

## BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Michael Anderson, Appellant

v.

Seattle Center, City of Seattle,  
Respondent

### DECISION ON HEARING

CSC No. 07-01-004

#### I. INTRODUCTION

The hearing in this matter was held on June 18, 19 and 20, 2007. The Seattle Center was represented by Paul Olsen, Assistant City Attorney; and Appellant Michael Anderson was represented by Saphronia Young. The Hearing Examiner was Diane Hess Taylor.

On December 11, 2006, there was a physical altercation between Appellant and Mathew Iwata at the Center House at the Seattle Center. Appellant Michael Anderson was manager of the Seattle Center's Emergency Services Unit (ESU). Iwata was a student at The Center School, an arts based high school located on the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the Center House at Seattle Center.

Appellant was terminated on January 26, 2007 and appeals this disciplinary action.

#### II. ISSUE

Whether the City of Seattle had just cause to terminate Appellant's employment for his conduct on December 11, 2006?

#### III. FACTUAL BACKGROUND

Mr. Anderson was employed as Manager of the Emergency Services Unit (ESU) at the Seattle Center since January 2000. His job duties involved management of the security of Seattle Center-- budget, policy and procedure, relationships with patrons and resident organizations, supervising security officers, and sometimes responding to calls himself. Nellams 2:44. Mr. Anderson has no prior disciplinary history and good performance evaluations. Seattle Center's Director, Robert Nellams, described Anderson as an employee who does what he is told to do. Nellams 2:48.

### On the Job Injury

In 2004, Anderson was injured on the job by a skateboarder, which caused head and other injuries. As a result, Anderson was off work for approximately 15 months, and upon initial return to work, worked light duty, during which time his job duties were limited. Former Human Resources Manager John Cunningham testified that these restrictions were due to the injury and that it was expected that Anderson would progress to full duty at some point.

Then Acting Director (now Director) Robert Nellams testified that when Anderson first returned after injury the job restrictions were due to Anderson's own concern about his health, Nellam's concern about Anderson's ability to do the job, and pressing need to complete policy and procedure and security plan work. Tony Lucero worked out of class to cover operation portions of Anderson's job. Nellams 2:45. Nellams testified that Anderson was concerned that the return to work plan was "a little loose, let's tighten them up." Nellams response was, "No, we're going to keep things as they are. In terms of on the operational side, Tony's doing an excellent job. We're going to keep that going. I have all of these other pieces of work that need to be done and I want you to concentrate on those." Nellams 2:46-47. It was not established that these restrictions were provided to Anderson in written form.

Later, on September 9, 2005, Director Nellams wrote a "note to file" documenting work restrictions for Anderson "going forward." Exh. 4. This note resulted from an investigation of a complaint against Anderson for allegedly shouting at a participant in *Bumbershoot* for a fire lane violation. Anderson was cleared of wrongdoing after investigation. The file note stated that Anderson would turn off his radio and completely remove himself from management and operations of the ESU. Anderson's subordinate, Tony Lucero, would now report directly to Nellams, rather than Anderson. Anderson was to work on projects involving policies and plans for vehicle security, vulnerability assessment, campus security plan and security and capitol projects integration. The note mentions "physical issues that limit his stamina and ability to concentrate." Exh. 4. There is no reference to actual medical restrictions. Nellams testified it was his expectation that Anderson would no longer wear a radio, patrol, or contact residents or patrons.

Nellams' notes in Exh. 4(B) show a progression to the resumption of former duties by Anderson such as "scheduling and payroll approvals," but there's no indication of when or whether this was actually provided to Anderson.

After complete review (and *Loudermill*) on the *Bumbershoot* issue, (on November 10, 2005) Nellams wrote to Anderson: "this event underscores why it is important for you to continue to separate yourself from operational activities." Exhibit 8. Shortly thereafter, by December 2005 Anderson requested, and Nellams granted, another leave from work in which Anderson stated he would make additional efforts at recovery after

which, "I would either return to work, with a new energy and full acceptance of my role, or decide that it is in everyone's best interest to resign my position." Exh. 9. Anderson expressed frustration at not performing his full job duties.

#### Anderson's Return to Work Fully Released

Anderson returned from this leave with a full release to work. On April 12, 2006, he was medically released to work full duty without restriction. Exh. 26. The release stated that the "worker can perform the physical duties described in the job analysis on a full time basis." It was signed by an orthopedic surgeon, neurologist and psychiatrist. After Anderson's full release to work, there was no written Return to Work plan, or discussion about his job duties. Human Resources manager John Cunningham had retired in the meantime and Maria Batayola had been hired in his place. Ms. Batayola testified she did not know about Anderson's job injury or injury related work restrictions. She learned of this only when conducting the investigation of the physical altercation at issue in this appeal.

Nellams testified he did not recall making any changes to his instructions to Anderson regarding his restriction of duties since November of 2005. Nellams testified it was his belief that the earlier direction to avoid operations remained intact because it had not been altered by him. He testified to several reasons for keeping the non-operations directive in place: there were policies/plans that still needed to be completed, Tony Lucero had developed better working relationships with clients than Anderson, and Nellams wanted to "keep that going," and Nellams was concerned about Anderson's potential emotional reactions when working with the public. 2:47, 57, 66, 77. There was no documentation that Mr. Lucero was promoted into Anderson's position, or that Anderson's position had formally or permanently changed.

After April 2006, Anderson testified it was his understanding that while his focus remained on completing policies and security plans, he understood that he was fully released to work without restriction and would gradually take on his regular job duties. He testified that upon his return, Tony Lucero again began reporting to him and he again wore his radio on his lanyard in plain view. 2:179, 190-194. The evidence showed that over the next few months, Anderson's involvement in operational duties increased as needed per staffing levels or for emergency callouts. He included these events in his weekly reports to Nellams, which ranged from running the gates (to let deliveries in) to chasing car prowl suspects. He was not questioned, counseled or disciplined for these involvements. He was never told he could be terminated for engaging in operational duties before or after his full medical release to duty.

#### Anderson's Contact with Mathew Iwata

On December 11, 2006 as he was returning to his office from a medical emergency, Anderson saw a young man inside the Center House who might be smoking. Center House rules prohibit smoking inside. State law prohibits smoking and possession of tobacco by minors. 2:140. When he got closer and saw that the

cigarette was not lit, Anderson asked this individual how old he was. The boy said he was 15, so Mr. Anderson asked for the cigarette, holding out his hand. Then the boy said, "I'm screwing with you, I'm 18." Mr. Anderson asked for the boy's identification. The boy handed Anderson a Washington State issued identification card which indicated the boy had turned 18 the month before, and his name was Mathew Iwata. Anderson testified, and it was not disputed, that Iwata started swearing at Anderson, using the word "Motherfucker," 4-5 times. Anderson told Iwata he could be "trespassed" for using profane language. This occurred during the holiday season's *Winterfest* when school bands and choirs were performing and many children were present as performers and spectators.

Anderson told Iwata that he was going to the school to let the principal handle it, and then turned and went up the stairs towards the school. Iwata stated, "Why in the Fuck are you doing that motherfucker?" 2:142. Anderson took the identification with him. After disposing of the cigarette, Iwata followed Anderson up the stairs. (Woelfle) Anderson entered the office and asked reception staff for the school's principal. Reception staff Kathy Webb and Rebecca McQuarrie were present at the front desk, and counselor Diana Sanusi was in a nearby office. At the desk, Anderson asked for Principal Vance and was told he was out. Anderson showed the ID to staff and told them about the contact with Iwata.

In prior situations, the ESU staff had worked with Principal Vance to address violations involving students. Rebecca Webb recalled that 2-3 times per month ESU staff brought students into the school office to do this. The testimony was undisputed that Principal Vance had requested that he have an opportunity to resolve issues involving his students.

### Physical Altercation

While Anderson was standing at the school's reception desk talking to the staff, Iwata entered the office and took a place behind and to the left of Anderson, about three feet away from Anderson. Iwata is about 6' 1" tall and 250 lbs. Iwata asked for his ID, "Give me my Fucking ID," and reached for it. The ID card was held in Anderson's right hand, so Iwata's reaching motion crossed in front of Anderson's body. Anderson said, "Don't you hit me," while Iwata reached across his body. There was a red mark on Iwata's neck after the physical contact. The foregoing is undisputed.

Anderson testified that suddenly a "flash came at me," he felt an impact to his left shoulder and felt Iwata grabbing his right wrist. 2:143. The sudden impact left him off balance. As he wrenched his hand free, he was left twisted to the right and tucked down a little. 2:146. Anderson testified that Iwata remained hovering over him with an arm on each side of him. Anderson testified he put his left hand on Iwata's chest to push him "back off me." 2:146. Anderson believed he was pushing against him so he pushed Iwata to the wall several steps away. 2:147. His hand slid up to Iwata's neck, and Iwata stated, "he's choking me," so Anderson readjusted his hand and moved his forearm to Iwata's chest and asked him to turn around. 2:147-148. Anderson testified it

was not his intent to choke Iwata, and that his airway was not obstructed because he was yelling and screaming and said, "he's choking me." 2:147-148.

Webb testified that Iwata "quickly grabbed" for the ID while Anderson was talking to reception staff. Webb heard Anderson say, "Don't hit me," as Iwata grabbed for the ID. She recalled that Iwata had to reach around the front of Anderson's body because the ID was on Anderson's right. McQuarrie testified that Anderson came to the front desk, asked for the principal and showed her the ID. She said Iwata was "insistent about the ID," saying "Give me my fucking ID." McQuarrie testified that Iwata tried to grab the ID, and then, Anderson grabbed Iwata and shoved him to the wall. She was not sure if Iwata resisted. McQuarrie testified that because Iwata was slightly behind Anderson, he could have been perceived as aggressive by Anderson, although from her angle Iwata did not appear aggressive. She noted that Anderson could have been surprised by Iwata's movement. She is not sure where her focus was before she saw Anderson's hand on Iwata's neck. Webb did not testify with regard to where her attention was focused at this time. Sanusi arrived at the end of the event and testified that she told Anderson to let go, and when he did not immediately let go, she said it again. As Anderson was directing Iwata to turn around, staff intervened and escorted Iwata out of the room. Both McQuarrie and Webb viewed Anderson as the aggressor in the situation.

Back at his office, Anderson was approached by John Merner who said his conduct was "being called into question." Merner is the Seattle Center's liaison to The Center School. Director Nellams asked Merner to obtain statements from witnesses.

### The Investigation

Shortly after the incident, John Merner and Director Nellams met with Iwata, his friend and a teacher who "was concerned that the matter be taken seriously." Merner testified that Iwata reviewed what happened during the incident at this meeting. Merner's statement to the investigator summarizing the meeting said, "The next day Robert Nellams and I met with a Center School teacher, Matt Iwata and another student. From our discussions it was clear that at no time during the incident did Iwata retaliate." See Exh. 17. Nellams said he is sure Iwata went over what happened, but the meeting was more about making sure that I was taking this seriously and communicating that Iwata was scared. Nellams 2:71. Iwata testified that he was told by Nellams that Anderson would probably be fired. Merner and Nellams remembered it differently, that Nellams said, "the matter would be taken seriously." Nellams, as Director of Seattle Center, was the final decision maker in disciplinary matters involving Michael Anderson. There were no notes taken of Iwata's statements at this meeting.

Merner discussed the statements written by witnesses. He noted that while McQuarrie said she did hear profanity used, she was not sure where it was coming from so did not want to include it in her statement. At the hearing she testified Iwata said, "Give me my Fucking ID." Exh. 17. Merner also contacted Iwata and his family on behalf of the Seattle Center to update them on the investigation of the matter. Merner

testified that there was special concern because the event involved a lessee of the Seattle Center, who relied on ESU for security, and with whom they had an ongoing relationship.

The investigation was turned over to Human Resources Manager Maria Batayola. She reviewed the written statements prepared by Center School staff. She interviewed employees of ESU on the issue of the limitation on Anderson's job duties, and self-defense. She did not interview school reception staff or Iwata.

The witness statements of Webb and McQuarrie did not include the physical positions of Iwata and Anderson—that Iwata was behind and to the left of Anderson, or that the ID was in Anderson's right hand. The statements do not include whether the movement was sudden or might have been a surprise to Anderson. Neither includes Iwata's statement as he grabbed for the ID, "Give me my Fucking ID."

Iwata's witness statement does not include his statements (calling Anderson "motherfucker," 4-5 times, "Why in the Fuck are you doing that motherfucker?", and "Give me my Fucking ID card"). The use of profanity was the reason Anderson brought up the trespassing (that people could be trespassed from the facilities for using bad language), which Iwata does include in his statement.

Batayola testified that she considered Anderson's assertion of self-defense but rejected it because Anderson told her that Iwata's arms were down at his sides when Anderson's hand/arm were on Iwata's chest/throat. She testified that she did not review other Seattle Center cases of physical force or assault because none were comparable. She defined comparable as other cases involving unauthorized use of force (excessive) by a manager. There were none that fit this description.

There was evidence from John Cunningham, former Human Resources Manager, that other situations involving the use of force had occurred at Seattle Center, although not involving managers. There was a case involving the use of self-defense against an unruly, intoxicated patron who took a punch at an employee. The employee wrestled the person to the ground. This employee was not disciplined and may have received an award. Another case involved a machine operator, surprised by someone turning off his machine (he had earphones on), who turned and struck the other employee in the chest. The machine had been straining badly and the operator had not heard it. There was a visible bruise on the victim's chest (he was African American). The employee received no discipline. The most egregious example was one in which a supervisor assigned his subordinate former girlfriend to an isolated location and then attacked her. He was not terminated, but was transferred to the Parks Department. Cunningham testified in his 15-year career at Seattle Center no employee had been terminated for use of force. 3:136-140. The City did not controvert this testimony.

#### Termination

Director Nellams decided termination was appropriate because Anderson's conduct was egregious and crossed the line when his hand ended up on Iwata's throat.

In Exhibit 26, the Loudermill letter dated January 26, 2007, Director Nellams outlines the basis for Anderson's termination as:

- 1) engaging with Mr. Iwata without authority
- 2) escalating the situation and using excessive force to gain control of the situation

These items were deemed violations of

- 1) Mr. Nellams' directive that Anderson separate himself from operational activities
- 2) Major disciplinary offense under Personnel Rule 1.3.4 ("threatening behavior and physical assault")
- 3) Seattle Center Rights and Responsibilities (respect others, comply with rules, be professional, help resolve issues), and
- 4) Seattle Center Leadership expectations (lead by example and foster positive attitudes)

#### IV. ANALYSIS

##### A. Applicable Rules

The personnel rules, SMC 1.3, provide that the disciplinary action imposed depends upon the seriousness of the employee's offense and such other considerations as the appointing authority . . . deems relevant. Progressive discipline is required, except that in cases of "major" disciplinary offenses, a verbal warning or written reprimand are not appropriate in the absence of mitigating circumstances.

Major disciplinary offenses are listed in SMC 1.3.4(A), and include:

- Committing an act of workplace violence, including but not limited to verbal assault, threatening behavior or physical assault occurring in or arising from the workplace;
- Endangering the safety of, or causing injury to, the person or property of another through negligence or intentional failure to follow policies or procedures;
- A knowing or intentional violation of workplace rules (policies, procedures and workplace expectations); and
- Other offenses of parallel gravity.

In determining the level of discipline to impose the appointing authority shall consider factors that he or she deems relevant to the employee and his or her offense, including but not necessarily limited to:

- Employment history
- Extent of injury/damage caused
- Employee's intent
- Whether the offense constituted a breach of fiduciary responsibility or of the public trust; SMC 1.3.4(B)

The City can suspend, demote or discharge an employee for justifiable cause, defined as including these factors [SMC 1.3.3(C)]:

- The employee was informed of or reasonably should have known the consequences of his or her conduct;
- The rule, policy or procedure the employee has violated is reasonably related to the employing unit's safe and efficient operations;
- A fair and objective investigation produced evidence of the employee's violation of the rule, policy or procedure;
- The rule, policy or procedure and penalties for the violation thereof are applied consistently; and
- The suspension or discharge is reasonably related to the seriousness of the employee's conduct and his or her previous disciplinary history.

For Employees who are subject to a collective bargaining agreement, these personnel rules apply to the extent they do not conflict with the terms of the collective bargaining agreement. SMC 1.3.2(B) No evidence was presented regarding any such conflict.

The Center House provided specific guidance for its employees regarding rule enforcement with patrons, Exhibit C-23. Patrons are prohibited from a number of listed items inside Center House including smoking and disruptive or unsafe behavior (examples: verbally threatening, harassing, etc.). See also Exhibit 22. The *Center House Safety, Rules, Rights, Roles and Responsibilities* document states: "Employees play an important and critical part in ensuring these rules are followed consistently and with equality." The document provides in chart form the expected response for employees for each rule violation. For smoking, the direction for employees is to inform the patron that smoking is not allowed and that ashtrays are outside. If the patron fails to comply, the employee is directed to call ESU (Emergency Services Unit). ESU staff are directed to request compliance, and if uncooperative, ask for back up and escort outside. If this is not successful, ESU is directed to call SPD (Seattle Police Department). For the rule regarding disruptive and unsafe behavior, the direction to employees is to call ESU staff to respond.

No evidence was presented with regard to the City's practice in reviewing self-defense issues or what standard has been applied, so Washington State Law on the defense of self and others will be included here. RCW 9A.16.020 defines the state law as follows:

"The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

...  
(3) Whenever used by a party about to be injured, . . . in preventing or attempting to prevent an offense against his or her person . . . in case the force is not more than is necessary.

RCW 9A.16.010 defines "necessary": (1) Necessary means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended."

The evaluation of self defense (above) includes a subjective and objective standard. The subjective portion requires the fact finder to stand in the shoes of the defendant and consider all the facts and circumstances known to him or her; the objective portion requires the jury to use this information to determine what a reasonably prudent person similar situated would have done. *State v. Janes*, 121 W.2d 220, 238 (1993).

B. Authority to Engage in Operations Activities

The City's position is that Anderson did not have the authority to approach a potential rule violator in Center House on December 11, 2006 because of the limitations on his job duties imposed in 2005. The Center House Rules and Responsibilities, as well as witness testimony, indicated that it was every employee's obligation to ensure that rules were enforced to ensure that the Center House remained "the nation's best gathering place." (Woelfle, Cunningham, Anderson). Any employee seeing a violation was instructed to request compliance, and then call ESU if that failed. ESU is directed to request compliance, then seek backup, and escort a noncompliant individual out of the building. Exhibit C-23. As both an Employee and a member of ESU, Anderson was not only within his authority, but was required by the City's rules to respond to the potential rule violation.

After Anderson's job injury, light duty was originally related to physical and psychological injuries. (Cunningham). There was little structure or formality to how the light duty evolved over time. In reaction to events (Bumbershoot fire lane issue) there were reiterations of expectations by Nellams. Exh. 4. After the full release in April 2006, it seemed Nellams wanted the limitations to remain because: Nellams perceived Anderson as still disabled (risk of emotional outburst), there was work to be done on policies/plans, and because he liked better how Tony Lucero was performing some aspects of Anderson's job (better relationships with clients). Two of these three reasons are questionable—there was no formal personnel action, but Nellams had placed someone in Anderson's job indefinitely in an "out of class" fashion; and it might be a violation of laws prohibiting discrimination to treat someone as disabled who is not.

Anderson had been engaging in some operational activities without comment by his superiors. The return to work plan was flexible and informal enough that Anderson did not have notice that he could be terminated for doing an operational activity. Had this situation not had a bad ending, it is likely that there would have been no disciplinary response.

**Finding:** Anderson did not have notice that engaging in the operational activity of handling a rule violation could possibly result in discipline or termination.

C. Contact with Iwata—Unnecessary Escalation

The City argues that Anderson unnecessarily escalated the situation by failing to ignore the rule violation(s) failing to give the ID back to Iwata, and failing to leave the scene earlier. The first event that extended the length of the contact was Iwata's lie about his age, saying he was only 15, when in fact he had turned 18 about a month prior. When Anderson held out his hand and requested the cigarette, Iwata admitted he'd been "screwing" with Anderson and that he was 18. Reasonably, Anderson requested identification. At 6' 1" and 250 pounds, one might have assumed he was 18, but he was barely 18 so the request was within reasonable bounds.

When the ID was produced, the evidence is undisputed that Iwata started to call Anderson a "motherfucker," and used this term 4-5 times. Whether Iwata's habit was to disrespect authority (his statement indicated he knew this was a security officer) or whether he was showing off for his friends (2 other students were with him), his conduct was not consistent with "the nation's best gathering place," especially with the presence of young attendees and performers of *Winterfest*. Had Anderson turned his back and ignored this conduct, he would have been disregarding the direction the city has given all its employees pursuant to Exhibit 23. He also would have sent a message to Anderson and his friends that bad language was condoned in this venue. Thus far, Anderson's conduct was within his authority, reasonable, and consistent with the employer's goals of creating and maintaining a family friendly venue.

The city also faults Anderson for taking Iwata's identification to the school's office, where he hoped to turn the matter over to the school's principal. In fact, this step served to de-escalate the situation—to disengage the contact and conflict between the two, and remove Iwata from the food court and surrounding youth. The evidence supported the position that Principal Vance had requested that he be contacted and permitted to deal with issues involving his students, and that this had occurred on a number of occasions before. In this situation, it was reasonable to believe that the school would want to deal with the profanity and dishonesty by Iwata.

Iwata could not have been seriously concerned that his ID card was in danger, as Anderson told him he was going to see the principal and immediately headed in that direction. Anderson testified that he took the ID instead of stopping to write down the information because he felt this would only make Iwata angrier, and that it would be better to get Iwata out of the area. He also noted former situations where attempts to identify students was lengthy and complicated. Anderson's approach was reasonable.

D. Physical Altercation with Iwata—Workplace Violence, Assault, Endangering Safety, Causing Injury, Self-defense

There is no dispute that Iwata initiated movement towards Anderson, while Anderson's attention was elsewhere. There is no dispute that Iwata was on Anderson's

left, that the ID card was in Anderson's right hand, or that Iwata had to reach across the front of Anderson's body to grab for the card. There is no dispute that Iwata used more profanity at this time, "Give me my fucking ID card." There is no dispute that Anderson said, "don't hit me." It is also uncontested that Anderson pushed Iwata to a wall several feet away with his left hand, and Anderson's left hand ended up on Iwata's neck/throat area.

What is in dispute is whether Iwata's body shoved into Anderson, whether Iwata grabbed Anderson's right hand, whether Iwata continued to push against Anderson when Anderson responded to the attempt to grab the card, and whether Anderson's physical response was excessive. Iwata is the main witness controverting Anderson's testimony on these issues. Iwata said he did not bump into Anderson's body and he did not grab his hand. Anderson testified that Iwata's body bumped him (left shoulder), Iwata grabbed his wrist (right) and pressed against him with his body, with both arms on either side of Anderson's body. This testimony is corroborated by Webb who heard Anderson say, "don't you hit me." This statement by Anderson is reliable because it was uttered spontaneously at the time of the event. The court rules of evidence recognize the heightened reliability of "excited utterances" made during a stressful event. At least one other witness said there may have been some bumping and it was unclear whether Iwata was resisting.

Iwata omitted from his written statement that he used profanity, which gave rise to the warning about trespassing him from the building. Iwata included the "trespass" part, but left out the unsavory part that led to the warning. In addition, Iwata stated he reached "slowly" for the ID. All witnesses controvert Iwata's statement that he reached slowly for the ID. The witnesses concurred with Anderson that Iwata's movement to grab the ID was quick and sudden. Also, Iwata's agitation was evident from his demand, "Give me the Fucking ID." At the hearing, there was testimony that because of Iwata's position behind and to the left of Anderson, Anderson might have perceived Iwata's sudden grabbing action as aggressive, sudden and unexpected. McQuarrie also testified that "there may have been some bumping" when Iwata grabbed for the ID. Webb didn't know where her attention was focused during that time. McQuarrie also testified she did not know whether Iwata resisted. 2:15.

Anderson has no history of dishonesty, and in fact is thought of as an employee who follows directions and is a "stand up" guy. Anderson's version of events is more accurate than Iwata's and is sufficiently corroborated by the eyewitnesses to establish that the aggressive physical actions did occur as described by Anderson.

**Finding of Fact: Anderson was bumped or pushed by Iwata when Iwata grabbed for his ID card. Anderson continued to feel physically threatened when Iwata hovered over or continued to push into Anderson's body.**

### Self-Defense

Under the self-defense analysis in the State of Washington the fact finder is to put himself in the shoes of the actor, taking into account all the information they had. In this case that includes the demeanor of Iwata (angry, swearing), size of Iwata (larger, stronger), the surprise (the suddenness of the event at the school office, when Anderson felt the situation had been diffused), without backup (no one knew Anderson was up there, and short staffed), the physical imposition (the larger Iwata reaching across the body, arms on both sides, grabbing Anderson's wrist, continuing to hover over), and Anderson's recent prior experience with unexpected assault (that serious injury can occur in a moment without warning—the skateboard incident). Then, the fact finder has to determine what the reasonably prudent person in that position would have done, using no more force than necessary to prevent the offense against him.

Given Anderson's bad experience with unexpected assault from behind, it is reasonable to believe that he felt quite threatened by the suddenness of the invasion of his body by this large man. It was reasonable for him to place his hand on Iwata's body and push him away. Whether it was reasonable to exert so much force that a red mark was left on Iwata's neck is the question. If Iwata was pushing still against Anderson, the force of pushing back to the wall was justified. This question was not fully explored in the investigation because self-defense was rejected when it was determined that Iwata did not have his arms up. This review was too narrow.

### D. Full and Fair Investigation

While it is not necessary to interview all potential witnesses, here the failure to interview the witnesses to the physical altercation made it impossible to sufficiently explore Anderson's assertion of self-defense. What was not developed in the investigation was what view the witnesses had, the focus of their attention, what they heard but may not have included in their statements (use of profanity, was Iwata angry, was Anderson angry, did anyone else hear Anderson say, "don't hit me?" and was Iwata resisting with his body by applying pressure against Anderson), etc. Of those present, only Anderson and Iwata were interviewed, and Iwata's interview was not recorded or noted in any way (by Merner and Nellams).

Critical evidence on some points was developed through testimony at the hearing—the vantage point of witnesses, where Anderson and Iwata were situated in relation to each other, Iwata's state of mind via his statement, "Give me the Fucking ID," the suddenness of Iwata's movement to grab the ID, whether Anderson could have perceived the action as aggressive, whether Anderson could have been bumped, etc.

### Bias

The fact that this serious event involved a regular lessee and client to the Seattle Center, created an unusual circumstance with which Seattle Center staff was unfamiliar.

This resulted in inappropriate contact by the new Director and the key witness against Anderson. While Nellams does not remember that this meeting involved going over the facts, Merner did and documented the same. And a promise of sorts was made that either Anderson would be fired, or at the least, "the matter would be taken seriously." Iwata in this meeting expressed his fear of Anderson and his discomfort with Anderson being in this workplace. It would be difficult for this contact not to influence the ultimate decision maker in a situation involving a young 18-year-old student, who was physically handled by an employee, who was also a lessee with an ongoing relationship. Merner's initial impression of the event (and he was the one collecting statements) was that "Anderson was making things worse," (Vance) and Anderson's conduct was "being called into question." It was a difficult position for Merner, the liaison with The Center School, to be involved in collecting statements for an independent fact finding.

#### Comparable Discipline

Just cause requires that the discipline be comparable to others similarly situated. Here the City drew its net too narrowly when it required that comparables involve managers and failed to evaluate other cases of physical altercation and self-defense. The assault between a romantic couple involved an intentional physical attack, more egregious than the facts here, and the employee was only transferred. There is no evidence that this employee received discipline. Another case that should have been considered was the one in which the machine operator was surprised by someone turning off his machine, which was not even a physical threat to his body, but rather something that made him mad, and he struck another employee so hard it caused a bruise. This employee received no discipline. The record was not developed with formal records of these or other disciplinary actions. It is the City's burden to present such evidence. The Hearing officer is relying on the best evidence presented (through a former Human Resources Manager Cunningham).

**Finding:** The investigation was not sufficient under the just cause standard because it failed to fully explore self-defense and comparable use of force events that received less or no discipline in the same workplace. The investigation was also compromised by the decision maker's meeting with the primary witness against his employee.

**Finding:** Even if Anderson's use of force was more than necessary under the self-defense law, his termination was excessive discipline considering other comparable situations at Seattle Center.

#### V. CONCLUSION

Appellant Anderson was justified in defending himself against the physical actions initiated by Iwata. It is likely that he exceeded the amount of force necessary to push Iwata away from him when he pushed him against the wall, did not immediately let go, and was exerting enough pressure to cause a red mark.

However, given that others who have used force with less justification than Anderson were not disciplined, the employer here cannot justify termination for Anderson. Even given his heightened status as both a manager and an ESU employee, his actions were substantially justified given the circumstances, therefore severe discipline is not warranted, particularly given Anderson's good work record. In the absence of any formal records that would justify discipline in this matter, no discipline shall be imposed in place of the termination.

#### VI. ORDER

**IT IS HEREBY ORDERED** that Appellant's termination be vacated, removed from his personnel file, and that he receive back pay and benefits.

Dated this 27<sup>th</sup> day of **July 2007**

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



A handwritten signature in black ink, appearing to read "Diane Hess Taylor / JST". A horizontal line is drawn through the signature.

Diane Hess Taylor, Hearing Officer

The decision of the Hearing Officer in this case is subject to review by the Civil Service Commission. Parties may also request that the Commission review the decision, by filing a petition of review of the Hearing Officer's decision, and asking the Commission to consider specific issues. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules.

**ORIGINAL**