

H-22-407 Referral Information

Hotline ID: H-22-407
Date of Submission: 11/21/2022
Entity Type: Local
Entity Category Type: Port/Airport District
Entity: Centralia, Port of
Sub Entity Name:
Category: Accounting/Financial Reporting
1-2 sentence description of concern: The legality and ethical concerns of the Port of Centralia Executive Director's (Kyle Heaton) employment contract.
Report Issued: No
Reporting Type: Hotline Letter
Report Number:
Investigation
Contracted: No
Contract Number:
Contract Name:
Billing Time Code:
Costs:
Public Records Request: Yes
Flag for Annual Report: No
Substantiated: No
ARRA: No
Action: Referred to Audit Team - Consider Next Audit
Audit Team: Olympia
Audit Team Contact: carrelll@sao.wa.gov
cc: #CC1#
cc: #CC2#
cc: #CC3#
cc: #CC4#
Referral Date: 11/22/2022
Action Taken: No
Response Date:
Report Date:
Follow Up Date:
Date Closed: 1/25/2024

H-22-407 Details Information

What state or local organization is involved?

Please identify the specific concerns you are hoping the audit will address.

The legality and ethical concerns of the Port of Centralia Executive Director's (Kyle Heaton) employment contract.

Please provide a detailed description of the assertion or outstanding achievement, including who, when, where, what, how and how much.

Executive Director Kyle Heaton's contract says he can only be fired for moral turpitude or embezzlement. It also states he cannot be fired for negligence of duty under any circumstances, whether knowingly or otherwise. The contract needs to be read to be believed. His contract should be offensive to most people. This should be investigated.

How did this issue come to your attention?

I did a Records Request for his employment contract.

What employee(s), contractors, etc., were involved in the assertion or achievement? Please include employee titles if possible.

Please provide the names of any witnesses to the assertion or achievement, if possible.

Please provide any additional details or comments that would help us understand your assertion or achievement.

H-22-407 Contact Information

Hotline ID: H-22-407
Date of Submission: 11/21/2022
Submission Method: Web
Submission Type: Citizen
Staff:
Author (Last, First): Banevich , Jan
Address: 911 Yew St.
City: Centralia,
State: WA
Zip: 98531
Home Phone: 360-736-2450
Work Phone:
Mobile Phone:
Email: janevich@msn.com
Can Contact: Yes
Contact Preference: Home Phone
Email
Regular Mail
Anonymous: No
Waived Confidentiality: No

H-22-407 Activity Log

01/25/2024

Referral updated by 'JEANA Gillis (gillisj)'.

11/28/2023

Referral updated by 'JEANA Gillis (gillisj)'.

11/28/2023

Referral updated by 'JEANA Gillis (gillisj)'.

11/27/2023

Hotline letter sent. See supporting documents tab. Ready to close. --jennie950

10/26/2023

Spoke with citizen to discuss concerns. --jennie950

10/20/2023

Called citizen to let her know that we are starting the audit and to expect a call soon from lead auditor to discuss concerns. --carrelll

10/03/2023

Referral updated by 'JEANA Gillis (gillisj)'.

12/02/2022

Attached documents sent by the citizen. --dylan950

12/02/2022

I communicated to the citizen the next audit is scheduled for the summer/fall of 2023. --dylan950

11/30/2022

Email sent on 11/30/22 letting the citizen know when the next audit will be started and that their hotline submission will be considered at that time. --dylan950

11/22/2022

Referral updated by 'JEANA Gillis (gillisj)'.

11/22/2022

Task assigned to 'carrelll@sao.wa.gov'. Team notification email sent to: carrelll@sao.wa.gov,dylan950@sao.wa.gov

11/22/2022

Referral updated by 'JEANA Gillis (gillisj)'. Action changed from (not set) to Referred to Audit Team - Consider Next Audit.

(h) Survival. Section 7 ("Termination of Employee's Employment"), Section 8 ("Agreement to Arbitrate and Governing Law") and Section 8 ("General Provisions") of this Agreement shall survive Employee's employment by the Company.

(i) Attorney Fees. In the event either party brings a legal action against the other party to enforce its rights hereunder, the substantially prevailing party shall be entitled to receive reimbursement from the other party of such prevailing party's costs incurred in such legal action (including the costs of appeal), including the reasonable fees and disbursement of the prevailing party's attorneys, in addition to all other rights and remedies available to the prevailing party at law or in equity.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, including without limitation that certain Employment Contract dated December 16, 2009. This Agreement may be amended or modified only with the written consent of Employee and the Port. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

THE PARTIES TO THIS AGREEMENT HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION. WHEREFORE, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

EMPLOYEE

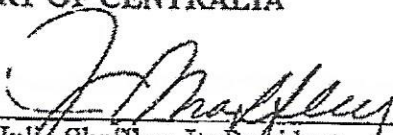
Dated: 12/20/17



Kyle W. Heaton

PORT OF CENTRALIA

Dated: 12/20/17

By: 

Julie Shaffley, Its President

By: 

Daniel Keahey, Its Vice-President

By: 

Matt Evans, Its Secretary

Employee agrees that the Company shall be entitled to an injunction, restraining order or such other equitable relief (without the requirement to post bond) restraining Employee from committing any violation of the covenants or obligations contained in this Paragraph 8. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Company may have at law or in equity. In connection with the foregoing provisions of this Paragraph 8, Employee represents that his economic means and circumstances are such that such provisions will not prevent him from providing for himself and his family of a basis satisfactory to him.

9. General Provisions.

(a) Governing Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. Venue for any action arising from this Agreement shall be exclusively in Lewis County, Washington.

(b) Successors and Assigns. The rights and obligations of the Port under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Port. Employee shall not be entitled to assign any of Employee's rights or obligations under this Agreement.

(c) Waiver. Either party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Agreement.

(d) Severability. In the event any provision of this Agreement is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated in this Agreement to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

(e) Interpretation: Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. Both parties have participated in the negotiation of this Agreement. Therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(f) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing.

(g) Employee Policies. Employee agrees to comply with all Port policies and procedures as adopted from time to time.

for the unquantifiable damages likely to result from the Port failure to promptly pay the Severance when due.

(e) Voluntary Resignation by Employee. Employee may voluntarily resign Employee's position with the Port at any time. In the event of Employee's resignation, Employee will be entitled to receive only (i) the Base Salary then in effect, prorated to the Termination Date, and (ii) accrued but unused vacation as of the Termination Date. All other Port obligations to Employee pursuant to this Agreement will become automatically terminated and completely extinguished.

(f) Employee's Execution of Release. The payment of Severance described in Sections 7(a) is expressly contingent upon Employee's signing a full and general release of any and all claims against the Port.

(g) Termination Upon Death or Disability.

i. Death. In the event that Employee's employment terminates as a result of Employee's death, Employee will be entitled to no compensation or benefits from the Port other than those earned through the date of Employee's death to include accrued vacation and sick leave.

ii. Disability. In the event that Employee becomes physically or mentally disabled such that Employee is unable to perform Employee's duties for a period of three (3) consecutive months ("Disability"), the Port may terminate Employee's employment, unless otherwise prohibited by law. In the event of termination due to Disability and in lieu of the benefits provided under Section (a), Employee shall be entitled to (i) Base Salary, less applicable withholdings, for a twelve (12) month period; (ii) any accrued but unused vacation as of the Termination Date, less applicable withholdings; and (iii) continuation of Employee's Health Benefits for a twelve (12) month period following the Termination Date.

8. Confidentiality.

(a) Duty of Confidentiality. Subject to the public disclosure laws of the State of Washington, Employee shall not disclose confidential information pertaining to the Port gained through, or as the consequence of, their employment by the Port. Confidential information includes, but is not limited to, information that has not been previously disclosed to the public pertaining to Port methods of operation, future Port business and economic plans, Port financial information, real estate prospects and pending offers and negotiations and identifying information about Port customers. In connection with the foregoing provisions of this Paragraph 8, Employee represents that her economic means and circumstances are such that such provisions will not prevent him from providing for himself and his family on a basis satisfactory to him.

(b) Injunctive Relief With Respect to Covenants. Employee acknowledges and agrees that the covenants and obligations of Employee with respect to noncompetition, non-solicitation, confidentiality and Company property relate to special, unique and extraordinary matters and that a violation of any of the terms of such covenants or obligations will cause the Company irreparable injury for which adequate remedies are not available at law. Therefore,

7. Termination of Employee's Employment.

(a) Termination Without Cause--Severance Payment. If the Port terminates Employee's employment without Cause, and contingent upon Employee's compliance with Section 7(f), Employee will be entitled to receive on the Termination Date the following: (a) a lump sum severance payment in an amount equal to twenty-four (24) months of Employee's then current Base Salary, plus all accrued but unused vacation, less applicable withholdings; and (b) continuation of all Health Benefits, as in effect as of the Termination Date, for Employee, spouse or domestic partner, and dependents for a period of twenty-four (24) months beginning on the day following the Termination Date, provided, however, that this Health Care obligation shall cease immediately upon Employee's acceptance of full-time employment and obtaining health care benefits under the new employer's plan (together, "Severance"). All other Port obligations to Employee pursuant to this Agreement will be automatically terminated and completely extinguished. For purposes of this Restated Agreement, termination of Employee's employment "without Good Cause" is defined as any reason other than those listed as "For Cause" in Section 7(b) below.

(b) Termination "For Good Cause" by Company. The Port may terminate Employee's employment at any time for Cause. For purposes of this Agreement, "For Good Cause" is defined and limited as follows: (i) Employee's conviction of a felony involving moral turpitude, or (ii) embezzlement or fraud in connection with Employee's employment. "For Good Cause" shall in no circumstances include an instance of negligence or failure to act, whether due to an error in judgment or otherwise. Only upon a final determination or order by a Court of law that Employee's termination was for "For Good Cause" shall the Port withhold any severance payment(s) or health benefits as described in Section 7(a) above.

(c) Erroneous Termination for Cause. In the event the Employee successfully challenges the termination "For Good Cause" by the Port under Section 7(b), Employee shall be entitled to the following in lieu of the Severance described in Section 7(a): (a) a lump sum severance payment in an amount equal to forty-eight (48) months of Employee's then current Base Salary, plus all accrued but unused vacation, less applicable withholdings; and (b) continuation of all Health Benefits, as in effect as of the Termination Date, for Employee, spouse or domestic partner, and dependents for a period of forty-eight (48) months beginning on the day following the Termination Date and any reasonable attorney fees expended by Employee. This clause is not intended as a penalty, but to fairly compensate Employee for the unquantifiable damages to Employee's reputation and employability likely to result from an erroneous termination "For Good Cause".

(d) Failure to Pay Severance When Due. In the event the Employee's employment is terminated without cause under Section 7(a) and the Port fails to pay the required severance within twenty (20) days of the Termination Date, Employee shall be entitled to the following in lieu of the Severance described in Section 7(a): (a) a lump sum severance payment in an amount equal to forty-eight (48) months of Employee's then current Base Salary, plus all accrued but unused vacation, less applicable withholdings; and (b) continuation of all Health Benefits, as in effect as of the Termination Date, for Employee, spouse or domestic partner, and dependents for a period of forty-eight (48) months beginning on the day following the Termination Date. This clause is not intended as a penalty, but to fairly compensate Employee

However, because the annual percentage increase cannot exceed 5% unless authorized by the Port Commission, the Base Salary for 2009 would be \$100,275.00 ($1.05 \times \$95,500$).

(c) Vacation and Sick Leave. Employee shall earn paid vacation benefits at the rate of three (3) days per month as approved in the Port District Personnel Policy Manual, whichever is greater. Earned vacation that does not exceed thirty (30) days is reimbursable to Employee in any calendar year or at the termination of this Agreement. Employee shall earn sick leave at the rate of two (2) day per month. Unused sick leave shall not be reimbursable upon termination of employment.

(d) Holidays. Employee shall be entitled to paid holidays in accordance with RCW 1.16.050, which currently recognizes the following holidays: the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

(e) Membership Dues. The Port shall pay membership dues for professional organizations and subscriptions to professional publications on behalf of the Employee as are specifically authorized by the Port Commission through the budget process.

(f) Benefits and Insurance. Employee shall be entitled to health care benefits as described herein: Employee may choose a health care provider and insurance program from the Washington State Health Care Authority for medical, dental, and basic life insurance. The Port shall pay the required premiums for Employee, spouse or domestic partner, and dependents.

(g) Professional Education. The Port shall pay and/or reimburse Executive Director the cost of attending seminars and such other professional enhancement meetings as are specifically authorized by the Port.

5. Deferred Compensation. The Port shall contribute \$18,500 towards the State of Washington Deferred Compensation Account for Employee every year while still under contract with immediate vesting to Employee.

6. Expenses. The Port shall pay Employee, or promptly reimburse Employee, for all reasonable, out-of-pocket business expenses incurred in the performance of Employee's duties on behalf of the Port which have been approved by the Port through its budget process and for which Employee submits appropriate supporting documentation. Reimbursable business expenses include vehicle mileage at the current Internal Revenue Service rate.

Comprehensive Plan, is not performed for a different governmental entity, and does not interfere with Employee's ability to effectively discharge Employee's assigned duties under this Agreement.

(c) Work Location. Employee's principal place of work shall be Port's office at 3508 Galvin Road, Centralia Washington.

3. At-Will Employment Relationship. Employee's employment with the Port is at-will and not for any specified period and may be terminated at any time with or without Cause (as defined below), by either Employee or the Port. Only the Port Commission has the authority to alter the at-will employment relationship. Any change to the at-will employment relationship must be by a specific, written agreement signed by Employee and approved by action of the Port Commission. Nothing in this Agreement is intended to or should be construed to contradict, modify or alter this at-will relationship. Notwithstanding the preceding sentences Employee shall give the Port a minimum of sixty (60) days prior written notice before terminating employment, and the Port shall give Employee a minimum of sixty (60) days prior written notice before terminating employment, unless employment is being terminated "For Good Cause" as defined in Paragraph 7(b) below, in which case termination shall be immediate.

4. Compensation.

(a) Base Salary. As compensation for Employee's performance of Employee's duties under this Agreement, the Port shall pay Employee a base salary which equates to \$123,000 per year, initially, payable on a bi-monthly basis on or about the 1st and 15th of each month ("Base Salary"). Employee's salary shall be paid in accordance with the normal payroll practices of the Port, less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions.

(b) Annual Indexed Inflation Adjustment. During the term of the Agreement, the Employee's Base Salary shall be adjusted annually, effective January 1st of each year, in an amount equal to the percentage increase in the Consumer Price Index ("CPI") for the twelve (12) month period ending in August of the preceding year. For purposes of this Agreement, CPI is defined as the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100) as maintained by the United States Department of Labor. Downward adjustments will not be made and the maximum allowable annual increase pursuant to this section for any given year shall be five percent (5%) unless a larger increase is authorized by the Port Commission. For example, if the CPI for August 2008 was 233.788 and the CPI for August 2007 was 221.559, the percentage increase to Base Salary would be as follows:

January 1, 2009, Base Salary Formula: August 2008 CPI/August 2007 CPI
x Base Salary then in effect.

August 2008 CPI/ August 2007: $CPI\ 233.788/221.559 = 1.055195230$.

Percentage Increase x Base Salary: $1.055195230 \times \$95,500 = \$100,771.14$

**PORT OF CENTRALIA
EMPLOYMENT AGREEMENT
(Kyle Heaton – Executive Director)**

This Employment Agreement ("Agreement") is entered into as of December 20, 2017, to be effective as of December 20, 2017 ("Effective Date"), by and between the PORT OF CENTRALIA, a Washington municipal corporation (the "Port"), and KYLE W. HEATON ("Employee").

RECITALS

- A. Employee commenced employment with the Port on or about January 1, 2001;
- B. Employee signed an employment agreement with the Port on December 16, 2009 which became effective on December 16, 2009 (the "Prior Employment Agreement");
- C. The Port and Employee now wish to update the terms of Employee's employment and replace the Prior Employment Agreement with this Employment Agreement;

AGREEMENT

Now therefore, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment. The Port hereby employs Employee, and Employee hereby accepts such employment, upon the terms and conditions set forth in this Agreement as of the Effective Date. The Prior Employment Agreement is hereby terminated and of no further effect.

2. Duties.

(a) Position. Employee is employed as the Executive Director of the Port of Centralia to perform such duties and responsibilities as may be reasonably assigned from time to time by the Port Commission of the Port of Centralia, including without limitation the overall management and the general administration of the Port office. A description of Employee's duties and responsibilities is set forth in Exhibit A to this Agreement and hereby incorporated by reference. The Port Commissioners reserve the right to modify Employee's duties at any time at the sole and absolute discretion of the Port Commission, provided that the duties assigned are consistent with the position of Executive Director. Employee shall report directly to the Port Commissioners.

(b) Best Efforts/Full-time. Employee will expend Employee's best efforts on behalf of the Port, and will abide by all policies and decisions made by the Port, as well as all applicable federal, state and local laws, regulations or ordinances. Employee shall devote Employee's full business time and efforts to the performance of Employee's assigned duties. Notwithstanding the foregoing, Employee may, from time to time, earn income and part time employment from other sources so long as it does not conflict with any Port activities, the Port's

From: [Cheng, Jennie \(SAO\)](#)
To: ["janevich@msn.com"](mailto:janevich@msn.com)
Subject: Hotline Response H-22-407
Date: Monday, November 27, 2023 9:36:00 AM
Attachments: [H-22-407 Hotline Letter_33651.pdf](#)
[image001.png](#)

Good morning,

Please see the attached letter for the response to the citizen hotline for H-22-407.

Thank you,



Jennie Cheng

Assistant State Auditor, Team Olympia, [Office of the Washington State Auditor](#)
(564) 201-2932 | Pronouns: She, Her, Hers
We're on social! Follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#).