

**BOARD OF CITY SERVICE COMMISSIONERS  
CITY OF MILWAUKEE**

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IN THE MATTER OF  
ADRIAN MELENDEZ  
V.  
CITY OF MILWAUKEE

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**FINDINGS AND DECISION**

This is the written determination of the Board of City Service Commissioners on the administrative appeal hearing in this case. A timely appeal was received from Adrian Melendez (hereinafter the "Appellant") challenging his discharge from the position of Painter, Department of Public Works (hereinafter the "Department") on March 9, 2022.

An administrative appeal hearing was held by video conference pursuant to Sec. 63.43, Wis. Stats. and City Service Commission Rule XI, Section 2, on Tuesday, May 3, 2022 at 9:00 a.m. The witnesses were sworn and all testimony was taken by a Court Reporter.

**Appearances:**

City Service Commission:	Francis Bock, President Marilyn Miller, Vice President Janet Cleary, Commissioner Steve Smith, Commissioner Kristin Urban, Secretary Karen Biernat, Administrative Assistant Coordinator
Commission Represented By:	Patrick McClain, Assistant City Attorney
Appellant Represented By:	Himself
Department Represented By:	Lindsey O'Connor, Infrastructure Services Personnel Officer
Witnesses:	Dan Thomas, Administrative Services Director, DPW Nicholas Goodwin, Bridge Maintenance Section Manager, DPW Nicholas Vogg, Painter, Lead Worker, DPW Dannell Vance, Urban Forestry Manager, DPW Appellant

## **ISSUE**

The issue is whether there was just cause for the action taken by the Department in accordance with Section 63.43, Wisconsin Statutes.

Based upon the evidence in the record, the Commission finds as follows:

## **FINDINGS OF FACT**

1. Appellant was first employed by the City on August 18, 2014, as a Painter with the Department of Public Works.
2. On March 2, 2022, Appellant was observed removing City equipment and materials from the DPW painter's shop and placing it into a City vehicle.
3. Lead worker Nicholas Vogg photographed the items while in the City vehicle.
4. Among the items were a sealed cardboard box and a hoseline still wrapped in cellophane packaging.
5. Appellant departed in the vehicle and when he returned the items were missing from the vehicle.
6. When questioned by management about the missing items upon his return, Appellant stated that he had cleared out his locker and taken the items home.
7. The following day, on March 3, 2022, when informed that an investigation had been opened into the matter, Appellant now stated that the items he had taken were "junk" (meaning they would be discarded as trash) and that he had previously been given permission to take "junk" items by his former supervisor.
8. Appellant admitted that he did not seek or receive permission from his current supervisor to take the items.
9. The items taken by Appellant were new or otherwise serviceable, and were therefore not trash or "junk."

10. Appellant admitted that he had taken the items to a relative's house and not to his own home.
11. Appellant did not have permission to leave City premises for the purpose of taking City property to either his or a relative's home.
12. The DPW Work Rules prohibit theft by employees. "Theft" is defined as:

"Theft of City property or services with the intent to deprive the city of the property or services permanently...Use of city property for personal reasons can be considered theft. This includes converting to personal use any material that may be discarded or sold by the city as salvage material."
13. A pre-disciplinary hearing was held on March 9, 2022.
14. At the hearing, Appellant admitted to taking the City property for his personal use.
15. On March 09, 2022, Mr. Melendez was discharged by the department for violations of City Service Rule XIV, Paragraph R ("[A]bsent without excuse, authorization or has had excessive absence and/or tardiness") and DPW Work Rules prohibiting "Theft."
16. A copy of the discharge notice was sent to Appellant via certified mail on March 14, 2022.
17. A timely appeal was filed by the Appellant on Thursday, March 22, 2022.

### **CONCLUSIONS OF LAW**

1. The Appellant was an employee holding a classified position in the Department of Public Works, the appointing authority within the meaning of Sec. 63.43, Wis. Stats., and City Service Commission Rules I and XI.
2. The Department demonstrated by the preponderance of the evidence that there is just cause to discipline Appellant for violation of City Service Rule XIV, Paragraph R, and for "Theft" in violation of the DPW work rules.

3. The Department demonstrated by the preponderance of the evidence that there is just cause to discharge Appellant for violation of City Service Rule XIV, Paragraph R, and for "Theft" in violation of the DPW work rules.

**ORDER**

By unanimous vote of the Board, the discharge of Appellant on March 09, 2022 is affirmed.

Dated and signed at Milwaukee, Wisconsin, this 24th day of May, 2022.

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FRANCIS BOCK, PRESIDENT