

SUMMARY OF PROCEEDINGS

CIVIL SERVICE COMMISSION – COUNTY OF KERN
1115 Truxtun Avenue
Bakersfield, California 93301

Special Meeting
Thursday, March 14, 2019
5:30 p.m.

PRESENT: Commissioners Agbalog, Burrow, Holt, Price, and Rose

ABSENT: None

OTHERS: Kendra Graham, Michael Goulart, Adrianna Kessler, Maria Murbach, Michelle Salazar, Brian Van Wyk, and others

NOTE: Ag, Bu, Ho, Pri, and Ro are abbreviations for Commissioners Agbalog, Burrow, Holt, Price, and Rose. For example, Bu/Pri denotes Commissioner Burrow made the motion and Commissioner Price seconded the motion. The abbreviations “ab” means absent and “abd” abstained.

COMMISSIONER ACTION IS SHOWN IN CAPS AFTER EACH ITEM

President Price called the meeting to order at 5:30 p.m.

PUBLIC SESSION

1. **Public Presentations**

None

2. **Commission Member Presentations or Announcements**

None

President Price announced Closed Session and Michelle Salazar requested to have Item No. 3 - CS Rule 1800 Evidentiary Hearing - held in Public Session. Item No. 3 heard in Public Session.

3. Salazar, Michelle – CS Rule 1800 Evidentiary Hearing
Social Service Worker III (Human Services) – Case No. 2019-0001; **DISMISSED**

Introduction of all parties involved in the matter took place. Kendra Graham, County Counsel, asked that individuals who would be testifying please leave the room.

Michelle Salazar stated that she only wanted to be heard and that she would not have any witnesses.

Commissioner Agbalog stated that if the County or Department would be calling witnesses she might want to consider having her own witnesses. Ms. Salazar stated that she only wanted to be heard, had a few statements, and she did not want this to be an actual hearing.

Ms. Graham stated that she did not have any witnesses ready this evening. She did not anticipate any other nights needed to be scheduled and Ms. Salazar did not request any additional dates.

President Price explained the hearing process. Human Resources Division (HRD) would present their findings and recommendations, the complainant would present relevant documentary evidence, and the Department would present relevant documentary evidence. Witnesses would follow, cross examinations, and closing statements.

President Price asked Commission's legal counsel if the Commission Secretary needed to administer the oath to Mr. Goulart. Brian Van Wyk, Deputy County Counsel, stated it was not necessary, as he was not a witness and only presenting HRD's findings and recommendations.

Michael Goulart, Principal Human Resources Analyst, presented an overview of the investigation process for this complaint. He reported that Ms. Salazar filed a complaint on February 2018. Her allegations were that she was discriminated or retaliated against by virtue of receiving an Evaluation Performance Record (EPR) and a Corrective Action document. She was already challenging some bad marks and narrative on the EPR with her department. Ms. Salazar had multiple meetings with Department of Human Services (DHS) supervisors and management staff, all the way up to meeting with DHS Director, Dena Murphy. The Department made the decision to modify the EPR and remove some narrative information that Ms. Salazar had challenged. He was informed this week that the initial EPR will be removed and replaced with the new document in Ms. Salazar's personnel file.

He stated that her complaint was filed in two parts. While the above was taking place, Ms. Salazar indicated that she felt she was being retaliated against for union activity and she indicated that was manifested by her potential reassignment to a different position. There are multiple department divisions where a Social Service Worker (SSW) with DHS may be assigned. Ms. Salazar felt that since she was notified she would be reassigned, it was in retaliation for union activity. Mr. Goulart stated he had more than one conversation with Ms. Salazar, where it was discussed that although she was notified she would be potentially reassigned, she had not yet been reassigned. A reassignment is not considered a disciplinary action and in her case, she had alleged retaliation for something that had not yet occurred. The target date for her reassignment moved a couple of times and because this was an amendment to her initial complaint, she filed an amended complaint. She was officially reassigned to a different assignment on October 1, 2018. After she was reassigned, the department was notified about her allegations of retaliation and the second half of the investigation occurred.

The investigation process included talking to supervision and management staff regarding the reasoning behind the reassignment and talking to similarly situated individuals. Over 30 individuals responded. They were asked questions regarding their duration of assignment,

previous assignments, and if they considered themselves active in the union. That was done because Ms. Salazar specifically alleged that she had more time and more experience in her position than other people who had not been reassigned. She also alleged there were other people who had been in the same assignment much longer than she had. She alleged there were people who had been in their current assignment for 7 to 10 years or longer and she reasoned that they should have been reassigned to a different assignment before she was.

Through the investigation, and talking with supervision and management, it was established that DHS has a long-standing practice of reassigning SSWs to different assignments. This is done to allow the employee to grow and gain experience in different areas. It is also done for the Department's succession planning. The investigation also established that most SSWs had worked in 3 or 4 assignments over the course of their tenure. At the time Ms. Salazar was reassigned, with the exception of a brief extra-help period, her entire tenure had been in one particular assignment. It was important to speak with employees about their own impression about union activity and if they were active in the union. Of the more than 30 SSWs who were interviewed, only 2 or 3 indicated they had a negative experience related to being in the union. However, they were not able to provide any specific information and only stated that they were treated differently.

There was no evidence to establish there was any retaliation. In the first part of her complaint, regarding the EPR, it was discovered that the formal document had never been modified to HRD standards. The narrative that the department had agreed to remove was using strike-through in the document. The checked boxes that had been modified were marked through and a new grading was checked. That document is important because it stays in the employee's personnel file. If an employee ever seeks to transfer or promote to a position in a different County department, that department has the ability to review the employee's personnel file. Simply striking through information and checking new boxes but leaving the strike-through information in the document is not recommended. The old narrative information can still be seen and it is not the same as entirely removing it. HRD recommended that DHS create a new and clean document and he was informed that the Department had done that. No other recommendations were made because no retaliation took place. The Department's process was consistent with what they have done with SSWs for a very long time.

President Price asked that Mr. Goulart to be sworn in so the Commission could ask questions. Mrs. Murbach, Commission Secretary, administered the oath to Mr. Goulart.

Commissioner Rose asked if Mr. Goulart spoke with 30 people in the Department and Mr. Goulart stated he spoke with over 30 SSWs who are able to perform the same functions as Ms. Salazar. Commissioner Rose asked if the employees are given any flexibility, if they have a conversation about switching to a new assignment, or if it just happens. Mr. Goulart explained that it varies and it is based on organizational need. There are times that the Department is able to be more flexible. There have been times where entire units are

disbanded and everyone in the unit is reassigned. One theme that was established is that, management refers to this as a tour of duty, if an employee has served in 4 or 5 different areas of assignment they have really had the opportunity to gain experience in what the Department does. If the employee has already served through their tour of duty, there is more latitude in not reassigning them to somewhere else. It does not serve the purpose of giving the employee additional experience in order to potentially help the Department in their succession planning. It is at the Department's discretion to move them as they see fit.

President Price asked how many SSWs were involved in union activity and what was the degree of their involvement. Mr. Goulart stated that the interviewed SSWs were asked to identify if they were active in the union. This was further defined as active, meaning participating in negotiations, participating in meetings, and sharing information internally, which is separate than simply belonging to the union or maybe going to an informational that the union provides. There were approximately a dozen or more who stated they were active in the course of their career. Others stated that there were parts of their career where they were more active than other times.

Commissioner Burrow asked if the union participation took place during work hours. Mr. Goulart explained that union activities vary and some meetings take place during work hours and some have meetings after work hours.

Commissioner Rose asked how the negotiating team would get time off to negotiate. Mr. Goulart explained that there is a provision in the MOU for release time that is arranged for employees to attend their union activity.

Commissioner Agbalog asked for the time frame it took, from the moment the complaint was received in February of 2018, to the time it was completed. Mr. Goulart explained that the final findings and recommendations were completed in January of 2019 but it is important to note that the bulk of that time, after the initial allegation of the EPR, the amended complaint was filed in October of 2018. Ms. Salazar was not reassigned until October of 2018.

Commissioner Agbalog asked if Mr. Goulart began the investigation the same month that the complaint was submitted in February of 2018 and Mr. Goulart stated yes. Commissioner Agbalog asked if he completed that portion of the investigation and Mr. Goulart stated that Ms. Salazar was having numerous meetings internally with the Department trying to resolve the issues with the EPR.

Commissioner Agbalog asked if the employee was actively negotiating with the Department to have amendments made to the EPR but also filed a complaint, would it have been appropriate for Mr. Goulart to communicate with her to see whether or not there was an interest in suspending the investigation pending the outcome of the negotiations with the Department. Mr. Goulart stated that communications took place. Commissioner Agbalog asked if the complainant in this case agreed to suspend the investigation on the first part relating to the

EPR. Mr. Goulart stated he did not remember if they spoke about suspending the investigation. It was more about that she was speaking with the department and she would let him know what was going on. Commissioner Agbalog asked him if he continued with his investigation. Mr. Goulart stated that from his perspective, a bad EPR is not a negative employment action. If an employee disagrees with an EPR, they may file a rebuttal. Commissioner Agbalog asked if that information was communicated to the employee and Mr. Goulart did not remember, but he would suppose he did. Commissioner Agbalog asked if she filed a rebuttal and Mr. Goulart stated he believed that she did.

Commissioner Agbalog asked for more information on the amended complaint filed in October of 2018. Mr. Goulart stated the amended complaint was about her being reassigned. Ms. Salazar alleged it was retaliation for union activity. Commissioner Agbalog asked if the investigation was initiated that same month of October and Mr. Goulart stated yes. Commissioner Agbalog asked how long the investigation took and Mr. Goulart reported it was completed January 10, 2019.

Commissioner Agbalog asked if the findings and recommendations included both parts of the complaint. Mr. Goulart stated yes, it included both sections. Commissioner Agbalog asked if that was within the investigation timeline allowed in CS Rule 1800. Mr. Goulart stated no, it would not fall within the 30-day informal or the 45-day formal investigation timelines, with the caveat that it was an amended complaint alleging something that had not happened.

Commissioner Holt asked if the amended date was August 15, 2018 or in October 1, 2018. Mr. Goulart stated that Ms. Salazar had indicated a couple of times that she thought she was being retaliated against and advised him about this in July but it did not actually happen. The Department was not notified about the retaliation complaint until October 1, 2018 when she was actually reassigned.

President Price asked if he stated that even if Ms. Salazar was moved it was not disciplinary in nature. Mr. Goulart explained that a reassignment is not considered a disciplinary action. A reassignment is something that is done at the discretion of the Department. President Price asked if the reassignment was done at the Department's discretion, then why did it meet the criteria to open the complaint under the CS Rule 1800 process. Mr. Goulart explained that it was because she made the allegation that she was moved for a discriminatory reason in retaliation for her union activity.

President Price stated that the term tour of duty sounded negative. Mr. Goulart stated he got that term from a management employee because it is difficult work that involves Child Protective Services and Emergency Response. He did not know if that term is commonly used throughout the Department.

President Price asked, to be clear, if the EPR complaint was not alleged to have been based on union activity and Mr. Goulart stated that was correct.

Commissioner Holt noted that the case summary stated that Ms. Salazar filed a complaint based on discrimination and retaliation, dated on February 13, 2018. He asked if that was for the first EPR complaint. Mr. Goulart stated his recollection was that her complaint was regarding the negative comments and narrative in the EPR.

Kendra Graham, County Counsel, objected and asked Mr. Goulart if he had a copy of the letter he sent to Ms. Salazar regarding the findings and recommendations and asked if he could review it to refresh his recollection.

Mr. Goulart stated it is in the letter that she received a written reprimand in retaliation for union activity. Ultimately, the Department made the decision to change that document.

Ms. Salazar started to speak and Ms. Graham asked that she be sworn in so that she could cross-examine her. Mrs. Murbach administered the oath to Ms. Salazar.

Ms. Salazar stated that her allegation of discrimination and retaliation started at the time she received the EPR, it did not start with the transfer. At the time she received the EPR, she was he was employed with DHS for 10 years. She had never received a negative mark on her EPR indicating she needed improvement in an area. Up to December of 2017, she never received complaints from any supervisors or clients. In December 2017, the union passed its last contract and in that contract, overtime was hit, which greatly affected the on-call program. She informed the Commission that she works as an on-call SSW. She was working with management and the union, trying to come up with a solution on how to deal with the loss of overtime. The contract was passed right before Christmas break and the holidays at that time were not counted as hours worked. SSWs were ready to completely pull out which would have left no on-call workers for the entire Christmas break. The manager that was in charge of the on-call program got frustrated and quit and her duties were handed over to Program Specialist, SA. This was on December 18. On that day, she was working with a couple of other managers, along with SA and another supervisor, MG. They were asking her to talk with the negotiator about what possibilities were available, what was in the contract, were there any clauses that allowed management to overcome for on-call banks. She was texting the negotiator, because management could not talk to the negotiator but she could, and the negotiator sent back a text that she was not expecting so she read it aloud. The text was essentially telling all on-call workers to go on strike, to bail out. When she read it, SA ran off, went into JC's office and closed the door. She does not know what happened after that. This happened in the middle of December. Between the middle of December, and when she got her EPR on February 2, allegations were made against her that she was never informed of until she was handed a written reprimand and an EPR. SA was never in her direct line of supervision, and was never her supervisor. At the time this was happening, JC, Program Director, was on vacation and SA was filling in. When her supervisor turned in her EPR, SA emailed her and told her she had to add other things to it. Her supervisor said she did not agree with that but she was not given a choice. She had two need improvement boxes marked on the EPR, two allegations of blatant

insubordination, she had received a written reprimand, and there were numerous other allegations. One specifically stated that she was abrasive to a County Counsel and that she argued every decision with her. SA has a 15-year-old son, and her son's paternal grandmother is this particular County Counsel whom she is alleging that she had a problem. Approximately a month prior, this County Counsel approached her in a hallway and was rude, unprofessional, and was seen by a witness. She reported it to her supervisor, who reported it to the Program Director. What she reported was completely flipped, but all this stuff was ultimately removed once the Director figured out none of it was true. The problem was that she was seeking assistance because they kept coming at her. A complaint that was not submitted to the Commission, from February 16, was that she was pulled out of work twice and was verbally reprimanded for talking about her situation with fellow co-workers. They did not leave her alone until she told them that the National Labor Relations Board protects talking about disciplinary actions after hours as protected activity. She was seeking help in order to prevent further action while she addressed the allegations in her EPR. She never spoke with Mr. Goulart until October. She had emails going back and forth with him and never once did he say that he was going to wait for the Department to determine what was going on with her EPR. She asked several times for updates and he said it was in process.

In July 2018, she was notified she would be transferred. Prior to her employment with DHS, she worked for six years with the Department of Public Health where she worked under a contract that was terminated. She was then moved to DHS. They immediately put her in a court unit because while she was working as a full-time SSW she went to law school. At the time that she transferred, she was only in court intake for three years and six months. At the start of that program, they told her that it takes a full two years before you learn the job and she was considered knowledgeable in that work for a year and a half. At the time she went to court intake, there was a worker who had also gone to law school and was there for 17 years. She explained that when a new SSW arrives at the department, they are often placed in family services to get an idea of what CPS is. It is essentially one of the entry-level positions. Once the SSW gains experience, the SSW can move up to be an investigator. The investigator position requires a SSW III or a Master's degree. Ms. Salazar is a SSW III and is considered an experienced worker. A SSW who is an investigator, in an experienced unit, who is then moved back down to Family Services, technically has a status demotion. When she asked why they transferred her there, the explanation was that it was for her own personal growth and development even though on the succession planning form she had stated she did not want to be transferred. When she got in there, they started giving her the most difficult cases. When she asked why, she was told that she was an experienced worker and they needed her to take those cases. To her, this was a status demotion and it was retaliation. In the Department, amongst the workers, it is well known that if they upset AR, they will be moved to Family Services.

It has been over one year and this has taken so long. She did come to the Commission in October to mention that she had filed a complaint in February and had never received a response. After October, they started the investigation. This complaint started with her EPR, but her supervisor who completed it was never interviewed. They never talked to her. SA was not her supervisor. She gave the list of 30 SSWs to Mr. Goulart. One of the people interviewed, came to her and told her that he had been asked if he had requested to be transferred. Ms. Graham objected stating it was hearsay and made a standing objection to any hearsay Ms. Salazar included in her statement. President Price stated it was duly noted.

Ms. Salazar stated that Mr. Goulart had asked the SSW if he had specifically asked to go to Emergency Response and he stated no, he only asked to be transferred. Mr. Goulart then told him that if he did not specifically asked to be moved to Emergency Response then that was considered an involuntary transfer because he did not ask to be moved to that unit. Since she does not have discovery to any of his investigation, she has a difficult time understanding how they unfounded an allegation without speaking to the supervisor who wrote and signed the EPR. She was present on Monday night and she listened to the proposal from County Counsel and from HR to CS Rule 1800. If she were to seek a different avenue to address her concerns with the County, it would not have been for this avenue, but for a court of law, to pursue a route to sue the County. Those were not her intentions when she filed this. There has been poor management. Her goal in all of this was to ask for change, to ask for help for the workers. A change she would ask the Commission to consider is to make the process more employee friendly. If employees are filing an appeal based on HR and the employee does not know what evidence they use in their investigation, the employee is walking in here alone. She feels the appeal process needs to be less intimidating for employees. Every HR complaint that was filed at the same time that hers was filed was unfounded. She also requested that, in the revisions, there be additional oversight over HR. It would be nice if they started reporting how many complaints are being filed with them and the nature of the complaints. If the Commission has the ability to audit investigations to ensure that there is a fair and complete investigation. She was elected to represent her co-workers as a bargaining team member and she is not going forward with the hearing. She wanted to be heard and wanted the Commission to be aware that HR is not conducting complete and thorough investigations.

Ms. Graham asked if Ms. Salazar was asking the Commission to make a ruling on whether she was discriminated against because that would impact how she moves forward. This process was not expected to be an appeal hearing; the purpose of this process is to create an evidentiary record, not to review an action. She needed clarification.

Ms. Salazar requested the matter to be dismissed without making any findings. She only wanted the Commission to be aware of what is going on.

Ms. Graham stated that based on the fact that Ms. Salazar was withdrawing, she was not asking any questions and nothing needed to be done at this point.

Commissioner Agbalog asked Ms. Graham if there was anything she wished to submit for the record.

Ms. Graham stated she had not submitted any of the evidence.

Commissioner Agbalog asked Ms. Salazar if she had anything in writing she would submit. Ms. Salazar stated she did not.

Ms. Graham stated she would not be submitting anything.

Commissioner Holt asked Ms. Salazar if the Commission was not being asked to make a ruling on anything that has happened. Ms. Salazar stated no, she was not prepared to represent herself. Commissioner Holt thanked her for appearing.

Ms. Graham stated there was nothing to appeal.

President Price asked if the written reprimand was part of her complaint to the EEOO and if she sent it to Mr. Goulart. Ms. Salazar stated yes.

President Price asked Ms. Salazar what were her grounds for thinking it was her union involvement that caused some of the negative things that happened. Ms. Salazar stated that it was because SA was newly assigned to handle on-call and the union negotiator had texted her while SA was there and she read it aloud. She feels that SA saw her as a threat because she had the power to pull out. She felt that they added the needs improvement on her EPR so that she would not have any type of influence over the on-call.

President Price asked her if she had heard SA or any other supervisor say that it was because she was a part of the union. Ms. Salazar stated it was because she was representing the union at that time. This happened in a brief period of six weeks. Prior to that, she was an outstanding employee.

Commissioner Rose asked for clarification on the overtime pay. Ms. Salazar explained the contract changed and sick time and holiday pay did not count towards the 40 hours per week accrual needed to have overtime paid.

Commissioner Burrow asked how Ms. Salazar knew that her supervisor was told to add items to her EPR. Ms. Salazar stated that her supervisor told her. He asked her if the meeting she held with her co-workers was held during work hours and Ms. Salazar stated it was after work hours.

President Price asked Ms. Salazar if she was aware that she could call her supervisor to testify and Ms. Salazar stated that was correct. President Price asked her if she still wanted to withdraw. Ms. Salazar stated that she did not want to call her co-workers because they feel intimidated and she did not want to put them through that.

Ms. Graham pointed out that these statements and answers to the Commission's questions have been one sided and the Department has not had an opportunity to answer those same questions and asked this placed on the record.

President Price asked Ms. Graham if the Department wanted to respond and Ms. Graham stated she did not have any witnesses.

President Price stated the matter was dismissed pursuant to complainant's request.

CLOSED SESSION (Government Code § 54957); NONE

4. President Price adjourned the meeting at 6:53 p.m. to the next regular meeting to be held on Monday, April 8, 2019 at 5:30 p.m.