

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

GERALD SULLIVAN,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-DEMO-08-009

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This matter came before the Personnel Resources Board, JOSEPH PINZONE, Vice Chair; LAURA ANDERSON, Member; and DJ MARK, Member. The hearing was held on February 11, 2009, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Gerald Sullivan was present and represented himself. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a demotion for failing to comply with agency policies and directives including basic safety and security practices, for failing to treat others with dignity and respect, and for possessing inappropriate and discriminatory documents in the workplace.

**II. FINDINGS OF FACT**

2.1 Appellant Gerald Sullivan is a permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on September 9, 2008.

2.2 Appellant has been employed with DOC for over 20 years. At the time of the actions giving rise to this appeal, Appellant was a Plant Manager 3 for the Maintenance Department at Olympic Corrections Center (OCC).

1  
2 2.3 Appellant had a history of informal corrective actions but no formal disciplinary actions.  
3 Between 1988 and 2001, Appellant received verbal counseling, letters of expectations, letters of  
4 counseling, and letters of reprimand. These addressed subjects such as the cleanliness of the  
5 maintenance area, waste disposal, inventory, compliance with a variety of institution policies,  
6 safety program compliance, use of two-way radios, computer usage, vehicle usage, tool and key  
7 control, and security.

8  
9 2.4 In addition, Appellant's performance and the expectations for his position were addressed  
10 in his Employee and Development Performance Plans. For example,

- 11 • Appellant's March 2002 to March 2003 Employee Development and  
12 Performance Plan advised Appellant of the expectation that tool control  
continue to be a security focus for the Maintenance Department.
- 13 • Appellant's August 2003 to August 2004 Employee Development and  
14 Performance Plan advised Appellant that safety and tool control should be a  
focus of his position.
- 15 • Appellant's August 2005 to August 2006 Employee Development and  
16 Performance Plan addressed Appellant's lack of patience which resulted in  
17 visible frustration and at times interfered with or delayed effective  
implementation of ideas for improvement.

18  
19 2.5 During his employment with DOC, Appellant received training covering sexual  
20 harassment, lock-out safety, hazardous material management, safety procedures, and diversity. As  
21 a long term employee, Appellant was aware of his responsibility to comply with DOC policies,  
22 procedures and standards of conduct.

23  
24 2.6 DOC standards of conduct are addressed, in part, in the DOC Employee Handbook. The  
25 handbook states:

26 **DEPARTMENT EXPECTATIONS**

27 As an employee of the Department, you will have many things to learn, not the  
28 least of which will be the expectations of your supervisor, your co-workers, and  
the agency as a whole. To assist you with this responsibility, the following is a list  
29

of *some* departmental expectations for your study. Familiarize yourself with the list so you may better understand and fulfill the duties of your position.

As an employee of the Department of Corrections, **you will be expected to:**

- Positively represent Washington state government to everyone you meet. You are our best public relations agent;  
    . . .
- Treat fellow staff with dignity and respect;  
    . . .

It is also important as a new employee that you understand some of the specific prohibitions that the Department must enforce. **You are not allowed to:**

- Discriminate against any offender, employee, prospective employee, or volunteer on the basis of race, color, religion, gender, sexual orientation, age, creed, national origin, marital status, veteran status, or disability;
- Use profanity for inflammatory remarks with offenders or individuals with which you work;  
    . . . .

2.7 DOC Policy 100.500, Non-Discrimination, states, in part:

II. Responsibilities

A. All supervisors and managers will have a duty to prevent discrimination from occurring in the workplace and will:

. . .

B. Supervisors who fail to take prompt and immediate steps to eliminate and/or report discrimination or retaliation as a result of reporting discrimination will be subject to corrective/disciplinary action.

C. Employees will conduct themselves at all times in the workplace in a manner that is free from discrimination.

. . . .

2.8 DOC Policy 420.500, Tool Control, states, in part:

II. Storage and Identification

A. All tools will be stored according to the Tool Control Matrix.

. . .

V. Issuing/Checking Out Tools

1 . . .

2 B. The work supervisor will ensure that all tools are accounted for at the beginning  
3 and end of each workday, and any time the offender is assigned to the tool crib  
4 leaves it.

5 . . .

#### 6 VI. Tool Accountability

7 A. Each employee responsible for the tools in his/her area will be required to sign  
8 DOC 21-516 Daily Tool Accountability, verifying that all tools are accounted for  
9 at the beginning and end of each work day. The signed form will be filed in each  
10 area and maintained per the Records Retention Schedule.

11 . . .

#### 12 VII. Unaccounted for Tools

13 A. When a staff member discovers a tool is missing, s/he will immediately:

- 14 1. Stop all offender movement in/out of the area;
- 15 2. Notify the Shift Commander;
- 16 3. Notify staff in the affected area;
- 17 4. Notify the immediate supervisor; and
- 18 5. Submit a written report to the Shift Commander.

19 . . .

#### 20 VIII. Disposal/Replacement of Tools

21 A. All new or replacement tools will come in through a central location and be  
22 marked and coded prior to being issued.

23 . . . .

24 2.9 DOC Policy 420.500, Key Control, states, in part:

#### 25 XI. Control

26 . . .

27 B. Key receipts must be used when issuing keys. Key receipts will be hung on the  
28 keyboard hook from which the key ring is taken.

29 C. All key rings will be accounted for on each shift by ensuring that either the  
assigned key ring or a key receipt is on each key hook. This will be documented by  
each shift in the appropriate logbook.

. . .

#### XII. Inventory

. . .

1 B. Staff on each shift at each key-issue point will account for all key rings daily  
2 and document in the appropriate key log. The Shift Commander will review the  
3 logs weekly and document the review.

4 2.10 DOC Policy 890.020, Confined Space Entry, states, in part:

5 II. Training

6 A. The Entry Supervisor will be thoroughly trained in the hazards and correct  
7 procedures for working in confined spaces. This training will be documented in the  
8 STATIS system using Code 01-07-SD7A.

9 B. The Entry Supervisor will provide this training to every person who may work  
10 or support workers in confined spaces.

11 2.11 DOC Policy 890.070, Chemical Control and Hazard Communication (HAZCOM), states,  
12 in part:

13 IV. Control of Flammable, Toxic, or Caustic Materials

14 A. All flammable, toxic, or caustic materials, identified as those chemicals with a  
15 HMIS hazard rating of 2 or higher for flammability, reactivity, or Health on the  
16 MSDS, will be monitored and stored in secure areas that are inaccessible to  
17 offenders. Only offenders under close supervision of qualified staff are to have  
18 access to these materials.

19 1. Materials will be stored per MSDS requirements in approved containers,  
20 cabinets, storage rooms, or areas that meet the manufacturer's  
21 specifications and applicable regulatory requirement, MSDS information  
22 will be kept with the items.

23 . . .

24 C. Receipt and distribution of flammable, toxic, or caustic materials will be  
25 documented on DOC 21-764 Flammable, Toxic, and Caustic Material Log. The  
26 log will be retained for 3 years.

27 2.12 Tamara Rowden was a Human Resource Consultant in the DOC headquarters. Part of her  
28 duties included helping facilities prepare for audits and for accreditation by the American  
29 Correctional Association. In this role, Ms. Rowden conducted "walkthroughs" of DOC facilities.  
Prior to January 9, 2007, Appellant had accompanied Ms. Rowden during walkthroughs at OCC.  
During these walkthroughs, she felt that Appellant was obnoxious and argumentative. As a result,

Ms. Rowden was reluctant to conduct further walkthroughs with Appellant unless other staff accompanied her.

2.13 On January 9, 2007, Ms. Rowden conducted a walkthrough with Appellant. She was accompanied by Tracy Hixson, Correctional Program Manager, and Scott Speer, Correctional Unit Supervisor. During the walkthrough, Appellant became argumentative and condescending toward Ms. Rowden. Other staff and inmates were in the area in which these exchanges occurred. After the walkthrough, Ms. Rowden reported her concerns about Appellant's behavior to Superintendent John Aldana. Mr. Speer reported his observations on January 10 and Ms. Hixson reported her observations on January 11.

2.14 During the walkthrough, Ms. Rowden expressed concerns to Appellant about items stacked on shelves that were too close to the ceiling, the location of Material Safety Data Sheets (MSDS) for stored chemicals, and unlocked flammable storage lockers. In addition, Mr. Speer had concerns with tool storage and security and noted inappropriate and pornographic magazines, inappropriate posters, playing cards, and craft items in the break area and in workstations.

2.15 On January 17, 2007, Appellant provided a response to the complaints and acknowledged his sarcasm was inappropriate and that his attitude was unprofessional. He also acknowledged that magazines, including a pornographic magazine, were found in the break and work areas.

2.16 On January 26, 2007, Superintendent Aldana assigned Al Stickney, Correctional Unit Supervisor from the Monroe Correctional Complex, to conduct an investigation into Appellant's alleged misconduct. During the investigation, Appellant was placed on administrative leave. Mr. Stickney's investigation included a walkthrough of the maintenance area at OCC, interviews with staff and an interview with Appellant.

2.17 Following his investigation, Mr. Stickney submitted his February 26, 2007 Fact-Finding Report to Superintendent Aldana. Mr. Stickney's report summarized findings of disrespectful,

1 vulgar, and defiant behavior by Appellant. In addition, he summarized deficiencies he found in  
2 plant operations; security management, including key and tool security; inventory management,  
3 including accountability for tools and keys; and offender accountability.

4  
5 2.18 Before receiving Mr. Stickney's report, Superintendent Aldana determined that further  
6 assessment of the maintenance department and Appellant's work area were needed. On February  
7 13, 2007, Darla Pew, Secretary Supervisor, participated in an assessment of the organizational  
8 needs of the maintenance department. During the assessment, several file folders containing  
9 questionable materials were found in Appellant's desk. Ms. Pew completed an incident report and  
10 forwarded it to Superintendent Aldana.

11  
12 2.19 Superintendent Aldana determined the information in the incident reported required  
13 further investigation. He assigned the investigation to Ms. Hixson who was assisted by Carol  
14 Hanson, Secretary Administrative. During the investigation, they reviewed several files found in a  
15 drawer of Appellant's desk. The files were marked "Slime", "Bullshit File", "New Bullshit File",  
16 "Additional Bullshit", and "Incident Report & Other Assorted Stupidity." The files contained  
17 work-related documents and information. They also found an untitled manila folder containing  
18 degrading, unprofessional, discriminatory and sexually charged/explicit materials.

19  
20 2.20 Ms. Hixson and Gina Maines, Human Resource Manager, met with Appellant on March  
21 14, 2007. When asked about the files and the inappropriate materials, Appellant admitted that the  
22 files and materials were probably his. Appellant also admitted that he was aware of his  
23 responsibility to read and be familiar with DOC policies. Ms. Hixson submitted her March 26,  
24 2007 Fact Finding Report to Superintendent Aldana.

25  
26 2.21 On July 20, 2007, Superintendent Aldana assigned Jeri Boe, Community Corrections  
27 Supervisor, to conduct a follow-up investigation to Mr. Stickney's and Ms. Hixson's reports. Ms.  
28 Boe was instructed to investigate allegations on unprofessional behavior and inappropriate  
29 security practices by Appellant. During her investigation, Ms. Boe interviewed a number of staff

1 including Appellant. Ms. Boe's investigation showed that as a manager, Appellant conducted  
2 himself in an unprofessional and inappropriate manner, that he had inappropriate files in his desk  
3 drawer, that he admitted his behavior could be considered challenging and argumentative, and that  
4 he failed to employ proper security practices, including tool and key control, within the  
5 maintenance department. Ms. Boe submitted her August 17, 2007 Fact Finding Report to  
6 Superintendent Aldana.

7  
8 2.22 After reviewing Ms. Boe's report, Superintendent Aldana determined that another  
9 investigation was needed to clear up discrepancies between the staff interviews from the first fact  
10 finding and the second fact finding. During this investigation, Ms. Boe talked to staff who worked  
11 under Appellant's supervision and to Appellant. Ms. Boe found that staff was not aware of  
12 discrepancies in the way the maintenance department handled tool control and that they had not  
13 been instructed to correct any discrepancies in this regard. Ms. Boe concluded that there was no  
14 level of responsibility among staff or from Appellant to fix tool control discrepancies. Ms. Boe  
15 submitted her October 16, 2007 Fact Finding Report to Superintendent Aldana.

16  
17 2.23 While the fact finding investigations were being conducted, several other DOC staff  
18 assessed the maintenance department at OCC. Robert Tiemeyer, Correctional Officer, is the Tool  
19 Control Officer for OCC. He did periodic inventories of tools in the maintenance area. CO  
20 Tiemeyer credibly testified that while Appellant was Plant Manager, conducting tool inventories in  
21 the maintenance area was a difficult task. He testified that tools were not checked out and  
22 checked in accordance with the tool control policy, that the tool cribs were not appropriately  
23 secured, that tools were not properly stored, and that the inmate tool crib attendant was not  
24 properly supervised.

25  
26 2.24 Tim Hull, Correctional Specialist 3, was CO Tiemeyer's supervisor. He was aware of the  
27 difficulties CO Tiemeyer had conducting tool inventories at OCC. On January 22, 2007, Mr. Hull  
28 and Glen Nicholas, Security Control Sergeant for Clallam Bay Corrections Center, conducted an  
29

1 inspection of some of OCC's tool storage areas. They found that tools were not secured,  
2 controlled or inventoried in accordance with DOC operating procedures.

3  
4 2.25 On January 25, 2007, CO Tiemeyer completed a quarterly inventory of all the tool cribs in  
5 the maintenance area. In a memo dated January 29, 2007, CO Tiemeyer listed the numerous  
6 discrepancies he found. These included improper tool storage, tools being used but not listed on  
7 the inventory, tools on the inventory that could not be located, and daily tool sign-off sheets not  
8 completed properly.

9  
10 2.26 On January 31, 2007, Mr. Hull accompanied Mr. Stickney on his walkthrough of the  
11 maintenance area. During the walkthrough, Mr. Hull noted that key inventory sheets were not  
12 being completed correctly. He noted that the log sheet showed that keys were logged out and  
13 keys were logged in but the keys that were noted as logged in were not in the lock box and the  
14 time noted on the log for when the keys were returned was after the time that Mr. Hull reviewed  
15 the log sheet. Mr. Hull described this as "pencil whipping" the log.

16  
17 2.27 Superintendent Aldana asked Chris Idso, Plant Manager 3 at Stafford Creek Corrections  
18 Center, to conduct an assessment of OCC's facility operations from a maintenance perspective. In  
19 his February 7, 2007 report to Superintendent Aldana, Mr. Idso indicated that OCC had no  
20 mechanism to evaluate the priority level of work orders and no planned maintenance program for  
21 the facilities at OCC. Mr. Idso also indicated that OCC lacked a system to monitor or to maintain  
22 materials needed for the maintenance department and that the OCC maintenance staff had become  
23 complacent and in comes cases, defiant toward basic DOC policies and operational procedures  
24 governing DOC facilities including those for inventory control, tools and keys. During the  
25 assessment, Mr. Idso noted that a set of keys were recovered from an inmate by unit custody staff  
26 during a pat down.

27  
28 2.28 At Superintendent Aldana's request, Gunnar Neilsen, Safety Officer, conducted an  
29 assessment of the OCC maintenance department. By email dated February 26, 2007, Mr. Neilsen

1 reported that the department was messy and cluttered and that there was a lack of commitment  
2 from department management to follow safety policies and procedures.

3  
4 2.29 After considering all the Fact Finding Reports and maintenance department assessments,  
5 Superintendent Aldana determined that discipline was necessary. Prior to determining the level of  
6 discipline to impose, Superintendent Aldana held a pre-disciplinary meeting with Appellant. By  
7 letter dated March 29, 2008, Superintendent Aldana notified Appellant of the pre-disciplinary meeting  
8 and outlined the allegations against Appellant. Those allegations were:

- 9 1. On January 9, 2007, you displayed unprofessional and inappropriate behavior towards  
10 fellow staff members in the presence of offenders.
- 11 2. Over an extended period of time, your interactions with Department staff have been  
12 unprofessional, demeaning, negative, argumentative, abusive, defiant, and/or  
13 intimidating.
- 14 3. You maintained degrading, unprofessional, discriminatory, and sexually  
15 charged/explicit materials in your work area.
- 16 4. You ignored tool control policies and did not supervise your staff for compliance with  
17 tool control management and policies.
- 18 5. You ignored key control policies and did not supervise your staff for compliance with  
19 key control management and policies.
- 20 6. Hazardous waste from maintenance projects was found and not properly disposed of.
- 21 7. You did not correct items repeatedly identified in Safety Audit Reports.
- 22 8. You circumvented safety procedures and/or did not comply with safety program  
23 requirements and did not supervise your staff and offenders for compliance with safety  
24 procedures and program.
- 25 9. You did not supervise your staff to ensure offenders were held accountable for their  
26 behavior.
- 27 10. You did not manage a preventative plant maintenance program to include  
28 accountability of purchases, adequate inventory of supplies and a work order program.

29  
30 2.30 During the pre-disciplinary meeting, Appellant provided a written response to the charges.  
31 In his written response Appellant indicated, in part and in summary:

- 32 • He frequently expressed his opinions, sometimes strongly, but it was never his  
33 intention to be abusive, intimidating, or offend anyone.

- He believed the discussion with Ms. Rowden about the shelf heights took place when no offenders were present.
- The materials found in his desk drawer had been there for at least 15 years.
- Tool control had been an issue and several methods and changes had been tried to improve the system.
- He did not ignore key control but he admitted he did not perform formal inspections of the process.
- Improvements had been made in the use of fall protection plans, use of protective devices, and the use of the lockout/tagout system.
- Maintenance of the facility was an ongoing process and supplies were ordered for both regular and special maintenance needs, health inspections were always followed up with a corrective action plan and subsequent work to correct deficiencies, and many of the repeat deficiencies were simply broken again by the time of the next inspection.

2.31 Superintendent Aldana heard nothing during the pre-disciplinary meeting to change his belief that Appellant had engaged in the alleged activities. After considering Appellant's written response to the allegations, Superintendent Aldana determined that there were no mitigating circumstances. He also felt that there was no indication that Appellant would take responsibility for correcting deficiencies in the maintenance area, for improving his demeanor toward other staff, or for assuring that the processes used in the maintenance area complied with DOC policies.

2.32 In determining the level of discipline, Superintendent Aldana considered termination. However, he felt that in spite of Appellant's 20-year history of active defiance with policies and failure to correct deficiencies in the maintenance department, Appellant also had a history of successes in the areas of hands-on work. Because Appellant was a long term employee and he had moments of successes in his career, Superintendent Aldana determined that demotion was the appropriate sanction. He felt that a demotion to a non-managerial position would free Appellant of administrative responsibility and would provide him a more structured environment. In addition, he felt that a demotion would allow Appellant to save his career, remain in his trade, and keep his benefits. Coincidentally, Clallam Bay Correctional Center had an opening for a Carpenter Supervisor. Therefore, by letter dated July 28, 2008,

1 Superintendent Aldana notified Appellant of his demotion from a Plant Manager 3 at OCC to a  
2 Carpenter Supervisor at Clallam Bay Corrections Center, effective August 12, 2008.

### 4 **III. ARGUMENTS OF THE PARTIES**

5 3.1 In summary, Respondent argues that security of the facility, staff, offenders and members of the  
6 public is of paramount importance at OCC and that as Plant Manager, Appellant was responsible first  
7 and foremost for maintaining the safety of the facility and performing the work of the department.  
8 Respondent contends that Appellant's attitude and disregard for policy put the facility and the public at  
9 great risk. Respondent asserts that Appellant ran the department like a construction office rather than  
10 like a maintenance department at a correctional facility. Respondent contends that the investigations  
11 were fair and thorough and that the Superintendent reviewed and took into consideration the full  
12 complexity of the matter and the findings of the investigations before determining that misconduct had  
13 occurred. Respondent asserts that the Superintendent considered Appellant's long history with the  
14 agency, but in light of the repeated deficiencies in the maintenance department, the matter had to be  
15 addressed. Respondent argues that Appellant had a long standing practice of disregarding policies and  
16 procedures. Respondent further argues that even though Appellant would say that he would  
17 immediately fix a deficiency, he became argumentative, he was not interested in changing processes, he  
18 did what was minimally required, and he continued to disregard rules and procedures putting the  
19 facility at risk. Respondent contends that a demotion was the lowest level of discipline that would  
20 affect the change necessary to bring the OCC maintenance department into compliance and to assure  
21 the safety and security of the institution.

22  
23 3.2 In summary, Appellant argues that he was on administrative leave for 18 months and that the  
24 investigation is in question because it "wasn't digging for truth but was digging for dirt." Appellant  
25 contends that the Superintendent ignored the statements he made in interviews and in writing and that  
26 his responses were discounted in the final rationale for the demotion. Appellant argues that he was not  
27 ignoring deficiencies and asserts that changes and improvements were made to bring the department  
28 into compliance with the American Correctional Association standards. Appellant admits that he may  
29 have foolishly shot off his mouth about what he thought but asserts that there is no evidence that he did

1 not do what he was told to do. Appellant contends that Respondent has failed to follow a course of  
2 progressive discipline and asserts that his performance evaluations show that he was doing a good job  
3 and was taking care of business. Appellant asserts that he has a 20-year history as a productive  
4 employee and that the demotion was not warranted.

#### 5 6 **IV. CONCLUSIONS OF LAW**

7 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.  
8

9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the  
10 charges upon which the action was initiated by proving by a preponderance of the credible evidence  
11 that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was  
12 appropriate under the facts and circumstances. WAC 357-52-110.  
13

14 4.3 Appellant challenges whether the investigations were fair and thorough. We find that they  
15 were. When Superintendent Aldana noted discrepancies in the investigation findings, he ordered further  
16 investigation. Each of the investigations provided further collaboration of the deficiencies in the  
17 maintenance department, of Appellant's poor management of the maintenance department, and of  
18 Appellant's disrespectful and inappropriate behavior in the workplace. Nothing in the record supports  
19 Appellant's claim that the investigations were unfair or that the investigations were not thorough.  
20

21 4.4 Respondent has met its burden of proof. Superintendent Aldana provided credible testimony  
22 about the extraordinary steps he took to assure that the investigations were fair, thorough and  
23 complete. He considered Appellant's responses, his employment history, including his successes in  
24 performing hands-on work for the maintenance department. Superintendent Aldana showed  
25 thoughtfulness and compassion in determining the level of discipline to impose.  
26

27 4.5 Respondent has proven by a preponderance of the credible testimony and evidence that  
28 Appellant failed to abide by department standards of conduct, policies and procedures. He failed to  
29 treat others with respect, failed to assure that process improvements were sustained, failed to assure

1 that safety and security policies and procedures were followed, and failed to assure that the appearance  
2 of the department was professional.

3  
4 4.6 Under the totality of the proven facts and circumstances, the disciplinary sanction of  
5 demotion is a minimal sanction considering the breadth, scope and duration of Appellant's  
6 misconduct. Therefore, appeal should be denied.

7  
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gerald Sullivan is denied.

10 DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

11  
12 WASHINGTON PERSONNEL RESOURCES BOARD

13  
14 \_\_\_\_\_  
15 JOSEPH PINZONE, Vice Chair

16  
17 \_\_\_\_\_  
18 LAURA ANDERSON, Member

19  
20 \_\_\_\_\_  
21 DJ MARK, Member