

## Memorandum


CONFIDENTIAL

**TO:** Henry Gardner  
City Administrator

**FROM:** M. D. Moye

**DATE:** December 8, 2014

**RE:** Confidential Investigation of Employee Complaints



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## **I. INTRODUCTION**

Our firm was engaged to investigate the circumstances surrounding a complaint made by two employees, Complainant 1 and Complainant 2, from the Oakland Public Works ("OPW") Building Services Division. Complainant 1 and Complainant 2 both work out of the City's Municipal Services Center ("MSC"). The complaint concerned Complainant 1 and Complainant 2 discovering a racially-charged symbol displayed in the workplace. The complaint by the employees ultimately lead to a large demonstration by employees of MSC the following day. We were charged with determining the facts that lead to the complaint by the employees and circumstances related to actions taken in response to the complaint.

As described in more detail below, our investigation included interviews with a substantial number of employees at various levels in the OPW. At the outset, we sought to determine how the initial complaint arose. As the investigation developed, we determined there was an equally important question as to how the situation at MSC ended up as it did, given our initial determination that the initial complaint and the demonstration at MSC the following day resulted from a different set of circumstances. Our report provides a summary of the relevant facts and we note at the outset that most of those facts are not in dispute. To the extent that facts are undisputed and point to a single conclusion, we have incorporated that conclusion in the report. In all other circumstances, our report is intended to be used as a factual foundation for further consideration of next steps to be taken by the City.

## **II. EXECUTIVE SUMMARY**

### **A. Background<sup>1</sup>**

On August 26, 2014, Complainant 1 and Complainant 2 reported an incident characterized as racial harassment based on their discovery of a rope, in the form of a noose, tied to the back of a City vehicle. The report was taken by an OPW supervisor and later that evening, was the subject of a police inquiry. The rope was left on the truck that evening. The next morning, word of an incident spread through the MSC and soon a large crowd of employees from across the MSC had gathered in the vicinity of the truck. As the size of the crowd grew, the rope was taken from the truck, then displayed in a form representing a "hangman's noose," and represented to the crowd as the symbol encountered by the two employees the night before. The crowd was upset by this symbol and the fact that it had been encountered by two African-American employees in the workplace. Media arrived at the MSC and, subsequently reported the appearance of the rope in the hangman's noose form and the obvious displeasure and concern of the crowd over such an overt display of a racially-charged symbol.

However, what the crowd was told that morning and what the media reported was not what had occurred the night before. The "noose" encountered by the employees the evening before was in a substantially different form. The question of racial motivation for the appearance of the rope at that time, was substantially different from the appearance in the

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<sup>1</sup> A timeline detailing the key events relevant to the investigation is set forth in Section V.A. below (pp. 7-8).

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morning. The unfortunate representation and a report of a "noose in the workplace" represented on August 27 was an entirely different incident.

In the course of the investigation, we learned of significant and long-standing tension between certain employees and groups of employees in the unit where the employees who discovered the noose worked. The initial consideration of the complaint suggested that this environment, including a past history of race-related tension, lead to the events that occurred on August 26 and 27. Accordingly, we sought to determine the extent to which this incident may have related to any of these past tensions and, in particular, the possibility that the racial overtones of this incident were intended as racial harassment as a means of general intimidation or intimidation because of complaints about past problems and practices in the work unit.

**B. With Respect to the Display of the Rope on the Evening of August 26, the Evidence Does Not Sustain An Allegation of Intentional Misconduct.**

The evidence shows that an OPW employee, Carpenter 1, parked his truck in the MSC at the end of the work day and tied a rope around a cross bar at the back of the truck. One end of the rope was secured to a peg on the vertical post on the back of the truck with a slipknot tied in the form of a noose - the loop was pulled fairly tight to the post on the truck and hung vertically with the loop at the top. The configuration indicates the purpose was to secure the rope, but allow for easy removal. This act by Carpenter 1 was neither unusual or out of character - evidence shows that the rope had been secured in this fashion on other occasions.

Complainant 1 and Complainant 2, both of whom are African-American, returned from an overtime assignment later that evening, observed the rope on the truck and reported an incident of racial harassment to two supervisors/managers who happened to be onsite. Representatives of the union came to the Yard and the matter was reported to the Oakland Police Department. The manager onsite and the Police documented the display of the rope with pictures. **(Attachment A)** The rope was not removed from the truck.

**C. The Evidence Does Not Indicate the Employee Secured the Rope to the Truck for a Purpose Motivated by Race or Racial Animus.**

The fact that the slipknot used by Carpenter 1 is similar to a noose reasonably calls into question the motives of Carpenter 1. Furthermore, the evidence demonstrates that in the past issues had arisen between Carpenter 1 and the two employees who made the complaint. Even if Carpenter 1 regularly secured the rope on his truck in that fashion, there remains a question of whether he did so because he wanted to make a statement to Complainant 1 and Complainant 2 and/or he knew a rope tied in that fashion would be perceived as a racially-charged symbol or intimidating to them. The evidence is to the contrary.

No witness ascribed such a motive to Carpenter 1 or the belief that such conduct was consistent with his character. Likewise, past tensions noted between Carpenter 1 and the two

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employees were described as related to work issues rather than a personal motivation such as racial animus. Although the relationship between Carpenter 1 and the other employees was not good at this time, the relationship had been better in the past, suggesting that differences because of race was not an issue between the employees.

The evidence also does not sustain a conclusion that Carpenter 1 acted in a culpably careless fashion by using that form of knot to secure the rope to his truck. Clearly, a rope configured in the form of a "hangman's noose" is inappropriate to a workplace, but the knot used by Carpenter 1 was not displayed in that fashion. Moreover, the configuration of the knot was not inconsistent with the legitimate purpose of securing the rope to the truck.

**D. The Evidence Shows that Carpenter 1 Acted Alone in Securing the Rope to His Truck on August 26.**

There is also no evidence that Carpenter 1 was prompted or encouraged by others to engage in an act that would be intimidating to or harassment of Complainant 1 or Complainant 2. Although Carpenter 1 is not suspected of having a racist attitude, a suspicion was voiced concerning the possibility that other employees may have encouraged Carpenter 1 to this conduct because of their disputes with Complainant 1 or Complainant 2. Similarly, there was speculation that Carpenter 1's conduct was solicited, perhaps by supervisors, because Complainant 1 and Complainant 2 had voiced concerns about work practices and decisions – including a decision related to the hiring of the supervisor for the unit.

There is no evidence to support either of these theories. From the outset, Carpenter 1 acknowledged tying the rope with the noose knot to the truck and disclaimed any intent other than to secure the rope to the truck. Carpenter 1 denies that he was encouraged or solicited by anyone to engage in conduct against Complainant 1 or Complainant 2.

**E. The Rope Was Removed the Following Morning and Displayed in a More Provocative Fashion.**

The following morning, at the time employees reported for work, the rope remained in place, displayed as it appeared the night before. Complainant 1 brought his supervisor to the truck to show him what he and Complainant 2 had encountered the night before. Again, the rope was not removed from the truck at that time.

At about that time, a Union Representative<sup>2</sup> removed the rope from the truck. The Union Representative had been called to MSC the night before at the time the employees made the original complaint. Employees from other divisions had begun to congregate in the area of the truck as word of an incident had spread through MSC as employees reported to work. A vocal discussion of the racial overtones associated with the incident began. In the course of

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<sup>2</sup> SEIU Local 1021.

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those discussions, Union Representative threw the rope onto the back of the truck such that it was now hanging from the middle of the cross bar at the back of the truck, the loop at the end of the rope was now significantly larger, and the loop was hanging downward in the appearance of a "hangman's noose." (**Attachment B**) The employees who had assembled were told — referring to the rope as it was now displayed — "this is what the employees saw last night." The crowd that had gathered was angered/agitated by this visual representation of what had occurred.

Local media arrived at the MSC and eventually reported on the incident, using an image of the rope as displayed by Union Representative as part of the story (the story also showed pictures of the rope as it had appeared the night before).

**F. There Is No Relationship Between the "Second Noose" Reported on August 27 and the Complaint from the Evening of August 26.**

Later in the morning of August 27, in a meeting of MSC employees with the City Administrator, discovery of a "second noose" was reported. This item was a different type of string/rope that had been discovered initially approximately six months earlier. The evidence does not show any connection between this item and the rope/noose knot that prompted the complaint on August 26.

The evidence does not establish any link between the discovery of this item and any of the employees involved in the matter in August. In addition, the circumstances related to the discovery of that item are entirely different than the circumstances of the August matter. At the time of the discovery of that item, there was no suspicion of a racial motive or even misconduct.

**III. SCOPE/CONDUCT OF THE INVESTIGATION**

**A. Witness Interviews**

Our investigation included the following interviews, all of which were conducted in person:

- Complainant 1
- Complainant 2
- Carpenter 1
- Mayor, City of Oakland
- City Administrator
- Director, Employee Relations



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- OPW Director
- OPW Human Resources Manager

**OPW – Infrastructure & Operations**

- Assistant Director, Infrastructure & Operations
- Public Works Operations Manager ("PWO Manager")
- Public Works Supervisor ("PW Supervisor")
- Administrative Employee 1
- Administrative Employee 2<sup>3</sup>

**OPW – Facilities & Environment**

- Assistant Director, Facilities & Environment
- Building Services Manager
- Facilities Complex Manager ("Complex Manager")
- Construction & Maintenance Supervisor 1 ("CM Supervisor 1")
- Construction & Maintenance Supervisor 2 ("CM Supervisor 2")
- Custodian Supervisor

**Co-Workers of Complainant 1, Complainant 2 and Carpenter 1 and Other Employees in Construction/Maintenance**

- Carpenter 1
- Carpenter 2
- Carpenter 3

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<sup>3</sup> We also conducted interviews with four non-supervisory employees from the Infrastructure & Operations Division.

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- Carpenter 4
- C&M Mechanic 1
- C&M Mechanic 2
- C&M Mechanic 3
- C&M Mechanic 4
- C&M Mechanic 5
- Maintenance Mechanic 1
- Maintenance Mechanic 2
- Maintenance Mechanic 3
- Maintenance Mechanic 4
- Maintenance Mechanic 5
- Maintenance Mechanic 6
- Plumber 1
- Plumber 2
- Electrician

**Local 1021**

- Local 1021 Representative ("Union Representative")
- Shop Steward

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**B. Document Review**

We also reviewed the following documents:

- Incident reports and related statements prepared by various employees of the OPW assigned to the Municipal Service Center.
- Photographs taken by PWO Manager on the evening of August 26, 2014.  
(Attachments A, C)
- Media reports of "incident" at MSC. (Attachment B).
- Photographs taken by Police Department related to "second noose."  
(Attachment D)
- Relevant organizational charts. (Attachment E)
- Electronic mail communications related to August 26, 2014 complaint.  
(Attachment F)
- City Personnel Rules and applicable employment policies.

**IV. THE ALLEGATIONS AND ISSUES ADDRESSED IN THE INVESTIGATION**

- Who displayed the rope appearing to be a noose, discovered by Complainant 1 and Complainant 2 on August 26?
- Why was a rope with a noose displayed on a City vehicle and is there evidence of racial animus, racial harassment, or racial intimidation?
- Was there a violation of the City's policy against racial harassment?
- What steps were taken in response to the complaint of Complainant 1 and Complainant 2 and was there a violation of City policy?
- What are the circumstances related to the "second noose" reported on August 27 and was there a violation of City policy?

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**V. SUMMARY OF THE RELEVANT FACTS**

**A. Timeline of Key Events**

**August 26, 2014**

3:30 p.m. — Regular day-shift ends for employees assigned to MSC.

3:45 p.m. — Complainant 1 and Complainant 2 depart MSC for overtime assignment.

7:20 p.m.<sup>\*4</sup> — Complainant 1 and Complainant 2 return to MSC. Complainant 2 notices rope on the back of City vehicle parked outside of Building 3. Calls Complainant 1's attention to rope.

7:23 p.m. — Complainant 2 calls co-worker (Carpenter 2) and reports what happened; sends picture to co-worker.

7:34 p.m. — Complainant 2 contacts supervisor from Sanitary Sewers Division (PW Supervisor) and reports matter to him; PW Supervisor reports matter to Assistant Director, Infrastructure & Operations.

7:40 p.m.\* — PW Supervisor speaks to PWO Manager; Complainant 2 and Complainant 1 approach PWO Manager and ask him to come and see the rope on the truck. PWO Manager goes with Complainant 1 and Complainant 2 and takes picture of truck.

8:00 p.m. — Oakland Police notified of incident; Union Representative notified of incident.

8:33 p.m.\* — Complainant 2 calls Carpenter 2 again; also notifies his supervisor, CM Supervisor 1, of complaint; Union Representative arrives at MSC.

9:15p.m.\* — Oakland Police arrive.

9:24 p.m. — PW Supervisor calls Assistant Director, Infrastructure & Operations a second time to update the situation.

9:38 p.m. — Assistant Director, Infrastructure & Operations sends email report to the OPW Director and Assistant Director, Facilities & Environment. (**Attachment F**)

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<sup>4</sup> "\*" indicates approximate time.

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10:27 p.m. — Assistant Director, Facilities & Environment responds to the email, requesting to "discuss first thing Wednesday." (**Attachment F**)

**August 27, 2014**

5:48 a.m. — OPW Director opens email from night before; indicates an investigation is required (adding City Administrator and Employee Relations Director to message string) and requests additional information from Assistant Director, Infrastructure & Operations. (**Attachment F**)

7:00 a.m.\* — Complainant 1 interrupts meeting to ask his supervisor, CM Supervisor 2, to see rope on truck; CM Supervisor 2 observes rope and leaves to report to Complex Manager.

CM Supervisor 1 informs his supervisor of call from Complainant 2; Complex Manager, goes out to inspect parked vehicle; returns to office to get camera.

7:15 a.m.\* — Crowd of employees from across MSC starts to gather around the truck; heated discussion ensues.

Union Representative removes rope from the truck and eventually throws it onto the truck such that it is hanging as depicted in photographs used by media. (see **Attachment B**)

9:15 a.m.\* — Media arrives and crowd begins to move towards main gate.

9:45 a.m.\* — Meeting with MSC employees and City Administrator in Building 4.

Administrative Employee 1 produces "second noose"; Police arrive and take custody of both ropes.

10:00 a.m.\* — Carpenter 1 called by co-worker and advised of incident at MSC that involves media; Carpenter 1 sees news report and sees rope hanging from the back of a truck (as depicted in **Attachment B**) and recognizes the truck as his.

**B. Facts Related to Specific Incidents Underlying the Allegations**

**1. Background**

**a. City of Oakland Public Works Department**

Oakland Public Works plans, builds and maintains the City's physical and environmental

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infrastructure. The work of the agency is carried out by three major units: Bureau of Engineering & Construction, Bureau of Infrastructure & Operations, and the Bureau of Facilities & Environment. The Infrastructure & Operations Bureau and Facilities & Environment Bureau are headed by Assistant Directors.

The Facilities & Environment Bureau is responsible for cleaning and caring for the City's facilities, properties, and natural environments. The Facilities Services Division ("FSD") provides custodial, engineering, construction and maintenance support for City facilities and property. FSD has two Construction & Maintenance units that include, carpenters, painters, electricians, maintenance mechanics, plumber and pool technician services/support. **(Attachment E)** Complainant 1 (Carpenter) and Complainant 2 (Maintenance Mechanic) are assigned to the Construction & Maintenance units under the supervision of CM Supervisor 2 and CM Supervisor 1, respectively. CM Supervisor 1 and CM Supervisor 2 report to the Complex Manager. The unit managed by the Complex Manager works out of Building 3 at the MSC.

**b. Past Employee Issues in the Construction & Maintenance Unit<sup>5</sup>**

**(1) Relationships Between Employees**

There is a general feeling within MSC that the Construction & Maintenance units in Building 3 have had problems in the past that involve conflict between employees and with management. Several employees cited the lack of African-American supervisors assigned to the unit and the reports of an incident involving racially-charged conduct. Several of the employees specifically mentioned incidents that resulted in disciplinary action against a manager and supervisors from the unit.<sup>6</sup>

The Construction & Maintenance units are ethnically diverse. However, statements by employees suggest the concern, if not the presence, of racial tensions. First, several

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<sup>5</sup> The reference here is to events that occurred several years earlier and concerned a different group of managers and supervisors. This investigation inquired into facts of past employment issues for the purpose of understanding certain of the allegations regarding possible motives for the conduct that lead to the instant complaint. Ultimately, the evidence demonstrated that there was no direct connection between any of the past events and this matter. Accordingly, we did not undertake an exhaustive review or fact determination of those incidents, as it was beyond the scope of this investigation, but used the general information as context for an assessment of the work environment relevant to this matter.

<sup>6</sup> Specifically, it was reported that the manager/supervisors were aware of inappropriate conduct that occurred in the workplace, including conduct that was characterized as racial harassment, but failed to take appropriate corrective action. Although the supervisors were removed, several employees from that time period remained on staff at the MSC.

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employees described "groups" of employees who did not get along with other employees in the unit. Although the make-up of the groups varied slightly, it was notable that one of the groups was composed of mostly white employees and the other of mostly employees of color (African-American and Latino). Despite this obvious objective evidence of a potential racial divide, most of the employees stated that the issue between the groups reflected differences over work ethic and performance and not race.<sup>7</sup> Notably, employees of color within the unit acknowledged some of the differences related to work issues, but also a sense of hostility from some employees that appeared to be related to race. There had been, however, no recent incidents of racially-charged behavior or conduct.<sup>8</sup> There was also a perception that complaints by employees of color were not handled properly by supervisors (Complex Manager and C&M unit supervisors).<sup>9</sup>

## (2) Supervisor Promotion

In 2013, one of the C&M supervisors retired and a vacancy opened. As was the practice, employees in the C&M unit who would have been eligible to compete for promotion to the vacancy were offered the opportunity to serve as "acting" supervisor on a rotating basis. Most of the employees in the unit took advantage of the opportunity. Also, most of the eligible employees in the unit applied for the open position.

Of the eight employees from the unit who applied for the position, only two were selected to compete in the interviews. Significantly, these were two employees who had been part of the group criticized by others because of work ethic and work performance issues (see Section C.1.b(i) above). These two employees interviewed for the position along with outside candidates in July and August of 2013. The current supervisor, CM Supervisor 2, was selected for the position and began work in November. From the outset, CM Supervisor 2's selection created some concerns within the unit: at one point he visited Building 3 before his hiring had

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<sup>7</sup> This characterization was echoed by employees who did not identify themselves particularly with either of the "groups." Likewise, employees of color who were not in the "groups" also disclaimed the notion that race had anything to do with the tensions between employees in the unit.

<sup>8</sup> An incident was described where a caricature of an African-American employee appeared in a common area of Building 3, but the specific details were not remembered. It appeared that this incident may have been related to the issue of racial harassment described above. (see footnote 6).

<sup>9</sup> Some of the issues concerned disputes between employees and situations where employees reported that they were not being treated fairly by other employees. Significantly, most of the employees in the C&M units, without regard to race or ethnic background, cited a lack of consistent supervision and enforcement of standards by the unit supervisors and the Complex Manager. Likewise, there were broad-based statements that characterized the supervisors as prone to showing favoritism towards certain employees.

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been announced to the employees who had been competing for the position<sup>10</sup> and there was the perception that he was receptive to employees who are not minorities who were complaining about their minority co-workers. In addition, there was a perception that his selection appeared to have been made over an internal candidate who was qualified for the position.<sup>11</sup>

## **2. Employee Complaint on the Evening of August 26, 2014**

On the evening of August 26, 2014, Complainant 1 and Complainant 2 returned to the MSC from an after-hours overtime work assignment. As they secured their vehicle and prepared to depart, Complainant 2 observed a rope on the back of another City vehicle that was secured to the back of the truck by a knot tied in the form of a noose. The two employees had departed on the overtime assignment at approximately 4:00 p.m. and returned to the Yard at approximately 7:20 p.m. They did not take note of the rope at the time they left for the overtime assignment. Other employees from that unit, including the employee who regularly used the truck where the rope was found, departed from the Yard between 3:30 and 4:00 p.m. No other employees/individuals were observed in the area during the period between 4:00 p.m. and 7:20 p.m.

The employees made a report to PW Supervisor (from the Sanitary Sewer Division) who was onsite. They ran into PW Supervisor as they had gone in the direction of Building 4 looking for the Assistant Director for Infrastructure & Operations ("Assistant Director 1") to show him what they had observed.<sup>12</sup> With PW Supervisor, they determined that Assistant Director 1 was not onsite and PW Supervisor had them show him the vehicle. PW Supervisor returned with them to the truck and the employees showed him the rope. The employees expressed concern that it was a racial incident and that someone from their unit was involved, but they did

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<sup>10</sup> There is a dispute as to whether the hiring had been announced or how the individual was introduced. We did not seek to resolve this dispute as it was outside the scope of the investigation. However, we noted that the issue affected the relationship between CM Supervisor 2 and some of the employees in the unit, including Complainant 1.

<sup>11</sup> It is our understanding that grievances or other challenges may have been filed regarding this recruitment/promotion. We did not seek to investigate the details of the personnel action, beyond ascertaining which of the employees participated and that the information considered in the process comported with City policy. Although Complainant 1 had competed for the vacant supervisor position and had raised a concern regarding the selection of an outside candidate over the internal candidates, our inquiry did not reveal a direct or indirect connection between the complaint by Complainant 1 and Complainant 2 and the past recruitment. Likewise, Carpenter 1 had also applied for the position, but withdrew his application, so we did not find that this presented a connection or improper motive with respect to the matter in question.

<sup>12</sup> The Assistant Director 1. As we explain below, the employees sought him out as they had concerns over how their immediate supervisors would respond to the incident.



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not have a specific name in mind at that time.<sup>13</sup>

As PW Supervisor went back towards his office to pick up his phone, he noticed the PWO Manager, coming into the yard. PW Supervisor told him what had been reported and what he had observed and continued on to get his phone. The PWO Manager went in the opposite direction with the employees to return to the truck. PW Supervisor then contacted Assistant Director 1 and received direction to gather additional facts and to report back to him. About two hours later, PW Supervisor contacted Assistant Director 1 by telephone again and provided additional information. At that point, Assistant Director 1 sent an email message advising of the complaint to the OPW Director.<sup>14</sup> PW Supervisor left, and as he was leaving MSC, he saw Union Representative coming into the MSC.<sup>15</sup>

Complainant 1 and Complainant 2 explained what had happened to PWO Manager and took him to Building 3 to show him what they had observed. Complainant 1 and Complainant 2 were upset by the configuration and display of the rope and expressed their concerns to PWO Manager. Complainant 1 and Complainant 2 stated they were not comfortable taking the rope down and they wanted Assistant Director 1 to see it as they were not comfortable reporting the matter to their management team. PWO Manager agreed to leave the rope up as he thought to do otherwise might upset the employees further.<sup>16</sup> Although Complainant 1 expressed some concern about disclosing this to his management team, Complainant 2 contacted his supervisor (CM Supervisor 1) and a co-worker to apprise them of the incident.

PWO Manager left, understanding that the matter had been reported to Assistant

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<sup>13</sup> Earlier in the day, Carpenter 1 and Complainant 2 had been involved in a heated verbal exchange with Carpenter 1 accusing Complainant 2 of erratic driving. Similar disputes had occurred between the two in the past and the animosity between the two was well known. An internal inquiry did not sustain the allegation against Complainant 2. At that time Carpenter 1 was not identified as the person who put the rope on the truck. As we explain below, the evidence shows Carpenter 1 put the rope on his truck, but it does not appear from the evidence that this interaction caused Carpenter 1 to tie the rope on his truck in form of a noose (See Sections VII and VIII).

<sup>14</sup> The OPW Director did not see the email message from Assistant Director 1 until the following morning and at that point directed specific steps to be taken in response. The Assistant Director for Facilities & Environment had acknowledged receipt of the message earlier that evening and indicated that the matter should be discussed in the morning. (**Attachment F**)

<sup>15</sup> PW Supervisor does not know who contacted Union Representative. For Union Representative to have had the opportunity to make it to MSC at that time, Complainant 1 or Complainant 2 would have called him as only they were aware of the incident. Union Representative does not recall who contacted him.

<sup>16</sup> Later, after the Union Representative arrived, there was a suggestion to leave the rope up in case the "perpetrator" returned to the truck to remove it.

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Director 1 and to the police. Union Representative waited with Complainant 1 and Complainant 2 until the police arrived. An officer and a technician arrived and took photos of the rope, noose and truck.<sup>17</sup>

### 3. The Morning of August 27, 2014

The next morning the rope was on the back of the truck as it had appeared the night before. Complainant 1 reported the matter to his supervisor, took him to the truck, and showed him the rope as it was discovered the night before. CM Supervisor 2 attempted to contact the Complex Manager (to whom he reported).<sup>18</sup> Complex Manager had received a report of the matter from CM Supervisor 1 that morning and also went to the truck. Complex Manager observed the rope and returned to his office to retrieve a phone to take a picture of the rope and the truck.

In the meantime, the Union Representative arrived on site and removed the rope from the truck. By this time, word of what had occurred began filtering through the yard and a group of employees from across the Yard began to congregate in the area of the vehicle where the rope was found. In the course of discussion of the incident amongst those employees, the Union Representative tossed the rope on the back of the vehicle. At this point, the rope was now hanging from the middle of the cross bar at the back of the truck - as reflected in **Attachment B**.

### 4. Report of the "Second Noose"

In March of 2014, two administrative employees who worked for Assistant Director 1 were cleaning up an area of Building 4 and came across a file cabinet. They did not know who owned the file cabinet and decided to go through the contents to determine ownership. A bottom drawer of the file cabinet contained some papers and work files from the Sewers division and underneath they discovered the nylon rope tied in the form of a noose. **(Attachment D)** Both employees thought that it had been left there as some sort of "joke" and did not feel that it had particular significance or was a serious matter. They took the item to Assistant Director 1, showed it to him and returned to work.<sup>19</sup> They put the item aside in a storage closet, intending to use it later for a Halloween display.

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<sup>17</sup> The police conducted an investigation of a possible threat. The investigation concluded that the rope had been placed on the truck by Carpenter 1 in the course of work (as he stated in an interview); Carpenter 1 was not charged.

<sup>18</sup> CM Supervisor 2 stated that he wanted the Complex Manager to see what Complainant 1 had shown him.

<sup>19</sup> See footnote 24 below.

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## **VI. RELEVANT POLICIES**

The following are relevant provisions of Administrative Instruction 71, Equal Employment Opportunity/Anti-Discrimination/Non-Harassment Policy and Complaint Procedure:

### **A. Equal Employment Opportunity -Right to Workplace Free of Discriminatory and Harassing Conduct Based on Protected Status**

The City of Oakland is committed to equal employment opportunity and to ensuring that all employees have a work environment that is free of conduct that could be considered discriminatory or harassing based on an employee's protected status (i.e., race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law.) The City will not allow anyone, including any supervisor, co-worker, vendor, client or customer, to unlawfully harass or discriminate against City employees or applicants for employment. The City will take prompt and effective remedial action upon discovery of such conduct.

#### **[Paragraph II.A.]**

### **B. Prohibited Types of Behavior**

#### **1. Unlawful discrimination, harassment or other inappropriate conduct based on protected status**

The City of Oakland strictly prohibits any form of unlawful employment discrimination and/or harassment or other inappropriate conduct based on race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law. The City will not tolerate any harassing or discriminatory conduct on these bases or any inappropriate conduct that affects tangible job benefits, that interferes unreasonably with an individual's work performance, or that creates an intimidating, hostile, or offensive working environment. The City does not allow anyone, including any supervisor, co-worker, vendor, client or customer, to unlawfully harass or discriminate against City employees or applicants for employment. Harassment is also prohibited against any person providing services to or working with the City pursuant to a contract. The City will take prompt and effective remedial action upon discovery of such conduct.

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**2. Discrimination or harassment based on a perception or belief that a person is a member of a protected group or a person's association with a protected group**

The City prohibits discrimination and/or harassment based on a perception that a person has any of the above characteristics, or that the person is associated with a person who has, or is perceived to have, any of the above characteristics. Harassment and/or discrimination based on these characteristics (whether actual, perceived or by association) is prohibited.

**3. Retaliation against a person based on his/her expressed concern about unlawful discrimination or harassment or for having filed a complaint or participated in an investigation of possible discrimination and/or harassment**

The City prohibits retaliation against anyone who has expressed a good faith concern about unlawful discrimination or harassment or who has filed a complaint or participated in an investigation of any such complaint. The City will not tolerate retaliatory conduct on these bases.

**4. Inappropriate, unprofessional, disrespectful conduct based on protected status that may not constitute unlawful workplace harassment.**

The City of Oakland prohibits not only unlawful harassment, but also any conduct that is unprofessional, disrespectful or inappropriate based on a protected status/characteristic, whether or not it rises to the level of legally prohibited harassment. It is the City's goal to prevent the occurrence of harassing activity and to stop harassing conduct when it occurs and before it becomes a violation of law. This Policy therefore covers activities that are inappropriate in a work environment, whether or not they are sufficiently severe, persistent or pervasive to constitute unlawful harassment.

Additionally, the City wishes to note that behavior can be inappropriate but not constitute workplace harassment. Inappropriate behavior is only workplace harassment when it is based on membership in a protected category (e.g., race, sex/gender, etc.) For example, even though employees are often offended when a manager yells at them, yelling itself is not workplace harassment unless the yelling can be linked to a protected status (e.g., yelling racist names, only yelling at women, etc.) While such behavior may not violate this Policy, as it is not based on a protected characteristic, it is the responsibility of all City employees to behave in a professional and respectful manner so as to create a comfortable work environment for everyone.

**[Paragraph II.C.]**

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**C. Harassing Conduct**

Prohibited behavior may include, but is not limited to, verbal, visual, physical or any other type of conduct that denigrates, demeans or shows hostility or aversion towards an employee because of his or her membership in a protected group. Some examples of the types of conduct that could violate City policy include, but are not limited to, the following:

1. **Physical conduct:** Unwanted touching, leering, prolonged staring, assault, violence, impeding or blocking movement, or any physical interference with normal work or movement, as well as defacement of a person's property;
2. **Verbal conduct:** Epithets, slurs, derogatory or demeaning comments, even if not directed at a specific person or persons, innuendo, jokes or ridicule, hostile or more severe treatment based on a person's protected characteristic or status, threats of violence or comments indicating stereotyping;
3. **Visual conduct:** Obscene, derogatory or demeaning posters, photos, cartoons, e-mail, screen savers or drawings; and
4. **Other conduct:** Hostility, harsh or less favorable treatment, or selection of assignments based on a person's protected status.

**[Paragraph III.A.]**

**D. Race/National Origin/Color/Ancestry Discrimination or Harassment**

1. **Hostile Work Environment:** Racial or ethnic harassment may include, but is not limited to, threats, physical conduct, pranks, vandalism, jokes, slurs, ridicule, verbal, graphic, or written materials, or hostility or less favorable treatment directed at an employee because of his or her race, color, ancestry or national origin.
2. **Examples:** Inappropriate conduct based on race, color, ancestry or national origin includes, but is not limited to:
  - a) Assault, impeding or blocking movement, or any physical interference with normal work or movement because of race, color, national origin or ethnicity;
  - b) Defacement of a person's property, derogatory or demeaning posters, cartoons, emails, screen savers, drawings or other similar materials depicting racial or ethnic stereotypes;
  - c) Derogatory or demeaning racial or national origin-based comments even if not directed at a specific person or persons, including

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stereotyping or mimicry based on race, color, ancestry or national religion;

- d) Jokes or ridicule directed to a specific person or persons about their race, color, national origin or ethnicity, including demeaning comments or stereotyping concerning ancestry, ethnic food or customs, attire, appearance or other ethnic or national origin-based characteristics;
- e) Racial or national origin-based epithets or slurs;
- f) Threats of, or actual violence based on race, color, national origin or ethnicity.

**[Paragraph III.C.]**

**E. Retaliation**

The City of Oakland strictly prohibits any retaliation against an employee who has filed a complaint of discrimination, harassment or retaliation, or has participated in an investigation or proceeding related to such a complaint. The City of Oakland also strictly prohibits retaliation against an employee who has opposed any practice or conduct that violates this policy. Retaliation is defined as any adverse employment action, including discharge, discipline, demotion or transfer.

**[Paragraph III.M.]**

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## **VII. FACTUAL FINDINGS**

The facts related to the incidents giving rise to the allegations are generally undisputed. In conducting the interviews, we found few instances of direct conflict between the statements of witnesses with knowledge of a particular incident or event. In most instances where an event is described differently by the participants, it appears that those differences are based on different perceptions rather than actual dispute as to the facts.

### **First Discovery of a "Noose"**

- Carpenter 1 secured the rope to his truck on the evening of August 26, 2014, as set forth in Attachment A.
- Carpenter 1 acted alone in securing the rope to his truck in that fashion.
- There is no evidence that Carpenter 1 has displayed a rope/noose on his truck similar to the manner in which the rope/noose is depicted in **Attachment B**.
- Carpenter 1 has no history of conduct reflecting racial animus.
- On the evening of August 26, 2014, Complainant 1 and Complainant 2 observed the rope/noose as depicted in **Attachment A** and based on that observation made a complaint.

### **Response to Complaint**

- The OPW manager and supervisor who took the complaint of Complainant 1 and Complainant 2 did not remove the rope from the truck or direct that the rope be removed from the truck after the appearance of the rope/noose was documented.<sup>20</sup>
- The OPW Director was notified of the complaint, by electronic mail, on the evening of August 26, 2014 by the Assistant Director Infrastructure & Operations.<sup>21</sup> The OPW Director did not open the message until the following morning.
- The Assistant Director Facilities & Environment acknowledged receipt of the message that evening, but did not notify the Facilities Services Manager of the complaint.

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<sup>20</sup> As noted above, PWO Manager elected not to remove the rope based on the statement of the complaining employee that the rope be left in place and his concern that removing the rope at that time would further upset the employees.

<sup>21</sup> Neither Complainant 1 nor Complainant 2 worked in this division, but the manager and supervisor involved in the reporting of the initial complaint were assigned to this division.

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- Complainant 2 reported his complaint to his immediate supervisor, CM Supervisor 1, on the evening of August 26, 2014. No action was taken by CM Supervisor 1 at that time.

- On the morning of August 27, 2014, at the time work began in the yard, the Building Services Manager and Complex Manager were not aware that a complaint of a racial incident had been made by two employees from their unit; they were also not aware of the fact that a rope appearing in the form of a "noose" was displayed on the back of a vehicle parked in the front of the building where they worked.

- On the morning of August 27, 2014, the rope/noose was still on the truck as indicated in **Attachment A**, and Complainant 1 showed the rope to CM Supervisor 2<sup>22</sup>, repeating his complaint of the night before.

- CM Supervisor 2 and Complex Manager did not direct that the rope/noose be removed from the truck (both observed the rope on the truck as it appears in **Attachment A**).

#### **Removal of the Rope/Demonstration on August 27**

- Union Representative removed the rope from the back of the truck (at the time, it was displayed as reflected in **Attachment A**.

- Union Representative placed the rope on the truck as it appears in **Attachment B**.

- The crowd of employees that gathered on the morning of August 27, 2014, understood/believed that Complainant 1 and Complainant 2 had encountered the noose depicted in **Attachment B**.<sup>23</sup>

- Complainant 1 and Complainant 2 did not encounter the noose depicted in **Attachment B** on the evening of August 26, 2014.

#### **"Second Noose"**

- Two administrative employees discovered the "second noose" amongst abandoned files in Building 4, in or about March 2014.

- At the time the item was discovered, neither employee considered it to be a racial

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<sup>22</sup> Complainant 1 and Complainant 2 had different supervisors.

<sup>23</sup> The evidence is inconclusive as to the specific statement/representation made to the crowd and by whom.



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symbol.<sup>24</sup>

- The employee who had found this item in March 2014 ("Administrative Employee 1") produced it on August 27, 2014, believing that it might be related to the discovery of the "noose" that had been reported.

- Other than the fact that the item is string/rope tied in the form of a noose, there is no evidence to connect this item with Carpenter 1 or the rope tied to his truck.

## **VIII. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

#### **1. Who displayed the rope appearing to be a noose, discovered by Complainant 1 and Complainant 2 on August 26?**

As noted above, the evidence is undisputed that Carpenter 1 placed the rope on his truck in the manner reported by Complainant 1 and Complainant 2.

#### **2. Why was a rope with a noose displayed on a City vehicle and is there evidence of racial animus, racial harassment, or racial intimidation?**

There is evidence that Carpenter 1 fashioned the rope as he did for a legitimate purpose. There is also substantial evidence that contradicts the notion that Carpenter 1 acted with a racial motive or that such conduct is consistent with his character. The evidence as to whether Carpenter 1 should have understood the potential for his use of the knot being viewed as racial harassment or intimidation is in dispute. On the one hand, the configuration of the knot, even if characterized as a slipknot, is that of a "noose." Understanding the impropriety of such a display in a workplace is a reasonable expectation for any employee. On the other hand, Carpenter 1 believed that he was simply securing a piece of equipment to his truck – he was not "displaying" the rope or the knot or doing what he was doing in anticipation of observation by others.<sup>25</sup> Carpenter 1's credibility on this point is bolstered by the absence of

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<sup>24</sup> Administrative Employee 1 is African American and initially discovered the item. Upon discovering the item she showed her co-worker and the employees showed it to Assistant Director 1 for whom they worked. Neither employee did so as a complaint of inappropriate conduct. Assistant Director 1 does not recall the specific circumstances where the item was brought to his attention.

<sup>25</sup> Which is not to say that having a noose or another racially-charged or offensive symbol in a workplace is okay so long as it is kept hidden or "there was no intent" that it be displayed. On the contrary, where such a symbol or visual representation is knowingly and intentionally brought into a workplace the circumstances are distinguishable. There is no arguable work

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any evidence of prior racial animus or race-related conduct and the perception that he would not engage in such conduct.<sup>26</sup> There is also evidence that supports the view that there is a legitimate non-intimidating/harassing purpose for using that type of knot in that fashion.

It is evident that there are employee tensions within the Construction & Maintenance units that have been exposed by the complaint made in this matter. In some instances the tension exists between employees of different ethnic backgrounds. However, it appears that the primary source of the tension is a dispute among employees over work performance and work standards. Thus, we have determined that the evidence does not support the conclusion that this incident occurred because of racial animus or harassment.<sup>27</sup>

It is not clear to what extent the misrepresentation of the rope as a "hangman's noose" on the morning of the 27<sup>th</sup> created, as opposed to continued, a real issue in the workplace. But the evidence is clear that perceptions of racial animus exist and are a concern for employees in the unit. Moreover, the reputation of the unit within the MSC environment and the ease with which the presence of a racial motive was presumed is a warning sign. That the divisions amongst employees in the unit tend to break down along racial lines is also a clear warning sign that should not be ignored by immediate supervisors.

### **3. Was there a violation of the City policy against racial harassment?**

The evidence concerning the display of the rope on August 26, 2014, does not sustain a claim of an intentional or inadvertent violation of Administrative Instruction 71 by Carpenter 1. The evidence demonstrates that a situation occurred in which two employees experienced unwelcome and unwanted conduct and reasonably took offense. The evidence does not sustain the contention that Carpenter 1 engaged in conduct to threaten or to intimidate, as a prank, slur or joke, or as a subtle form of any of the foregoing (innuendo).

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purpose in such conduct and the specific effort to conceal such an item is evidence of at least an understanding of the potential intimidating, offensive, or threatening nature of the item, if not evidence of an actual intent to threaten, intimidate or offend.

<sup>26</sup> We relied in particular on the employees who worked closely and regularly with Carpenter 1. It was suggested in one context that Carpenter 1 "has had a noose on this truck before" (as reported by the Shop Steward) but there were also reports that Carpenter 1 had secured the rope to his truck in that fashion on other occasions in which the rope was not described as a "noose." There also never been any complaints against Carpenter 1 on this point. This evidence shows that Carpenter 1's actions on the 26<sup>th</sup> were not unique and that to the extent that a rope tied in that fashion had been observed, it did not raise a concern. Consequently, there was no evidence that Carpenter 1 had been warned of a problem with this conduct and continued the conduct despite the warning.

<sup>27</sup> There is no evidence that the tension between Carpenter 1 and Complainant 2 is race-related; the evidence indicates it stems from work-related issues.

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Furthermore, the undisputed evidence that a knot of that type had been used by Carpenter 1 in the past, but had not been the subject of a complaint or noted as inappropriate demonstrates that Carpenter 1 had not been put on notice prior to August 26, 2014, of the potential harmful nature of how he secured his rope to the truck. Based on the foregoing, we conclude that Carpenter 1's conduct was not a violation of the Administrative Instruction 71.

**4. What steps were taken in response to the complaint of Complainant 1 and Complainant 2 and was there a violation of City policy?**

The evidence demonstrates that the City responded to the complaint by the employees consistent with the requirements of the Administrative Instruction. Both the onsite supervisor (PW Supervisor) and manager (PWO Manager) responded to the two employees in a fashion that indicated they took the complaint seriously and were respectful of the employees' concerns. The matter was also reported appropriately by these supervisors through their appropriate chain of command.

Neither supervisor took the step of removing the rope from the truck after the employees' observations had been documented in photographs taken by PWO Manager and the Police. Likewise, there was no direction in the course of reporting of the event for the rope to be removed from the truck and secured until the following morning. There is some significance to this fact, inasmuch as the following day a different representation of the "noose" and the employees' complaint occurred because the rope was still on the truck.

On the other hand, PWO Manager appreciated the emotion underlying the employees' complaint and the expression by the employees that they wanted their supervisors to see what they had experienced. Under those circumstances, he was concerned that removing the rope might aggravate the concerns of the employees; because the MSC was closed for the night, there was no issue of other employees observing and taking offense at the rope and knot and it appeared to him that there would be adequate opportunity to deal with the situation the following morning.<sup>28</sup>

The situation in the morning was different, in that employees would be reporting to work, it was reasonable to anticipate that there might be talk about the complaint, and there was the possibility that another employee might discover the same as Complainant 1 and Complainant 2 had observed and be offended. As it turns out, by shortly after 7:00 a.m., the situation had started to escalate precisely along these lines. This occurred because the immediate manager (Complex Manager) was not alerted to the situation until too late and, once alerted, neither he

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<sup>28</sup> The manager felt that because no one else was in the MSC, the likelihood of the rope being a problem if left on the truck was minimal. Furthermore, from certain angles, given the lighting, it was not as apparent that the knot in the rope was in the form of a noose or that it would be noticed. **(Attachment C)**

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nor the immediate supervisors appreciated the steps that needed to be taken (i.e., to remove the rope immediately) to respond properly.<sup>29</sup>

Consequently, the lack of a clear set of steps to be followed on the morning of August 27<sup>th</sup> is significant. As the Facilities Services Manager noted, key among those steps would have been direction to remove the rope immediately. Because this did not occur, the situation turned in a different direction with the portrayal of the rope in a much different manner.<sup>30</sup>

**5. What are the circumstances related to the "second noose" reported on August 27 and was there a violation of City policy?**

No. At the time of the discovery of this item, there was no employee complaint and the circumstances under which it was discovered did not indicate a violation of City policy.

When the employees notified the Assistant Director 1 of the item, they did not do so in the manner of a complaint or expressing concern regarding an offensive item or potential violation of City policy – it was characterized as a "joke." Despite this characterization, the Assistant Director's obligation would have been to determine whether the item constituted a violation of City policy, notwithstanding the fact that these employees may not have found it offensive.

The Assistant Director 1 does not recall the specifics of the conversation with the employees wherein they brought this matter to his attention. His vague recollection is that he was in the middle of an important work matter, the employees mentioned the finding in an off-hand fashion and he did not pay much attention at least in part because they did not appear to be reporting a serious matter.

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<sup>29</sup> This due in part to the fact that the matter was not reported to the Facilities Services Manager the evening before when one of his supervisors received a report of the incident. It seems evident that the matter that Complainant 2 reported to his supervisor, C&M Supervisor 1, should have prompted a call to the next level of the chain of command, the Complex Manager and then a report to the Facilities Services Manager.

<sup>30</sup> This serves only to magnify or reinforce concerns that employees have expressed regarding past issues in the work environment. As noted in a prior section, one of these is the evidence of employees' concerns with the lack of consistent exercise of supervisory authority within this unit. The issues raised by this incident – the perception that the immediate supervisors did not respond promptly or that supervisors are insensitive to the concerns of African-American employees appear to reinforce those employee concerns.

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**B. Recommendation**

We recommend the City Administrator adopt the factual findings and conclusions as set forth above and take any additional action deemed appropriate consistent with City policy.

MDM:tam  
Attachments

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## Attachments

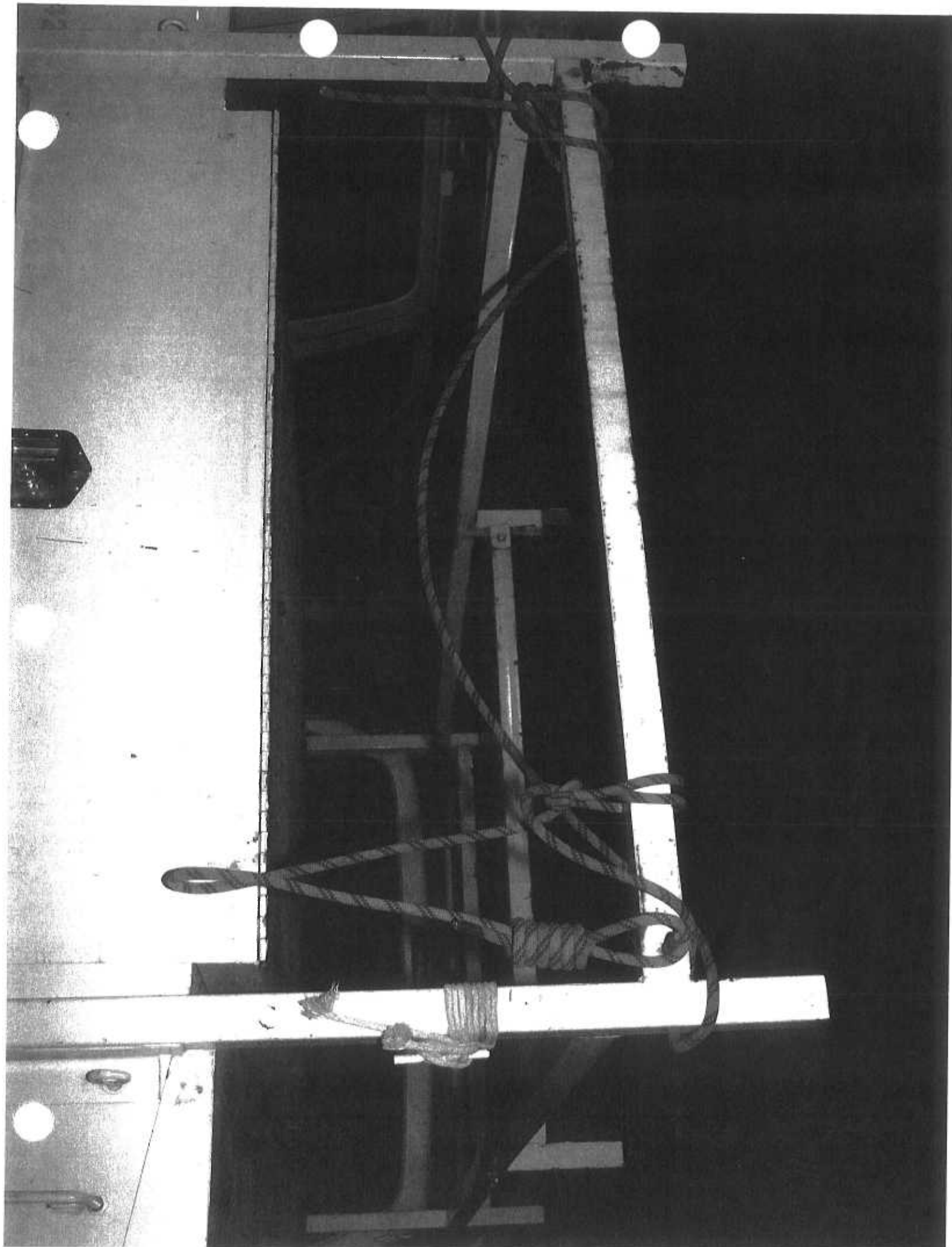
- A - Photographs taken on August 26, 2014
- B - Photo appearing in media reporting on incident at MSC
- C - Additional photo taken on August 26, 2014
- D - Photograph of 'second noose'
- E - Relevant Organizational Charts
- F - Email message re: Potential Racial Issue at MSC

# ATTACHMENT A

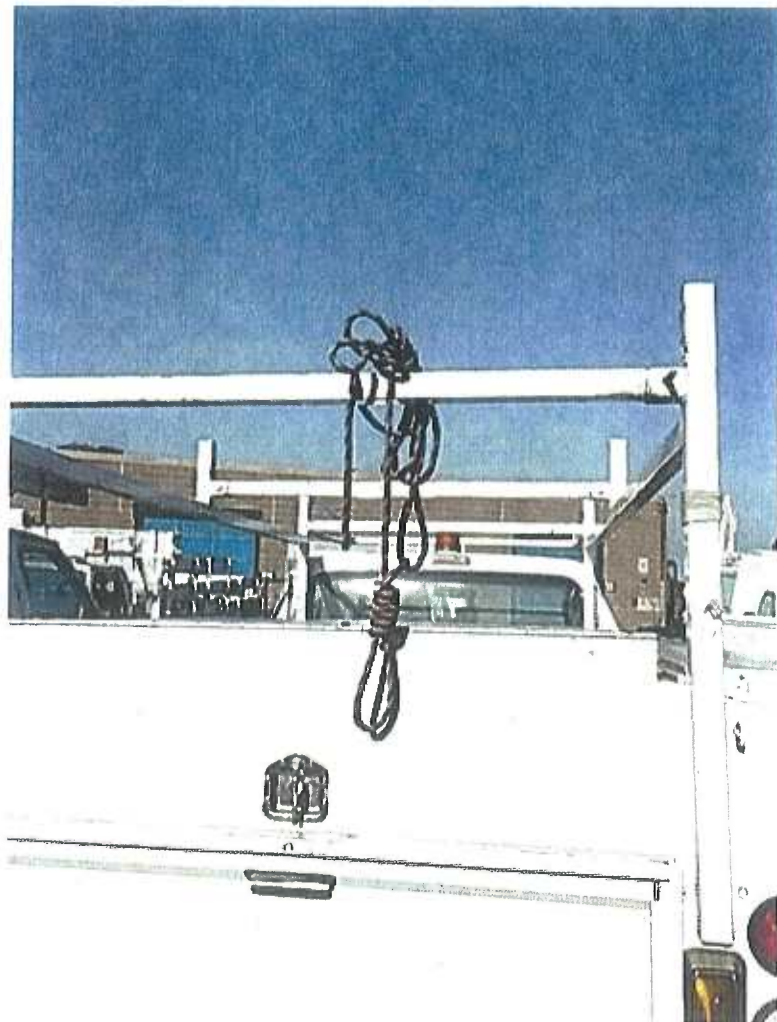








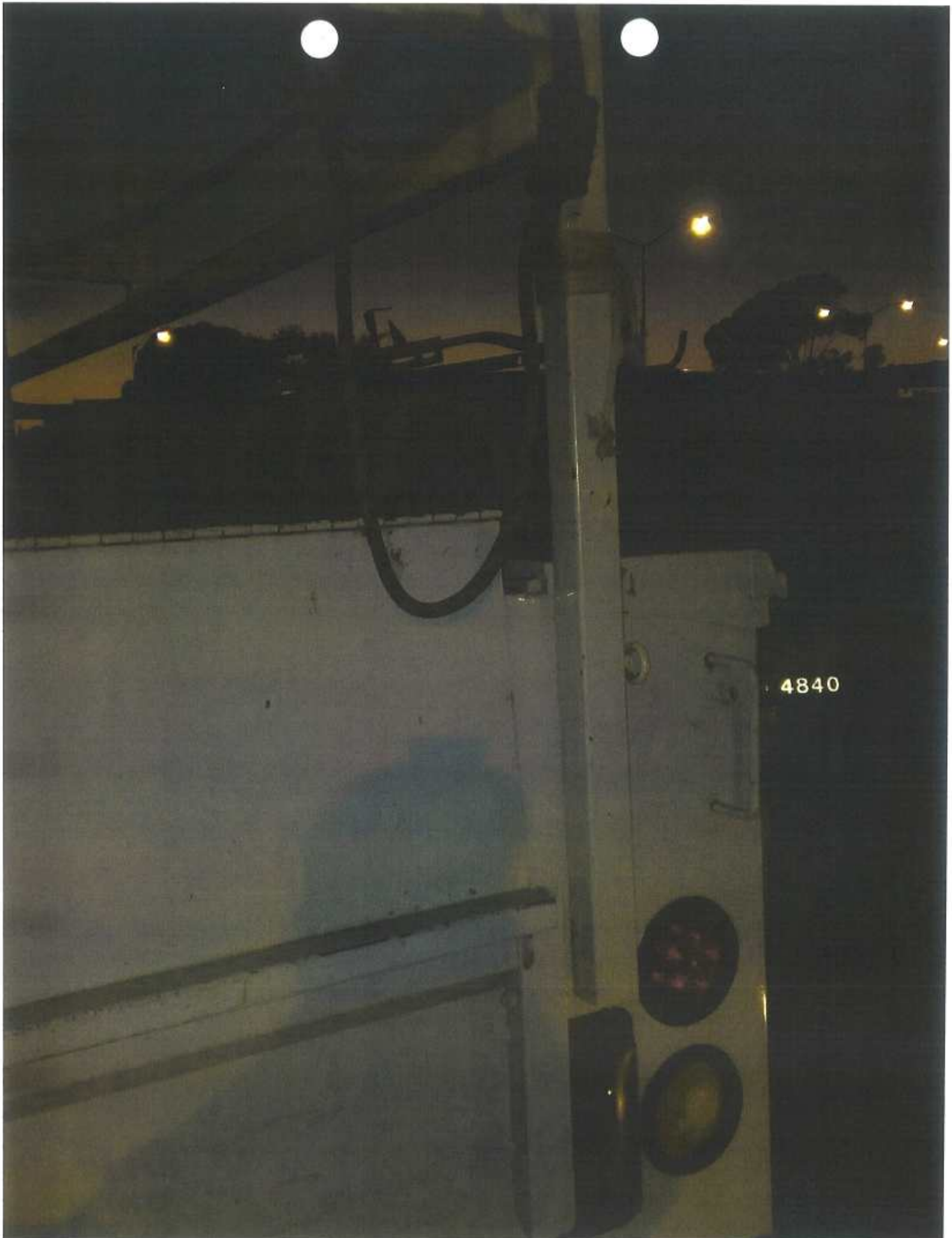
# ATTACHMENT B





# ATTACHMENT C





# ATTACHMENT D

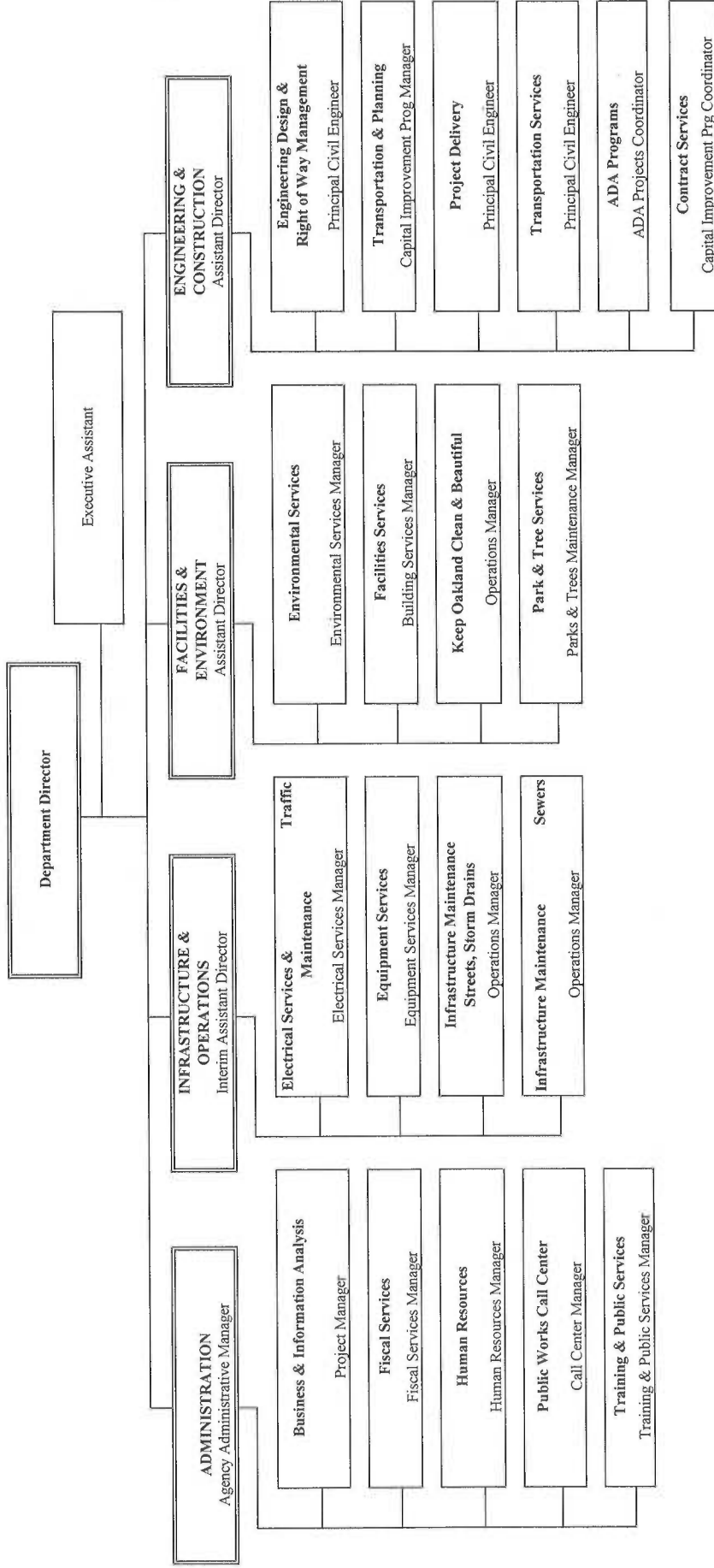


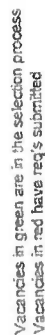


# ATTACHMENT E

# Public Works Department

Fiscal Year 2014-2015





# ATTACHMENT F

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**From:** Assistant Director 1  
**Sent:** Tuesday, August 26, 2014 9:38 PM  
**To:** OPW Director  
**Cc:** OPW Human Resources; Assistant Director 2  
**Subject:** Potential Racial Issue at MSC  
**Importance:** High

Hello All,

I just received a few calls that someone in the carpenter's shop placed a noose on the back of a City vehicle. As you can imagine this is causing frustration amongst staff that is aware of the issue. This will be a problem tomorrow. I suspect that this will be elevated to DHRM and the CAO. It is my understanding that staff has already informed Union representatives and they have called OPD to file a report. This is all the information I have currently. We may need to reach out to staff to help calm this matter if true.

Regards,

Assistant Director 1

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**From:** Assistant Director 2  
**Sent:** Tuesday, August 26, 2014 10:27 PM  
**To:** Assistant Director 1  
**Cc:** OPW Director; OPW Human Resources  
**Subject:** Re: Potential Racial Issue at MSC

Thank you AD 1. Let's discuss first thing Wednesday.

Regards,  
Assistant Director 2

Sent from my iPad

On Aug 26, 2014, at 9:37 PM, "Assistant Director 1" > wrote:

Hello All,

I just received a few calls that someone in the carpenter's shop placed a noose on the back of a City vehicle. As you can imagine this is causing frustration amongst staff that is aware of the issue. This will be a problem tomorrow. I suspect that this will be elevated to DHRM and the CAO. It is my understanding that staff has already informed Union representatives and they have called OPD to file a report. This is all the information I have currently. We may need to reach out to staff to help calm this matter if true.

Regards,  
Assistant Director 1

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**From:** OPW Director  
**Sent:** Wednesday, August 27, 2014 5:48 AM  
**To:** Employee Relations; Recipient 1; Recipient 2; City Administrator  
**Cc:** Assistant Director 2; Assistant Director 1; OPW Human Resources  
**Subject:** Fwd: Potential Racial Issue at MSC

All,

I just opened this email which is extremely disturbing and requires an immediate investigation,

I will have Assist. Director 2 work with OPW H.R. and Recipient on next steps first thing this morning.

OPW Director

Sent from my iPad

Begin forwarded message:

**From:** "Assistant Director 1"  
**Date:** August 26, 2014, 9:37:52 PM PDT  
**To:** OPW Director  
**Cc:** "OPW Human Resources; Assistant Director 2"  
<  
**Subject:** Potential Racial Issue at MSC

Hello All,

I just received a few calls that someone in the carpenter's shop placed a noose on the back of a City vehicle. As you can imagine this is causing frustration amongst staff that is aware of the issue. This will be a problem tomorrow. I suspect that this will be elevated to DIIRM and the CAO. It is my understanding that staff has already informed Union representatives and they have called OPD to file a report. This is all the information I have currently. We may need to reach out to staff to help calm this matter if true.

Regards,

Assistant Director 1

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**From:** OPW Director  
**Sent:** Wednesday, August 27, 2014 5:50 AM  
**To:** Assistant Director 1  
**Cc:** OPW Human Resources; Assistant Director 2; Recipient 1; Employee Relations  
**Subject:** Re: Potential Racial Issue at MSC

AD 1,

We will need a statement from you on the details that were given to you including who called you, what employees are allegedly involved - a truck number or any other details that will assist with an investigation. Thank you for elevating this and for providing any additional information.

OPW Director

Sent from my iPad

On Aug 26, 2014, at 9:37 PM, "

> wrote:

Hello All,

I just received a few calls that someone in the carpenter's shop placed a noose on the back of a City vehicle. As you can imagine this is causing frustration amongst staff that is aware of the issue. This will be a problem tomorrow. I suspect that this will be elevated to DHRM and the CAO. It is my understanding that staff has already informed Union representatives and they have called OPD to file a report. This is all the information I have currently. We may need to reach out to staff to help calm this matter if true.

Regards,

Assistant Director 1