

COUNTY OF LOS ANGELES

EMPLOYEE RELATIONS COMMISSION

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In the Matter of:

**SERVICE EMPLOYEES INTERNATIONAL
UNION
(SEIU), LOCAL 721**

Charging Party

And

**COUNTY OF LOS ANGELES
LIBRARY DEPARTMENT**

Respondent

CASE NO. UFC 024-14

HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS AND
RECOMMENDED
DECISION

December 27, 2016

Before: Sandra Lindoerfer, Hearing Officer

Appearances: Holguin, Garfield, Martinez & Goldberg
By Kyrsten B. Skogstad, for Charging Party; County of Los
Angeles, Sachi Hami, Chief Executive Officer, by Marcha
A. Stevenson.

BACKGROUND AND JURISDICTIONAL INFORMATION

The charge in this matter was filed by the Service Employees International Union, Local 721 (SEIU or Union) on June 24, 2014.

The Charge stated:

The County of Los Angeles Public Library (Library) has engaged in unfair labor practices in the past 180 days. Specifically, the Library has retaliated against Ms. Theodora Dipassional, an SEIU Local 721 represented Library Aide.¹ The County released Ms. from County service. On April 16, 2014, Shoushan Baghbourdarian, a Union staff person, asked Lupe Hoxworth, the Assistant Regional Manager, why Ms. Dipassional was let go. Ms. Hoxworth, in the presence of Kim Peter, a Union steward, stated that Ms. Dipassional should have "never threatened Community Library Manager, Julie Sorenson with the Union." Ms. Dipassional had told Ms. Sorenson that she would get the Union involved with her request for Aides and Pages to have access to a particular computer program.

In short, the Union asserts that the Library violated Section 12(a)(1) by interfering with the right of Library employees to exercise their rights under the

¹After the first use of a person's full name, s/he is referred to by last name only.

Ordinance free from retaliation. The Union asks that Ms. Dipassional be reinstated and made whole.

The Employee Relations Commission served The Notice of Hearing in this matter on the parties on February 18, 2016. On July 20, 2016, the Charging Party filed a Motion for Summary Judgment in favor of Charging Party, based on the Respondent's failure to file a timely answer to the Charge, as stated in Los Angeles County Employee Relations Rules, Section 6.06 (a). The Hearing Officer ruled that the matter of the Motion for Summary Judgment would be addressed in this Recommended Decision.

The Respondent denied the Charge on July 21, 2016.

The Employee Relations Ordinance Sections 12(a)(1), and 4 state, in pertinent part:

Section 12: UNFAIR EMPLOYEE RELATIONS PRACTICES

(a) It shall be an unfair employee relations practice for the County:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance.

Section 4:

Employees of the County shall have the right to form, join, and participate in the activities of employee organizations of their choosing for the purpose of representation on all matters of employee relations.... No employees shall be

interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

STATEMENT OF THE FACTS

Dipassional was hired as a temporary Library Aide for the Los Angeles County Public Library (Library) in 2011. She first worked at the West Hollywood Branch Library, and then moved, at her request, to the same position at the San Gabriel Branch Library (San Gabriel Branch). Her position is in a bargaining unit represented by SEIU. Dipassional had many years of experience working in a variety of library systems prior to the time that she began working at the San Gabriel Branch.

Her immediate supervisor at the San Gabriel Branch was Barbara Wheeler, Library Assistant. Julie Sorensen is the Community Library Manager (CLM) at the San Gabriel Branch and is the person who has overall responsibility for that branch. Dipassional's duties at the San Gabriel Branch included staffing various client service areas, and geographic coding of library applications. Both at the West Hollywood and San Gabriel branches, the Library Aides had to ask professional library staff for assistance with logging in to the GIS locator computer system (GIS) where the geographic codes could be located. This was difficult for the Library Aides if the professional staff was not available to log them into the system. Usually, the Library Aides only had about an hour of time away from customer service duties to enter applications into the system. When there was a delay in the Library Aides having access to the

GIS, it meant they could process fewer applications. The geographic coding of applications is important because the Library system may get funding for providing library services based on the community in which an applicant resides. Dipassional discussed the issue of Library Aides not being able to log into the GIS independently with the other Library Aides at San Gabriel. They told Dipassional that they did not want to challenge the supervisors about the issue of Library Aides not being able to log onto the GIS without assistance from the professional staff.

Prior to April 5, 2014, Dipassional brought up the issue of the GIS system access several times during staff meetings at San Gabriel.

Sorensen said that there had not been any complaints from the Library Aides or Pages about what Dipassional said on April 5, 2014.

Sorensen's memory of the events related to the GIS system was that for three days, one of which was April 5, 2014, Dipassional kept bringing up the issue. On the third day, April 5, 2014, Dipassional was emotional and heated. Sorensen stated during her testimony that, "it got to the point where we didn't need this disruption of the library any more." (TR133) Sorensen's sense was that there had been six or seven conversations with Dipassional about this issue over a three-day period. (TR139) Sorensen recalled that at one point, in her office, Dipassional said that she was going to go to the Union with the issue. Sorensen said she told Dipassional that it was a regional policy about the login issue, not just the branch.

On April 5, 2014, a Saturday, some events occurred related to the GIS logon issue. The day before, April 4, 2014, Dipassional had attended a meeting which was also attended by staff from other libraries. The meeting was held in the Central Region of the Library system. She spoke to a CLM from another library employee who told Dipassional that PC support staff had found a workaround that would allow Library Aides to log on to the GIS without having to ask the professional staff to log on for them. When Dipassional came to work on April 5, 2014, she first had a conversation with Wheeler, during which she told Wheeler what she had learned the previous day, and showed her how it worked on a computer in the workroom. Later, she had a five-minute conversation with Sorensen, during which Dipassional told Sorensen about what she had learned the previous day. She also told Sorensen that the work around had been available since July 2013.

Also on April 5, 2014, Dipassional met again with Sorensen in Sorensen's office, with the door closed. There was again a discussion regarding the workaround for the GIS system access.

After the events of April 5, 2014, Sorensen consulted with Susan Baier and recommended that Dipassional be released from her employment. After discussions, Sorensen received approval for releasing Dipassional effective April 12, 2014. A notice was provided to Sorensen to give Dipassional in the meeting with her on April 12, 2014. Wheeler attended the meeting during which Sorensen notified Dipassional she was released from her position with the Library.

Dipassional had difficulty finding other employment after she was released and, as a result, had financial problems.

Dipassional's and Sorensen's memories differ about whether there was a time during that day that Dipassional went out to the area of the circulation desk and loudly stated, in substance, that the Library management did not know what it was doing.

At some point after April 5, 2014, Dipassional also told Smita Luhan, another Library Assistant at San Gabriel, that she was frustrated because the workaround had been available so long, but even though "they" now had the information, "they" were still not going to use it. Dipassional told Luhan that Dipassional was "left with no option but to ask the Union for help with this."

THE PARTIES' POSITIONS

The Union

The Union argues that Dipassional established a prima facie case of discrimination on the basis of protected activity in these basic elements:

First, Dipassional exercised rights under the Employee Relations Ordinance(ERO). She talked to co-workers and then to her supervisor about a working condition that affected all employees in her position. She suggested to her supervisor that she would involve the union in the issue. There is no basis for a finding that Dipassional's speech

lost its protected status because it caused substantial disruption or material interference with the Library's activities. Employees are allowed, under both NLRB and PERB precedent, to loudly criticize management. Moreover, employees are allowed to engage in such speech in the presences of customers, or in this case, Library patrons. The Union cites to a number of NLRB and PERB cases in which employees brought their complaints about management to them in the presence of customers, and were still considered to have engaged in protected activity. The Union also argues that because none of the witnesses who spoke to Sorensen mentioned that Dipassional was talking loudly at the Circulation Desk about the issue, and because Sorensen's testimony was conflicting, Dipassional should be credited in her statements that she did not make any comments at the Circulation Desk. The Union further argues that the persistence of Dipassional's advocacy regarding this issue does not eliminate its protected status. Further, the Union cites to NLRB precedent for the proposition that Sorensen's admitted failure to give Dipassional a direct order to stop approaching her about the issue undercuts the Library's assertion that Dipassional's speech lost its protected status.

Second, the Union argues that all decision makers in the process of Dipassional's termination knew about her exercise of protected rights. These persons were: Sorensen, Baier, and Barbara Custer. Custer ultimately gave the authorization to terminate Dipassional.

Third, the Union argues that a termination, or release, from employment is clearly an adverse action by the employer.

Fourth, the Union argues that the County took the adverse action because of Dipassional's exercise of protected speech. Sorensen actually testified that she recommended Dipassional's termination because of the conversations between her and Dipassional about the GIS issue, and the comments at the Circulation Desk. Baghboudarian testified that Hoxworth told her that Dipassional should not have threatened Sorensen with the union. Moreover, the termination occurred within a week of the conversations between Dipassional and Sorensen.

Next the Union argues that the County failed to meet its burden of establishing that they would have taken the same adverse action, even if Dipassional had not engaged in the protected activity. Their argument has two elements:

First, the County did not establish any alternative non-discriminatory reason for Dipassional's termination. The only possible reasons Susan Baier stated besides those that were a part of Dipassional's protected activity were that Dipassional did not want to work mornings, and that she was difficult to supervise. Both Dipassional and Sorensen testified to the contrary with respect to the work scheduling issue. With respect to the difficulty to supervise issue, there were no examples provided other than Dipassional's advocacy with respect to the issue of the GIS system.

Second, all the evidence, in particular the County's own witnesses, established that Dipassional was terminated because of her protected activity.

Finally, the Union argues that the County's failure to answer SEIU's complaint in a timely manner should result in a determination by the Hearing Officer that all allegations of the charge are admitted, absent a showing of good cause. The Union argues that there was not good cause for the failure to answer the complaint in a timely manner. There was not an effort by the County to comply with the rules.

The Union argues for a make whole remedy of back pay and reinstatement.

THE COUNTY

The County argues that it does not harbor any animus with the Union. They routinely engage the Union at monthly joint labor-management meetings where they cover many workplace issues with SEIU.

The County argues that the months of Dipassional challenging her supervisor regarding the computer access issues were actually better characterized as aggressive, intimidation, and bullying. The specific incident leading to Dipassional's release was an attack on the CLM that called into question her competency to perform her duties in the public space of the library and in the presence of patrons and staff.

The County further argues that the Union's requested remedy of reinstatement is in direct conflict with County Code Rule (CCR) 17, which provides for the reinstatement of permanent employees. It does not provide for reinstatement of temporary employees. Further, CCR subsection 13.03 states, "A person given a temporary appointment may not be transferred or reassigned to any other position except on a temporary basis, and shall never attain permanent status from such assignment."

DISCUSSION

This is a matter alleging retaliation/discrimination on the basis of protected activity against Dipassional by the County. The standards for decision making in a matter such as this are well established, both under the NLRA, and the California statutes governing public sector labor relations, that is in PERB precedents. The County ERCOM follows both sets of precedents in the interpretation of the ERO Section 12 regarding employee relations.

As a preliminary matter, it should be noted that Dipassional is a temporary employee, whose employment is basically at-will. Her category of employee, Library Aide, is in a bargaining unit represented by SEIU. In the normal course of events, these at-will employees may have their employment ended for no reason, and are usually not given a reason for their employment ending. The County's witnesses stated that Library managers are not allowed to document employment issues or concerns relating to temporary employees.

PERB precedent establishes that although at-will employees can be terminated for no reason, that does not imply that they can be terminated for an illegal reason, such as because they have engaged in protected activity under applicable law. *Palo Verde Unified School District* (1988) PERB Decision No. 689. (*Palo Verde*)

Most recently, in *Pomona Unified School District* (2000), PERB Decision No. 1375, PERB reaffirmed the basic standards applicable to an allegation of the type involved here. These standards are:

First, the Charging Party must establish a prima facie case of discrimination, by proving, by a preponderance of the evidence, that the employee engaged in protected activities, that the activities were known to the employer, and the employer took adverse action because of the activities. *Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*) If there is not direct evidence of unlawful motivation, an inference may be drawn from the record as a whole, and including circumstantial evidence. There have been a number of PERB cases where varying circumstances have justified an inference of unlawful motivation on the employer's part. Examples of circumstantial evidence potentially applicable to this matter are: timing, or inconsistent or contradictory justifications for the employers' actions. *North Sacramento School District* (1982) PERB Decision No. 264, and *State of California Department of Parks and Recreation* (1983) PERB Decision No. 328-S.

Second, if the inference is made, the burden of both proof and persuasion shifts to the employer to show that it would

have taken the adverse action, in the absence of the employee's protected activities.

Each of these elements of analysis will be examined in turn.

For the first three elements, the Charging Party has the burden of proof and persuasion:

Were Dipassional's activities on or about April 5, 2014 protected under the Ordinance?

There is background information related to the events of April 5, 2014. Dipassional testified that she spoke to both her co-workers and her supervisors about the issue of having access to computer login for a portion of her work without having to seek assistance from supervisors.

Specifically, she spoke to her coworkers "frequently and at length." (TR: 49) Dipassional also stated that her co-workers did not want to challenge their supervisor, but that she volunteered to bring the issue up to the supervisors. (TR 50) Dipassional testified that she had been raising the issue of the issue of the GIS locator access for Library Aides for 15 months. (TR 53) Sorensen confirmed that Dipassional had, over a period of time, raised the issue of computer access to the GIS locator system.

With respect to the specific events of April 5, 2014, it was a Saturday. Both Dipassional and Sorensen were working. Smita Luhan, a Library Assistant, was also working. Sorensen testified that over the period of a few days, ending with April 5, 2014, Dipassional had been raising the

issue of the access to the GIS locator system with Sorensen. Sorensen recalled that Dipassional was in and out of her office regarding the issue of the password for the GIS locator system several times on April 5, 2014. Sorensen recalled one closed door meeting with Dipassional on April 5, 2014, during which Sorensen said she counseled Dipassional that the Library Aides having their own passwords was not going to be, that the staff would always help her to log on to the system, that the designated password issue was a very minor part of her work. It was a talk between her and Dipassional, according to Sorensen. Sorensen recalled that Dipassional said she wanted to take the issue to the Union. Sorensen said to Dipassional that she needed to let go of the issue for now, because they needed to run a library, and the constant clamor over this issue was not to go on. Then, according to Sorensen, Dipassional went out of Sorensen's office and said loudly in the area of the circulation desk that they were not capable of running the library. Sorensen thought that Luhan was at the Circulation Desk when this occurred. Patrons were in the library when Dipassional made the loud statements. Dipassional's recollection was that there was one meeting with Sorensen in the workroom earlier in the day on April 5, 2014, and later in the day the meeting in Sorensen's office. Dipassional testified that she did not raise her voice during the meetings, but that she was frustrated.

Also on April 5, 2014, when she first came into work, Dipassional testified that she showed Wheeler how the workaround for gaining access to the Internet to use the

GIS locator system. It was the workaround about which Dipassional had learned prior to that day.

After April 5, 2014, Dipassional spoke to Luhan about her frustration with the refusal to implement the workaround that would allow Library Aides to gain access to the GIS locator system without having to seek help from the professional staff. According to Dipassional, she told Luhan that she did not know what to do, but that she thought there was no other option than seeking the union's help.

The above summary of the evidence demonstrates that Dipassional was trying to improve working conditions for herself and other Library Aides at the San Gabriel Branch. She wanted to make it possible for the Library Aides to be more efficient and faster with the work of finding the information necessary for coding library applications. By implication, this would free up time for other activities that needed to be done during the short time allocated for Aides to work at the computer, away from the demands of customers at the Circulation Desk, and make their work easier. She noted that the time for this type of work was limited, usually to an hour at a time, when a Library Aide was not assigned to the Circulation Desk. Although Dipassional stated that the volume of this type of work was not as heavy at the San Gabriel Branch as it was not at the West Hollywood Branch, she did articulate that at certain times, such as the start of the school year, it was heavy at the San Gabriel Branch. Dipassional did state that there was not a required number of applications that she had to process during an hour of work away from the Circulation

Desk. This means that there was not an increased workload for her or other Library Aides created by the time it took to have professional staff log them in for access to the GIS locator. .It merely meant that it took them longer to do the work. When, however, there was a large number of applications to process, such as at the start of the school year, the increased time to log in could have an impact on the amount of work that could be accomplished during that limited period. From the perspective of Sorensen, the time for the computer access to occur was slight, and the professional staff was always willing to help with login for the Library Aides. From Dipassional's perspective, there was an unnecessary inefficiency, especially once she learned that a work around had been created as almost a year before she learned about it. The working conditions, about which Dipassional was concerned were not of earth-shattering impact, such as a safety issue might be. She and her co-workers were not required to meet particular production standards for the application processing. The conditions did, however, have great importance to Dipassional. The San Gabriel Branch policies for access to the computer programs necessary for the work related to GIS access did add a step to the work she and other Library Aides had to do in order to complete that one task. Her advocacy both for herself and others thus generally concerned her and their employment relations with the County. Her speech concerned terms and conditions of employment both for herself and others.

There is one more question that must be answered before it can be determined if Dipassional's speech was protected. The question is whether, under PERB's decision in *Rancho*

Santiago Community College District (1986) PERB Decision N. 602 (*Rancho Santiago*), her speech lost its protected status under the Ordinance because it is so "opprobrious, flagrant, insulting, defamatory, insubordinate, or fraught with malice" as to cause "substantial disruption of or material interference with school activities." All of the listed terms for unprotected speech in *Rancho Santiago*, except for "insubordinate," are of a similar nature, even though there are some nuances in their individual meanings. The words that Dipassional is alleged to have said in a place where they could be heard by patrons and other staff, that management was not capable of running a library were strong words. They did not, however, result in any person coming to Sorensen to complain or raise concerns. The failure of staff to complain about what Dipassional said is an indication that the speech was not so opprobrious, flagrant, insulting, defamatory, or fraught with malice so as to cause a substantial disruption of library activities. Nor was there any testimony proffered of any other Library staff regarding how these adjectives would reasonably be applied to Dipassional's speech about this issue. Sorensen testified that in fact no Library Aides or Pages complained to her that Dipassional was causing problems in her discussions of the GIS locator system. (TR:138)

With respect to the question of whether the words were insubordinate, that question requires an analysis of what Sorensen told Dipassional to do during their closed-door meeting(s) in Sorensen's office. Sorensen was asked during cross-examination whether she told Dipassional to stop or drop her advocacy for the change in processes for access to the GIS locator. Her answer was that she told Dipassional

to drop it during all three days when she was talking to Sorensen about the access issue. There was then this exchange between Counsel for the Charging Party and Sorensen:

Counsel for SEIU: Right. But she had one conversation with you and at the end of that first conversation you said you need to drop it?

Sorensen: Well, obviously, I didn't say "Drop it." We are human beings and we are respectful human beings, so I always said, Look Theo, this is handled the way that we've been taught to handle it and the way our region is telling us to handle it. So, you know, if you are having trouble getting logged on, I will tell the staff, hey, Theo wants on.

Counsel for SEIU: At what point did you tell her, though, to stop her advocacy for getting her these passwords.

Sorensen: Well wasn't what I just said close enough to stopping?

Counsel for SEIU: No. What you'd told her was that the problem was resolved. At what point did you tell her to stop her advocacy?

Sorensen: Well, in my mind, repeatedly saying this problem is already set up so let's not pursue it anymore is kind of a---I didn't say "Stop it." (TR:148-150)

A review of this exchange is a reminder that a library is a workplace filled with employees who are professional or quasi professional, and for whom respect in the workplace matters. From Sorensen's perspective, she was telling Dipassional to stop trying to get something changed that was not going to change. The words are softer and less clear and, taken on their own, however, are not a basis for a finding of insubordination on Dipassional's part. It is, however, understandable how Sorensen could understand them to mean that Dipassional should stop going on with her attempts to change what was not, in Sorensen's view, anything that she (Sorensen) could change, when she knew that the current process was the way the Region wanted things done.

Based on the foregoing analysis, Di Passional's speech was protected.

Did the employer know about her protected activities?

There is no dispute that the employer through its agents, from Sorensen, up through the ranks of the persons who considered her recommendation that Dipassional be released from her position, knew that Dipassional's speech was the cause for her release from employment with the library.

Did the County take adverse action because of Di Passional's protected activities?

There can be no dispute that the action taken against Dipassional was adverse.

The final witness for the County at the hearing was Lupe Hoxworth, Assistant Human Resources for the County of Los Angeles Public Library. Hoxworth was present during the meeting among Baghboudarian, Kim Peters, Steward for SEIU, and Patricia_____, who is a Regional Manager in the Library, about another employee matter at the Library, sometime on April 14, 2014. Baghboudarian testified that she asked Hoxworth why Dipassional was let go. Baghboudarian further testified that ~~after some back and forth discussion, and~~ some admitted pushiness by Baghboudarian, Hoxworth hit her hand on the table, and told Baghboudarian that Dipassional should not have threatened Sorensen "with the Union." Hoxworth was not asked any questions about this conversation with Baghboudarian during her direct testimony later in the hearing, after Baghboudarian's testimony. An adverse inference may be drawn from the failure to question her regarding what she said to Baghboudarian at the meeting. That adverse inference is that Hoxworth did make the statements alleged by Baghboudarian. Such an adverse inference confirms that Hoxworth made the statements as alleged by Baghboudarian. This eliminates any potential hearsay issue with respect to Baghboudarian's testimony regarding what Hoxworth said. Hoxworth's statements provide a strong element of support for a finding that Dipassional's protected speech was the reason for the release of Dipassional from her employment with the County. They occurred soon after Dipassional's termination; they had a strong emotional content; Hoxworth was in a position of knowledge with respect to the events leading up to Dipassional's termination, given her position.

Considering Hoxworth's statement at the April 14, 2014 meeting in conjunction with circumstantial evidence makes the causation more certain: the close timing between Dipassional's protected speech and her termination.

DiPassional was terminated because of her protected activity.

For the final element, the County has the burden of proof and persuasion:

Would the County have taken the adverse action against Dipassional in the absence of her protected activities?

PERB precedents are instructive in answering this question. In *Palo Verde*, PERB reviewed its earlier precedents regarding this affirmative defense. The employer has both the burden of going forward with the evidence and the burden of persuasion. It must prove that it had an alternative non-discriminatory reason for its action, and that its action would have occurred in the absence of the employee's protected activity.

The County cites to testimony of both Dipassional and Sorensen as a basis for its having ended Dipassional's employment for non-discriminatory reasons. The County notes that Dipassional testified that she "volunteered to bring up the issue with supervisor;" that she was frustrated because she "had been asking them for 15-months." (TR 50:2-4, and 53:14-15) The County argues that Dipassional's behavior related to this issue over several months could be characterized as aggressive, intimidation, and bullying.

The County characterizes as the "specific incident leading to Dipassional's release" Dipassional's "verbal attacks on Sorensen in the public space of the library in the presence of library staff and patrons." All of Dipassional's statements, and the surrounding circumstances were examined in the section of this Recommended Decision regarding the issue of whether Dipassional's actions/words were protected activity. They were determined to be so protected. Thus, the County's citations to them as reasons for their release of Dipassional do not provide evidence that supports this affirmative defense.

Further, the County provided testimony of Susan Baier, Library Administrator who was the supervisor of Sorensen's supervisor at the time of the release of Dipassional from her position with the Library. Baier testified that at the time of the events leading up to Dipassional's release, Sorensen told Baier that Dipassional had "verbally attacked" Sorensen. This conversation between Baier and Sorensen occurred on the telephone on April 5, 2014. Baier testified that she had earlier conversations with Sorensen regarding incidents prior to April 5, 2014. Baier had advised Sorensen to have conversations with the employee about the incidents. These incidents, according to Baier, had to do with Dipassional wanting to have her own Internet password, because she thought she could not perform her duties without an Internet password. Sorensen discussed the earlier events with Baier two to four times during a two to four week period before the events of April 5, 2014, according to Baier. Baier also recalled that in the time leading up to the events of April 5, 2014, Sorensen also

told her that Dipassional did not want to work morning shifts because they were too busy.

Baier also testified that after consultation with her own supervisor, she advised Sorensen they would proceed with releasing Dipassional from her employment with the library. Baier stated that the reason for the release was cumulative.

Baier seemed to have a general and consistent recollection of events related to Dipassional during the two to four week period prior to April 5, 2014. Her statements about Dipassional not wanting to work mornings, however, are not supported by the testimony of Sorensen or Dipassional. The shift preference, therefore, is not a credible, non-discriminatory basis for Dipassional's release from her position.

Further, the final witness for the County at the hearing was Lupe Hoxworth, Assistant Human Resources for the County of Los Angeles Public Library. Hoxworth's statement, noted in the section above regarding the protected activity being a cause for the adverse action, undercuts the County's ability to meet its burden of proof and persuasion for its affirmative defense. It provides such strong evidence of a firmly held conviction about the reason for Dipassional's release, both in the words and the emotional content observed by Baghboudarian, that all other alleged possible causes (the work shift preference, and even the statements in the open area of the San Gabriel Branch) fade into minor issues in its face.

The County also raises a defense based on Dipassional's status as a temporary employee. PERB precedent is also instructive regarding this issue. In *Palo Verde*, PERB affirmed that its statutes protect the right of at-will employees to engage in protected activity and to be free of discrimination on the basis of such protected activity, citing *McFarland Unified School District*, 228 Cal. App.3d 166). *McFarland* was a case involving an order from PERB to reinstate a teacher which would result in the teacher becoming tenured. The employer argued to the Appellate Court that the applicable statutes gave only the employer the discretion to grant a teacher tenure. Similarly, here, the County argues that a reinstatement remedy would be counter to the County rules that provide that only permanent employees can be reinstated to employment. This argument fails to take into account that the Employee Relations Ordinance allows the Commission to fashion appropriate remedies for violations of the ordinance, including make-whole and restoration of the status quo ante which are the traditional kind of remedies in a matter of this nature. The Hearing Officer has taken into account the employment status Dipassional held prior to her release from employment in the remedies which she proposes to the Commission below.

CONCLUSION

Based on the foregoing analysis, it is concluded that the County violated Section 12 (a) (1) of the County Employee Relations Ordinance by releasing Dipassional from her temporary position as a Library Aide on April 12, 2014.

MOTION FOR SUMMARY JUDGMENT

The Hearing Officer has considered the arguments of the Moving Party. (SEIU) and the County regarding this Motion. The County and the Charging Party were both taking appropriate action to move toward a hearing in this matter after the notice that the hearing was scheduled. There was no delay in the process because Respondent inadvertently did not file its answer in a timely manner. The Hearing officer liberally construes the provisions of Section 6.06 of the Commission's Rules and Regulations to find good Cause for the Delay in the Answer. The Motion for Summary Judgment is denied.

RECOMMENDED ORDER

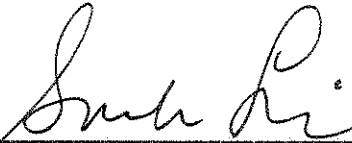
It is recommended that the Employee Relations Commission order the following:

The County shall offer Dipassional reinstatement to her former temporary position of employment with the Library, or if that position no longer exists, or is currently filled by another employee, to a substantially similar temporary position;

The County shall make Dipassional whole for lost benefits, monetary and otherwise, which she suffered as a result of the County's conduct, including back pay, plus interest at the rate of 7 percent per annum, from the date of her release, April 12, 2014, to the date the offer of reinstatement is made to her;

The Library Department shall cease and desist from discriminating against employees represented by SEIU Local 721 by releasing them from employment on the basis of protected activity.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Sandra Lindoerfer".

Sandra Lindoerfer

Hearing Officer

Dated: December 27, 2016

PROOF OF SERVICE BY ELECTRONIC MAIL ONLY

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is 500 W. Temple Street, 374 Hall of Administration, Los Angeles, CA 90012.

On January 3, 2017, I served the within HEARING OFFICER'S REPORT in the matter of UFC 024-14 on the interested parties in said action, by electronic transmission. The electronic transmission report indicated that the transmission was complete and without error. Service was completed as follows:

<p>Kyrsten B. Skogstad Holguin, Garfield, Martinez & Goldberg 800 West Sixth Street, Suite 950 Los Angeles, CA 90017</p> <p>Email: kskogstad@hgmglaw.com</p>	<p>Robinetta Mack Senior Manager CEO 500 W. Temple Street, Room 774 Los Angeles, CA 90012</p> <p>Email: rmack@ceo.lacounty.gov</p> <p>Marcha Stevenson Chief Program Specialist 500 W. Temple Street, Room 774 Los Angeles, CA 90012</p> <p>Email: MStevenson@ceo.lacounty.gov</p>
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Executed on January 3, 2017 at Los Angeles, California.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.


Rose Henderson