**CONFIDENTIAL**

**ADMINISTRATIVE INVESTIGATION**

**REPORT OF FINDINGS**

**IN THE MATTER OF**

*The Gary Olson Complaint*

*City of Gotham*



**INVESTIGATED BY:**

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June 25, 2020

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SUBJECT: ADMINISTRATIVE INVESTIGATION – *The Gary Olson Complaint*

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## **EXECUTIVE SUMMARY**

This matter relates to an administrative investigation undertaken on behalf of the City of Gotham (City). The general scope of this investigation was to determine whether Sanitation Services supervisors, David Bush (Mr. Bush) and/or Thomas Martin (Mr. Martin), violated the rules of the City concerning harassment, discrimination, and/or retaliation in relationship to subordinate employee, Gary Olson (Mr. Olson). Mr. Olson made a complaint on October 2, 2019, claiming that Mr. Martin and Mr. Bush had violated the City's rules relating to harassment, discrimination, and/or retaliation to Mr. Olson's medical condition and Workers’ Compensation claims.

The facts in this matter demonstrate that Mr. Olson operates in the Sanitation Services Division as a Sanitation Equipment Operator. His tasks include operating a City-assigned truck with an armature that picks up trash cans, including normal trash, recyclables, and green waste. Mr. Olson works directly for Mr. Martin and Mr. Bush.

In May 2018, Mr. Olson, claimed allergy difficulties concerning his green waste routes. Mr. Olson was examined by a City doctor who found that Mr. Olson's allergies were not remarkable; however, since that time, Mr. Olson has essentially been assigned recyclable routes which do not contain green waste,

Later that year, on December 12, 2018, Mr. Olson failed to notice damage on his assigned work truck and, on January 3, 2019, was issued a written reprimand in relationship to that matter. Initially, Mr. Olson refused to take delivery or discuss the written reprimand; however, on January 15, 2019, it was issued to him, yet he declined to sign the document. Very quickly thereafter, Mr. Olson filed a series of Workers’ Compensation claims relating to various alleged injuries.

The facts demonstrate that, on July 15, 2019, Mr. Olson made a claim of injury concerning "*stress and anxiety*." On January 22, 2019, Mr. Olson made a claim of injury for exposure to diesel fumes from a City truck he was operating. Additionally, on March 28, 2019, Mr. Olson made a third claim of injury alleging a left shoulder injury from operating the truck that he was assigned. All three of these injury claims were investigated, and all were denied by the City’s Workers’ Compensation Risk Management Division.

During this same period of time in early 2019, both Mr. Martin and Mr. Bush noticed that Mr. Olson was performing poorly in completing Route 7, which is a Thursday recyclable route in the City. The facts demonstrate that this route is somewhat difficult and includes various alleys and sharp turns that require additional time and concentration. The facts demonstrate that Mr. Olson had requested this route when the former operator of the route went on some form of leave.

Because of Mr. Olson's poor performance during the first several months of 2019, Mr. Bush and Mr. Martin worked with the Human Resources Department to attempt to address Mr. Olson's deficiencies. These conversations with Human Resources related only to Mr. Olson’s job performance, and there were no discussions concerning any medical issues or Workers’ Compensation claims. After these discussions, Mr. Bush did an analysis concerning Mr. Olson's performance concerning his Thursday Route 7 activities for the first several months of 2019, and additionally rode with Mr. Olson in May 2019 in order to observe his performance firsthand ,and to provide any needed guidance or suggestions. Mr. Olson did not seem to have any problems negotiating his route, and did not require any instruction or feedback, at that time.

After these meetings with Human Resources, along with observations and analysis, Mr. Olson was given an initial performance evaluation which was later amended and revised and reissued on October 17, 2019. The facts demonstrate that Mr. Olson initially complained to Jim Keith (Mr. Keith), a relatively new Manager in the Sanitation Services Division, that his (Mr. Olson's) initial performance evaluation was unfair. Thereafter, Mr. Keith conducted his own inquiry and overview of the specific Thursday Route 7 recyclable route to determine whether changes needed to be made or whether the route was reasonable, as established at that time.

The facts demonstrate that Mr. Keith rode on this particular route and considered the fact that the location for delivering the recyclables had changed from the City of Gotham to the City of Wilmington. Additionally, the prior operator of Route 7 was suspected of not completing the route entirely and may have skipped specific residences, allowing that operator to appear to have completed the route in a timely fashion. After considering these issues, Mr. Keith decided to restructure the route and create a third route wherein parts of the Route 7 would be assigned to Route 6 and a new route, Route 8.

The facts demonstrate that, after Mr. Keith made these adjustments to Route 7, he rewrote Mr. Olson's review and changed his below-standards rating to "*meets objectives*." This revision of Mr. Olson's evaluation also eliminated the need for the performance improvement plan that Mr. Martin and Mr. Bush had been working on with the Human Resources Department.

Prior to Mr. Olson being given his amended performance evaluation, He filed the aforementioned formal complaint regarding violation of the City's rules relating to harassment, discrimination, and/or retaliation on October 2, 2019. After the City received Mr. Olson's complaint, they immediately sent Mr. Olson a letter indicating that they would be investigating his concerns.

The facts demonstrate that, on November 17, 2019, Rob Weinmeister (Mr. Weinmeister), Senior Human Resources Analyst for the City met with Mr. Olson in order to begin his investigation of his complaints by interviewing Mr. Olson. At the time, Mr. Olson wanted to postpone his interview and meeting and was asked by Mr. Weinmeister to reschedule the meeting at Mr. Olson's "*earliest convenience*." Mr. Olson thereafter resisted being interviewed by Mr. Weinmeister, claiming that he (Mr. Olson) concluded that the Human Resources Department would not be objective or fair in the process.

The facts further demonstrate that, on December 18, 2019, Mr. Weinmeister sent Mr. Olson another letter asking him to participate in an investigation of his complaint and to respond by December 30, 2019. Eventually, on January 6, 2020, this fact finder was retained to investigate Mr. Olson's claims. At that time, a number of documents were provided to this fact finder for review and preparation.

Based on the greater weight of the credible evidence, there was insufficient credible evidence to say that Mr. Martin and/or Mr. Bush violated the rules of the City relating to discrimination, harassment, and/or retaliation concerning their treatment of Mr. Olson. Even though Mr. Olson claimed that Mr. Martin and/or Mr. Bush had engaged in various activities which he construed as negative job actions, including his initial performance evaluation, doing so based on the fact that Mr. Olson had filed a number of Workers’ Compensation claims and had necessary medical leave for treatments and examinations, the evidence developed in this matter does not substantiate those claims.

For instance, Mr. Olson acknowledged that Mr. Martin had treated him poorly since the two began employment together. This alleged poor treatment by Mr. Martin greatly preceded any claims of Workers’ Compensation, medical problems and/or attending medical appointments and/or treatments. Indeed, there was no credible evidence to show that either Mr. Martin and/or Mr. Bush were inspired and/or motivated in their treatment of Mr. Olson concerning any issues relating to his medical condition and/or Workers’ Compensation claims. The evidence demonstrates that all of the discussions with Human Resources officials in relationship to Mr. Olson, were strictly based on his poor performance, and there were no discussions concerning his medical issues nor his Workers’ Compensation claims.

There was additionally no credible evidence to say that any of Mr. Olson's medical appointments were not accommodated nor allowed. Indeed, the facts show that the City mistakenly allowed Mr. Olson to attend his Workers’ Compensation appointments while still providing him full regular pay for the day. They should have coded Mr. Olson sick leave and/or vacation leave time for these appointments, and those leaves would have been reimbursed had any of his claims been accepted by the City. Indeed, none of his claims were accepted by the City.

In this investigation, the fact finder conducted various credibility analyses relating to Mr. Olson, as well as the accused employees and witnesses. This fact finder concluded that Mr. Olson lacked credibility in many aspects of his statements to this fact finder, whereas other witnesses appeared credible and were corroborated by credible evidence and/or statements by other credible witnesses.

The allegations by Mr. Olson that Mr. Martin and/or Mr. Bush violated the rules of the City concerning discrimination, harassment, and/or retaliation are therefore, **Not Sustained**.

## **SCOPE OF THE INVESTIGATION**

The scope of this investigation was to determine:

1. **In Mr. Olson’s complaint, he alleged the following activates:** 
   1. **Mr. Olson alleged that the Workers’ Compensation Claims that he filed and the time off taken related to those claims lead to him be wrongfully criticized in his performance evaluation relating to his attendance and overall job performance.**
   2. **Mr. Olson alleged that the reprimand that he received for the unnoticed damage on his work truck was unfair.**
   3. **Mr. Olson alleged that when he declined to sign a written reprimand, Mr. Martin shredded the original document.**
   4. **Mr. Olson alleged that Mr. Martin directed him to go to his Department of Transportation physical on a Saturday and was not provided overtime compensation or advised about that availability?**
   5. **Mr. Olson alleged that he was not properly paid for filing his Department of Motor Vehicles certificate for his license status while on duty.**
   6. **Mr. Olson alleged that Mr. Martin called him while he was on vacation inquiring about damage to his City-assigned vehicle.**
   7. **Mr. Olson alleged that Mr. Martin said that he (Mr. Olson) was rude when he answered Thomas Martin's request that he work overtime relating to a request made over the Department radio system.**
   8. **Mr. Olson alleged that Mr. Martin had been measuring the tire width on Gary Olson's City-assigned vehicle.**
   9. **Mr. Olson alleged that Mr. Martin’s and/or others' used the City Yard surveillance video camera system relating to Mr. Olson leaving his map book on the dash of Mr. Olson's City-assigned vehicle.**
   10. **Mr. Olson alleged that the Manager of the Department, Mr. Keith, had to change his performance valuation and rescind the performance improvement plan because of Mr. Martin and/or Mr. Boykins’ violation of the City’s rules concerning discrimination, harassment and/or retaliation concerning their treatment of Mr. Olson in the evaluation process.**
   11. **Mr. Olson alleged that Mr. Martin or Mr. Boykins’ requirements regarding moving trash cans into position in order to allow their trucks to reach, grasp and dump the cans using the automated arm were applied unfairly to Mr. Olson?**
   12. **Mr. Olson alleged that Mr. Martin told him that he had been "*following him.*"**
   13. **Mr. Olson alleged that personnel in the Sanitation Department have attempted to "*push*" him out of the organization? .**
   14. **Mr. Olson alleged that he not provided any feedback with regard to the time that Mr. Martin and/or Mr. Bush had shadowed him on his Thursday route to determine whether the route was fair and feasible.**
2. **Concerning Mr. Olson’s claims, did any City employee violate the City of Gotham Anti-Harassment Policy No. 34 concerning discrimination, harassment and/or retaliation concerning their treatment of Mr. Olson?**

## **METHODOLOGY**

This investigation involved the review of documents and surveillance footage, as well as conducting interviews of current and former City employees. Once factual evidence was developed, the various statements of the witnesses were compared and contrasted with one another, as well as other evidence, and determinations of credibility were established. Once credibility was established along with a factual framework of the alleged events, conclusions were formed based on the greater weight of the credible evidence. For the purpose of findings, direct and circumstantial evidence may be given equal weight. The investigation also involved:

1. Reviewing applicable City rules and regulations;
2. Reviewing applicable personnel documents, including any related investigation records;
3. Interviewing co-workers, supervisors and witnesses;
4. Following-up on other evidentiary leads; and
5. Providing additional services as may be requested by the City.

## **INVESTIGATIVE STATEGY**

The strategy of this investigation was to determine whether the allegations made against the accused employees were true. The fact finder determined that the best practice here would be to obtain relevant written statements and/or documents, and then to conduct interviews with relevant witnesses to determine, based on the greater weight of the credible evidence, whether the complainant’s allegations were true.

## **SOURCE OF THE COMPLAINT**

1. **Gary Olson**

Sanitation Equipment Operator

City of Gotham

## **ACCUSED/FOCUS EMPLOYEE**

1. **David Bush**

Public Works Supervisor

City of Gotham

1. **Thomas Martin**

Public Works Supervisor

City of Gotham

## **RULES**

The relevant rules of the City are attached and incorporated herein by reference.

## **WITNESSES**

1. **Gary Olson**

Sanitation Equipment Operator

City of Gotham

1. **Jim Keith**

Sanitation Services Manager

City of Gotham

1. **Jennifer Davis**

Human Resources Analyst (former)

City of Gotham

1. **Terry Olson**

Human Resources Analyst

City of Gotham

1. **David Bush**

Public Works Supervisor

City of Gotham

1. **Thomas Martin**

Public Works Supervisor

City of Gotham

## **CREDIBILITY OF THE WITNESSES**

The analysis of the credibility of the witnesses is an important aspect of a fact-finding investigation. As an accepted rule of evidence, a fact finder can disregard the statements of a witness who has been found to have provided false or unreliable information during their testimony in a matter. Those witnesses' statements can be disregarded in their entirety and not believed unless there is compelling evidence to conclude that individual statements otherwise are true.[[1]](#footnote-1) Concerning the witnesses’ statements, this fact finder considered:

(a) The witness’ demeanor while providing a statement and the manner in which he/she provided the statement.

(b) The character of the witness’ statement.

(c) The extent of the witness’ capacity to perceive, to recollect, or to communicate any matter about which he gave a statement.

(d) The extent of the witness’ opportunity to perceive any matter about which he gave a statement.

(e) The witness’ character for honesty or veracity or their opposites.

(f) The existence or nonexistence of a bias, interest, or other motive.

(g) A statement previously made by the witness that is consistent with his statement during the fact-finding investigation.

(h) A statement made by the witness that is inconsistent with any part of his statement during the fact-finding investigation.

(i) The existence or nonexistence of any fact given in statement by the witness.

(j) The witness’ attitude toward the fact-finding investigation in which he gave a statement or toward the giving of a statement.

*Discussion*

1. **Gary Olson**

Mr. Olson did not appear to be a credible witness to this fact finder. Mr. Olson, from the outset of this investigation appeared to be somewhat reticent to cooperate and provide factual information. For instance, when he was first contacted by the Human Resources Department, Mr. Olson refused to be interviewed by Mr. Weinmeister. After that event, Mr. Olson was given several weeks in order to reschedule an interview such that the Human Resources Department could investigate his claims of discrimination, harassment, and retaliation. Eventually, due to Mr. Olson's suspicions concerning the Human Resources Department’s objectivity, this fact finder was engaged to conduct this fact-finding investigation.

Concerning being questioned by this fact finder, Mr. Olson presented as being somewhat suspicious and even paranoid in his demeanor. Mr. Olson, on a number of occasions, hesitated to answer questions completely and did not appear to be forthright in his answers, nor in his demeanor. One such area was when Mr. Olson was questioned about the status of the time off given to him to attend his Workers’ Compensation related medical appointments. Mr. Olson’s leave had not been properly coded for those appointments when he should have been required to use sick or vacation leave with the opportunity of having those leaves taken reimbursed should any of the Workers’ Compensation claims be accepted. All three of his claims were denied by the City.

It was additionally odd and rather suspicious that Mr. Olson claimed that his Workers’ Compensation claims were still pending when he had clearly been informed in writing that they had all been denied. Mr. Olson's demeanor, coupled with his tentative answers in many instances, left this fact finder to conclude that Mr. Olson was not entirely credible as a witness.

1. **Jim Keith**

Mr. Keith was a credible witness in this matter. Mr. Keith is a relatively new supervisor of the Sanitation Services Division. Mr. Keith had initially understood that Mr. Olson was concerned about his recent review, as well as the criticism concerning Mr. Olson's failure to finish the Thursday Route 7. This fact finder noted that it was Mr. Keith that investigated further in regard to the Thursday Route 7, coupled with assistance by Human Resources, as well as Mr. Bush. Mr. Keith, in this fact finder's opinion, presented an objective and fair-minded approach to the event wherein he rescinded Mr. Olson's initial negative performance evaluation, as well as a performance improvement plan. Mr. Keith's answers to questions posed by this fact finder seemed to be straightforward, honest, and truthful.

1. **Jennifer Davis**

Jennifer Davis (Ms. Davis) was a credible witness in this matter. Ms. Davis is a former Human Resources Analyst for the City, who initially had worked with Mr. Keith's predecessor in the Department as well as Mr. Bush and Mr. Martin concerning their concerns about Mr. Olson's performance. Ms. Davis's statements to this fact finder tended to be corroborated by other credible witnesses, such as Mr. Bush and Mr. Martin, as well as Terry Olson (Ms. Olson), the Human Resources Analyst who took over from Ms. Davis.

1. **Terry Olson**

Ms. Olson was a credible witness in this matter. Ms. Olson is the current Human Resources Analyst working with Mr. Keith, Mr. Bush, and Mr. Martin concerning Mr. Olson's performance issues. Ms. Olson's recollection and statements to this fact finder were corroborated by Ms. Davis's recollection of events that she was aware of in relationship to the time that she worked at the City concerning Mr. Olson's performance issues.

1. **David Bush**

Mr. Bush was a credible witness in this matter. Mr. Bush is a supervisor in the Sanitation Services Division and worked with Mr. Skinner, the former manager of the Sanitation Services Division, as well as the more recent manager, Mr. Keith, in relationship to Mr. Olson's performance issues. Mr. Bush's statements to this fact finder were corroborated by other credible witnesses in regard to his activities relating to Mr. Olson's performance issues. There was no credible evidence to conclude that Mr. Bush provided any unreliable or untruthful information during the course of this investigation.

1. **Thomas Martin**

Mr. Martin was a credible witness in this matter. Mr. Martin is Mr. Olson's direct supervisor along with Mr. Bush. The information that Mr. Martin provided to this fact finder was corroborated by other credible witnesses in this matter such as Mr. Bush, Ms. Olson, Mr. Keith and Ms. Davis. There was no credible evidence to show that Mr. Martin had provided any unreliable or untruthful information during the course of this investigation.

## **INVESTIGATION/FINDINGS**

***Background***

This matter relates to an administrative investigation undertaken on behalf of the City. The scope of the investigation was to determine whether supervisors of Mr. Olson, including Mr. Martin and/or Mr. Bush, violated the rules of the City concerning discrimination, harassment, and/or retaliation. Specifically, Mr. Olson, on September 10, 2019, complained that Mr. Martin and Mr. Bush had violated the City's rules in relation to Mr. Olson's Workers’ Compensation claims that he had filed earlier in the year.

The facts demonstrate that Mr. Olson, in 2019, had filed a number of Workers’ Compensation claims relating to stress and anxiety, exposure to diesel fuel fumes (this led the City to fit Mr. Olson with a respirator to be worn as needed), and a further alleged left shoulder injury. In 2018, Mr. Olson claimed that he had allergic reactions when performing green waste routes, since that time, Mr. Olson has essentially been assigned recyclable routes which do not contain green waste. Mr. Olson's complaints against Mr. Martin and/or Mr. Bush came after he was given his initial performance evaluation on September 9, 2019, which pointed out that he had not performed properly and had not finished or performed his Thursday route (Route 7) on a consistent basis.

***Timeline***

| **Date** | **Event** |
| --- | --- |
| May 2018 | Mr. Olson claims allergies concerning his green waste routes, as well as normal trash routes wherein there was green waste in the receptacles. His personal physician reported that his allergies were not remarkable and there would be “*No Restrictions!!*” |
| January 3, 2019 | Written reprimand issued to Mr. Olson and delivered on January 15, 2019 for failure to notice damage on an assigned work truck December 12, 2018. |
| January 15, 2019 | Mr. Olson makes a claim of injury concerning “*stress and anxiety*.” (TORR18-0088) Denial letter sent on April 11, 2019. |
| January 22, 2019 | Mr. Olson makes a claim of injury for exposure to diesel fumes from the City truck he was operating. (TORR18-0106) Denial letter sent on May 6, 2019. Mr. Olson is eventually fitted with a respirator to be worn as needed. |
| March 28, 2019 | Mr. Olson makes a claim of injury for left shoulder injury from the City truck he was operating. (TORR18-0138) Denial Letter sent on July 16, 2019. |
| April 11, 2019 | Mr. Martin contacts Human Resources regarding Mr. Olson’s CDL Medical Certificate expiring on April 14, 2019, and that he will have to use sick leave if he does not obtain a new certificate. |
| April 30, 2019 | E-mail from Ms. Davis advising Mr. Martin not to deduct sick leave, consisting of 2.7 hours, and to pay Mr. Olson regular pay for the time to go turn in certificate to DMV. |
| May 23, 2019 | Mr. Bush drives behind Mr. Olson to observe his Thursday Route 7 (Alley route). Mr. Bush is advised by Ms. Davis that he should ride with Mr. Olson and not just behind him. |
| May 31, 2019 | Mr. Bush rode with Mr. Olson on the Thursday Route 7 (Alley route). Mr. Bush reports by e-mail, “*Olson did not point out any route challenges or concerns, no medical complaints were mentioned, serviced route at safe productive pace, did not make any risky driving maneuvers, took required rest break at 10:30am, used restroom / drunk water as needed, and completed everything north of Gotham Blvd by 10:30 a.m*.” |
| September 9, 2019 | Mr. Olson is given his initial performance evaluation, which is later amended and revised on October 17, 2019. |
| September 10, 2019 | Mr. Olson fills out his complaint relating to alleged violations of the City’s rules related to harassment, discrimination and/or retaliation. |
| September 18, 2019 | Mr. Olson files his rebuttal to his initial performance evaluation of September 9, 2019. |
| October 2, 2019 | The City receives Mr. Olson’s complaint relating to alleged violations of the City’s rules related to harassment, discrimination and/or retaliation. |
| October 17, 2019 | The City sends Mr. Olson a letter that they will be investigating his complaint. |
| October 17, 2019 | Mr. Olson is given his amended performance evaluation for the period of August 1, 2018 through August 1, 2019. |
| October 24, 2019 | Mr. Olson submits his rebuttal to his October 17, 2019 amended performance evaluation. |
| November 17, 2019 | Mr. Weinmeister, of the Human Resources Department, meets with Mr. Olson to interview him regarding his complaint. Mr. Olson, at the time, wanted to postpone the meeting and was asked to reschedule the meeting at his “*earliest convenience*.”[[2]](#footnote-2) Mr. Olson thereafter resists being interviewed by Mr. Weinmeister claiming that he believes that the Human Resources Department will not be objective. |
| December 18, 2019 | Mr. Weinmeister again sends Mr. Olson a letter asking him to participate in an investigation of his complaint and respond by December 30, 2019. |
| January 6, 2020 | This fact finder is retained to investigate Mr. Olson’s claims. Various documents are provided for review. |
| January 9, 2020 | Mr. Olson is interviewed by this fact finder and other witnesses interviews are thereafter conducted along with the review of various documents. |
| January 22, 2020 | E-mail date January 22, 2020, from Janet Lanoye, Concentra Health Care, confirming Mr. Olson went to be re-certified on a Saturday, April 13, 2019 and returned on Monday April 15,2019, following the expiration of his medical certificate, to complete the exam. |
| July 21, 2020 | This fact finder concludes his investigation with this Report of Findings. |

***Allegations***

1. **In Mr. Olson’s complaint, he alleged the following activates:**
   1. **Mr. Olson alleged that the Workers’ Compensation Claims that he filed and the time off taken related to those claims lead to him be wrongfully criticized in his performance evaluation relating to his attendance and overall job performance.**

Short Answer: ***Not Sustained.* *The greater weight of the credible evidence demonstrates that the concerns regarding Mr. Olson’s attendance did not consider or include the time that he took off for any of his Workers’ Compensation claims.***

*Discussion*

Mr. Olson's complaint here was specifically that the Workers’ Compensation Claims that he filed and the time off taken for medical purposes related to those claims lead to him be wrongfully criticized in his Employee Appraisal Review issued October 17, 2019, relating to his attendance and/or use of sick leave. In Mr. Olson's claim, he states "*I have three pending workers' comp claims that have caused me to be off work for medical disability, medical treatment, and state medical consults. As a result of this, it was put in my employee appraisal review that I have an attendance problem and that the quality of my work and the quantity of my work is now below standard*."

Mr. Olson goes on to claim that he feels as though he is being retaliated against and harassed as a result of having "*sustained these compensable work injuries*." The facts in this matter demonstrate that in May 2018, Mr. Olson claimed allergies to certain green waste route activities. Although Mr. Olson did not make a Workers’ Compensation claim on this issue, the City engaged in an interactive discussion with Mr. Olson and, since that time, Mr. Olson has essentially been assigned recyclable routes which do not contain green waste.

Furthermore, in early 2019 beginning on January 15, Mr. Olson made a claim of injury concerning "*stress and anxiety*." This Workers’ Compensation claim was investigated and later denied on April 11, 2019. Then again on January 22, 2019, Mr. Olson made a second claim, this time for exposure to diesel fuel fumes from the City truck that he was operating. This claim was also investigated and denied on May 6, 2019. Mr. Olson, on March 28, 2019, made a third Workers’ Compensation injury claim, this time, for an alleged left shoulder injury. This claim, like the other two, were investigated and was denied on July 16, 2019 . Mr. Olson claims that he is litigating that particular claim.

It is the basis of these claims and the medical appointments that Mr. Olson attended in relationship to examinations and treatments that he believes formed the basis of negative commentary in his initial and amended Employee Appraisal Reviews for August 1, 2018 through August 1, 2019, and which he claims are acts of discrimination, harassment, and retaliation based on City rules. Mr. Olson cited a number of alleged events and concerns, which he indicates were indicative of such violations. These specific issues and incidents are discussed below.

The facts in this matter demonstrate that the time considered in Mr. Olson’s amended Employee Appraisal Review issued on October 17, 2019 did *not* consider the time taken off for Mr. Olson to attend to any of the Workers’ Compensation appointments during the related time period. The facts show the that the time Mr. Olson took off for those medical appointments associated with his various Workers’ Compensation claims had been coded as regular pay for the full day, albeit incorrectly.[[3]](#footnote-3) Even so, the time considered by Mr. Olson’s supervisors in coming to the conclude that Mr. Olson had “*not met*” the goal to “*Maintain a regular and consistent record to include keeping sick leave below the Department average of 40 hours per year*” did *not* include any of the time Mr. Olson had taken to attend to his various Workers’ Compensation medical appointments.[[4]](#footnote-4)

In Mr. Olson’s Employee Appraisal Review it was clearly noted that the 73.9 hours of sick time taken by Mr. Olson during the August 1, 2018 though August 1, 2019 evaluation period was *not* time “*related to any protected use of sick leave, such as FMLA/CFRA or Family Sick Leave*.” It was also clear, based on how Mr. Olson’s leaves associated with his pending and, at the time, unaccepted Workers’ Compensation leave was coded (*not* as sick leave), that this sick leave analysis further did *not* consider the time he took off related to his pending Workers’ Compensation claims, as those times were *never* reflected on his timesheet, as he was mistakenly given full regular pay for all of those appointments. The time cited as sick leave (e.g. 73.9 hours) appears to be sick time taken by Mr. Olson that was unrelated to the protected use of sick leave or leave time taken that was occasioned by his various Worker’s Compensation claims.

There was additionally no credible evidence to say that any of Mr. Olson's medical appointments were not accommodated nor allowed. Indeed, the facts show that the City mistakenly allowed Mr. Olson to attend his Workers’ Compensation appointments while still providing him full regular pay for the day. They should have coded Mr. Olson sick leave and/or vacation leave time for these appointments, and those leaves would have been reimbursed had any of his claims been accepted by the City. Indeed, none of his claims were accepted by the City.

* 1. **Mr. Olson alleged that the reprimand that he received for the unnoticed damage on his work truck was unfair.**

Short Answer: ***Not Sustained. The greater weight of the credible evidence demonstrates that the damage to this vehicle was noted by the next operator, which demonstrates that a reasonable and prudent inspection by Mr. Olson would have revealed the damage.***

*Discussion*

This matter relates to a written reprimand issued to Mr. Olson on January 15, 2019 concerning Mr. Olson's failure to report damage on his City assigned vehicle. The facts demonstrate that on Wednesday, December 12, 2018, Mr. Olson was assigned to truck 9017PW for the purposes of servicing recycle Route 7. On that date, Mr. Olson, as per Department requirement, submitted his vehicle inspection report, which are done both before and after each route, doing so at the end of his shift on December 12, 2018. At that time, Mr. Olson did not note any damage to his assigned vehicle.

On December 13, 2018, another employee, Michael Santos (Mr. Santos), found clear damage to the fuel tank protective shroud on this vehicle. Mr. Santos noted the damage on his pre-trip inspection form on December 13, 2018 and turned the truck into the Fleet Services Department for repairs.

The facts demonstrate that Mr. Olson was the last employee to use the vehicle before Mr. Santos had observed the damage on December 13, 2018. Mr. Olson was not charged or accused of damaging the vehicle, but merely for failing to report the damage in his either pre or post-trip damage inspection report.

* + 1. **Should Gary Olson have observed this damage?**

The facts demonstrate that Mr. Olson should have reasonably observed the damage to the vehicle. Indeed, the facts demonstrate that Mr. Santos, upon being assigned the vehicle on December 13, 2018, and conducting his pre-trip vehicle inspection of the concerned vehicle, found the damage as detailed to the fuel tank protective shroud atop the work vehicle. As such, it was reasonable that Mr. Olson should have observed this damage.

In his interview, Mr. Olson seemed to conclude that it would be unreasonable for him to climb to the top of the truck to observe the damage to the relevant location on the fuel tank protective shroud. However, such an inspection is required and is part of the driver's vehicle inspection report that Mr. Olson, as well as all operators, such as Mr. Santos, are required to complete before and after their shifts. The purpose of this report is to point out and report any noted damage to the vehicle. As such, Mr. Olson should have reasonably observed this damage and should have reported it properly on his post driver's vehicle report on December 12, 2018, this he did not do.

* 1. **Mr. Olson alleged that when he declined to sign a written reprimand, Mr. Martin shredded the original document.**

Short Answer: ***Not Sustained. There was insufficient credible evidence to say that Mr. Martin had actually shredded the original reprimand document, as Mr. Olson claims.***

*Discussion*

This matter relates to Mr. Olson's claim that after he declined to sign the January 3, 2019 written reprimand, that Mr. Martin actually had shredded the original reprimand document.

* + 1. **Thomas Martin’s understanding of the protocols regarding employees who declined to sign documents.**

Mr. Martin indicated to this fact finder that he was aware of the procedures and protocols regarding employees who may decline to sign certain documents, such as a written reprimand or an evaluation. Mr. Martin explained that the procedure for an employee that refuses to sign such a document has recently changed. Mr. Martin went on to explain that at the time of Mr. Olson's discipline in January 2019, if an employee refused to sign a document, the procedure at that time was to record the date and time the employee was given the disciplinary document and merely make a notation on the document that they did not sign it.

Mr. Martin indicated that if an employee was to write anything other than his signature on the document, the issuing supervisor would shred the document and print a new one and merely note that the employee refused to sign the document. Mr. Martin said that the issuing document was not provided to the employee for them to detail their grievance process by making anecdotal remarks on the document. Mr. Martin also noted that the employee would be offered a copy of the disciplinary document.

Mr. Martin noted though that since the time that Mr. Olson was given his disciplinary notice in January 2019, the procedures and protocols regarding employees who refuse to sign disciplinary notices or other documents has somewhat changed. Mr. Martin indicated that the new procedure is to note that the employee declined to sign the document and that they were offered a copy of the document. Mr. Martin indicated that the signature on these documents now note that the employee has received a copy of the document and not that the employee agrees with it, as was done seemingly in past practices.

* + 1. **Did Thomas Martin believe that the employee was required to sign such documents?**

There was no credible evidence to conclude that Mr. Martin believed that Mr. Olson or any other employee was absolutely required to sign any sort of disciplinary documents. Mr. Martin seemed to be clear that an employee could refuse to sign such a document and that their refusal to sign the document would be noted on the particular document.

* + 1. **Did Gary Olson initially write “*refuse to sign*” and did Thomas Martin thereafter shred the document and print a new one for Gary Olson’s signature?**

Mr. Olson told this fact finder that when Mr. Martin first gave him the written reprimand in January 2019 that he wrote the words "*refused to sign*" on the document and that Mr. Martin thereafter shred the document and printed a new one for Mr. Olson's signature. Specifically, Mr. Olson told this fact finder that when he was issued the reprimand that he refused to sign the document and Mr. Martin put the document in the shredder and printed out a second copy for him to sign, doing so in front of Mr. Olson. Mr. Olson also noted that Mr. Martin and Mr. Bush, who was also present at that time, alleged that Mr. Olson was audio-recording the meeting on his phone. Mr. Olson indicated that he was not secretly or otherwise audio-recording the meeting on his cellphone, and that he merely took his cellphone out of his pocket to take a picture of the reprimand for the purpose of showing it to his union representative prior to signing it.

Mr. Bush recalled that Mr. Martin attempted to serve Mr. Olson with his disciplinary document at the end of a workday at approximately 5:15 p.m. on Mr. Olson's last day of the work week. Mr. Bush could not recall the specific date; however, recalled that Mr. Olson requested that Mr. Martin wait to give him the discipline until later, indicating at the meeting, for Mr. Martin to give Mr. Olson the disciplinary memorandum, as it was interfering with Mr. Olson's cleanup time, which lasts from 5:15 p.m. until 5:30 p.m. each day. Mr. Bush recalled that Mr. Olson indicated that he was not going to sign any disciplinary document during his cleanup time.

Mr. Bush recalled that when Mr. Olson returned to the office the following Monday morning, Mr. Martin again attempted to serve Mr. Olson with his disciplinary notice. Mr. Bush said he was present at this time and he described Mr. Olson as being very distraught and "*loud*" with Mr. Martin. Mr. Bush recalled Mr. Olson told them that he had to go to the hospital over the weekend for chest pains due to the stress and anxiety of thinking about the pending disciplinary action. Then, Mr. Bush observed that Mr. Olson began to sob uncontrollably, slumped over in his chair and held his chest, requesting immediate medical attention. Mr. Bush said that he summoned the assistance of the Gotham Fire Department, who responded to the scene and ultimately transported Mr. Olson to the hospital. Mr. Bush said he was unsure if Mr. Olson had ever signed the disciplinary paperwork, as he was ultimately transported to the hospital. Mr. Bush said that he never saw anybody shred or throw away Mr. Olson's disciplinary paperwork at that time or any other time.

Mr. Martin told this fact finder that he issued Mr. Olson the disciplinary memorandum concerning the unreported damage in January 2019. Mr. Martin indicated that the meeting "*did not go well*." Mr. Martin recalled that at approximately 5:25 p.m. or thereabouts on a Thursday or Friday afternoon, he called Mr. Olson into his office in order to issue him the discipline notice. At the time, Mr. Olson said that he wanted to have a union representative present, however, Mr. Martin said that the discipline notice was merely a written reprimand, that he would not be interrogating Mr. Olson and that he was not entitled to have union representation present.

Mr. Martin noted that Mr. Olson became somewhat agitated and heated in his tone and demeanor. Mr. Martin recalled that Mr. Olson complained to the effect that he was being held accountable for damage somebody else had caused. Mr. Olson then asked Mr. Martin to wait until Monday to give him the discipline notice because he was already working on overtime and had not yet completed his cleanup period. Mr. Martin told this fact finder he could not recall if Mr. Olson had refused to sign the disciplinary paperwork at that time but ultimately, he held the discipline notice until Mr. Olson's next workday, which was the following Monday or Tuesday. Mr. Martin claimed that Mr. Olson may have made some sort of notation on the disciplinary document but that he (Mr. Martin) did not shred any documents related to the discipline paperwork at that time.

Mr. Martin recalled that the following week when Mr. Olson returned to work, he attempted to serve Mr. Olson with the discipline notice. Mr. Martin recalled that Mr. Olson told him that he had spent the entire weekend with heart attack like symptoms after having to think about the pending discipline, which caused him ultimately to go to urgent care to seek medical assistance. At that time, Mr. Olson aggressively pointed his finger at Mr. Martin and accused him of lying in the disciplinary document. Mr. Olson told Mr. Martin that he did not want to speak with him because Mr. Martin made him too "*upset*." Mr. Martin indicated that because of Mr. Olson's attitude and statements about having chest pains over the weekend, Mr. Martin had Mr. Bush and Damien Skinner (Mr. Skinner) handle the disciplinary issues. Mr. Martin recalled that Mr. Olson's union representative was also present during that time.

Mr. Martin said he did not recall if any documents related to the discipline were ever shredded but said that perhaps he shredded the initial disciplinary document from the previous week and printed out a new one with a new date of delivery on it. Mr. Martin said he did not recall doing this in front of Mr. Olson. Likewise, Mr. Martin said he could not recall if Mr. Olson had ever signed the disciplinary notice and that Mr. Olson never acknowledged having failed to properly document the damage to the vehicle, nor did he take responsibility for the damage.

Based on the greater weight of the credible evidence, there was insufficient credible evidence to show that Mr. Martin had, in fact, shredded the initial disciplinary document that was to be issued to Mr. Olson, or doing so in front of Mr. Olson or otherwise. The disciplinary document noted that it was signed by Mr. Martin on January 15, 2019, and that the date the document was drafted was January 3, 2019. The document was never signed by Mr. Olson and there is a notation that the employee had refused to sign the document on January 15, 2019 at 7:30 a.m. with initials T.M. There was insufficient credible evidence to say that any document was shredded. Mr. Martin was a credible witness in this matter; however, Mr. Olson, for reasons detailed in this report, was not entirely a credible witness.

* 1. **Mr. Olson alleged that Mr. Martin directed him to go to his Department of Transportation physical on a Saturday and that he was not provided overtime compensation or advised about that availability.**

Short Answer: ***Not Sustained. The greater weight of the credible evidence demonstrates that Mr. Olson did, in fact go to his Department of Transportation physical on April 13, 2019, a Saturday, however he was not directed to do so by Mr. Martin. Mr. Olson went on Saturday because his medical certificate had already expired and he therefore would not be able to work on the following Monday.***

*Discussion*

This matter relates to a Department of Transportation (DOT) physical examination that Mr. Olson was required to complete in order to support the licensing required for his position with the Department of Motor Vehicles (DMV). Mr. Olson claims that he was required to attend this physical on a Saturday, on his day off.

* + 1. **Did Thomas Martin advise or direct Gary Olson to go on a Saturday for his DOT physical?[[5]](#footnote-5)**

* + 1. **Has Thomas Martin asked or required other employees to go on their day off to complete their DOT Physical?**

Mr. Martin explained that in regard to employees' commercial driver's licenses, most employees go to their doctor's appointments for their medical DOT certificate while on-duty, so they can be compensated for the time. However, Mr. Martin pointed out that some employees will request to go on their day off, as they become nervous and anxious when completing their DOT medical card clearance. Mr. Martin indicates that the City will accommodate these requests for off-duty DOT medical clearances, however, the City will not compensate an employee for overtime if he or she chooses to go on their day off.

Concerning Mr. Olson, Mr. Martin could not recall if Mr. Olson had requested or had, on his own volition, gone to his DOT doctor's appointment on a weekend; however, he indicated that this sounded somewhat familiar. Mr. Martin recalled that Mr. Olson had arrived to work with an expired medical card. Mr. Martin recalled that the City required Mr. Olson to take 2.7 hours of sick leave until he obtained the proper paperwork and had taken care of the matter at the DMV, as having a valid commercial driver's license and medical card are required for employees in Mr. Olson's job classification. Mr. Martin pointed out that without such paperwork, an employee cannot drive a commercial vehicle and is therefore considered "*not ready for work*."

Mr. Martin pointed out that letters from the DMV are sent to employees approximately two months in advance concerning their license’s pending expiration in order to give the license holder time to renew it; however, employees, like Mr. Olson, often wait until the last minute to take care of this important paperwork. Mr. Martin made it clear that no employee, including Mr. Olson, is required to complete their DOT physicals on their days off.

As indicated above, some employees request to complete their physicals on their day off, as they may be required to provide additional medical information from their own personal physicians and some employees become somewhat anxious, which has the effect of heightening their blood pressure outside of acceptable levels. Mr. Martin said that the City will accommodate these employees; however, cannot compensate them for overtime, as they allow employees generally to attend these DOT physicals during the workday while they are being paid. Mr. Martin did not direct Mr. Olson or any other employee to take their DOT physicals during off-duty time, whether compensated or not.

* 1. **Mr. Olson alleged that he was not properly paid for filing his Department of Motor Vehicles certificate for his license status while on duty.**

Short Answer: ***Not Sustained. The greater weight of the credible evidence shows that all employees in the Sanitation Services Division are allowed to file their medical certificate at the DMV on City time during their workday. Those who chose to do this while off-duty are not compensated.***

*Discussion*

This matter concerns the practices concerning leave time allotment to Mr. Olson and others in the Sanitation Services Division regarding filing their DMV certificates for license status and renewal.

* + 1. **What was is the practice in Thomas Martin’s Division, Sanitation Services, regarding whether employees go for their Department of Transportation physical on City paid time or on the employee’s time?**

Mr. Martin told this fact finder that normally the City sends employees for their physical during working hours. However, in the most recent case with Mr. Olson, Mr. Martin made him go on his own time. Mr. Olson claims that Mr. Martin told him to go on a Friday which was Mr. Olson's day off. Mr. Olson said that he already had a doctor's appointment scheduled for that day and as a result, Mr. Olson went to his Department of Transportation physical appointment on Saturday. Mr. Olson said he was not compensated for the time at the appointment nor did he turn in a slip requesting such overtime. Mr. Olson said that Mr. Martin did not mention whether Mr. Olson would or would not be paid for overtime for attending this Department of Transportation medical appointment on Saturday.

Mr. Olson said that when he went to the clinic for the Department of Transportation physical on Saturday, the clinic was having trouble with their Wi‑Fi so they could not complete the entire physical exam and paperwork. Mr. Olson claimed that those at the clinic told him to come back on Monday so the doctors could fill out the final forms and submit them.[[6]](#footnote-6)

Mr. Olson said that the following workday, Mr. Martin had noted 2.7 or 3.0 hours of sick time for Mr. Olson because Mr. Olson had to go turn in his Department of Transportation physical paperwork to the Department of Motor Vehicles in relation to his commercial license certification. Mr. Olson said that when he returned from the Department of Motor Vehicles, he checked out his vehicle and continued on his normal route. In truth, the 2.7 hours reflected the time that Mr. Olson took in the morning to renew his DMV Certificate. When Mr. Olson showed up to work that morning, he was not lawfully able to perform his duties due to his DMV Certificate, which is required for his position, have lapsed. The 2.7 hours of sick reflected the time between the beginning of his shift and the time that he obtained his required DMV Certificate.

As a result of the sick time being attributed to Mr. Olson's leave bank, Mr. Olson called Ms. Davis who, at the time, was an analyst in the Human Resources Department. Eventually, Ms. Davis spoke with Mr. Martin, and afterward, Mr. Martin advised Mr. Olson over the radio that he was going to have to change his sick leave back to regular time. This reinstatement of his sick leave was done merely as an accommodation and was not required.

Mr. Bush told this fact finder that he was not involved in Mr. Olson obtaining his Department of Transportation mandated physical. Mr. Bush stated that from his experience, approximately 90% of the employees get their physicals completed while on-duty so they can be compensated for the time. After which, the employees will then go to the Department of Motor Vehicles to turn in their medical paperwork in order to renew their commercial licenses.

Mr. Bush noted that a small number of employees, however, request to go to take their Department of Transportation physical on their day off because they want to be more relaxed for the medical assessment, they may need more doctor oversight, or they need to go to their own doctor to obtain additional medical records for the City's doctor. Mr. Bush pointed out that if an employee requests to go to the doctor while they are off-duty, the City will not provide compensation for their time as the City allows employees to engage in this sort of activity while they are on-duty and being compensated during their normal work week.

Mr. Martin told this fact finder that in regard to employees' commercial driver's licenses, most employees go to the doctor's appointment for their Department of Transportation medical card while on-duty so they can be compensated for the time. Mr. Martin noted though that some employees will request to go on their day off because they become somewhat nervous or anxious when obtaining their Department of Transportation medical card clearance. Mr. Martin said that the City will compensate employees who go for their Department of Transportation physical or to the Department of Motor Vehicles thereafter while on-duty but will not do so for employees who choose to do this sort of activity while off-duty.

* + 1. **What was is the practice in Thomas Martin’s Division, Sanitation Services, regarding when employees take their medical certificate to the Department of Motor Vehicles, on City paid time or on the employee’s time?**

Mr. Martin told this fact finder that he could not specifically recall if Mr. Olson had gone to a doctor's appointment for his Department of Transportation physical on a weekend. However, this fact sounded somewhat familiar to him. Mr. Martin said he does recall that Mr. Olson had arrived to work with an expired medical card which needed to be renewed such that Mr. Olson's Department of Motor Vehicles commercial driver's license was in full force and effect. Mr. Martin seemed to recall that he had made Mr. Olson take 2.7 hours of sick leave until he was able to go to the Department of Motor Vehicles and file his new Department of Transportation medical card and thus having a valid commercial driver's license which is required for employees in Mr. Olson's job classification.

Mr. Martin pointed out that without such paperwork, an employee cannot drive a commercial vehicle and is therefore considered "*not ready for work*." Mr. Martin explained that letters are usually sent to all employees from the Department of Motor Vehicles at least two months in advance concerning their license’s pending expiration in order to give the license holder time to renew it. Mr. Martin noted though that some employees like Mr. Olson often wait until the last minute to take care of this important paperwork.

The credible evidence here demonstrates that the practice in the Sanitation Services Division for employees to renew their Department of Transportation medical certificate with the Department of Motor Vehicles is that the employees are allowed to do so on City time so long as the employee has not allowed their medical certificate to lapse. In this case, it appears that Mr. Olson waited until the very last moment which necessitated him going to the Department of Transportation medical exam on the weekend. There was no credible evidence to show that Mr. Martin had directed Mr. Olson to do that. However, Mr. Olson did so, understanding that without his proper Department of Transportation medical certificate which had apparently lapsed, he would not have a proper DMV-certified commercial license which is required for his position. Here, the evidence shows that Mr. Olson, had he attended to this paperwork early on, would, like all other employees, have been able to attend his Department of Transportation physical, as well as completing the necessary Department of Motor Vehicles paperwork while on-duty and being compensated. There was no credible evidence to show that Mr. Olson was treated any differently in regard to these procedures and practices.

* 1. **Mr. Olson alleged that Mr. Martin called him while he was on vacation inquiring about damage to his City-assigned vehicle.**

Short Answer: ***Not Sustained. There was some evidence to conclude that Mr. Martin may have called Mr. Olson while Mr. Olson was on vacation sometime during Mr. Olson’s second year of employment. The greater weight of the credible evidence supports the fact that calling employees while they are on vacation is a required occurrence relating to overtime opportunities.***

*Discussion*

This matter concerned determining whether Mr. Martin had telephoned Mr. Olson while he was on vacation for the purpose of inquiring regarding damage to a City vehicle. Furthermore, this matter concerns determining what the normal practice or protocol is in the sanitation division regarding calling employees during their vacation time.

* + 1. **Did Thomas Martin call Gary Olson while Gary Olson was on his vacation regarding damage to a vehicle?**

Mr. Olson indicated that he recalled a specific time on a Thursday in his second year of employment when Mr. Martin had asked him to work overtime when he was supposed to start a two‑week vacation the next day. Furthermore, Mr. Olson said that while he was on this two‑week vacation, Mr. Martin called him and asked him if he had collided with a wall in his vehicle, damaging a brick wall cap. Mr. Olson questioned why Mr. Martin would call him on his vacation and ask him such a question and surmised that it was possibly some form of punishment because Mr. Olson had earlier declined to work overtime upon Mr. Martin's request.

Mr. Keith, the newer manager of the Sanitation Services Division, said he was not aware that any supervisors had contacted employees while they were on vacation about damage to City vehicles. Mr. Keith's statements here make sense, as this incident appears to have happened years ago. Mr. Keith noted though that it was a regular practice to contact employees who are on vacation concerning overtime opportunities.

Mr. Bush told this fact finder that the policy concerning contacting employees on vacation had changed. Mr. Bush said in the past, supervisors and managers had not contacted employees if they knew the employee was on vacation or out of the country concerning overtime issues. Mr. Bush stated now, however, they contact every employee regardless of their leave status to give each employee the opportunity for overtime, unless the employee has specifically signed a notice to them stating that he/she does not want to be contacted during a particular period.

Mr. Martin explained that it was possible that there was a time that he called Mr. Olson in the past while Mr. Olson on vacation regarding damage to a vehicle. Mr. Martin said he could not recall the exact phone call or time that this may have occurred. Mr. Martin surmised that it would have been something that he was directed to do by management and that he would not have done so on his own volition, as it is not normal practice. However, in this particular case there must have been some sort of urgency.

* + 1. **Has Thomas Martin called other employees when they were on vacation? If so, why?**

Mr. Martin indicated that the typical policy, apart from advising employees on leave of overtime opportunities, is to not contact employees while they are on vacation. Mr. Martin indicated that he could not recall the specifics concerning Mr. Olson's claims but seemed to recall having spoken to him about vehicle damage at some point in the past while Mr. Olson may have been on his days off or on vacation.

Here, the greater weight of the credible evidence tends to demonstrate that the practice and protocol of that Sanitation Services Division is to always contact employees who are on vacation in relationship to overtime opportunities. If any employee does not want to be contacted while on vacation for such overtime opportunities, that employee is required to submit a written notice advising the division not to contact them under those circumstances. It appeared to this fact finder that there was no formal policy concerning contacting employees who were off-duty or on vacation for non‑overtime matters.

It seemed to this fact finder that Mr. Martin had likely contacted Mr. Olson while he was on vacation inquiring about damage to a vehicle. However, there was a lack of specificity or credible evidence to determine when and how that occurred. It was odd that Mr. Olson brought up this issue during this investigation knowing that this event was said to have occurred sometime during Mr. Olson’s second year of employment with the City and years ago. Mr. Martin indicated that he had some recollection and believed that he would not have contacted Mr. Olson on his own volition but would have only done so at the urging or request of his supervisors. Mr. Martin indicated that such actions may have been warranted if it was an urgent and/or pressing issue.

* 1. **Mr. Olson alleged that Mr. Martin said that he (Mr. Olson) was rude when he answered Thomas Martin's request that he work overtime relating to a request made over the Department radio system.**

Short Answer: ***Not Sustained. There was insufficient credible evidence to say that Mr. Martin had told Mr. Olson that he was rude while communicating with him over the radio.***

*Discussion*

This matter relates to Mr. Olson's claim that Mr. Martin told Mr. Olson that Mr. Olson had been rude when he answered Mr. Martin's request for him (Mr. Olson) to work overtime concerning a request made over the Department's radio system.

Mr. Olson told this fact finder that there was a time when Mr. Martin had asked several employees over the radio if they wanted to work overtime on a particular day. When asked, Mr. Olson declined by stating over the radio, "*No, thank you*." Mr. Olson indicated that Mr. Martin seemed somewhat upset by the way Mr. Olson had responded to him, or perhaps the fact that Mr. Olson did not want to work the overtime as requested, and Mr. Martin stated words to the effect of, "t*ry not to be so rude*." Mr. Olson also claims that Mr. Martin has questioned him over the same radio system as to why he did not want to work overtime.

Mr. Martin told this fact finder that he has never been rude to Mr. Olson on the Department radio when he has asked him to work overtime. However, Mr. Olson has claimed to him a few times that he felt that he (Mr. Martin) was, in fact, rude to him (Olson). Mr. Olson, according to Mr. Martin, stated words to the effect of, "y*ou know, you're rude when you talk to me… or you know, you could have said this differently.*" In reflection, Mr. Martin believed that he was merely trying to be concise and brief on the radio in attempting to accomplish the tasks of finding someone to work overtime and that Mr. Olson may have taken this somewhat negatively.

* + 1. **Is overtime mandatory?**

The facts in this matter demonstrate that overtime is potentially mandatory due to essential role of trash collection and the public health and that the Department uses what is referred to an "*inverse overtime procedure*" in order to fairly assign employees to work overtime. Because the Sanitation Services' activities are considered a public health issue, in some rare circumstances, an employee could be pressed to work overtime in order to provide these necessary services.

* + 1. **Has Thomas Martin pressured Gary Olson to accept overtime?**

Mr. Martin explained to this fact finder the use of an "*inverse overtime procedure*." Mr. Martin indicated that this procedure entails asking all employees from the top of the seniority list to the bottom if they want to work overtime. Mr. Martin said that if this initial volunteer system does not work for filling the overtime, they then require someone to work the overtime starting from employees who have the least seniority to those who have the greatest seniority. Mr. Martin said that Mr. Olson is in the group required to work approximately 95% of the overtime given his lower seniority.

Mr. Martin indicated that the request for overtime tends to occur on nearly a weekly basis because of staffing. Mr. Olson, according to Mr. Martin, has never been criticized for not accepting overtime but Mr. Olson has occasionally questioned as to why he needed to stay late for a particular day and work overtime. Mr. Martin indicated that he and other supervisors attempt to work and accommodate employees regarding this inverse overtime system if employees called to work overtime have other obligations and cannot stay to work the overtime.

* + 1. **Is the radio system an “*open mic*”?**

The facts in this matter indicate that radio system used by the sanitation division is an all‑broadcast system where every employee can hear what is being said so long as their radio is in the on position and the volume is turned up.

* + 1. **If true, what was the context in which this occurred?**

There was a lack of credible evidence to say that Mr. Martin had told Mr. Olson that he had been rude to him concerning Mr. Martin's request over the radio for volunteers to work overtime. Indeed, Mr. Martin denied this allegation and indicated that it was Mr. Olson who had claimed that Mr. Martin had been somewhat rude over the radio.

* + 1. **Was he trying to embarrass Gary Olson and/or make him feel badly for not agreeing to work overtime?**

As indicated above in Section D, there was insufficient credible evidence to show that Mr. Martin had criticized Mr. Olson for being rude to him when Mr. Martin had called out over the radio asking for volunteers to work overtime. As such, there was no credible evidence to conclude that Mr. Martin was attempting to embarrass Mr. Olson and/or make him feel badly for not agreeing to work overtime.

* 1. **Mr. Olson alleged that Mr. Martin had been measuring the tire width on Gary Olson's City-assigned vehicle.**

Short Answer: ***Exonerated. There was credible evidence to show that this occurred but was done for legitimate business purposes associated with Mr. Martin investigating a damage claim relating to Mr. Olson’s City-assigned vehicle.***

*Discussion*

This matter relates to whether Mr. Martin had been measuring tire width on a vehicle assigned to Mr. Olson and to determine, if true, why Mr. Martin may have been engaged in this sort of activity.

Mr. Olson claims that on October 22, 2019 he observed Mr. Martin walking around his City-assigned truck, seemingly noting things and looking inside. Mr. Olson said that Mr. Martin then retrieved a tape measure and was measuring the width of the tires on the vehicle. Mr. Olson noted that he did not observe Mr. Martin walking around and measuring other trucks in the area.

Mr. Olson noted that he did not speak with Mr. Martin about what he had observed, and Mr. Martin never mentioned anything to Mr. Olson about that inspection of his vehicle that day. Mr. Olson felt that if Mr. Martin was doing an inspection on his assigned truck, that he should have been doing similar inspections to other employees' assigned vehicles.

Mr. Olson acknowledged that a possible explanation for Mr. Martin's activities in measuring the width of his tire tracks is that Mr. Olson had previously been questioned about running over someone's lawn or grass area. Mr. Olson speculated that Mr. Martin was trying to match the width of tires of Mr. Olson's City-assigned vehicle to a tire mark on someone's lawn. However, Mr. Olson noted that this incident occurred long ago, early in 2019, and did not appear to be the correct timeframe concerning Mr. Martin's measurement activities on October 22, 2019.

Mr. Martin told this fact finder that he recalled a time where he was looking at and measuring the tires of Mr. Olson's City-assigned truck due to there being a report of a traffic collision involving a City truck. Mr. Martin did not specifically recall the date of the incident but said he regularly takes measurements of City vehicles when there is an allegation of a collision, doing so for the purpose of trying to eliminate the possibility of, or to determine whether, in fact, it was caused by one of their employees.

Mr. Martin further explained that even though the City may have similar truck models, some of the trucks used by the City have been modified making it necessary for him to measure the specific truck that was on the route of the alleged collision rather than some other truck of a similar description or model. Mr. Martin said that he additionally reviews the GPS data for the City vehicles to see what truck, if any, was in the area during the time of the alleged collision or damage.

* + 1. **If so, was there a legitimate business reason for doing so?**

Here, the greater weight of the credible evidence tends to suggest that there was, in fact, a legitimate business purpose for Mr. Martin measuring the tires on a vehicle assigned to Mr. Olson. Mr. Martin, as supervisor, is tasked with determining, from time-to-time, whether vehicles assigned to his subordinate employees were involved in a collision or caused damage to private property while operating their vehicles in the course and scope of their employment. Taking measurements and examining vehicles for damage and conducting other necessary inspections would be necessary for Mr. Martin to conduct such an investigation.

Concerning Mr. Olson's opinions that Mr. Martin should be additionally checking other employees' tires and vehicles in a similar fashion is, of course, absurd. Mr. Martin's task in inspecting Mr. Olson's truck at the time was likely tied to a complaint of damage and Mr. Martin would initially check the GPS data for the area, date, and location of the alleged collision or damage in attempt to narrow it down to a specific City-assigned vehicle and employee. It would make no sense for Mr. Martin to conduct similar inspections of other vehicles that would not be remotely involved in the event. Here, the greater weight of the credible evidence demonstrates that Mr. Martin's inspection activities were done for legitimate business reasons.

* 1. **Mr. Olson alleged that Mr. Martin’s and/or others' used the City Yard surveillance video camera system relating to Mr. Olson leaving his map book on the dash of Mr. Olson's City-assigned vehicle.**

Short Answer: ***Exonerated***. ***The greater weight of the credible evidence showed that Mr. Martin does not have access to the City Yard camera system and is aware of the protocols for this camera system. Mr. Martin was directed to counsel Mr. Olson regarding a violation of a safety policy observed by a manager. A still image of the violation was provided to Mr. Martin to provide to Mr. Olson to explain the violation.***

*Discussion*

* + 1. **Is this camera system being used for disciplinary/employee purposes and, if so, is that allowed?**

This issue relates to Mr. Martin and perhaps others' use of a surveillance video camera system at the Gotham City Yard and the allegation that on November 21, 2017, Mr. Martin provided Mr. Olson with a still image taken from the aforementioned surveillance video camera system when Mr. Olson had forgotten to remove his map book from the dashboard of his vehicle, which was a rule they had enacted approximately a week prior to the date of the incident. The issue here is whether this camera system allows for such disciplinary/employee purposes and whether Mr. Martin had violated those precepts.

In an e-mail dated December 9, 2011, Assistant City Manager Aram Chaparyan (Mr. Chaparyan) provided guidance as to how the security cameras installed in the Gotham City Yard were to be used. He wrote, in relevant part:

*"The cameras have already been installed and will be primarily used for security purposes only. They are not intended to be used to monitor employees. The cameras will monitor traffic in and out of the front gates and also monitor the exterior of the buildings and parking lots. This will allow us to review video footage when something out of the ordinary occurs at the facility such as people dumping hazmat, trash etc. in the yard on weekends or after hours, or if we have a report of theft in the parking lot.”*

On December 9, 2011, a memorandum was published by Mr. Chaparyan that stated, in relevant part:

*“The cameras have already been installed and will be primarily used for security purposes. They are not intended to be used to monitor employees, unless employees actions are reported after review of footage. Consistent with existing practice, violations of City policy may lead to discipline.”[[7]](#footnote-7)*

Mr. Olson told this fact finder that on November 21, 2017, he claimed that his supervisors took photographs of him on the City surveillance camera system due to the fact that they noticed that he failed to remove his map book from the dashboard area of his City-assigned vehicle. Mr. Olson noted that, approximately a week earlier, a rule had been enacted instructing employees not to leave their map book on the dashboard area, as it tended to cause reflection as well as block the operator's view forward and down in front of the vehicle.

Mr. Olson claimed that "*out of habit*," he had left his map book on the dashboard area as there was no more suitable place in the vehicle to place it where it would not move or slide about. Mr. Olson said that his superiors had told him that they were going to provide him some sort of storage holder in the vehicle, in order to hold the map book; however, they never did so.

Mr. Olson said that when he was confronted about the improper storage of his map book that Mr. Olson only recalled that he received a verbal warning but viewed the entire incident somewhat suspiciously due to the fact that his superiors had been taking photographs of him. Mr. Olson showed this fact finder a still image that had apparently been pulled from the City surveillance camera system at the Gotham City Yard.

Mr. Martin told this fact finder that either Mr. Skinner or Mr. Knapp had apparently observed Mr. Olson leaving the City Yard with his map book on the dash area of the truck, which is a violation of the City's rules. Mr. Martin said he could not recall which manager had spoken to him, but he had advised Mr. Martin that he had observed the violation and requested that Mr. Martin counsel Mr. Olson to remove his map book from the dashboard. Mr. Martin, in turn, relayed this direction to Mr. Olson over the radio system.

Mr. Martin seemed to recall that Mr. Olson admitted that he had been driving his City-assigned vehicle with his map book in the window area and further recalled that he may have issued Mr. Olson a verbal counseling report.

* + 1. **At the time this occurred, what was Thomas Martin’s understanding regarding how the surveillance cameras were/could to be used?**

Mr. Martin advised this fact finder that his understanding concerning the surveillance camera system for the Gotham City Yard is primarily used for perimeter security purposes, such as theft and trespassing. Mr. Martin indicated that he does not have access to the footage and that the only person that has access is John Drakaditis (Mr. Drakaditis) who would have access to system and taken the screen capture of Mr. Olson's truck, at the request of either Mr. Skinner or Mr. Knapp. Mr. Martin indicated that he did not make such a request and was only made aware of the infraction after one of the managers advised him to counsel Mr. Olson concerning the safety violation.

* + 1. **Has Thomas Martin used the cameras to capture pictures of other employees for any reason?**

Mr. Martin reiterated that he does not have access to the surveillance camera system, and in the case of Mr. Olson, or any other employee, Mr. Martin only acts at the direction of his managers and that Mr. Drakaditis is the only person who can review the surveillance footage for any potential issues or concerns that occur at the City Yard facility.

* 1. **Mr. Olson alleged that the Manager of the Department, Mr. Keith, had to change his performance valuation and rescind the performance improvement plan because of Mr. Martin and/or Mr. Boykins’ violation of the City’s rules concerning discrimination, harassment and/or retaliation concerning their treatment of Mr. Olson in the evaluation process.**

Short Answer: ***Not Sustained. The greater weight of the credible evidence showed that Mr. Keith had legitimate business reasons why he chose to modify Mr. Olson's initial performance evaluation, as well as a performance improvement plan. These changes did not relate to identifying and/or correcting issues of discrimination, harassment and/or retaliation concerning their treatment of Mr. Olson in the evaluation process.***

*Discussion*

Mr. Olson told this fact finder that after he received his initial (unamended) performance evaluation in August 2019, he complained to Mr. Keith, the manager of the Sanitation Services Division. Mr. Olson said he told Mr. Keith that the Thursday route was the most difficult route in the group and felt that he was being unfairly punished for not being able to complete the route in a timely fashion.

Mr. Olson said that he understood that Mr. Keith went through the entire Thursday route with Mr. Bush and came to the conclusion that it was an "*unrealistic*" expectation for a driver to timely complete the route. Mr. Olson said that he had been complaining about the route for some time and mentioned that he used to be able to finish the route when he was not taking any breaks; however, he advised Mr. Keith that he was going to take those breaks that he needed.

Mr. Olson said that Mr. Keith later modified the route, removing some of the residential stops into separate routes, thereby allowing the Thursday route to be more manageable.

Mr. Olson claimed that other employees who had previously been assigned the Thursday route also had difficulties completing it due to the intricate pattern of the various alleys that are part of this particular route. Mr. Olson also noted that some of the roads are not paved well and that there are numerous obstacles, such as wires, branches, and the eaves of residences. Mr. Olson said that the only route that his supervisors, Mr. Martin and Mr. Bush, commented about in his review was that particular Thursday recycling route.

When Mr. Keith first started his employment in 2019 with the City, Mr. Olson had just received a substandard performance evaluation. At the time, Ms. Davis from the Human Resources Department helped draft a performance improvement plan for Mr. Olson in relationship to this substandard performance evaluation.

Mr. Keith said that Mr. Olson was quite upset about the negative evaluation and was adamant that the statistics in the evaluation were inaccurate and he indicated that his Thursday route (Route 7) was difficult and hard to complete. As a result, Mr. Keith agreed to review Mr. Olson's Thursday route to see if his concerns had merit.

After a review of the route, Mr. Keith developed some concerns about the time it took to complete the Thursday route due to all of the alleys, tight roadways, and the lengthy drive to the dump facility which had recently changed from the City of Gotham to the City of Wilmington. Mr. Keith said that he discussed his concerns and feelings with Mr. Martin and Mr. Bush. Mr. Keith noted that Mr. Bush had indicated that he (Mr. Bush) had previously been assigned to that route prior to his promotion and agreed it was a difficult route to complete. Mr. Keith also learned that the previous operator for that route prior to Mr. Olson asking to have that route as his normal route rotation, was able to complete the route only because it appeared that the prior operator did not service all the containers as required. Mr. Keith indicated that Mr. Bush and Mr. Martin indicated that the poor performance evaluation for Mr. Olson was a result of their observations concerning his difficulties and that they were directed to document these issues by management and Human Resources.

As a result of Mr. Keith's observations and findings, the supervisors agreed to split up some of Mr. Olson's Thursday Route 7 due to its difficulty. Essentially, Mr. Keith had Mr. Olson's supervisors created a third route designated as Route 8 and included some of the residential areas from Routes 6 and 7 to form this new collection route. Mr. Keith indicated that this change and reorganization tended to make Route 7 a reasonable route to complete for the average operator who would be assigned.

Mr. Keith indicated that he and Mr. Weinmeister in Human Resources did some further investigating into the statistics relating to Mr. Olson's evaluation and his leave time. During a more thorough review of Mr. Olson's attendance, it was discovered that some of Mr. Olson's actual attendance numbers discovered by this review were less favorable than were initially documented in his first performance evaluation. Because of this, Mr. Keith left some of the original analysis but removed other numbers from the second draft of the evaluation in an attempt to create the appearance that the amended evaluation was less negative than the initial evaluation was, as he intended to move the score in the overall evaluation to "*meets standards*."

Additionally, Mr. Keith noted that the notations about Mr. Olson receiving discipline for not documenting the damage on his truck, whereby he received a written reprimand in January of 2019, were included; however, the remarks concerning Mr. Olson not completing his route on Thursdays was removed in the second and final draft of his performance evaluation. Mr. Keith remarked that the evaluation was changed to a "*meets standards*" evaluation, which thereafter abrogated the need for the performance improvement plan that had been drafted in consultation with the Human Resources Department.

In summary, Mr. Keith's reasoning for the changes in Mr. Olson's initial evaluation, as well as removing the performance improvement plan, were due to what he felt that some of the assumptions about the difficulty of Mr. Olson's Thursday route were initially inaccurate. Mr. Keith indicated that the intricacy of the route coupled with the fact that the route operator was more recently required to drive to the City of Wilmington to dump their load of debris created the appearance that the Thursday Route 7 may be somewhat unreasonable. For this reason, Mr. Keith redrafted the initial performance evaluation to reflect a "*meets standards*" evaluation, as he felt that Mr. Olson's initial performance evaluation may not have been entirely fair.

Here, the greater way of the credible evidence tends to demonstrate that Mr. Keith had legitimate business reasons for changing Mr. Olson's evaluation. Mr. Keith was new to the Department as a manager at or about the time that Mr. Olson received the initial evaluation and had thereafter complained to Mr. Keith about it. Mr. Keith engaged in due diligence, investigated Mr. Olson's claims about the Thursday Route 7, and came to a reasoned conclusion that perhaps the Thursday Route 7 was somewhat unreasonable and needed to be reorganized by creating a third route where parts of the Thursday Route 7 would be removed, thereby alleviating the operator of having to operate a route that was not entirely feasible to be completed as thought. It appeared to this fact finder that Mr. Keith demonstrated an open-minded approach, exercised prudential judgement, and acted in the best interests of the Department, as well as Mr. Olson. There was no credible evidence to say that Mr. Keith acted capriciously or unreasonably.

* 1. **Mr. Olson alleged that Mr. Martin or Mr. Boykins’ requirements regarding moving trash cans into position in order to allow their trucks to reach, grasp and dump the cans using the automated arm were applied unfairly to Mr. Olson.**

Short Answer: ***Not sustained. The greater weight of the credible evidence demonstrates that all employees are required to reasonably move trash receptacles to a position where they can be safely grasped by the trash trucks and emptied***.

*Discussion*

This matter relates to the expectations for employees such as Mr. Olson regarding moving disposal cans into position in order to allow their trucks to reach, grasp, and dump the disposal containers using the automated arm.

* + 1. **Has Thomas Martin gone out on Gary Olson’s route and moved/re-positioned trash cans so that Gary can go back to pick them up? If so, why?**

Mr. Olson told this fact finder that one of the issues that contributed to him not being able to finish his Thursday routes (Route 7) was that Mr. Martin would go through the alleys as part of Route 7 and pull out the trash cans that had previously not been left in their proper position in the roadway area and would tell Mr. Olson to re‑service the route after he had already serviced that particular section. Mr. Olson claimed that doing this increased the time that Mr. Olson had to spend on this particular route. Mr. Olson claimed that it was not his job to pull out disposal cans that were not properly positioned on the date for service.

Mr. Martin told this fact finder that, when drivers service alleys and other areas, the drivers are required to get out of their trucks and to move the refuse cans into a position where they can be grasped by the arms on the City trucks. Mr. Bush, in his interview concurred with this job expectation. Mr. Bush had worked on the Thursday Route 7 before he was promoted and was well aware of the dynamics of that particular route and the expectations of the operators’ assigned to it.

Mr. Martin further said that, in order to help Mr. Olson and other drivers, Mr. Martin has driven the routes in front of the operators and pulled out the waste cans into position or told them that the cans that were placed backwards could be disregarded. Mr. Martin said that he has done this in order to help the drivers, including Mr. Olson, work faster and more efficient and also helps them avoid overhangs, such as eaves in the alleyway where drivers might move their vehicles into too close of a position to a building.

Here, the greater weight of the credible evidence demonstrates that it is a general expectation of drivers, such as Mr. Olson, to be certain that cans that have not been positioned properly are repositioned such that the truck's arm can reach the refuse can, grasp it, and dump its contents into the truck. Whereas Mr. Olson claims that Mr. Martin would go through Mr. Olson's route after he had serviced it, the facts tend to demonstrate that Mr. Martin would go through the route prior to Mr. Olson servicing it in order to move refuse cans into position so as to help Mr. Olson's work go more efficiently and quickly. Here, the fact finder concludes that Mr. Martin's statements are more believable, as Mr. Olson has demonstrated a lack of credibility in this matter, as described above.

* 1. **Mr. Olson alleged that Mr. Martin told him that he had been "*following him.*"**

Short Answer: ***Not Sustained.*** ***There was insufficient credible evidence to show that Mr. Martin had told Mr. Olson that he was “following him.”***

*Discussion*

Mr. Olson claims that Mr. Martin has made remarks such as "*I've been watching you*," regarding following Mr. Olson on his routes. Mr. Olson claims that Mr. Bush has additionally followed Mr. Olson on his routes. Mr. Olson remarked that it does not concern him that his supervisors have followed him on his routes, rather that they have claimed in his performance review that they have counseled on his work habits after following him on his routes when, in fact, they never did.

Mr. Martin indicated to this fact finder that he has not been involved in following or riding along with Mr. Olson around the time of his proposed performance improvement plan. Mr. Martin indicated that the last time that he did a "*ride along*" with Mr. Olson was approximately two to three years earlier. Mr. Martin said that he goes on ride-alongs with all employees on an equal basis, especially the newer employees as part of his routine supervision. If any other employee, such as Mr. Olson, did not complete one of their routes, Mr. Martin indicated that a supervisor would follow the employee to see what the issue was and occasionally assist by placing another employee on the route to see if there was any deviation in the completion rate of the route by another employee. Mr. Martin also indicated that they would consider whether it was a "*difficult route*," as well as reviewing the GPS data for the truck to see if the employee was taking unnecessary breaks.

The facts also demonstrated that Mr. Bush followed and additionally had ridden with Mr. Olson at the suggestion and direction of management and Ms. Davis in the Human Resources Department when they were working on assisting Mr. Olson in being more efficient on his Thursday route. This activity by Mr. Bush was important, as Mr. Bush was very familiar with the Thursday route (Route 7), as he had been assigned to that route prior to his promotion.

Here, the greater weight of the credible evidence demonstrates that both Mr. Martin in the more distant past and, in more recently, Mr. Bush, as Mr. Olson's supervisors, had followed and even ridden with Mr. Olson while he performed his duties on various routes. More recently, Mr. Bush had ridden with Mr. Olson on the Thursday Route 7, which Mr. Olson was struggling to complete in a timely basis. Mr. Bush rode with Mr. Olson in order to observe Mr. Olson's abilities in order to assist Mr. Olson, concerning the interactions with the Human Resources Department that Mr. Bush and Mr. Martin were having in order to craft a performance improvement plan to assist Mr. Olson in performing his duties more successfully and efficiently. There was no direct, credible evidence to say that Mr. Martin had ever advised Mr. Olson in the recent past that he had been "*following him*."

* 1. **Mr. Olson alleged that personnel in the Sanitation Department have attempted to "*push*" him out of the organization.**

Short Answer: ***Not Sustained. There was insufficient credible evidence to show that anyone had been trying to “push” or force Mr. Olson out of the organization.***

*Discussion*

This matter relates to Mr. Olson's claim that members of the Department, such as Mr. Martin and Mr. Bush, are attempting to "*push*" Mr. Olson out of the organization. This fact finder was asked to explore Mr. Olson's allergy complaint lodged in May 2018 regarding operating the green waste routes, as well as his more recent complaint in 2019 regarding the diesel fumes, followed with his assignment of a respirator and fit test as part of an overall credibility analysis.

During his interview, Mr. Olson told this fact finder that Mr. Martin and Mr. Bush were trying to "*push him out*" because of his allergies. Mr. Olson claimed that he could not pick up green waste or regular trash due to it containing green waste due to allergies that he had pointed out to the Department in May 2018. He further alleged that he could not drive diesel-motor trucks because of the exhaust fumes effects on his allergies. Mr. Olson believes that this caused concern and anger from his supervisors as they cannot utilize him wherever they need, and currently he is only assigned to pick up and collect recyclables while driving a compressed natural gas (CNG) truck.

The facts in this matter demonstrate that, in May 2018, Mr. Olson claimed allergies concerning the green waste routes, as well as normal trash routes where there were green wastes in the receptacles. This was not filed as a Workers’ Compensation claim; however, Mr. Olson was sent to a City doctor, and the City engaged in an interactive process with Mr. Olson in an attempt to make reasonable accommodations, under the law. Mr. Olson’s own personal physician examined Mr. Olson and indicated that he had no restrictions and further remarked that he (the physician) had treated thousands of patients with similar allergies and that Mr. Olson's allergies should not restrict his abilities to do his work. Since that time, Mr. Olson has essentially been assigned recyclable routes, which do not contain green waste.

In January 22, 2019, Mr. Olson made a claim of injury under the Workers’ Compensation rules for what he characterized as exposure to diesel fumes from the City truck he was operating. His claim was investigated and denied under the Workers’ Compensation rules; however, an accommodation was essentially made to Mr. Olson wherein he was allowed to operate CNG trucks where there would be not diesel fumes.

In review of Mr. Olson's records and interviews of relevant witnesses in this matter, there appears to be a lack of credible evidence to show that any employee was attempting to "*push*" Mr. Olson out of the organization for any reasons, much less his allergies. Ms. Davis, the former Human Resources Analyst for the City, recalled that Mr. Olson, through his various complaints and claims of allergies and sensitivity to diesel fumes, may well have been attempting to orchestrate a transfer to a different Department in Public Works where he would be operating a street sweeping truck for another manager, Mike Woolsey (Mr. Woolsey). Ms. Davis noted that Mr. Woolsey had a reputation of being easygoing and not likely to discipline or "*write up*" a subordinate employee. Ms. Davis further noted that both Mr. Martin and Mr. Bush, who were Mr. Olson's current supervisors at the time and to this date, have a reputation of being assertive supervisors and required their employees to maintain proper standards. Ms. Davis opined that it may have been that Mr. Olson, through complaining about unsubstantiated medical issues and allergies, may have, in fact, been attempting to obtain a transfer to a supervisor who would be easier to work with and for whom he would not have to maintain similar efficient standards.

Neither Mr. Martin or Mr. Bush indicated that there was any attempt to force or to "*push*" Mr. Olson out of the organization. Both supervisors claimed that they were merely attempting to obtain competent performance from Mr. Olson and had been working with Human Resources to that end. Neither supervisor indicated that Mr. Olson's allergies were a factor concerning their oversight and attempted corrective measures. For instance, the Thursday route (Route 7) that Mr. Olson was having continual difficulty with during the early part of 2019, or involved the collection of recyclables that did not relate to Mr. Olson's allergies to green waste or diesel fumes. This route was undertaken with a CNG truck, and no green waste was collected.

Mr. Keith said he never heard Mr. Olson claim that Mr. Martin or anyone else was trying to force him or "*push him*" out of the organization. Mr. Olson, however, made the claim that supervisors who wrote his evaluations were somehow being dishonest. Mr. Keith indicated that he has not observed Mr. Martin, nor anyone else treat Mr. Olson unreasonably, disrespectfully, or rudely and has never heard anyone make such a claim. In fact, Mr. Keith explained that before he started his position as the manager of Sanitation Services, Mr. Olson had filed a number of Workers’ Compensation claims against the City, and in regard to those claims, Mr. Keith believes that Mr. Olson had been given wide latitude and accommodations greater than the City should have allowed.

Here, the greater weight of the credible evidence fails to substantiate that anyone, including Mr. Martin and/or Mr. Bush, had attempted to "*push*" Mr. Olson out of the organization. Mr. Olson's claims concerning his allergies to green waste seemed somewhat contrived to this fact finder. This fact finder concluded that Ms. Davis’s suspicions might likely be true and that Mr. Olson, through making these seemingly specious claims of allergies to green waste and to diesel fumes, that did not seem to bother him prior to his dissatisfaction working for Mr. Martin and/or Mr. Bush, were largely contrived and aimed at forcing the City to make some form of accommodation wherein Mr. Olson could escape proper oversight and work for a more lenient supervisor and/or manager as Ms. Davis had described and explained. It was also somewhat unusual that Mr. Olson had utilized the respirator assigned to him and provided through a fit test for the purposes of him avoiding allegeded allergic reactions to diesel fumes when he then used this respirator mask in relationship to his alleged allergies regarding green waste. As described in the aforementioned credibility analysis section of this report, Mr. Olson lacked credibility.

* 1. **Mr. Olson alleged that he not provided any feedback with regard to the time that Mr. Martin and/or Mr. Bush had shadowed him on his Thursday route to determine whether the route was fair and feasible.**

Short Answer: ***Exonerated. Mr. Bush, in driving behind and then along with Mr. Olson observed that Mr. Olson was operating his truck in a proper fashion. No instruction or additional feedback was warranted at that time.***

*Discussion*

This issue relates to Mr. Olson's concern relating to his Thursday route whereupon Mr. Bush, his supervisor, had shadowed him on a Thursday and additionally rode with him on another Thursday in order to determine whether the route was reasonable to be completed as necessary. Mr. Olson complains that he did not receive any feedback by Mr. Bush or Mr. Martin.

Because Mr. Olson had complained about having to communicate with Mr. Martin after the January 2019 issue concerning Mr. Martin's issuance of a disciplinary notice to Mr. Olson, Mr. Bush was, in fact, the person who observed Mr. Olson's operation of his route on two Thursdays and additionally documented and compiled the analysis concerning Mr. Olson's noncompletion of his Thursday route.

* + 1. **In the original evaluation, 2nd paragraph, why did Thomas Martin focus on the period from January 10, 2019 to May 30, 2019, regarding Gary Olson’s non-completion of the Thursday route?**

As indicated above, this analysis was actually completed by Mr. Bush and not Mr. Martin. The facts demonstrate that performance evaluations of various employees in the Sanitation Services Division are often completed and compiled by two supervisors working together. The various employees are divided into two groups. One of the groups is the responsibility of Mr. Bush to evaluate, and the other is the responsibility of Mr. Martin. Even so, both Mr. Bush and Mr. Martin can and do provide input to the various evaluations regardless of who the author is.

Mr. Bush told this fact finder that it was obvious concerning his oversight that Mr. Olson was having difficulties during the first several months of 2019 in regard to not completing his Thursday route. Additionally, Mr. Bush indicated that in working with Ms. Davis in the Human Resources Department, she suggested that Mr. Bush monitor Mr. Olson's performance concerning this Thursday route, as well as his attendance issues during the initial six months of 2019.

Mr. Davis told this fact finder that she did not recall precisely what months that she had detailed either Mr. Bush or Mr. Martin to tabulate Mr. Olson's performance and/or attendance issues. Ms. Davis indicated that Mr. Olson's evaluation had been delayed due to Mr. Keith's involvement after Mr. Olson complained about the fairness of his initial evaluation.

Both Mr. Bush and Ms. Davis agreed that the focus on the period from January 10, 2019 through May 30, 2019 was done specifically for the purpose of monitoring and tabulating Mr. Olson's failure to comply on his Thursday route, as well as contrasting this issue with any attendance concerns. Both agreed that this activity had nothing to do with Mr. Olson's Workers’ Compensation claims or medical issues and any days that were taken as leave concerning those matters were not considered in their analysis.

* + 1. **How does Thomas Martin document when a driver has not completed their route and required assistance from another driver on a particular day?[[8]](#footnote-8)**
    2. **If it is determined by tracking whether overtime was needed, how does Thomas Martin know if the overtime was for a driver to complete their route, or to assist another driver complete their route?**

As previously noted, Mr. Martin did not engage in the documentation concerning Mr. Olson's failure to complete his Thursday routes, as detailed above. Instead, around January 2019, Mr. Olson advised Mr. Bush that he was having difficulties completing his Thursday route, as was required. Mr. Bush recalled this conversation and indicated that he would occasionally have to send another employee to assist Mr. Olson finishing his route. Mr. Bush said that he kept records of these requests, related overtime and activities at the direction of management and Ms. Davis in Human Resources for the purposes of using this information to correctly score Mr. Olson in his initial performance evaluation.

Concerning providing Mr. Olson any feedback, Mr. Bush indicated that he did not specifically give Mr. Olson any performance feedback, as his role in following Mr. Olson and then riding with him during his Thursday route was to observe the route and to have Mr. Olson point out any hazards or difficulties along the way. Mr. Bush indicated that there seemed to be no difficulties or issues such that any sort of feedback or correction was warranted

1. **Concerning Mr. Olson’s claims, did any City employee violate the City rules concerning discrimination, harassment and/or retaliation concerning their treatment of Mr. Olson?**

Short Answer: ***Not Sustained. There was insufficient credible evidence to say that any City employee violated the City rules related to discrimination, harassment and/or retaliation concerning their treatment of employee, Gary Olson.***

*Discussion*

* 1. **Claims basis of discrimination, harassment and/or retaliation.**

Mr. Olson filed his complaint on September 10, 2019. Mr. Olson's complaint was specifically that Mr. Bush and Mr. Martin had engaged in discrimination, harassment, and retaliation in violation of the City's rules relating to Mr. Olson's medical condition. In Mr. Olson's claim, he states "*I have three pending workers' comp claims that have caused me to be off work for medical disability, medical treatment, and state medical consults. As a result of this, it was put in my employee appraisal review that I have an attendance problem and that the quality of my work and the quantity of my work is now below standard*."

Mr. Olson goes on to claim that he feels as though he is being retaliated against and harassed as a result of having "*sustained these compensable work injuries*." The facts in this matter demonstrate that in May 2018, Mr. Olson claimed allergies to certain green waste route activities. Although Mr. Olson did not make a Workers’ Compensation claim on this issue, the City engaged in an interactive discussion with Mr. Olson and, since that time, Mr. Olson has essentially been assigned recyclable routes which do not contain green waste.

Furthermore, in early 2019 beginning on January 15, Mr. Olson made a claim of injury concerning "*stress and anxiety*." This Workers’ Compensation claim was investigated and later denied on April 11, 2019. Then again on January 22, 2019, Mr. Olson made a second claim, this time for exposure to diesel fuel fumes from the City truck that he was operating. This claim was also investigated and denied on May 6, 2019. Mr. Olson, on March 28, 2019, made a third worker's compensation injury claim, this time, for an alleged left shoulder injury. This claim, like the other two, were investigated and was denied on July 16, 2019 . Mr. Olson claims that he is litigating that particular claim.

It is the basis of these claims and the medical appointments that Mr. Olson attended in relationship to examinations and treatments that he believes formed the basis of negative commentary in his initial performance evaluation, and which he claims are acts of discrimination, harassment, and retaliation based on City rules. Mr. Olson cited a number of alleged events and concerns, which he indicates were indicative of such violations.

* 1. **City’s Anti-Harassment rules**

The City of Gotham has established rules to prevent unlawful discrimination, harassment and retaliation based on certain protected characteristics. Those rules are enumerated in the City of Gotham Guide to Policies, Procedures, Protocols and Events, Chapter 34 – Policy – Anti Harassment and states, in relevant part:

*“Harassment can consist of virtually any form or combination of verbal, physical, visual or hostile work environment conduct. It need not be explicit, nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders.*

*Harassment includes, but is not limited to the following misconduct:*

*Discriminatory Harassment*

*Harassment based on actual or perceived race, religious creed, sex, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation.”*

Furthermore, this Policy prohibits retaliation related to harassment in violation of the City’s rules. Section 34.20 (B) of the City of Gotham Guide to Policies, Procedures, Protocols and Events, Chapter 34 – Policy – Anti Harassment and states, in relevant part:

*Retaliate against any applicant, or employee, because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by an authorized investigator.*

Finally, Section 34.25 of the City of Gotham Guide to Policies, Procedures, Protocols and Events, Chapter 34 – Policy – Anti Harassment and states, in relevant part:

*“No employee in the City of Gotham shall:*

1. *Create a hostile or offensive work environment for any other person by engaging in any discriminatory harassment or by tolerating it on the part of another employee.*
2. *Assist any individual in doing any act which constitutes discriminatory harassment against any other employee of the City of Gotham.”* 
   1. **Analysis**

Although Mr. Olson claims that negative job actions were taken against him concerning his Workers’ Compensation claims and medical issues, the greater weight of the credible evidence tends to show that any actions taken against Mr. Olson, such as his performance evaluation and/or other such claims, as discussed below in Section B, were actions taken for legitimate business purposes. There was insufficient credible evidence to say that either Mr. Martin, Mr. Bush, or any other person violated the rules of the City concerning discrimination, harassment, and/or retaliation relating to Mr. Olson's medical claims.

The facts in this matter demonstrate that Mr. Olson was clearly not finishing his Thursday Route 7. It was noted by Mr. Olson's supervisors that this Thursday Route 7 was rather difficult due to the intricate nature of operating a trash truck in narrow alleyways throughout the City. Both Mr. Bush and Mr. Martin, as direct supervisors of Mr. Olson, had an obligation to be certain that Mr. Olson, as well as other employees, were performing their duties in a competent and efficient fashion. The facts in this matter demonstrate that there was legitimate concern regarding Mr. Olson's inability to properly complete his Thursday routes without assistance. Help was provided to Mr. Olson and both supervisors appeared to take a legitimate interest in helping to correct or alleviate any concerns that Mr. Olson had regarding performing this particular route.

Importantly, there was no credible evidence to suggest that the Workers’ Compensation claims or medical appointments that Mr. Olson engaged in concerning those claims had factored into discussions between Mr. Bush, Mr. Martin, and various human resources individuals with whom they consulted and coordinated with concerning improving Mr. Olson's performance. Both Ms. Davis and Ms. Olson noted that all discussions had with members of the Sanitation Department concerning Mr. Olson hinged solely on Mr. Olson's performance issues. The issues and concerns regarding Mr. Olson's Workers’ Compensation claims were never discussed during the various meetings and communications between Mr. Olson's supervisors and the Human Resources Department. Indeed, the City assigns the Workers’ Compensation issues to different risk management personnel apart from Human Resources personnel, such as Ms. Davis and Ms. Olson, who were assisting and working with Mr. Martin and Mr. Bush concerning Mr. Olson's performance deficiencies.

Even though Mr. Olson claimed that his current Workers’ Compensation claims were still pending, the evidence clearly shows that all three of the claims he made in 2019, as discussed above, were denied. Mr. Olson claims that he is litigating one of the claims, specifically for an alleged injury to his left shoulder. Also of interest is the fact that Mr. Olson was accommodated by mistakenly coding his leave to attend various medical appointments and treatments concerning the three claims after they had been made in early 2019. Mr. Olson should have been required to use his own personal (sick or vacation) leave and that leave would have been reimbursed to Mr. Olson had any of his claims been accepted by the City.

Instead, the City had mistakenly allowed Mr. Olson to not use leave time to attend to these various medical appointments when they conflicted with his work schedule. Interestingly, Mr. Olson indicated to this fact finder that he was not aware as to what type of leave was used for these various medical appointments. This assertion by Mr. Olson caused this fact finder concern about Mr. Olson's credibility and truthfulness during the interview process in this matter. This fact finder had no sense that Mr. Olson's Workers’ Compensation claims factored into any discussions or decisions concerning his performance review or a performance improvement plan, both of which were either amended and/or not eventually implemented.

The facts demonstrate that after Mr. Olson received his initial performance evaluation on September 9, 2019, he filed the aforementioned complaint, which is the subject of this investigation, as well as a lengthy rebuttal, which he submitted on September 18, 2019. Around the same time, the manager of the Sanitation Services Division, Mr. Keith, had been hired and reviewed Mr. Olson's concerns. Thereafter, Mr. Keith conducted his own investigation, specifically relating to the Thursday Route 7, which was the central concern regarding Mr. Olson's negative evaluation remarks.

This fact finder was impressed with Mr. Keith's objectivity and even-handed approach concerning his analysis of the Thursday refuse route. Mr. Keith agreed to review Mr. Olson's Thursday route. Mr. Keith reviewed the route and the new location that refuse was deposited in the City of Wilmington, Mr. Keith developed some concerns about the time it would reasonably take to complete the Thursday route due to all the alleys and intricacies of the route layout, as well as the length drive to the dump facility. Mr. Keith thereafter discussed his concerns and impressions with Mr. Martin and Mr. Bush.

Mr. Bush indicated that he had previously been assigned to that route prior to his promotion as a supervisor and had agreed that the route was somewhat difficult to complete. Added to this, Mr. Keith in his investigation, also learned that a previous driver for the route was likely able to complete the route easily, as he did not necessarily service all the containers as required. Moreover, Mr. Keith discussed with Mr. Bush and Mr. Martin why they were predisposed to giving Mr. Olson the poor performance evaluation they had given on September 9, 2019. Mr. Keith recalled that Mr. Bush and Mr. Martin indicated that they were directed to complete the evaluation in that fashion by the Human Resources Department based on the available information at that time.

Mr. Keith thereafter decided to take the Thursday Route 7 and to split it up sharing some of the residential zones with other routes and created a third route (Route 8). Added to this, Mr. Keith and Mr. Weinmeister in the Human Resources Department, did further investigation into the statistics regarding attendance concerning Mr. Olson's initial evaluation. During this more thorough review of Mr. Olson's attendance, it was noted that some of Mr. Olson's actual attendance numbers were even less favorable than what was initially documented in this initial performance evaluation. Even so, Mr. Keith, in attempting to be objective and fair, left some of the original analysis concerning leave time but removed some of the other negative leave time analysis in the amended evaluation he crafted, in an attempt to make the evaluation less negative than it originally was in order to justify a competent rating overall.

Thereafter, Mr. Keith redrafted the evaluation to an "*meets standards*" evaluation, which abrogated the need for the performance improvement plan, which was thereafter, rescinded. Mr. Keith's reasonings for these changes were due to some assumptions about the difficulty of Mr. Olson's Thursday route which may have initially been inaccurate and Mr. Olson's initial performance evaluation may not have been entirely fair. Even so, there was insufficient credible evidence to show that either Mr. Martin or Mr. Bush had intentionally engaged in any degree of lack of fairness or objectivity in crafting this evaluation. The facts demonstrate that Mr. Martin and Mr. Bush had worked with Ms. Davis, and later Ms. Olson in the Human Resources Department in order to craft an initial evaluation that they believed objectively characterized Mr. Olson's performance.

Part of the analysis that went into the initial performance evaluation of Mr. Olson was a review of his leave time during the initial five months of 2019. This analysis was done by Mr. Bush at the direction of management and Human Resources, as it touched on and concerned a time where Mr. Olson's failures to finish his Thursday route were most pronounced. This was prompted by Mr. Olson’s claims at that time that he was struggling to complete this route without help. There was no credible evidence to say that this analysis was focused or done in relationship to Mr. Olson's Workers’ Compensation claims.

It was also interesting to note that Mr. Bush remarked that he had never heard Mr. Olson complain about either him or Mr. Martin being unfair to him prior to receiving discipline in January 2019. Mr. Bush noted that it was not until after Mr. Olson had been issued the disciplinary notice concerning his failure to observe damage to his City vehicle in December 2018, that Mr. Olson indicated that he did not want to talk to Mr. Martin, as he felt Mr. Martin did not treat him fairly and had treated him differently than other employees. Mr. Bush told this fact finder that he felt that if Mr. Martin had not been instructed to issue this disciplinary notice, Mr. Olson would not have had any issues with him. Mr. Bush believes that if he (Mr. Bush) had been the one instructed by management to issue the discipline, as opposed to Mr. Martin, that Mr. Olson would be more upset with Mr. Bush and not Mr. Martin.

The written reprimand issued to Mr. Olson on January 15, 2019, by Mr. Martin, related to Mr. Olson having failed to notice damage on an assigned work truck back on December 12, 2018. Mr. Martin indicated that he was directed by management to issue Mr. Olson this disciplinary notice and that Mr. Olson did not react well to this issue.[[9]](#footnote-9)

Another key aspect concerning Mr. Olson's claims that Mr. Martin and Mr. Bush had somehow treated him poorly or had retaliated against him concerning his Workers’ Compensation claims and medical leave in early 2019, was Mr. Olson's own statements to this fact finder when he indicated that he felt that Mr. Martin had essentially treated him poorly from the beginning of their employment together. This poor treatment that Mr. Olson claims occurred long before Mr. Olson had made any medical claims or had used any sort of medical leave relating to any sort of alleged workplace injuries.

* 1. **Findings**

Based on the greater weight of the credible evidence and considering all of the available evidence comprised in this fact-finding investigation, there appears to be insufficient credible evidence to say that either Mr. Bush and/or Mr. Martin engaged in violations of the City's anti-harassment policies. The greater weight of the credible evidence tends to demonstrate that Mr. Bush and Mr. Martin were critical of Mr. Olson in his evaluation given in September 2019 for the legitimate business purpose of attempting to document what they reasonably observed was poor performance.

Both Mr. Bush and Mr. Martin were Mr. Olson's supervisors and had a legitimate obligation to observe, correct, and attempt to improve what they considered deficient work performance by a subordinate employee. By documenting such observed poor performance in Mr. Olson's initial performance evaluation, Mr. Martin and Mr. Bush, who assisting in gathering information, were fulfilling their duties as supervisors, even though, Mr. Keith, the new manager in the Department later intervened and revised the evaluation and changed some of the workplace activities concerning the Thursday route, which was seen as being difficult and perhaps unreasonable due to changed circumstances.

Based on this evidence, there is insufficient credible evidence to say that either Mr. Martin or Mr. Bush engaged in violations of the City's rules concerning anti-harassment. The allegations are, therefore, **Not Sustained**.

## **SUMMARY OF INTERVIEWS**

1. **Summary of Interview with Gary Olson**

On January 9, 2020, this fact finder conducted an audio-recorded interview of Mr. Olson at Gotham City Hall. Mr. Olson made a recent complaint to Human Resources alleging discrimination, harassment, and retaliation in the workplace by his supervisors, Mr. Martin and Mr. Bush. Also present for the interview was Mr. Olson’s labor union representative, George Muir(Mr. Castrellon), with ASME Local 440, and this fact finder’s associate, Sarah Carter (Ms. Carter).

This fact finder showed Mr. Olson a copy of an employee complaint date stamped October 2, 2019. Mr. Olson recognized the document as being the complaint he filed with Human Resources and confirmed everything in it was true and correct to the best of his knowledge. He explained that he has been a Sanitation Equipment Operator for the City for five years. Prior to his August 2019 evaluation, he had never received a substandard performance review. He feels that the negative review was in retaliation for three Workers’ Compensation claims he made earlier in the year. He claimed Mr. Martin was abusing his authority by writing false allegations in his performance review, including statements that he was not finishing his Thursday service route and that he was leaving work early due to a shoulder injury allegedly caused by operating the controls on the refuse truck. Prior to his injury, he said he never had a problem finishing his routes. In addition to his shoulder injury absences, Mr. Olson said he was marked down on his performance review for an absence on July 31, 2019, when he left work 30-minutes early due to the death of his brother, despite having already finished his route.

In regard to his shoulder injury, Mr. Olson explained he uses his arm more on his Thursday route because there is more work on that route, which he claims aggravates the pain in his shoulder. When he left work for the third time on a Thursday, the City sent him to a doctor. Mr. Olson contended that his performance review should not have reflected negatively when he did not finish his routes or when he left work early because his absences were a Workers’ Compensation issue, rather than him being a “*bad worker*.”

Mr. Olson explained he has three pending Workers’ Compensation claims that have caused him to take time off from work in order to attend his doctor’s appointments.[[10]](#footnote-10) He said the City would set up his doctor’s appointments, and he would in turn submit to them Workers’ Compensation paperwork. In regard to the statement in his unamended evaluation, "*On 4/10/19, Gary alleges he experienced medical issues and health concerns; however, when Gary was asked to provide medical documentation, he did not*,” Mr. Olson said he initially turned in Family Medical Leave Act (FMLA) paperwork, not Workers’ Compensation paperwork, because they did not give it to him until his third Workers’ Compensation incident. Prior to that, he did not turn in any medical documentation, and no one asked him for any.

Mr. Olson said all three of his Workers’ Compensation claims have been denied by the City, however he said the Qualified Medical Examination (QME) doctors are “*on his side*.” He has retained an attorney and is litigating the claim for his shoulder. He said the other two claims are still “*pending”* due to the City having asked for more information which has required him to go to more evaluations.[[11]](#footnote-11)

Mr. Olson said the two outstanding Workers’ Compensation claims, apart from the claim about his shoulder injury, are for having to go to the hospital in January 2019 due to anxiety caused by being “*cornered*” and “*trapped*” by Mr. Martin and Mr. Bush in the office. When this fact finder asked Mr. Olson to describe what he meant when he said that he was “*cornered,”* Mr. Olson said his supervisors told him, “*here, sign this*,” referring to a reprimand stemming from an incident in December 2018 having to do with him not reporting damage to a City truck.

He explained Mr. Martin accused him of not documenting damage to a truck that was discovered Thursday, December 13, 2018. Mr. Olson thought Mr. Martin was retaliating against him because he took that Thursday off, given the fact he does not like to work on Thursdays due to his route. When he returned to work on Monday, Mr. Martin asked Mr. Olson if there was damage to truck #9017 when he left on Wednesday. This was a City truck that had been newly assigned to him the week prior. Mr. Martin said the truck was damaged and was in the shop getting fixed. Mr. Olson told Mr. Martin that there was no damage to the truck when he left work. Mr. Martin asked if there had been branches hanging off the truck, to which Mr. Olson replied, “*no*.”

Mr. Olson called “*Miguel*,” the shop manager, who told him there was damage to the compressed natural gas (CNG) tanks on the top of the truck. Miguel said he could not tell how long the branches had been on the top of the truck or if the damage was recently caused. Mr. Olson explained that he would have had to get a ladder to see the branches on the top of the truck in order to make the documentation. He said the truck had previously been assigned to Chavez, who had been in a collision that damaged the roof and Mr. Ornate further remarked that perhaps the damage was pre-existing from that incident. Mr. Olson asked “*Myron*” and “*Santos*,” two other employees, if they had seen any branches hanging off the truck when they came in the City Yard behind him on the date in question, to which both employees replied they had not.

In January 2019, Mr. Martin attempted to write him up for not reporting the damage to the truck, despite Mr. Olson contending he did not see the damage and was off-duty on the date it occurred.[[12]](#footnote-12) He said Mr. Bush was the calmer person in the office, whereas Mr. Martin was more persistent and aggressive regarding him signing the reprimand. When Mr. Olson wrote on the reprimand that he would not sign the document, Mr. Martin put the document in the shredder and printed out second copy for him to sign. Mr. Martin and Mr. Bush also alleged that Mr. Olson was audio-recording the meeting on his phone, when, in fact, he said he merely taken out his phone to take pictures of the reprimand for the purpose of showing it to his union representative prior to signing it. Mr. Olson said this incident caused him such anxiety that he had to be transported from work to the hospital. Mr. Olson said Mr. Martin has never made reference to him taking too much sick leave in the past, only in 2019, and believes it stems from this incident in the office.

Mr. Olson provided a possible explanation for the damage to the truck. He alleged that employee Justin Kline (Mr. Kline) “*seems to know everything before I know…telling me, ‘Oh, hey, I know you’re under investigation*.’” Mr. Olson believes Mr. Kline was the employee that reported the damage to the truck. He said Mr. Kline previously had “*too many*” accidents, which would be motivation for Mr. Kline to blame him for the damage to the truck when, in fact, Mr. Kline may have caused it himself. Mr. Olson said Mr. Kline has family that works for the City, including two in-laws who are supervisors (Mr. Ornate he did not know their names), both of whom are close to Mr. Martin. Mr. Olson thinks this may be the reason Mr. Kline seems to have known about meetings in which he should not have had such knowledge, and the fact that he knew he was being investigated for the damage to the truck.

On two other occasions since January 2019, Mr. Bush has asked Mr. Olson whether he had a collision with his City-assigned truck, once into a wall and another time into a fence. Mr. Olson told him he did not have any collisions and went out to the addresses to see if he could locate any damage, which he ultimately could not. He said he was never disciplined for either of these incidents, only questioned. Mr. Olson viewed the fact he was being questioned about alleged collisions as suspicious because later in the year he was given a belt buckle award, which is given to employees who do not have any accidents for over five years.

This fact finder asked Mr. Olson if he had to use his sick time for the appointments associated with his Workers’ Compensation claims, he said, “*I dunno*.” He said he would have to check his pay statements at home, but described a time when, on April 30, 2019, he noticed on his pay stub that sick leave had been taken out of his bank, despite him having been present for work. When Mr. Olson questioned Mr. Martin about it, Mr. Martin told him that one day he “*didn’t come ready*” for work. When this fact finder asked Mr. Olson what day Mr. Martin had marked him as being out sick, Mr. Olson replied that it was for his Department of Transportation (DOT) physical.

Mr. Olson claimed that normally the City sends employees for their physicals during work hours, however this time Mr. Martin made him go on his own time. Mr. Martin told him to go on a Friday, his day off, however he already had doctor’s appointments that day. As a result, Mr. Olson went to his Department of Transportation appointment on Saturday.[[13]](#footnote-13) He said he was not compensated for the time at the appointment, and that he did not turn in an overtime slip, nor did Mr. Martin mention that he would or could be paid overtime. Mr. Olson said that when he went to the clinic on Saturday for his exam, the clinic was having trouble with their Wi-Fi, so they could not complete the whole physical exam. Those at the clinic told him to come back on Monday so the doctors could fill out the final forms. Mr. Olson said Mr. Martin put down 2.7 or 3.0 hours of sick time for him because he had to go turn in paperwork to the Department of Motor Vehicles. When he returned from the Department of Motor Vehicles, he got in his truck and continued his route. As a result of the sick time being taken from his leave bank, Mr. Olson called Ms. Davis who, at the time, was an Analyst in Human Resources. Ms. Davis spoke to Mr. Martin, and afterwards, Mr. Martin got on the radio and told him he was going to have to change the sick leave back to regular time.

Mr. Olson said that he does not feel Mr. Martin is a good manager and does not know how to use his drivers in a proper way. He said Mr. Martin “*abuses*” the newer drivers and is easier on the more tenured drivers. Mr. Olson feels he is burnt out because the first few years he was “*running around like a chicken without its head just trying to do everything*,” referring to the extra work that Mr. Martin assigns the newer drivers.

Mr. Olson said another issue that he feels Mr. Martin has had with him is the fact that he does not like to work overtime anymore. He described one specific time on a Thursday, in his second year of employment, when Mr. Martin asked him to work overtime when he was supposed to start a two-week vacation the next day. Mr. Olson said he could not work the overtime because he already had plans. While he was on his two-week vacation, Mr. Martin called him and asked if he had collided his truck with a wall, damaging a brick wall cap. Mr. Olson questioned why Mr. Martin would call him on his vacation to ask him such a question and supposed it was a form of punishment because he had earlier declined the overtime request.

Mr. Olson described another time when Mr. Martin asked several employees if they wanted to work overtime. Mr. Olson declined by saying, “*no, thank you*.” Mr. Martin seemed upset by the way he responded or the fact that he did not want to work the overtime, and said words to the effect of, “*try not to be so rude*.” He also said Mr. Martin has questioned him over the radio as to why he did not want to work overtime.

On October 22, 2019, Mr. Olson saw Mr. Martin walking around his truck, noting things and looking inside. He observed Mr. Martin retrieve a tape measure and measure the width of one of the tires on the truck. Mr. Olson did not see him walking around or measuring any other trucks. When Mr. Martin finished and left, Mr. Olson approached Josh Bendik (Mr. Bendik) who was sitting in another truck two or three parking spaces away and had allegedly witnessed the incident. Mr. Olson asked Mr. Bendik what Mr. Martin was doing, to which Mr. Bendik replied that he did not know. Mr. Olson said he thought Mr. Martin had it out for him and that Mr. Martin was looking for something for which to write him up or discipline him. Mr. Olson never had a conversation with Mr. Martin about what he had been doing concerning his truck, and Mr. Martin never mentioned anything to him. Mr. Olson felt that if Mr. Martin was doing an inspection on the truck he (Olson) drives, he should have done an inspection on the other employees’ trucks.

Mr. Olson provided a possible explanation for Mr. Martin’s measuring, in that he had previously been questioned about running over somebody’s lawn. He speculated that Mr. Martin was trying to match the width of his tire to the tire mark on someone’s lawn, however he remarked that the lawn incident occurred a long time ago, within 2019, but that it did not seem to be the correct time frame for Mr. Martin’s measuring activities.

Mr. Olson also discussed an incident that occurred on November 21, 2017, when his supervisors took photographs of him on the City surveillance cameras because they noticed he neglected to remove his map book from the dashboard of his truck, which was a rule they had enacted approximately one week prior. Out of habit, Mr. Olson said he left his map book on the dashboard because there is not a good place in the truck to put it where it does not slide around. His supervisors said they were going to provide him some sort of storage holder in the truck, but never did. When they confronted Mr. Olson about the improper storage of his map book, Mr. Olson only recalled he received a verbal warning, but viewed the whole incident as suspicious due to the fact they had been taking photographs of him.[[14]](#footnote-14)

As far as the performance improvement plan Mr. Olson was placed on after his initial (unamended) performance evaluation in August 2019, he said it was rescinded when his evaluation was amended after he submitted a rebuttal to Manager, Mr. Keith. At that time, Mr. Olson spoke to Mr. Keith about his Thursday route being the hardest route in the group. Mr. Keith went through the whole route with Mr. Bush and agreed that it was an “*unrealistic*” expectation. Mr. Olson said that he had been complaining about the route for some time and mentioned that he used to be able to finish the route when he was not taking any breaks, however he was not going to miss his breaks anymore. Shortly thereafter, Mr. Keith modified the route into two separate routes. Mr. Olson explained that everybody who had done this Thursday route previously also had difficulties completing it due to the entrance to the alleys being tight, and the roads not being properly paved, as well as other obstacles on the route such as wires and branches. Mr. Olson said the only route his supervisors made comments about him not completing was this Thursday route.

One of the other issues Mr. Olson said that contributed to him not finishing his Thursday route was when Mr. Martin would go through the alleys and pull out the trash cans that were not left in their proper position in the roadway and would tell Mr. Olson to reservice the route after he had already serviced it. Doing this increased the time Mr. Olson had to spend on the route. Mr. Olson commented that it was not his job to pull out cans that were not properly put out for service.

Mr. Martin has made remarks such as, “*I’ve been watching you*,” regarding following him on his route. He said Mr. Bush has also followed him. He remarked that it does not bother him that his supervisors have followed him, rather what bothers him is the fact that they said in his performance review that they counseled him on his work habits after following him, when in fact they never did. He also claimed that the assertion on his performance evaluation that he does not help out his co-workers was also false because he said he helps his fellow employees every day.

Mr. Olson said at one point they were trying “*to push him out*” because of his allergies. He explained that he cannot pick up green waste or regular trash due to it containing green waste. He also allegedly cannot drive the diesel trucks because of the exhaust fumes effect his allergies. Mr. Olson believes this is an issue for his supervisors because they cannot utilize him wherever they need him, and currently he can only pick up recyclables while driving a CNG truck.

Mr. Olson brought several notebooks with him to the interview in which he said he had been making contemporaneous notations about occurrences at work since January 2019. He said he was spending a lot of time documenting and doing extra paperwork just to protect himself when he should be focused on safety and driving. He remarked that the notetaking was “*kind of*” interfering with his work because he had to stop all the time to make notations, despite just wanting to do his job.

Mr. Olson said that when he first started working for the City there were two bad accidents involving a trash truck running over a lady’s leg and another incident in which a trash truck nearly pulled down some telephone poles. Mr. Olson contended the collisions were due to pressure the supervisors were placing on the drivers. He also described a high turnover rate alleging that 16 employees in a 31-person department have left employment over the past five years.

This fact finder asked Mr. Olson if Mr. Martin had treated him poorly during the entire time they have worked together and Mr. Olson responded, “*well, yeah, no, he did. He used to give me some of the worst trucks and the route*.” Mr. Olson explained that he just could not “*do it anymore*.” He said he did not like the fact that Mr. Martin gives newer employees preference with newer trucks and gives him trucks that just came from the shop for repairs. Mr. Olson explained that Mr. Martin has been his supervisor for his entire five years of employment with the City, and that he has had issues with Mr. Martin prior to this past year. He said that he believes Mr. Martin treats him poorly because Mr. Martin was not the person who hired him and that it was, instead, Mr. Woolsey who hired Mr. Olson. When this fact finder asked Mr. Olson if he felt that Mr. Martin disliked him from the beginning of his employment, Mr. Olson replied, “*uh yeah. Sort of, I do*.” When asked if Mr. Olson had any further complaints at this time, he stated there were no further issues that he could recall.

1. **Summary of Interview with Jim Keith**

On February 20, 2020, at approximately 12:30 p.m., this fact finder conducted an audio-recorded interview of Mr. Keith at Gotham City Hall. Mr. Keith was called as a possible witness to a complaint by Mr. Olson alleging discrimination, harassment, and retaliation in the workplace by his supervisors, Mr. Bush and Mr. Martin. Also present for the interview was this fact finder’s associate, Ms. Carter.

Mr. Keith explained he has been the Sanitation Services Manager for the City for approximately seven months. When Mr. Keith first started his employment, Mr. Olson had just received a substandard performance evaluation. As such, Ms. Davis, a former City Human Resources Analyst helped draft a performance improvement plan for Mr. Olson. Mr. Olson was very upset about his negative evaluation, was adamant that the statistics in the evaluation were inaccurate and indicated that his Thursday route (Route 7) was difficult and hard to complete. As a result, Mr. Keith agreed to review Mr. Olson’s Thursday route.

After a review of the route, Mr. Keith developed some concerns about the time it took to complete the Thursday route due to all of the alleys and lengthy drive to the dump facility. He discussed his feelings with Mr. Martin and Mr. Bush. Mr. Bush indicated he had previously been assigned to that route prior to his promotion, and agreed it was a difficult route to complete. Mr. Keith also learned that the previous driver for the route was able to complete the route only because he did not service all of the containers as was required. Mr. Keith asked Mr. Bush and Mr. Martin why they were so adamant on giving Mr. Olson a poor performance evaluation, given they knew the route had difficulties. They replied to the effect that they were directed to do so.

As a result, Mr. Keith and the supervisors agreed to split up some of Mr. Olson’s Thursday route due to its difficulty. Mr. Keith and Rob Weinmeister in Human Resources did some investigating into the statistics used on Mr. Olson’s evaluation. During a more thorough review of Mr. Olson’s attendance, it was discovered that some of Mr. Olson’s actual attendance numbers were less favorable than what was initially cited in his first performance evaluation. Because of this, Mr. Keith left some of the original numbers in, but removed other numbers from the second draft of the evaluation, in an attempt to make the evaluation less negative than it originally was. Additionally, the notations about Mr. Olson receiving discipline for not documenting the damage to his truck were again included, but the parts that concerned Mr. Olson not completing his route were removed on the second draft. The review was changed to a “*meets standards*” evaluation, which took away the need for the performance improvement plan. Mr. Keith’s reasoning for the changes was that because some of their assumptions about the difficulty of Mr. Olson’s route were initially inaccurate, as such, Mr. Olson’s first performance evaluation may not have been entirely fair.

Mr. Keith said he never heard Mr. Olson claim that Mr. Martin or anybody else was out to get him or push him out of the organization. Mr. Olson however made the claim that the supervisors who wrote his evaluation were lying. Mr. Keith did not know which supervisor wrote which part of Mr. Olson’s evaluation, but he believes Mr. Martin wrote the bulk of it. Mr. Keith has not seen Mr. Martin or anybody else treat Mr. Olson unreasonably, disrespectfully, or rudely, and has never heard anybody make such a claim. In fact, Mr. Keith explained that before he started his position, Mr. Olson had filed a few worker’s compensation claims against the City, and in regard to those claims, Mr. Keith believes Mr. Olson has been given accommodation longer than the City should have allowed.

Mr. Keith was not aware that any supervisors had contacted employees while they were on vacation about damage to City vehicles. He said it is regular practice however, to contact employees who are on vacation for overtime opportunities.

1. **Summary of Interview with Jennifer Davis**

On February 27, 2020, this fact finder conducted a non‑recorded telephone interview of Ms. Davis, a former Human Resources Analyst for the City. Ms. Davis is now the Human Resources Manager for the City of Youngstown, having left employment with the City of Gotham in June 2019. Ms. Davis was called as a potential witness in this matter, as she had worked with members of the City of Gotham’s Public Works Department concerning Mr. Olson's performance in the workplace.

Ms. Davis told this fact finder that she had some recollection of Mr. Olson, and that when she left the agency, she transferred her e-mails and workbooks concerning his file to Ms. Olson, who was later assigned to coordinate any further actions regarding Mr. Olson relating to Human Resources' actions regarding his employment.

Ms. Davis recalled that Mr. Olson was having difficulties with a particular sanitation route that he was assigned on Thursdays (Route 7). Ms. Davis recalled that the individual who had normally been assigned that duty either no longer worked for the City or was on some form of leave. Ms. Davis said that she recalled that the assignment was not favorable, as it was a rather difficult route to operate for trash collection. Ms. Davis recalled that Mr. Martin and Mr. Bush would rotate the assignment such that no particular person was permanently assigned that duty. Ms. Davis recalled that the senior sanitation workers were more often asked to operate that route due to their experience and skill.

Ms. Davis recalled that one of the issues of concern was that the City was using newer trucks that were larger and taller than previous vehicles used for that route. Ms. Davis said that this posed some degree of difficulty, as the route entailed driving through very narrow allies and making sharp turns that had been easier with the older and smaller trucks that had previously been used.

Ms. Davis seemed to recall that Mr. Olson had received some sort of discipline regarding an accident or damage to a vehicle in relationship to the Thursday route. Ms. Davis said that her approach, at the time, was to discuss the issue with Mr. Olson and to not, necessarily, impose some sort of disciplinary memorandum. Ms. Davis said that the morale in that particular department, as well as Public Works in general, was rather low at the time. Ms. Davis shared that the manager at the time, Mr. Skinner, had a habit and custom of listening to customer complaints and suggesting solutions without including the supervisors in those discussions, causing some confusion and a general feeling amongst the employees that the supervisors had been unreasonable or "*out to get them*."

Ms. Davis recalled that she had suggested that Mr. Bush ride with Mr. Olson on his route on a Thursday in order to observe his driving and, perhaps, where warranted, give him tips or advice concerning negotiating the narrow allies and various turns required during this route. Ms. Davis said that she specifically told Mr. Bush that he should ride with Mr. Olson, but later found out that Mr. Bush merely driven behind Mr. Olson, observing him from Mr. Bush's truck, following Mr. Olson during approximately half of his route on a Thursday.

Ms. Davis said that when she learned that Mr. Bush had not, in fact, ridden with Mr. Olson, she told him that that would be necessary and, thereafter, Mr. Bush did, in fact, ride with Mr. Olson during his Thursday route. Ms. Davis said she was not aware of what discussions, training, tips or other suggestions that Mr. Bush may have made during the course of that observation.

Ms. Davis said that she had some concern that if Mr. Olson was given a negative disciplinary memorandum at the time, that there could be some degree of liability should he cause or be engaged in some form of traffic collision or damage during the course of his route. Instead, Ms. Davis seemed to recall that they advised Mr. Olson that he had met the standards; however, needed some degree of improvement, and that he was given an early evaluation explaining those observations. Ms. Davis does not recall any discussions concerning a performance improvement plan.

Ms. Davis said that there may have been some issues concerning sick leave relating to Mr. Olson. Ms. Davis was not entirely certain, but she seemed to recall that Mr. Olson had claimed that he had some sort of claimed issues with his bladder, requiring him to make frequent stops in order to use the restroom, which somehow had caused him not to finish his routes. Ms. Davis said that Mr. Olson was asked to provide a note from his physician and was provided other required paperwork; however, Mr. Olson did not seem to provide any feedback from his physician, nor did he file any of the Family Medical Leave Act (FMLA) paperwork that he had been provided.

Ms. Davis seemed to recall that Mr. Olson, though his various complaints and claims, may have been attempting to be transferred to a different Department within Public Works, where he would be operating a street sweeping truck for another manager, Mr. Woolsey. Ms. Davis said that Mr. Woolsey had a reputation of being easygoing and not likely to discipline or "*write up*" a subordinate employee. Ms. Davis said that both Mr. Martin and Mr. Bush, who were and are Mr. Olson's current supervisors, had a reputation of being assertive supervisors, requiring their employees to maintain proper standards. Ms. Davis said it may have been that Mr. Olson, through complaining about unsubstantiated medical issues, may have, in fact, been attempting to obtain a transfer to a supervisor who would be easier to work with and for whom he would not have to maintain proper standards.

Ms. Davis said that she did not recall specifically detailing anyone to review or to substantiate any particular sick leave calculations in regard to Mr. Olson's sick leave time. Ms. Davis suggested that this fact finder contact Ms. Olson, who would be in possession of various documents, communications and the general work notebook relating to the Human Resources Department's interactions with Mr. Olson and his supervisors.

1. **Summary of Interview with Terry Olson**

On March 13, 2020, this fact finder conducted a non-recorded telephone interview of Ms. Olson, a Human Resources Analyst for the City. Ms. Olson was called as a potential witness in this matter, as she worked with supervisors and managers in Mr. Olson's work unit concerning performance issues.

Ms. Olson told this fact finder that she had recollection of Mr. Olson's employment issues and had taken over his file from Ms. Davis, who had resigned her position from the City and has since gone to work as a Human Resources Manager with the City of Youngstown. Ms. Olson indicated that Ms. Davis had transferred various e-mails and workbooks over to her concerning Mr. Olson's file when she left her employment with the City.

Ms. Olson said that Mr. Olson was having difficulties with a particular sanitation route he was assigned on Thursdays (Route 7). Ms. Olson recalled that her interactions with Mr. Bush and Mr. Martin related largely to Mr. Olson's performance, as opposed to his use of sick leave.

Ms. Olson indicated that, typically, Mr. Olson's sick leave would be reviewed for approximately one year of time and compared to the sick leave averages of his contemporaries in his work unit. Ms. Olson does not recall what the findings were concerning Mr. Olson's sick leave usage and that the period reviewed might not reflect and entire year's period, as she recalled that Mr. Olson's review was late due to performance concerns and that his date of review would have been different than his typical date of anniversary of appointment.

Ms. Olson recalled that Mr. Olson was having difficulties concerning an assignment on the Thursday route and that he had difficulties completing that route in a proper fashion. Ms. Olson recalled that Mr. Olson additionally had filed a number of Workers’ Compensation claims, which had been reviewed and each denied based on those reviews. Ms. Olson said that she recalls no discussions concerning Mr. Olson's Workers’ Compensation claims and that her discussions with Mr. Bush, Mr. Martin, Mr. Keith, and his predecessor all related to Mr. Olson's performance issues as opposed to any injury claims that he had made.

Ms. Olson said that Mr. Keith, who became the Sanitation Services Manager in 2019, reevaluated the Thursday route that Mr. Olson was having difficulties completing in a timely manner. Mr. Keith based this evaluation on Mr. Olson's claims that the Thursday route was too difficult and essentially impossible to complete based on the nature of the route. Ms. Olson recalled that Mr. Keith learned that the location where trash would be dumped at the conclusion of performing this route had changed from a City location to another location in City of Wilmington. Mr. Keith reviewed all the particular evidence regarding the Thursday route, felt that the conditions had changed such that the route needed to be broken up where an additional route was created with part of Thursday's route assigned to other route in order to make the route more reasonable and subject to being completed during a normal workday.

In summary, Ms. Olson indicated that there had been no discussions or concerns, necessarily, regarding Mr. Olson's Workers’ Compensation claims. Ms. Olson said that the Human Resources Department's involvement with members of the Sanitation Services Division working with Mr. Olson were focused on Mr. Olson's work performance and his ability to complete his jobs in a competent fashion. Ms. Olson said that once Mr. Keith determined that the prior Thursday route had been somewhat unreasonable and needed to be changed, he directed that Mr. Olson's review be changed from a needs improvement score to a competent review. This competent rating review made a performance improvement plan crafted to assist Mr. Olson to improve and become competent, as unnecessary. As such, Mr. Olson was given a competent review with no need for a performance improvement plan.

1. **Summary of Interview with David Bush**

On February 20, 2020, this fact finder conducted an audio-recorded interview of Mr. Bush at Gotham City Hall. Mr. Bush was the subject of a complaint by Mr. Olson who alleged discrimination, harassment, and retaliation in the workplace by his supervisors, Mr. Bush and Mr. Martin. Also present for the interview was this fact finder’s associate, Ms. Carter.

Mr. Bush explained he has worked for the City for approximately eight years and is currently the Public Works Supervisor. He worked as a peer of Mr. Olson for approximately 1-1/2 years prior to his promotion to supervisor and said they always got along well. Likewise, Mr. Olson has always been polite to Mr. Bush as a supervisor and has never had an issue with taking orders from him.

In regard to Mr. Olson’s discipline for not reporting damage to a truck, Mr. Bush explained that Mr. Santos notified Mr. Martin of damage to a truck that was assigned to Mr. Olson. Mr. Martin reviewed Mr. Olson’s previous inspection reports and noted that Mr. Olson had not documented the damage. Per their policy, when damage is not reported on a pre or post-trip inspection form, the last person that drove the truck is held accountable for either causing the damage, or for failing to document the damage on his inspection report. Mr. Martin notified Mr. Skinner or Mr. Knapp in management and was instructed to hold the employee that failed to report the damage accountable.

Mr. Martin attempted to serve Mr. Olson with his discipline concerning his failure to report the damage to his truck at the end of a workday at approximately 5:15 p.m. on Mr. Olson’s last day of his work week. Mr. Olson however requested that Mr. Martin wait to give him the discipline notice, indicating the meeting was interfering with his cleanup time from 5:15 p.m. until 5:30 p.m.. Mr. Olson indicated that he was not going to sign any discipline paperwork during that time.

When Mr. Olson returned to the office the following Monday morning, Mr. Martin again attempted to serve Mr. Olson with his discipline notice. Mr. Bush was present and described Mr. Olson as being very distraught and “*loud*” with Mr. Martin. Mr. Olson indicated to them that he had to go to the hospital over the weekend for chest pains due to the stress of thinking about the pending discipline. Mr. Olson then started to sob uncontrollably, slumped over in his chair, held his chest, and requested immediate medical attention. Mr. Bush summoned the assistance of the Gotham Fire Department. Mr. Bush was unsure if Mr. Olson ever signed the discipline paperwork because he was ultimately transported to the hospital. At no time did Mr. Bush see anybody shred or throw away Mr. Olson’s discipline paperwork.

Mr. Bush said that he never heard Mr. Olson complain about Mr. Martin being unfair to him prior to receiving the discipline. It was not until after Mr. Olson was issued the discipline notice that Mr. Olson indicated he did not want to talk to Mr. Martin because he felt Mr. Martin did not treat him fairly and that he treated him differently than other employees. Mr. Bush feels that if Mr. Martin had not been instructed to issue the discipline, Mr. Olson would not have had any issues with him. Likewise, Mr. Bush said he believes that if he had been the one instructed to issue the discipline; he would be the one with whom Mr. Olson was upset, not Mr. Martin.

Because Mr. Olson no longer wanted to interact with Mr. Martin, Mr. Bush assumed the responsibility of communicating with him in their morning meetings. When Mr. Martin attempted to speak to Mr. Olson, Mr. Olson would tell him, “*I can’t talk to you*.” One day after briefing, Mr. Martin gave Mr. Olson a normal/ordinary directive regarding his map assignment. Mr. Olson began shaking and had to leave briefing to go for a walk to calm down. Mr. Olson told Mr. Bush that every time Mr. Martin spoke to him his blood pressure would rise. Despite this, Mr. Bush indicated he has never seen Mr. Martin or anyone else treat Mr. Olson poorly or try to run him out of the agency. Likewise, Mr. Bush has never heard Mr. Martin be rude to Mr. Olson over the radio when he has requested him to work overtime, and he has never heard Mr. Olson make such a complaint.

When one of their drivers left on military leave, Mr. Olson requested to take over that employee’s Thursday route (Route 7), because he did not yet have a permanent route or truck. Up to that time, Mr. Olson had been filling in where there were vacancies. The Thursday Route 7 was the most challenging and least desirable route because of all the alleyways, and as such was usually assigned to the least senior employee. Mr. Bush explained that in the alleys, refuse cans are usually left in a stationary position, and the driver has to get out the truck and move the cans to a position where the truck can pick them up.

Mr. Bush was quite familiar with Route 7 because he used to be assigned to it prior to his promotion and indicated it was, in fact, difficult. He said the previous employee that was assigned to the route did not have difficulty completing the route but only because he was not servicing each of the containers as he should have been. When Mr. Olson took over the route however, he serviced the route correctly by emptying each receptacle. Around January 2019, Mr. Olson told Mr. Bush he was having difficulty completing his Thursday route, and as a result, Mr. Bush would occasionally send another employee to help finish the route. Mr. Bush kept records of these requests. This deficiency concerning the Thursday route reflected negatively on Mr. Olson when he was issued his performance evaluation.

Mr. Bush explained that he and Mr. Martin divided the number of employee evaluations that need to be completed. Mr. Olson happened to be in Mr. Martin’s evaluation group. Both supervisors have to sign the evaluation, but Mr. Martin was the primary supervisor assigned to write Mr. Olson’s evaluation. Mr. Martin sent the draft of the evaluation to management for review, which is standard procedure. Mr. Knapp requested that Mr. Bush review the GPS history from Mr. Olson’s truck and let him know how many times Mr. Olson did not complete his route and/or required assistance from another employee.

Mr. Knapp also requested that Mr. Bush ride along with Mr. Olson, which is common practice when an employee is having difficulty with a route. First Mr. Bush drove the route behind Mr. Olson and then later went on a ride-along with him. Mr. Bush did not give Mr. Olson any performance feedback, as he was merely there to observe the route and to have Mr. Olson point out any hazards or difficulties along the way. When both he and Mr. Martin gave Mr. Olson his initial evaluation, Mr. Olson said he did not agree with it and wrote a rebuttal. The labor union then accused Mr. Bush and Mr. Martin of putting false information in the evaluation.

Around this time, a new manager, Mr. Keith, started his employment with the City. Mr. Keith had Mr. Bush take him along Mr. Olson’s route and to the dump during which they timed this activity during light traffic. They noted that the dump in the City of Wilmington was much further than the dump they previously used. Mr. Keith also took into consideration the fact that the previous driver used to finish Mr. Olson’s Thursday route consistently, but only because he was not servicing every trash container and did not have to drive the further distance to the City of Wilmington to dispose of the refuse.

Because of his observations, Mr. Keith requested that Mr. Bush rearrange the routes by taking off approximately 300 homes from Route 7, as well as some from Route 6, to create a Route 8, for the purpose of making Route 7 more manageable. As such, Mr. Keith did not think it was fair to give a low rating to Mr. Olson on his evaluation given the aforementioned circumstances and the changes they had noted, plus the fact that they had made an additional route. Mr. Keith, in turn, rewrote Mr. Olson’s evaluation which reflected a competent rating, thereby negating the need for implementing a performance improvement plan.

Mr. Bush explained that he was not involved in Mr. Olson getting his Department of Transportation (DOT) mandated physical. He said that approximately 90% of the employees get their physical while on-duty so they can be compensated for the time. They then go to the Department of Motor Vehicles to turn in the medical paperwork to renew their commercial driver’s license. A small number of employees however request to go on their days off because they want to be more relaxed for the medical assessment, they need more doctor oversight, or they need to go to their own doctor to obtain additional medical records for the City’s doctor. If an employee requests to go to the doctor while they are off-duty, the City will not provide compensation for their time to do so.

As far as contacting employees while they are off-duty, Mr. Bush explained the policy has changed. Previously, they did not used to contact employees if they knew the employee was on vacation or out of the country. Now, however, they contact every employee regardless of their leave status to give each employee the opportunity for overtime, unless the employee has specifically signed a notice stating that he does not want to be contacted during a particular period.

Mr. Bush said occasionally they receive complaints that their drivers have damaged property along a route. When this happens, he or Mr. Martin will inspect the truck in question and measure it to see if the truck’s measurements match the alleged damage. They will also review the GPS data for the truck to see if the truck was even in the area during the time the damage was alleged to have occurred.

1. **Summary of Interview with Thomas Martin**

On February 20, 2020, at approximately 10:00 a.m., this fact finder conducted an audio-recorded interview of Mr. Martin at Gotham City Hall. Mr. Martin is the subject of a complaint by Mr. Olson alleging discrimination, harassment, and retaliation in the workplace by his supervisors, Mr. Martin and Mr. Bush. Also present for the interview was this fact finder’s associate, Ms. Carter.

Mr. Martin said he understood he was allowed to have representation present for the interview, however he declined to do so. He explained he has worked for the City for approximately 35 years, 17 of which were working as a refuse driver, and approximately 19 years of which have been spent supervising refuse employees as a Public Works Supervisor, including Mr. Olson.

Mr. Martin described Mr. Olson as an employee who normally shows up to work and does a “*pretty good job*.” Approximately one year ago, Mr. Olson claimed that he was allergic to green waste and sensitive to the fumes from the diesel trucks. His doctor cleared him to perform any route, but he had to be fitted with a respirator mask in case he had to use a diesel truck rather than the CNG trucks. Mr. Martin explained there has never been a time when Mr. Olson has made a claim or complaint in which he or the City has not taken some sort of action.

Mr. Martin said Mr. Olson was not assigned permanently to a route or a truck. When Route 7 became available, Mr. Olson requested to take over the route, despite the number of alleyways on the route and the intricate driving. Eventually, however, Mr. Olson became unhappy with the route because there were not enough restrooms where he could stop. Mr. Bush worked with Mr. Olson to find restrooms and areas where he could stop to take breaks.

In December 2018, Mr. Santos discovered damage to the shroud of a CNG truck that Mr. Olson usually drives. Upon completing his vehicle inspection, Mr. Santos reported the damage to Mr. Martin. Mr. Martin inspected the truck and found that the damage should have been documented on the previous night’s post-trip inspection report by Mr. Olson, however it was not. Mr. Martin asked Mr. Olson about the damage; and he replied that he did not feel it was damage he caused the previous day. Mr. Martin then alerted his manager, Mr. Skinner, that Mr. Santos had found damage on Mr. Olson’s truck and that Mr. Olson had failed to document the damage on his post-trip inspection report. After a discussion with Mr. Skinner and Mr. Bush, they decided to issue Mr. Olson a discipline notice for failing to document the damage.

Mr. Martin gave Mr. Olson the discipline notice in January 2019 and stated the meeting “*did not go well.*” At approximately 5:25 p.m. or thereabouts, on a Thursday or Friday, Mr. Martin called Mr. Olson into his office to give him the discipline document. Mr. Olson said he would like to have a union representative present; however, Mr. Martin said the discipline was not a written reprimand, that he would not be interrogating him, and, as such, he was not entitled to union representation. Mr. Olson then got somewhat agitated and heated in his tone and demeaner. He complained to the effect that he was being held accountable for damage someone else caused. He then asked to wait until Monday to be given the discipline because he was already on overtime and had not yet had his cleanup period. Mr. Martin could not recall if Mr. Olson refused to sign the discipline document at that time, but ultimately, he held it until Mr. Olson’s next workday which was the following Monday or Tuesday. Mr. Martin claimed Mr. Olson may have made a notation on the discipline document, but he (Martin) did not shred any documents related to the discipline matter at that time.

The following week when Mr. Martin attempted to serve Mr. Olson with the discipline notice, Mr. Olson indicated that he had spent the whole weekend with heart attack like symptoms after having to think about the pending discipline and ultimately had to go to urgent care. Mr. Olson pointed his finger at Mr. Martin and accused him of lying in the discipline document. He indicated that he did not want to speak to Mr. Martin, because Mr. Martin made him too upset. Because of Mr. Olson’s statements about having chest pains over the weekend, Mr. Martin had Mr. Bush and Mr. Skinner handle the discipline matter.

Mr. Martin did not recall if any documents related to the discipline matter were shredded but said that perhaps he shredded the initial notice from the previous week and printed a new one with the new date of delivery on it. He did not recall doing this in front of Mr. Olson. Likewise, he could not recall if Mr. Olson ever signed the discipline document. Mr. Olson never acknowledged having failed to properly document the damage to the vehicle or took responsibility for the damage.

Mr. Martin explained the procedure for an employee that refuses to sign a document has changed. At the time of Mr. Olson’s discipline, if an employee refused to sign a document, the procedure was to record the date and time that the employee was given the discipline notice and make a notation that they did not sign the document. They would shred the document and print a new one if the employee wrote anything other than a signature on the document because that was not the appropriate time for the employee to start their grievance process. They also would offer the employee a copy of the discipline documents. Since then, the procedure has changed. The new procedure is to note that the employee “*declined,*” as opposed to “*refused*” to sign the document and that they were offered a copy. The signature line now notes that the employee has received a copy of the document, not that he agrees with it, as with past practice.

In regard to employees’ commercial driver’s licenses, Mr. Martin explained that most employees go to the doctor’s appointment for their medical card while on-duty so they can get compensated for the time. Some employees will request to go on their day off because they get nervous when doing their medical card clearance. The City however will not compensate an employee for overtime if they choose to go on their day off.

Mr. Martin could not recall if Mr. Olson went to a doctor’s appointment on the weekend, however, he said it sounded vaguely familiar. He recalled that Mr. Olson arrived to work with an expired medical card. They made him take 2.7 hours of sick leave until he got the paperwork taken care of at the Department of Motor Vehicles because having a valid commercial driver’s license and medical card is required for employees in Mr. Olson’s job classification. Without such paperwork, an employee cannot drive a commercial vehicle, and is therefore considered “*not ready for work*.” He explained that letters are usually sent to employees from the Department of Motor Vehicles two months in advance about their licenses’ impending expiration, in order to give each license holder time to renew it, but employees often wait until the last minute to take care of the paperwork.

Mr. Martin said he has never been rude to Mr. Olson on the radio when he has asked him to work overtime, however Mr. Olson has claimed to him a few times that he felt he (Mr. Martin) was rude, stating, “*you know, you’re rude when you talk to me, or you know, you coulda said this differently*.” In reflection, Mr. Martin reasoned that he was trying to be concise and brief on the radio, and trying to get things done, which Mr. Olson may have taken negatively.

Mr. Martin explained that currently they use an “*inverse overtime procedure*” which means they ask all of the employees from the top of the seniority list to the bottom if they want to work. If they do not get any volunteers for the overtime, then they require someone to work the overtime starting from employees that have the least amount of seniority. Mr. Olson is in the group that is required to work approximately 95% of the time, given his low seniority. Mr. Martin indicated this occurs on a near weekly basis. Mr. Olson has never been criticized for not accepting overtime, but Mr. Olson has occasionally questioned why he needed to stay late for the day. Mr. Martin said they try to work with the employees regarding the inverse overtime system if they have other obligations and cannot stay to work the overtime.

Mr. Martin explained that it was possible that there was a time that he called Mr. Olson while he was on vacation regarding damage to a vehicle, however he could not recall the exact phone call. He said it would have been something he was directed to do by management. He would not have done it on his own volition, it is not normal practice, and there would have probably been some sort of urgency.

Mr. Martin recalled a time when he was looking at and measuring the tires of Mr. Olson’s truck due to a report of a traffic collision involving a City truck. He did not specifically recall the date of the incident, but said he regularly takes measurements of City vehicles when there is an allegation of a collision for the purpose of trying to eliminate the possibility it was caused by one of their employees. Mr. Martin explained that even though the City may have a few of the same model trucks, some of the trucks have been modified differently, making it necessary for him to measure the specific truck that was on the route of the collision, rather than another similar truck. Mr. Martin said he reviews the GPS data for the City vehicles to see which truck, if any, was in the area during the time of an alleged collision.

In regard to the surveillance photograph that was taken of Mr. Olson’s map book being stored on his City-assigned truck’s dashboard, Mr. Martin explained that one of the managers, either Mr. Skinner or Mr. Knapp, saw Mr. Olson leaving the yard with his map book on the dash of his truck, which is a violation of their rules. The manager who witnessed the violation requested that Mr. Martin tell Mr. Olson to remove his map book from his dashboard. Mr. Martin in turn relayed the direction to Mr. Olson via the radio. He said Mr. Olson admitted he was driving with his map book in the window and indicated that he may have issued Mr. Olson a verbal counseling report. Mr. Martin explained that the surveillance camera system for the yard is primarily used for perimeter security purposes, and he does not have access to the footage. The only person that has access is Mr. Drakaditis, who would have accessed the system and taken the screen capture of Mr. Olson’s truck at the request of Mr. Skinner or Mr. Knapp, but not him.

In regard to Mr. Olson’s performance, Mr. Martin explained that initially, Mr. Olson was completing all of his routes in a timely and proper manner. He then started having trouble completing his Thursday route (Route 7) or he would call in sick that day, yet still complete his Monday through Wednesday routes satisfactorily. Mr. Martin described Mr. Olson’s Thursday route as challenging due all of the alleyways. When servicing the alleys, the drivers are required to get out of their trucks and move the refuse cans to dump them if they are not in a position where the truck can readily pick them up. To help Mr. Olson or the other drivers, Mr. Martin has driven the route in front of them and pulled out the waste cans or told them that any receptacles that are placed backwards could be disregarded. This helps the drivers work faster and helps them avoid the building eves in the alleyways.

In regard to Mr. Olson’s performance improvement plan, Mr. Martin explained that the former Human Resources Director, Ms. Davis, met with him, Mr. Knapp, and Mr. Bush regarding the difficulties Mr. Olson was having. They were directed to issue Mr. Olson a performance improvement plan to improve his Thursday route collection and reduce his sick time usage. Ms. Davis directed the focus of Mr. Olson’s original evaluation to be from January 10, 2019 to May 2019, as that was the time Mr. Olson seemed to be having the most difficulty with his Thursday route. Both he and Mr. Bush were responsible for writing the first draft of the initial evaluation, but not the second draft.

When Mr. Keith was hired, he reviewed Mr. Olson’s initial evaluation and the performance improvement plan. He found some errors with the dates that were included for Mr. Olson’s sick time usage and the days he did not complete his route. Both Mr. Keith and Mr. Bush rode along with Mr. Olson to review the route. They came to the conclusion it was a very difficult route due the all of the alleyways and ended up restructuring it. As a result, Mr. Keith modified Mr. Olson’s evaluation, and decided not to place him on the performance improvement plan.

Mr. Martin indicated he was not involved in following or riding along with Mr. Olson around the time of his proposed performance improvement plan. The last time he did a ride-along with Mr. Olson was approximately two to three years ago. He does this with all of the employees equally, especially the newer employees, as part of his routine supervision. If another employee besides Mr. Olson did not complete one of his routes, Mr. Martin indicated a supervisor would follow the employee to see what the issue was and sometimes put another employee on the route to see if there is a difference in the completion rate of the route by another employee. They would also look at the route to see if it is a difficult route, as well as look at the GPS for the truck to see if the employee was taking unnecessary breaks. Additionally, they would offer the employee the benefit of the Employee Assistance Program (EAP) if the issue was something from the employee’s personal life that was affecting their work performance.

Mr. Martin said he believes that Mr. Olson was audio-recording him when they were in his office when he was issuing Mr. Olson’s second evaluation and trying to get him to say certain things for the recording. Also present was Mr. Keith, Mr. Bush, and Mr. Olson’s representative, Mr. Castellron. Mr. Martin said they noticed Mr. Olson had his phone in his hand as he walked out the door of the office. Either Mr. Keith or Mr. Bush asked Mr. Olson if he was recording the meeting. It seemed as though Mr. Olson did not know what to say, as if he had been caught. Mr. Olson denied recording the meeting and said that he had his phone out to take a picture of the evaluation. Mr. Keith told Mr. Olson that he was not allowed to record people without their permission. Mr. Martin indicated that because of this incident, he no longer trusts Mr. Olson.

## **EXHIBITS**

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| **Exhibit** | **Number** |
| Report of Findings | 1 |
| Transcript of Interview with Gary Olson | 2 |
| Transcript of Interview with Jim Keith | 3 |
| Transcript of Interview with David Bush | 4 |
| Transcript of Interview with Thomas Martin | 5 |
| Mr. Olson’s Complaint – October 2, 2019 (Received by City) | 6 |
| Letter from City acknowledging Mr. Olson’s Complaint – October 17, 2019 | 7 |
| Mr. Olson’s Initial Performance Evaluation – September 9, 2019 | 8 |
| Mr. Olson’s Written Rebuttal to his Initial Performance Evaluation – September 19, 2019 | 9 |
| Performance Improvement Plan Notification – August 29, 2019 (Delivered on September 9, 2019) | 10 |
| Mr. Olson’s Amended Performance Evaluation – October 17, 2019 | 11 |
| Mr. Olson’s Written Rebuttal to his Amended Performance Evaluation – October 24, 2019 | 12 |
| Time Sheet details for Mr. Olson – August 1, 2018 through August 1, 2019 | 13 |
| Letters from City to Mr. Olson regarding the investigation of his complaint – November 19, 2019 and December 18, 2019 | 14 a/b |
| Written Reprimand to Mr. Olson – January 2, 2019 | 15 |
| Workers’ Compensation documents – Delay and Denial Letters, status reports and appointment spreadsheet | 16 |
| Documents regarding Mr. Olson’s DOT medical and DMV renewal | 17 |
| Documents regarding the City Yard security Camera System | 18 |
| Documents regarding the May 2019 Ride-Along by Mr. Bush with Mr. Olson | 19 |
| Documents regarding the May 2018 Interactive Process related to Ms. Olson’s alleged allergies | 20 |
| Documents regarding the October 2019 Interactive Process related to Ms. Olson’s alleged diesel fumes claim | 21 |
| Documents regarding the May 2019 Interactive Process related to Ms. Olson’s health claims | 22 |
| City of Gotham Rules | 23 |
| Audio files of the recorded witness interviews | 24 |

1. See *California Civil Jury Instruction* Section 5003. [↑](#footnote-ref-1)
2. See the attached Letter from Mr. Weinmeister, dated November 19, 2019. [↑](#footnote-ref-2)
3. Because this time taken was for Workers’ Compensations claims that had not yet been accepted by the City and that were being investigated, the time *should* have been tracked and coded as sick leave and then, in the event that the claims were accepted by the City, this sick leave would have been reimbursed to Mr. Olson. In Mr. Olson’s case, the time he took for his unaccepted Workers’ Compensation claims were incorrectly tabulated as Workers’ Compensation leave time for the purposes of his time sheets. [↑](#footnote-ref-3)
4. See Item 11, Mr. Olson’s Employee Appraisal Review, issued October 17, 2019. [↑](#footnote-ref-4)
5. Both Sections A and B are discussed together, below. [↑](#footnote-ref-5)
6. A review by Human Resources found that Mr. Olson had, in fact, gone for his physical on Saturday, April 13, 2019 and returned back to the doctor's on Monday, April 15, 2019 to complete the DOT physical and required forms. [↑](#footnote-ref-6)
7. See the attached memorandum and relevant e-mails. [↑](#footnote-ref-7)
8. Sections B and C will be discussed together, below. [↑](#footnote-ref-8)
9. See the discussion below at Section B.1. concerning the issue of the written reprimand issued to Mr. Olson by Mr. Martin. [↑](#footnote-ref-9)
10. Investigative Note: All three of these referenced Workers’ Compensation claims were reviewed and ultimately denied by the City after initial 90-day investigation. [↑](#footnote-ref-10)
11. Investigative Note: These cases have been denied and Mr. Olson was advised of this status by letter from the City concerning all of his Workers’ Compensation claims. Mr. Olson lacked credibility in this claim. See correspondence, as attached. [↑](#footnote-ref-11)
12. Investigative Note: Mr. Olson was not accused of damaging the vehicle but merely not having found and recording the damage during his morning and afternoon inspections. Mr. Olson lacked credibility in this claim. [↑](#footnote-ref-12)
13. Investigative Note: The evidence showed that Mr. Olson did take his DOT physical on a Saturday, as he claimed, but was not directed to do so by any superior. [↑](#footnote-ref-13)
14. Mr. Olson showed this fact finder the image that showed his vehicle and the placement of the map book on the dash. The image was a still image video capture from the City Yard surveillance camera. [↑](#footnote-ref-14)