

CIVIL SERVICE COMMISSION
SPECIAL MONTHLY MEETING
Monday, July 20, 2020

A special monthly meeting of the City Civil Service Commission was held on Monday, July 20, 2020. The meeting was held virtually via Zoom as authorized under State Proclamation 59 JBE 2020. Lisa Hudson, Personnel Director, called the roll. Present were Commissioner Mark Surprenant, Commissioner Brittney Richardson and Commissioner John Korn. Commissioner Richardson convened the business meeting at 2:04 p.m.

Item #1 on the agenda was a request for approval of the November 18, 2019, February 17, 2020, April 20, 2020 and May 26, 2020 minutes. Commissioner Surprenant motioned to accept the minutes. Commissioner Richardson seconded the motion and it was approved by all Commissioners.

Item #2 was a report on the Delegation of Authority to the Sewerage and Water Board (S&WB). Director Hudson requested deferral of this item while awaiting the receipt of reports staff had requested from S&WB.

Item #3a under Classification and Compensation Matters was a request from the Sewerage and Water Board for reconsideration of the Commission's denial of the unclassified Chief Audit Executive (CAE) job class. Vice Chairperson Clifton Moore, Jr. joined the meeting during the discussion of this item. Director Hudson noted that at its October 2019 meeting the Commission, after hearing arguments from both sides, had approved the creation of a classified position with a salary of \$165,000. She stated that Ghassan Korban, the Executive Director of S&WB, has requested reconsideration of the matter and is asking the Commission to grant an unclassified position. Yolanda Grinstead, Special Counsel for S&WB, stated Civil Service staff had denied S&WB's request for an unclassified position in September of 2019 and had determined that the position did not meet the criteria established in Rule III Section 7.1. She noted that in October of 2019, the Commission accepted staff's recommendation to deny S&WB's request. She stated that S&WB is asking for reconsideration because the position meets the criteria as set out in Rule III Section 7.1.; the position is neither appropriate for nor should it be performed by a classified employee. In August of 2019 the New Orleans Office of Inspector General (OIG) released a report that included recommendations and best practices to improve the S&WB's oversight. The Board has taken steps to improve the audit function by creating

an internal audit charter. The restructuring and reporting of the Chief Audit Executive is essential to meeting the International Internal Audit (IIA) standards. That means that the CAE must report to the Audit Committee. The Board of Directors must be responsible for the appointment, removal and remuneration of the CAE. The position needs to meet the IIA standards which require that it report directly to the Audit Committee and the Board of Directors. Ms. Grinstead noted that the peer review period set out by the IIA standards exceeds the one-year probationary period for a classified employee. Larry Douglas, First Assistant Inspector General over Audit and Evaluations in the Office of Inspector General, stated that his office has evaluated the performance of S&WB's Internal Audit Department in accordance with the Institute of Internal Auditors Standards. The findings included that the internal audit function must report to the Board, the Board must set the salary, and a quality assurance review must be done once every five years.

Ms. Grinstead stated that the second requirement of Rule III section 7.1 is that the position is of a sensitive nature having considerable discretion and policy making authority. She stated the CAE will have that considerable discretion and policy making authority. Unlike in the Orazio decision where the policy making authority was limited to the Commanders' own staffs, the CAE's policy making authority would go across the organization. Additionally, in Orazio there were 16 Commanders as opposed to one CAE. This position will be the head of the Audit Department. It will not be third in command like the Commanders. It will be first in command and report directly to the Audit Committee. It will not have interference from executive management. Ms. Grinstead stated that the CAE will be subject to the Commission's audit in the future to determine if the position continues to meet the criteria in Rule III section 7.1.

Commissioner Richardson asked Ms. Grinstead to give the Commission a better understanding of the position's policy making authority. Commissioner Richardson noted that an auditor usually tests an organization's existing policies. Ms. Grinstead responded that the Board is starting from scratch and they need a turnaround specialist who can enact policies across the board in each department, internal controls that will create effective and efficient change and make sure that there is no fraud at any level. This position will have the authority to come into a department and ask for sensitive information and set up internal controls.

Commissioner Surprenant stated the Rule says that policy making authority is not subject to further review or modification. There is no question that the CAE is going to be involved in creating policy. He noted that the Commission wants to help S&WB, but the Commission is duty bound to follow the Rules. It is clear that the CAE is going to be tasked with policy decisions but it is clear that the individual is making recommendations that will then be submitted, based on what is in the Audit Charter, to the Audit Committee for review and approval. He asked Ms. Grinstead to address the part of the Rule that requires policy that is not subject to further modification or review. Commissioner Surprenant stated it appears the recommendations can only be recommendations and they can only be approved by the Audit Committee and the Board. Ms. Grinstead responded that in this case there would be concurrent approval. This person would actually make policy across the board. Some, but not all policies would go to the Board for approval. The day to day internal controls that need to be implemented to improve effectiveness and efficiency in various departments don't necessarily have to go to the Board. High level policies, for example the risk-based assessment. Not all policies go up to the Board. Some will and some won't. If the Commission does not feel the position satisfies the Rules, it fits the exception pointed out in Orazio because the Board must take into consideration the IIA standards.

Commissioner Surprenant stated that reading from the Internal Audit Charter, it does not say that certain policy making decisions by the CAE are not subject to further review by the Audit Committee. It does not make that distinction. He stated everything he is reading states the CAE can only make policy recommendations. Ms. Grinstead responded the Board was trying to come into compliance with the OIG's recommendations. She noted the internal audit and audit charters have been approved but are both up for review and revision. Commissioner Surprenant then confirmed with Ms. Grinstead that the charter was approved by the Board in June of this year. Commissioner Surprenant asked Ms. Grinstead who is Andrew Nash and stated that his name is listed on the Internal Audit Charter as the Interim Chief Audit Executive. Ms. Grinstead responded that Mr. Nash was a temporary employee assigned to the Audit Department. He is no longer with S&WB. Ms. Grinstead noted that S&WB needs to elevate this position to a c-suite level position which will have direct interaction with the Board members. It cannot be a classified position due to the sensitive nature the position will encompass. This person will be able to investigate any department at the Board. The Commission has the right and authority to make this position unclassified under the Rule. If

made unclassified, the position is still subject to the Commission's audit at a later date.

Robert Hagmann, Personnel Administrator over the Classification and Compensation Division, stated that the Inspector General's report did not include a recommendation that this position be unclassified. He noted that an important take away from the Orazio decision is that all three conditions of Rule III section 7.1 must be met. The primary role of the CAE has not changed over time. The role is to identify risk hot spots and analyze the current internal controls in place. Both the 2004 and 2019 job descriptions for Chief Auditor compare favorably to the duties and responsibilities currently listed for this position. He noted that the Commission has worked with S&WB to meet their salary requirements. Much has been made of the change in reporting relationships to reporting to the Board, but the position has previously reported to the Board. Mr. Hagmann presented an organizational chart from 2004 to illustrate this information. Mr. Hagmann noted that the position is appropriate for the classified service because internal audit requires independence. He then quoted the Institute of Internal Auditors which noted in a 2012 report that a Chief Auditing Executive must be protected from management or political interference or retaliation resulting from carrying out legitimate duties. Mr. Hagmann stated the second test of the Rule is that the position have policy making authority not subject to further review or modification. He noted the purpose of internal audit is to act as a consultant or advisor. He quoted the Institute of Internal Auditors which said it is critical that Internal Audit assumes no management responsibility in order to avoid conflicts of interest. Management should own their own policies. You cannot audit your own policies that you created. Mr. Hagmann noted the internal audit policy has already been established and approved by the Board. The internal audit policy has been around for years. At its June 10th meeting the S&WB Audit Committee stated it would determine what areas would be audited in order to avoid any conflicts of interest. If the CAE was a true policy maker s/he would be setting policy regarding what is to be audited. The policy set by the CAE has to have further review. Staff does not believe the request for an unclassified CAE should be approved because it does not meet all three criteria of Rule III Section 7.1. Mr. Hagmann reminded the Commission that it had previously approved a classified Chief Audit Executive position with a flexible hiring rate of \$116,000 to \$164,000.

Ms. Grinstead stated that she believes the Orazio decision gives the Commission the ability to make an exception based on the IIA standards. This is a c-suite position that reports directly to the Audit Committee via the Board of Directors who has concurrent approval of the policies that are recommended by the CAE. She stated that many of the unclassified positions in city government do not meet the criteria of the Rule. Ms. Grinstead further stated that because the policy that is going to be implemented by the CAE applies across the organization, this position is a policy making position.

Mr. Douglas clarified that the OIG's audits never advocate for or against a classified or unclassified function. This position is best served if it has organizational independence due to the function it performs. Mr. Douglas noted that the OIG's report mentioned that the former Executive Director did interfere with the internal audit function because of his organizational placement. Director Hudson then asked Mr. Douglas if he had applied the Commission's Rule when the OIG wrote the original report. Mr. Douglas responded that he had not. Director Hudson then noted that classified employees can report directly to a board.

Commissioner Surprenant stated that S&WB says that the CAE will have concurrent approval authority, but the Internal Audit Charter says just the opposite. He noted that the job description for the unclassified CAE submitted after the OIG report talks all about policy making authority. He was, however, surprised to then see the Internal Audit Charter which says the CAE's role is simply to make recommendations. Ms. Grinstead responded that S&WB had been working closely with OIG and other entities and had asked the same question. To meet the IIA standards, while the CAE will draft those policies, there must be checks and balances with the Audit Committee. The Audit Committee is responsible, based on IIA standards, to oversee the Internal Audit Department. That is why the charter was written that way. This position is an exception. Ms. Grinstead noted that the Commission can audit the position in the future to determine if it still should be unclassified. Director Hudson responded that staff would like to audit other unclassified positions, but getting information from the S&WB has been very difficult. The Board could choose to ignore staff again. Ms. Grinstead responded that staff would be dealing with the Audit Committee chair, not the rank and file.

Commissioner Moore stated you can still have the auditor report directly to the Board as a classified position. Part of the audit process is to manage risk and conduct self-examination. Giving them the protections of a classified

position does not interfere with the Board's ability to receive information from that position. Ms. Grinstead stated that the protection will be at the Board level. The eleven-member board will be the only entity that can hire and fire that auditor. A one-year probationary period is insufficient due to the IIA peer review requirements. Any disagreement between the auditor and Board will be transparent and open at a Board meeting or Audit Committee meeting. Due to the sensitive nature of the information, the information should not be shared with a classified employee. That should only be shared with a high-level unclassified employee. Director Hudson then asked what would preclude the classified employee from hearing that information. Commissioner Moore stated he was sure that there are classified positions that deal with similar sensitive information. Ms. Grinstead gave the example of an investigation of a high-ranking official at the Board. Director Hudson stated the Assistant Chief Administrative Officer (ACAO), one of the highest-ranking classified positions, handles sensitive and private information. Ms. Grinstead responded that the difference with the ACAO is that the head of the department is unclassified and the CAO is in the c-suite with the Mayor. The Assistant CAO is not an executive level position. Director Hudson responded that the ACAO is at the executive level. Ms. Grinstead stated sensitive information comes from internal and external entities. The direct relationship with the Board is key. Director Hudson stated staff had reviewed the internal audit charter passed in June of 2020 and it did not say one thing about the CAE establishing policy that would go across the department. An auditor establishing policy and then auditing the policy represents a conflict of interest. Ms. Grinstead stated the person would not be doing and checking his own policy because that person would be subject to the concurrent approval of the Board. There was an interim contract person in the position. Once we hire a person, we will have to revisit all of our charters to bring them up to the IIA standards.

Commissioner Surprenant then asked Ms. Grinstead if the exception in Orazio she referenced pertains to this issue about the person being in a position to make policy that is not subject to further review or modification. He stated he does not see that in Orazio. Ms. Grinstead responded affirmatively. She stated that the CAE is so distinguishable from Orazio that this position complies with the exception. With this position, the policy is going to be implemented Board-wide and it has an effect on the organization as a whole. Commissioner Surprenant clarified that his question was in reference to the phrase in the Rules regarding making policy not subject to further review or modification. He stated he did not see anything in the Orazio case that eliminated that requirement. Ms. Grinstead stated that the idea is for most positions to be in

the merit system unless there is some important exception. In this case, the exception to the position not meeting section 7.1(b) is that the Board has to meet International Internal Audit guidelines. Director Hudson stated the exception that Ms. Grinstead mentions does not have to do with the policies not having further review. To say the CAE has concurrent approval would put the position at the same level as the Committee, but that is not the case. The CAE will be reporting to the Audit Committee and his/her policies will be reviewed and adopted by the Committee.

Commissioner Korn stated anyone in any organization is subject to review of a Board, even the Executive Director. Ms. Grinstead responded affirmatively. There are some organizations where there are no positions that are not subject to further approval. Director Hudson noted there are department heads who do not need Board approval to put policies in place for their department. They can do that directly as the head of the department, for example the Police and Fire Departments.

Commissioner Surprenant stated if the Board is going to amend its documents after the position is approved, shouldn't it be done first. He noted the Commission can only base its decision on what is in front of us. Ms. Grinstead stated we need the CAE establishing that department and updating those charters. We have been without this position for a year or longer. It is crucial that we get this approved and the national search begins. Commissioner Surprenant asked Ms. Grinstead if the Board had Andrew Nash as the interim CAE until the last month or so. Ms. Grinstead responded that Andrew Nash was a temporary employee who was not appointed by the Audit Committee. He did not have the credentials. Director Hudson then asked who appointed Mr. Nash. Ms. Grinstead responded he was simply a temporary employee hired to assist the Board. Commissioner Surprenant asked when Mr. Nash was hired. Ms. Grinstead responded that she did not recall. She stated that the Board needs someone to come and review what is already in place. She noted S&WB is trying to implement internal controls to prevent fraud and increase efficiency and effectiveness.

No motion was made and the Commission's previous decision to create a classified position stood. Commissioner Surprenant then asked that the S&WB Internal Audit Charter passed in June of 2020 be made a part of the record.

Item #3b was a request from the Sewerage and Water Board to create new job classification of Environmental Enforcement Technician Supervisor. Robert Hagmann, Personnel Administrator over the Classification and Compensation Division, stated the intent of the classification is to provide a first line supervisor that reports to the manager. Two positions would be allocated. The position is non-exempt and it has a hiring rate of \$51,144. Yolanda Grinstead stated Sewerage and Water Board is in support of the request to create the position. Commissioner Surprenant motioned to approve the position. Commissioner Richardson seconded the motion and it was approved unanimously.

Item #3c was a request from Fire Union to address the Commission regarding back pay for promotion cases including Fire Captains and District Chiefs. Christina Carroll, Executive Counsel for the Commission, stated she would not be commenting on this item as she believed she is conflicted out. Louis Robein, attorney for the Fire Union, stated the backpay pursuant to the Achord decision has been issued to the Captains. There is a pending request to the Fire Department to produce an itemization of how it was calculated. William Goforth, representing the City Attorney's Office, stated the Finance Department is working on preparing the information. He noted that at this point no specific issues with the backpay have been raised. Mr. Robein then stated he is waiting for a determination on if the District Chiefs are entitled to back pay and if not, then why not. Mr. Goforth responded the department has determined that no back pay is owed to the District Chiefs because what they earned as Captains was actually more than they would have earned as District Chiefs. Mr. Robein asked for that determination to be issued in writing. Commissioner Moore then stated he was interested in the rate of pay, not the actual pay. Mr. Goforth responded that District Chiefs are exempt employees, so rate of pay is a fiction. Because they are ineligible for overtime, they are limited in the amount they can make. The Captains, even though their rate is lower, are eligible to earn overtime. Aaron Mischler, representing the Fire Union, stated that they earned that pay by working those hours. They deserve that difference in pay. They were wrongfully passed-over so they earned those days. Mr. Goforth responded that the Commission stated they should be promoted in May of 2016. They worked as Captains, so we have to go back and look and see what they would have earned had they been District Chiefs. It is inequitable to state they should earn more than what they have already been paid. Commissioner Moore stated if they were District Chiefs and still working the hours they worked, they would have made a lot more money. Mr. Goforth responded they would not have because they are not entitled to

overtime as District Chiefs. Mr. Hagmann stated under the law, overtime can be used as an offset. This is also a city practice. Oftentimes people get promoted to an exempt class and they can make more money in a non-exempt class. Mr. Hagmann noted he believes the issue the union has is that the employees would not have put in the hours they did if they had been rightfully promoted to District Chief. However, under the law and city practice that does not entitle them to any different compensation other than the difference between District Chief and what they made in overtime as a Captain. Mr. Robein requested something in writing showing the calculation including those for unscheduled hours. He contended that unscheduled overtime hours are a "reverse bonus" and therefore could not be used in backpay calculations. Mr. Goforth stated they already had their own records so he did not understand what was needed from the City. Mr. Robein responded they needed backpay information. Mr. Goforth offered provide Mr. Robein with what he needs. Mr. Goforth agreed to try to get the information to Mr. Robein in the next two weeks.

Stephanie Hennings, representing the Chief Administrative Office, then asked about the rules of quorum (sic) for the Commission interrupting a speaker. Commissioner Moore stated that the Commission can run the meeting as it sees prudent. Ms. Hennings responded that there is a difference in running the meeting and interrupting someone in the middle of speaking. Commissioner Moore responded that in order to run the meeting efficiently, it may be required. Ms. Carroll stated that the chair has wide discretion on how the meeting is run. The only rules of order are the ones the Commission adopts for itself.

Commissioner Richardson then motioned to defer the item to the next meeting. The motion was seconded by Commissioner Korn and it was approved unanimously.

Item #3d was a request from the Fire Union to address the Commission regarding a pay adjustment related to 2018 pay increase. Louis Robein, representing the Fire Union, stated there is a group of approximately thirty firefighters for whom the City has agreed to adjust back pay allotments and bring them to a full 10% pay increase. Mr. Robein stated he understands there are other affected classified employees in other departments. This is a fully executed agreement which requires both parties to appear before the Commission to move forward. Stephanie Hennings, representing the

Administration, stated the administration has begun conversations with the Civil Service staff regarding data for calculations.

Mr. Hagmann stated there were a number of pay changes in 2018 which resulted in a 10% adjustment for most classes. The minimum salaries were adjusted by 10% to get people closer to the midpoint which is considered a competitive salary. Fire is asking for a retroactive pay policy to give all firefighters a full 10%. Due to their tenure, these 30 firefighters were already at a higher step, which caused them to receive less than the full 10%. This occurred service-wide and not all employees received a 10% increase. You are being asked to recraft the pay policy and do it retroactively. Whatever is done would have to be done in a uniform basis. You would need to create a complex pay policy to do so. Ms. Hennings stated we are putting our efforts into moving this forward. Ms. Hudson clarified that staff was looking at adjusting the rate for all employees who did not receive a full 10% from the 2018 pay plan. She asked the Commission to defer the item until September. Commissioner Richardson motioned to defer the item to September's meeting. Commissioner Surprenant seconded the motion and it was approved unanimously.

Item #3e was a report on hazard pay practices in other jurisdictions for first responders who worked during the COVID-19 Pandemic. Robert Hagmann stated this report was compiled as the result of a previous request from the Fraternal Order of Police to be paid emergency pay at the time and a half rate. Mr. Hagmann stated staff looked at state-wide and regional data. He noted that state-wide most jurisdictions were not awarding additional pay. Regionally, approximately 50% of surveyed jurisdictions provided some incentive. He also noted there was pending federal legislation that may provide additional pay. He stated there was an existing Rule that could be used, but it would require approval of the administration. Stephanie Hennings stated that moving forward, it may benefit all parties to clarify and restructure the emergency pay rule which allows for a 5% pay increase for employees who work on emergencies when city hall is open.

Item #3f was a request for title changes, new classifications and hiring rates to address recruitment and retention of Civil Service Test Development staff. Robert Hagmann stated that staff is proposing a new dedicated series for test development and validation. There is a high demand for Industrial/Organizational Psychology and a reduction of university programs. Mr. Hagmann noted the proposed series also includes a special rate of pay of

15% for a PhD in Industrial Organizational Psychology. These positions are critical to continue the creation of public safety tests. Director Hudson stated the department had recently lost two staff members, so we have no one on staff currently to perform test development. Commissioner Richardson moved to approve the new classes and hiring rates. Commissioner Korn seconded the motion and it was approved unanimously.

Item #4 under Recruitment and Selection Matters was the approval of examination announcements 10254-10326. Commissioner Richardson moved to approve the announcements. Commissioner Surprenant seconded the motion and it was approved unanimously.

Item #4b was a request from the Fire Union to extend the expired Fire Captain's Eligible list for another two years based upon Rule V, Section 5.3. Ms. Carroll stated she was conflicted out and would not participate in this item. Mr. Robein stated that the Captain's list expired this past April 30th and the Commission is authorized to extend the list upon request. Shelly Stolp, Personnel Administrator over the Recruitment and Selection Division, stated that staff is opposed to the request because the list expired on April 30, 2019. The list was established in April of 2016, at that time the appointing authority approved the list for three years. The Commission must approve any extension over three years. Staff has never received a request to un-expire a list. Ms. Stolp noted her concerns regarding setting a precedent by doing so. Ms. Stolp suggested that provisional appointments could be used until a new list is established. Mr. Robein stated that the appointing authority supports the request. Ms. Stolp noted that if the list was extended, people who have not been able to apply since 2015 would be excluded from these permanent appointments. Commissioner Moore stated that there were some unprecedented issues that took place over the life of the list. William Goforth, representing the City Attorney's Office, noted that Chief McConnell has no objection to extending the list. Mr. Goforth noted that he understands staffs concern regarding setting a precedent to extend a list after it is expired. He noted that the Commission may want to consider that the list expired while we were in a state of emergency. Ms. Stolp stated that the list expired in April of 2019, and there was not a state of emergency at that time. Aaron Mischler stated there is no one who was not eligible to be tested back then who would be eligible today.

Director Hudson stated that the list died in April of 2019. Under the Commission's Rules it cannot be revived. She reiterated that there was no state of emergency in place at that time. We do not want to set the precedent of reviving lists that have been dead for over a year and a half. There are legal concerns that could arise out of doing so. Commissioner Surprenant asked if there was any attempt to extend the list before it expired in April of 2019. Director Hudson responded there was not. Mr. Mischler stated we were still in litigation at that point. Commissioner Surprenant asked if there was a legal barrier that prevented the department from asking for an extension at that time. Director Hudson responded there was not. Mr. Robein noted that matter was being litigated in 2018 and 2019 so he believes liberative prescription was suspended. Director Hudson asked if Mr. Robein could submit a brief on his argument. Mr. Goforth noted his objection to Mr. Robein's argument.

Commissioner Richardson motioned to defer the item to the September meeting. Commissioner Surprenant seconded the motion and it was approved unanimously.

Item #5 was the ratification of Public Integrity Bureau (PIB) 60 Day Extension Requests. Commissioner Surprenant called for public comment. There being none, Commissioner Surprenant motioned to approve the extensions. Commissioner Richardson seconded the motion and it passed unanimously.

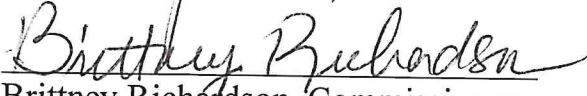
Item #6a under Rule Amendments was proposed Rule II, Section 4.22 permitting electronic signatures of the Civil Service Commissioners. Ms. Carroll stated the intent of the proposed Rule is to allow commissioners to sign orders electronically via Adobe Sign which includes a time and date stamp. She noted it would meet the standards of the Attorney General's opinion and the Louisiana Statute. Commissioner Surprenant moved for approval. Commissioner Korn seconded the motioned and it was approved unanimously.

Item #7 under Communications was the Director's report. This item was deferred.

Commissioner Korn moved for adjournment at 5:06 p.m. The motion was seconded by Commissioner Richardson and approved unanimously.



Clifton Moore, Jr., Vice Chairperson



Brittney Richardson, Commissioner



Mark Surprenant, Commissioner



John Korn, Commissioner