the Spokane Police Department.

The ARP SUSTAINED findings for: *Conduct Unbecoming an Officer in violation of Ethical Standards 4.4, 4.8, and 4.9; SPD Policy 340.3.2(k) and Civil Service Rule IX,*

"Spokane – Near Nature, Near Perfect"

Section 5 (f). The ARP recommended disciplinary suspension as a sanction for these policy violations. The ARP serves in an advisory capacity, and we are not bound by their findings or disciplinary recommendation. While we agree with their conclusion regarding the policy violations, we do not believe that their disciplinary recommendation is appropriate given the serious nature of your violations. Additionally, the ARP does not have the benefit of knowing your prior work and disciplinary record before making a recommendation, and we must consider your complete record before making final decisions on discipline.

After reviewing the complete IA file for this incident as well as your personnel file, Chief Kirkpatrick notified you of an intent to terminate your employment. A Loudermill hearing was scheduled to give you an opportunity to present any information you wanted to be considered before finalizing any disciplinary decision. The Loudermill hearing was conducted on July 8, 2011. Attending the hearing with you were Chief Kirkpatrick, Captain Steve Braun, Captain Frank Scalise, Sgt. Dave McCabe, Assistant City Attorney Erin Jacobson, HR Analyst Gita Hatcher, your Guild Representatives Ernie Wuthrich, John Gately, John Griffin and Ray Harding, and Guild Attorney Hillary McClure. The proceedings were recorded, and Ms. McClure and you both provided information that you wanted to be considered before a final disciplinary decision was made. Before you spoke, Chief Kirkpatrick gave you a Garrity Order so that you could speak freely.

In addition to the IA investigation and ARP findings, we have considered the information you and Ms. McClure presented at the Loudermill hearing, the additional information your Guild representatives provided prior to the hearing, and your work history. The following is a summary of your work history that was reviewed before coming to the final decision regarding discipline. Your work history discloses a troubled record spanning approximately 24 years and three Chiefs of Police:

- 1987-May 27 – 20 day suspension and written reprimand for Excessive Use of Force and Demeanor after breaking a man's arm who "got to [you]."
- 1987-June 11 – Suspension for Harassment
- 1989 PAR – Sgt. Cusick stated: "[Jeff] has a tendency towards letting job related situations become a personal thing. As a result, he tends to get tunnel vision on

some problems. When I discussed this problem with him he gets very defensive and has a hard time admitting weaknesses in this area.”

- 1989-June 26 – Oral Reprimand for Excessive Force
- 1991-November 24 – 40 hour suspension for Abuse of Sick Leave. After you were denied a requested day off because of short staffing, you called in sick and went hunting. In the suspension letter, dated February 20, 1992, Chief Mangan stated: *“You are hereby put on notice that any further similar pattern will see the benefit of the doubt which you are given in this case will swing in the other direction and will therefore be subject to disciplinary action of a more severe nature including possible termination from police service. I would encourage you to think carefully about the longer view, i.e., the rest of your potential career in police service.”*
- 1993-April 1 – Five day suspension (suspended) for False Allegations about a Supervisor. Chief Mangan writes in his closing letter: *“I hope that your experience in this matter will have led you to... accept responsibility for your actions and that you learn from your prior mistakes. Your past disciplinary record is not an enviable one.*

“Jeff, this is a point in your career where you must consistently adhere to the policies and procedures and the values and ethics of this profession.

I am sure you know by now that any serious lapses back into the kind of disciplinary history which you have experienced in the past would most certainly lead to not only serious disciplinary action but your probable termination from police services altogether.” [emphasis added]

- 1994-June 24 – Written Reprimand for Unidentified Policy Violation
- 2001 – The State of Washington began requiring that all commissioned officers be Certified Peace Officers. Officers hired before this date were grandfathered into Certification but were required to sign the certification form. You signed your Certification form under protest.

- After several years without any PARs, you began receiving PARs on a regular basis in 2000. Your recent PARs note the following areas of concern:

- 06-2002 (Sgt. Torok): *The area I have most concern in “interpersonal relations” as evidenced to the numerical value assigned to his evaluation form. . . Jeff has been extremely critical of these issues. While I believe Jeff has an opinion and is entitled to voice it, he needs to understand that there are limitations. Jeff’s eagerness to repeatedly express his displeasure has a cooling effect on people around him. Many of which have commented “that’s just Jeff.”*

The second event that illustrates my concerns has to do with an incident that occurred between a member of the South NIRO’s and SIU . . . The South NIRO told Jeff about the incident. Jeff became upset by what he had learned and almost immediately voices his displeasure with many people present. Jeff seems to become too emotionally involved in these incidences and loses objectivity. Jeff was extremely unhappy with what he had “heard” and what was “told” and willingly told anyone that would listen. I believe that this behavior is detrimental to working relations and would hope that he would consider that before going on a tirade on what he believes are injustices. [emphasis added]

You refused to sign this evaluation.

- 12-2002 (Sgt. Torok): *In Jeff’s last PAR I noticed what I perceived to be some interpersonal problems as was evidenced by his rating in this area on the PAR.*
- 12-2004 (Sgt. McCabe): *Jeff’s major drawback, I believe, is his inability to react appropriately to what he believes are injustices occurring in the department. It appears that the main source of Jeff’s frustrations is the Administration [Chief Bragdon] and the decisions made there. Jeff is a very strong willed individual and he is not shy about sharing his opinion. In some cases Jeff shares his opinion over and over with others, seemingly unwilling to “let it go”. This has generated comments to me by some of*

Jeff's co-workers that they wish he would just let things go so that they don't have to hear the same things over and over. Jeff and I have spoken many times over the last year about this...I just would like to see Jeff not take things so personally.

- 02-2005 (Sgt. McCabe): *Two incidents highlight Jeff's workplace attitude. In late September, I had scheduled Jeff for a SWAT school... I needed to give Jeff 2 days off to avoid overtime. I told Jeff immediately that he needed to take the rest of the 29th and all of the 30th off for scheduling purposes...On the 30th Jeff arrived at work, despite my instruction the day before.*

The second incident involves a memorandum of counseling that I gave Jeff on October 27. Jeff had turned in to me an additional report for review. The report contained, in my view, editorial comments that had no bearing on the case he was investigating. This included directing a steno to bold highlight one of those comments. We discussed the issue, including the proper avenue for Jeff to express his opinions and frustrations, but Jeff did not agree with my assessment of his report, or the memorandum of counseling.

You signed the evaluation but with a note expressing disagreement with the comments.

- 12-2006 (Sgt. McCabe): *I counseled Jeff in September about a dispute that he had with a Deputy Prosecutor. The dispute was primarily conducted via e-mail, which I thought showed a lack of professionalism on both sides, and it involved the DPA trying to get Jeff to contact a victim for her.*
- 06-2007 (Sgt. Scalise): *Detective Harvey can be an intense individual.*
- 06-2009 (Sgt. Torok): *During this rating period, Detective Mossman disseminated an e-mail to all commissioned officers with regards on how to process property being held at pawn shops...Detective Harvey took*

exception to the e-mail then made comments something similar to when Detective Mossman could show him case law as to why the property needed to be disposed of in a certain way, then he would adhere to it. While in that meeting Detective Harvey made the comment that when he received a written order from his supervisor then he would abide by it. On 05-14-09 Detective Harvey was provided with that order. At the end of that order Sgt. Torok writes the following statement: I did not appreciate the fact that my verbal order was not "good" enough and that the order had to be reduced to writing. Det. Harvey's ratings in "acceptance of supervision and adaptability to change" were adversely affected by this issue. If my authority to make directives to my subordinates is challenged again, the result will be an official complaint for insubordination.

- 12-2009 (Sgt. Torok): *Often times Jeff discusses issues in the department in a manner that is afforded a union representative that would be frowned upon if it were any other detective. An example is his severe criticism of the administration, a policy, certain members of Senior Staff, etc.*

You refused to sign the evaluation and wrote a letter of protest.

- 12-2009 (Sgt. Torok): *Jeff is a competent investigator and is capable of producing a superior work product. However, this fact is sometimes overshadowed by what appears to be an overreaction to some issues.*
- 2010-June 22 – Sgt. Torok wrote a Memo of Concern about Jeff Harvey, stating: *“His overall demeanor was concerning to me. At this time I asked Ernie if Jeff was getting worse. My question was in regards to his attitude and seemingly displeasure with being here. . . I have brought up prior issues to establish somewhat of a background and to determine that his responses and actions are not what one would expect from an employee. I do not see this situation resolving itself and the unresolved issues cannot be healthy.”*

Around this same time period, Chief Kirkpatrick's assistant, Carla, reported that a fellow officer was emotionally upset and fearful about working around you. This officer was concerned that you were dangerous.

Analysis and Findings

The main goal of discipline is restoration rather than punishment. However, when the efforts to restore an employee constantly fail, then the discipline must progress. In this case, the appropriate level of discipline is termination. We do not take lightly the decision to terminate a 25-year employee. Nor do we dismiss your many years of good work and service. But that good work must be balanced against the severity of the sustained policy violations and the record of discipline and many years of documented concerns.

In the Loudermill hearing, Ms. McClure alleged that this matter was personal between you and Chief Kirkpatrick. Yet your troubled record is objective, starting 24 years ago and spanning three Chiefs of Police.

Regarding the severity of the policy violations at issue presently, Ms. McClure made a summary statement that she could not believe the City would terminate an officer for only having raised his voice. As she stated: "We are calling raised voices as conduct unbecoming." Ms. McClure's characterization severely understates the level of unbecoming conduct you exhibited in your encounter with Officer Spurbeck.

You had a contact with Officer Spurbeck that resulted in your being charged with the crime of Obstructing a Law Enforcement Officer. An element of that crime requires a physical aspect (and in this case Officer Spurbeck did go "hands on" with you) and not just raising one's voice. In addition, the crime requires willfulness on the part of the defendant to interfere with the Officer's duties. This crime has, at its base, the attitude of insubordination and insolence, which is consistent with your documented history. Your history is riddled with an attitude of insolence, dissension, and incorrigibility.

Although your contact with Officer Spurbeck is alone sufficient to warrant termination, this is not a singular event. The charge of Obstruction is just the fruit of a pattern of insolence that not only continues to disrupt the workplace but has now manifested itself into a criminal charge.

When Chief Kirkpatrick came to Spokane in 2006, one of her main tenets was to clearly set forth workplace expectations and five Cardinal Rules. The Spokane Police Department is in the business of regulating other people's conduct; therefore, we must

Jeff Harvey
Termination of Employment
July 13, 2011

regulate our own.

The five Cardinal Rules are in areas of misconduct that are integrity based. These rules were widely disseminated by Chief Kirkpatrick, not only in person but video recorded. They are also incorporated in the Department's Lexipol Policy Manual. Chief Kirkpatrick made it clear to all members of the Department that violating a Cardinal Rule could subject a person to termination. One of those Cardinal Rules was Conduct Unbecoming that would result in a lack of trust in this department. Not every case of Conduct Unbecoming would result in such serious discipline, but those Conduct Unbecoming cases that result in a lack of trust in this department are so serious that they warrant termination.

Such lack of trust resulted from your contact with Officer Spurbeck. When you were charged with this crime, KXLY reporter Jeff Humphrey did a story for the news whereby he made a very powerful statement: "Well, if you think about it...all of our officer involved shootings have got their start when someone refused to follow an officer's commands. Harvey is accused of doing the same thing...and so if Harvey was more interested in protecting his kids from a ticket than allowing this officer to safely do his job, then he betrayed his own profession."

Ms. McClure also emphasized at the beginning of the Loudermill hearing that the standard of proof for this termination matter is clear and convincing evidence. It is important to note that you were charged via a Summons process and not arrested on the scene. A very seasoned Prosecuting Attorney reviewed this case and made a charging decision. So, not only was probable cause established by one of the most experienced and seasoned DPA's, but the Prosecutor is duty-bound to not bring a charge forward that he or she does not believe can be proved beyond a reasonable doubt in a court of law. This is one of the factors that leads me to conclude that the evidence related to your conduct in this precipitating event was indeed established by clear and convincing evidence.

Again at the Loudermill Hearing, Ms. McClure and you spent considerable time presenting alleged discrepancies within the record in an attempt to discredit Officer Spurbeck. Prior to the hearing the Guild forwarded to Chief Kirkpatrick the audio CAD of the stop and your phone records as evidence of these alleged discrepancies. All of this

Jeff Harvey
Termination of Employment
July 13, 2011

information and evidence was reviewed and considered by Chief Kirkpatrick, members of the ARP team (with the exception of Lt. McGovern who has since retired), the SPD

Command Staff, the Sergeant and Lieutenant in IA, and legal counsel. None of them found the information persuasive to negate reliance on Officer Spurbeck's report of the contact. Simply stated, we unequivocally find Officer Spurbeck credible.

Furthermore, the objective record shows that you have already had two findings of improper conduct that involve a lack of truthfulness and credibility. You were disciplined for sick leave abuse and for making false allegations about a supervisor, both of which resulted in significant sanctions with clear warnings of probable termination for any future violations. These two events alone would qualify you as a "Brady officer" and they are in addition to the other serious discipline matter for Excessive Use of Force that yielded a 20 day suspension and a Fitness for Duty exam.

For purposes of this disciplinary decision, we find the record to be clear and convincing that your allegation of misconduct in this singular event is SUSTAINED for Conduct Unbecoming an Officer that resulted in a lack of trust in this department.

We also find, at a clear and convincing level, that the underlying nature of this misconduct is a continuation of a long -suffering pattern of rebellion and insolence and not an isolated event. This misconduct represents more of the same, but at a higher level of intensity. Moreover, this was not out of character for you. In fact the opposite is true. We also find at a clear and convincing standard that prior documented discipline and coaching has not restored you. In fact, you simply have rejected all prior interventions and have grown worse.

Mr. Harvey, you are in violation of the following, including one of my Cardinal Rules:

1. *Conduct Unbecoming an Officer, in violation of Ethical Standards 4.4, 4.8, and 4.9; SPD Policy 340.3.2 (k); and Civil Service Rule IX, Section 5 (f)*
2. *Obstructing a Law Enforcement Officer – RCW 9A.76.020*

Because the record is objective and clear that you are unwilling to respond to correction; that your prior sustained findings were terminable cases on their own merit;

Jeff Harvey
Termination of Employment
July 13, 2011

that you were clearly warned by Chief Mangan that your continued course of misconduct was moving from a possible to a probable termination; that you are

presently in violation of the above-stated policies, including one of Chief Kirkpatrick's Cardinal Rules where she gave unambiguous warnings that a violation of a Cardinal Rule could result in termination, we have determined that you should be terminated from the Spokane Police Department effective immediately.

You have the right of appeal as specified in Civil Service Rule XI, Section 5 as follows:

"Any employee in the classified service who has been suspended, reduced in rank or discharged as provided in Rule IX may appeal such action to the Commission. All appeals must be in writing and filed with the Secretary within 10 working days from the date of filing of such order with the Commission or from the date of service of such order on the employee, whichever is later. The Secretary shall provide a copy to the Human Resources Director of any appeal so filed. Failure to file within the prescribed time shall be considered as acceptance of the action and the action shall be deemed complete."

Check with your collective bargaining representative for any further rights that you may have.

Sincerely,



Anne E. Kirkpatrick
Chief of Police



Thomas E. Danek, Jr.
City Administrator

cc: Jim Nicks, Assistant Police Chief
Evie Gies, Police Payroll
Maria Arguinzoni, Police Payroll
Judy Destito, Civil Service
Gita Hatcher, Human Resources Analyst
Erin Jacobson, Assistant City Attorney
Darcie Leonard-Chaffins, Payroll
Teresa Collins, Employee Benefits
Diana Hart, Retirement
Marcia McGarrigle, Human Resources
Ernie Wuthrich, Police Guild