

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
MONDAY, MAY 16, 2022

The regular monthly meeting of the City Civil Service Commission was held on Monday, May 16, 2022 in City Council Chambers, 1300 Perdido Street, New Orleans, LA 70112. Ms. Doddie Smith, Personnel Administrator of the Management Services Division, called the roll. Present were Chairperson Brittney Richardson, Vice-Chairperson John Korn, and Commissioner Ruth White Davis. Commissioner Richardson convened the meeting at 10:17 a.m. The Commission then proceeded with the docket. At 10:30 a.m. on the motion of Commissioner Davis and the second of Commissioner Korn, the Commission voted unanimously to go into executive session. At 11:09 a.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from the March 11, 2022 and April 11, 2022 meetings. Commissioner Davis moved to approve the minutes. The motion was seconded by Commissioner Korn and approved unanimously.

Item #2 was the ratification of Public Integrity Bureau (PIB) extension requests. Commissioner Richardson called for public comment. There being none, Commissioner Korn motioned to approve the extension requests. Commissioner Davis seconded the motion, and it was approved unanimously.

Item #3a under Rule Amendments was an amendment to Rule V Section 8.1 (d) to update job classifications on the list of non-competitive classifications. Personnel Director Amy Trepagnier stated the amendment brings the listing of classification in the rule into alignment with the Pay Plan. Several job classifications were retitled, eliminated, or consolidated as part of the \$15 an hour Pay Plan. Other positions have also changed over time. She noted staff had not received any public feedback since the amendment was introduced last month. Commissioner Davis motioned to approve the Rule amendment. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #4 was a notice from the Chief Administrative Office regarding Merit Pay for 2022. Director Trepagnier stated an official notice regarding the administration's ability to fund merit pay had not yet been received from the Chief Administrative Office. She asked for deferral since there was not a representative from the Administration at the meeting to comment. Commissioner Davis motioned for

deferral. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #5a under Classification and Compensation Matters was a request from Sewerage and Water Board (S&WB) to create two additional unclassified Deputy General Superintendents. Robert Haggmann, Personnel Administrator over the Classification and Compensation Division, stated S&WB currently has one Deputy General Superintendent. The request would break the position into three positions. Staff believes the request meets the criteria for the creation of additional unclassified positions pursuant to Rule III Section 7.1 (4). The position is the equivalent to a deputy executive director of a city board or is equivalent in rank, duties, and responsibilities. The General Superintendent enjoys a unique position in S&WB's organization structure at the level of Executive Director due to its creation under Louisiana RS 33:4075. These positions are authorized in writing to act in the capacity of the General Superintendent in his/her absence. The positions would be split to oversee major segments of S&WB including engineering and services, operations, and power and pumping. The proposed compensation is estimated to be \$150,000 to \$180,000. Commissioner Korn moved for approval of the new unclassified positions. The motion was seconded by Commissioner Davis and approved unanimously.

Item #5b was a request from Sewerage and Water Board for hiring rates for Engineering job classifications. Robert Haggmann stated the request is to upgrade the salaries for the current professional and paraprofessional engineering classifications in order to keep up with market conditions. Director Trepagnier noted the last time engineering salaries were adjusted was in 2017. The ability of S&WB to recruit and retain engineers has diminished over time. There has also been a great deal of recent turnover in engineering positions. Ron Spooner, the interim General Superintendent of S&WB, stated typically there is a 15% to 25% vacancy rate for engineers at S&WB. S&WB has submitted engineering requisitions to Civil Service and in some cases has not received any qualified applicants. We have to stay somewhat competitive with the private sector to retain employees. Commissioner Korn moved for approval of the hiring rates. The motion was seconded by Commissioner Davis and approved unanimously.

Item #5c was a request from Sewerage and Water Board for an exception to Rule IV, Section 9.7(a) relative to individuals exceeding overtime limits for 2022. Mr. Haggmann stated S&WB anticipated that six individuals in Networks will exceed the overtime threshold in Rule IV by 300 hours. One additional employee in Facilities Maintenance will exceed the threshold by 800 hours to perform emergency repairs.

Staff is recommending approval and would like to work with S&WB to determine if additional hires could curtail some of the overtime. Mr. Spooner stated S&WB is having a difficult time with experienced personnel, especially in performing specialized tasks relative to aging infrastructure. S&WB is submitting the projected overtime request in compliance with the Civil Service Rules. Director Trepagnier thanked S&WB for making the change in their process to request prospective approval. Commissioner Richardson encouraged open dialogue between S&WB and Civil Service. Commissioner Davis moved for approval of the overtime. The motion was seconded by Commissioner Korn and approved unanimously.

Item #5d was a request from the New Orleans Firefighters Association Local 632 for military leave benefits for Alan Favallora and Tim Thomas. Paula Bruner, representing the Firefighters Association stated Alan Favallora previously received full military leave benefits which included uniform pay, full millage, accrued annual leave, holiday pay, and accrued sick leave. In December of 2020 he was denied uniform pay, shorted millage, received annual leave, paid partial holiday pay, and only received 24 hours of sick leave. She stated per Civil Service Rules, upon reinstatement from active duty, and subject to the provisions of Rule VIII, Section 8, an employee on military leave without pay shall be eligible to accrue sick leave at the rate formerly earned. She noted the term accrued is crucial because it shows the proper treatment is as though the employee is continuously employed while on military leave. She stated Commissioner Surprenant had asked about past practice at a prior meeting, but that staff's findings were inconclusive. What is important is that Mr. Favallora has received military pay in the past. To deny him military leave would be adverse treatment. The City may argue there is double dipping, but the employee is not drawing salary, these are military leave benefits they would accrue if they were continuously employed.

Eizabeth Robins, representing the Law Department, stated Fire Superintendent Roman Nelson had posed this question to Director Trepagnier and Ms. Robins in January of last year regarding if employees who were out on military orders were being improperly denied holiday pay that occurred during their period of absence. Ms. Robins noted she had 29 years of military service, mostly as a reservist. The federal focus is that there be no adverse action while someone is doing their military service. You have a right to continued employment for up to five years, but USERRA does not require your employer to pay you during that period of absence. You are being paid by the military. Regarding holiday pay, the Rules say all persons in leave without pay status are treated the same. Pursuant to the Rule, it does not matter why a person is in leave without pay status. The person is being paid by the military and asking to be paid for a holiday when they were not working for you.

USERRA and the Civil Service Rules do not require you to treat individuals on military leave differently. What Ms. Bruner referenced in the statute is talking about adverse treatment. There is no adverse treatment. To give people on military leave holiday pay would require a change to the Rules. She noted the current holiday pay rule which treats everyone the same is the appropriate rule. Ms. Robins noted employees receive two weeks of pay while on military leave. If that two weeks includes a holiday, they would receive the holiday pay. What they are asking for is after that pay is exhausted to pay the holiday pay while they are out and being paid by the military. The rule does not allow for those holidays to be paid. Doing so would be treating them more favorably than other classified personnel also out on leave without pay.

Commissioner Richardson stated she did not understand the ask if the policy is the same for all employees. She asked why we are creating this exception. Ms. Bruner responded it has been paid in the past. Commissioner Richardson responded there are no rules that say it has been paid. Ms. Bruner stated based on the Rules subject to Rule VIII, Section 8, an employee on military leave without pay shall be eligible to accrue sick and annual leave at the rate formerly earned. Ms. Bruner noted millage and uniform allowance are not covered by the Civil Service Rules.

Aaron Michler, representing the fire union, stated uniform allowance is collectively bargained. Mr. Favalora should have been paid uniform allowance and millage. Ms. Bruner referenced La. R.S. 29:405. Commissioner Richardson noted the Statute had been submitted to the Commission just prior to the meeting. Ms. Bruner then cited the Military Service Relief Act which says the employee shall continue to accrue sick leave, annual leave, vacation leave, military leave, holiday pay, and any paid leave, offered by the employer, pursuant to the employer's stated leave of absence policy which would have accrued if continuously employed. Director Trepagnier stated the City's stated leave of absence policy is that employees who are on leave without pay do not receive those benefits. Commissioner Richardson stated the Commission is looking at City law. Director Trepagnier noted the City's stated policy on holiday pay is that employees on leave without pay before or after a holiday are not eligible for holiday pay. Commissioner Richardson stated we are definitely in support of our military personnel, but we have to treat them equitably with all employees. It would create an unfair action to consider them differently. Ms. Bruner asked if state law applies here. Commissioner Richardson responded we are going by Civil Service Rules. Commissioner Korn stated you are asking for an exception because of military service that would create inequity with other employees. If you want to change the rule going forward that is something we could consider, but at this point there is no policy to pay these benefits while people are on

leave without pay. Commissioner Korn moved to deny the request. The motion was seconded by Commissioner Davis and approved unanimously.

Item #5e was a request from the New Orleans Firefighters Association Local 632 for equity adjustments for Firefighters relative to the 2018 Pay Plan implementation. Louis Robein, representing the Fire union, stated the court held the Commission had primary jurisdiction with respect to the implementation of the Letter of Intent (LOI). Joshua Zuckerman, representing the administration, stated the City believes this is a gratuitous donation. The City would like to get an Attorney General's opinion before it makes any financial commitments. Mr. Robein stated the agreement says the City wants to do it. Commissioner Richardson stated we need to make sure this is legal and not gratuitous. The intent of the pay plan at that time was to bring people closer to market, it was not to give money to people who were close to or already at market. Mr. Zuckerman stated the City is concerned that what is proposed is not legal and that is why it has not been done. Mr. Robein read from the LOI which stated the City would seek necessary approval for the increases. He stated there is nothing in the Commission's Rules that says you can't do this. This is a collective bargaining agreement. The City has agreed to do this. Commissioner Richardson noted the request is for some people who are no longer in the system. Additionally, the individuals were already at or close to market; that was the intent of the rule, not to give them an additional amount. Mr. Robein stated the City agreed to that. Mr. Mischler stated they were not at market. There was an eight step increase. Some only received a six-step increase. They were two steps ahead based on being in their rank way ahead of a pay adjustment. They earned those two steps ahead. Giving them six steps and everyone else eight is inequitable. Mr. Hagmann stated you are asking to recreate history. There was a pay policy in place that guaranteed a person a 1.25% increase even though the hiring rates went up by eight steps. The lower classifications were guaranteed a 5% increase. Essentially you would be taking everyone who did not receive the fullness of the increase and give them a comparable benefit. You would have to define how you recreate history and you would be looking at several million dollars.

Ms. Robins stated the letter of intent says the City intends to do this, but we are not the final authority. Upon further research, it is retroactive and singles out some people. This was not an across-the-board raise. People whose salary was already higher did not receive as big of an increase. She also noted this is not a collective bargaining agreement. It is a Letter of Intent. Mr. Robein stated the whereases in the recitals clearly recognize Local 632 as the bargaining agent. In the agreement the parties agree to do certain things. It is signed by Mr. Mischler, the Mayor and the City Attorney. Commissioner Richardson stated this is a Letter of Intent. The

Commission has to determine if it is amenable to our rules and guidelines. Mr. Robein stated the parties acknowledge the City's ability to implement the pay increases described are subject to the Civil Service Rules which may prohibit or limit the intended pay increases and may require authorization by the Commission, City Council or both. The questions is do your rules prohibit it and I would say they do not. Commissioner Richardson responded if it is gratuitous, they do. You are asking for carving out specific individuals which is problematic. We are also talking about people who have retired. Once you have retired you are not entitled to anything unless there was some adverse action while you were employed. Mr. Robein stated in Monroe the firefighters receive a retroactive bonus of 10 paid holidays, but it is okay because it is collectively bargained. Commissioner Richardson asked Mr. Robein if he is asking the Commission to get an Attorney General's opinion. Mr. Robein responded we do not oppose it. Ms. Carroll stated the Attorney General's staff has told me they will not opine until all the appeals have run on the litigation in Civil District Court. If the Firefighters intend to appeal, that will further delay it. Mr. Robein stated he does not intend to appeal or seek a writ. He stated he anticipates a favorable opinion with respect to police retention pay. Mr. Zuckerman stated in this case what we are talking about is purely retroactive based on work performed in the past. The current pending Attorney General opinion we are waiting on is for pay that will happen in the future. Those are distinct things. Would feel more comfortable having the AG opine on both things.

Mr. Mischler stated he adamantly disagrees that this is not collectively bargained. The reason this happened was based on Mardi Gras when my members chose not to work overtime. We boycotted overtime and details because they were working us to death. That is why we had to come to the table and collectively bargain. To deny this would be disastrous. Commissioner Richardson stated we cannot do this right now when it is unclear if it is gratuitous, the City is not in agreement, and it includes retirees. Mr. Robein stated an MOU is an agreement. Commissioner Richardson stated we can defer this while you go back to the City for clarity regarding the letter of intent or we can vote. Commissioner Korn asked for the opinion of the Commission's Executive Council. Ms. Carroll stated the Commission is not a party to the agreement. Her opinion is the retroactive payment would be a prohibited donation. The fourteen retired employees on the list create a problem regarding if there is a governmental purpose. If they are taken out, that changes. The AG has said that unearned compensation for past services rendered is gratuitous. Since the AG was unable to give us an opinion because of the litigation that was filed, my best analysis of the law is that the AG would say it is a prohibited donation. Mr. Robein stated there is the series of Monroe cases where retroactivity is allowed annually because it is collectively bargained to avoid labor strife. Commissioner Davis

motioned to defer the decision based on the need for clarity between the City and firefighters and on if a decision can be made by the AG. Commissioner Korn seconded the motion to defer, and it was approved unanimously.

Item #5f was a proposed hiring rate for Crime Laboratory Director. Mr. Hagmann stated that despite recruitment efforts, NOPD has not been able to identify a qualified candidate to accept this position. The proposal would increase the pay for this position by approximately 20% from \$100,030 to \$122,025. The applicant pool is very small. The availability for FBI training is limited and there is a high demand for these positions at this time. Director Trepagnier noted the position has been open to applications for over a year. Commissioner Korn moved for approval of the hiring rate. The motion was seconded by Commissioner Davis and approved unanimously.

Item #5g was a proposed new Automotive Mechanic job series. Mr. Hagmann stated this new series starts with entry level work and prepares people to perform more advanced work. Brian Firstly, interim Assistant Chief Administrative Officer over Fleet, stated the Equipment Maintenance Division has lost several mechanics over the last few years to the private sector. We are having difficulty recruiting new ones. We are trying to bring salaries up to a reasonable level to recruit. Other employers are offering sign on bonuses and salary increases. There are currently seventeen vacancies. We are opening a new facility so we will really need to beef up the staff to do so. We have an old fleet that needs lots of maintenance. We service over 2600 pieces of equipment from lawnmowers to dump trucks. Commissioner Davis asked about the ability to contract out some of this work. Mr. Firstly responded there are not many local vendors and those vendors are having difficulty finding employees. It is a nationwide issue because young people are not going into the trades. Commissioner Korn moved for approval proposed job series. The motion was seconded by Commissioner Davis and approved unanimously.

Item #5h was a request from New Orleans Public Library to create the new classification of Library Public Services Administrator. Mr. Hagmann stated this position will report to the Library Director and be responsible for all public services provided by the library as well as supervising all regional branch managers and those providing programming services. The hiring rate will be \$92,845. This is a key position to assist the Library with meeting its objectives. 90-95% of the library employees would work under this position. Commissioner Davis moved for approval of the new classification. The motion was seconded by Commissioner Korn and approved unanimously.

Item #5i was a request from the Health Department for a new classification of Dentist Supervisor. Mr. Hagmann stated the creation of this position is needed due to growing size and scope of the Healthcare for the Homeless dental program. This position will free up the current Healthcare for the Homeless Administrator from performing the daily oversight of the dental program. The position provides for a 7.5% gap between this position and the regular dental providers. Commissioner Korn moved for approval of the new classification. The motion was seconded by Commissioner Davis and approved unanimously.

Item #6a under Recruitment and Selection Matters was the approval of examination announcements 10598-10630. Commissioner Davis motioned to accept the announcements. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #6b was a request to extend the Police Lieutenant's eligible list for an additional three months. Shelly Stolp, Personnel Administrator over the Recruitment and Selection Division, stated staff will be overseeing the administration of the new exam in July so we are asking for a three-month extension of the current eligible list until a new list can be created. This will allow NOPD to continue to use the existing eligible list to make probationary appointments until the new list is issued. Commissioner Davis moved for approval of the extension. The motion was seconded by Commissioner Korn and approved unanimously.

Item #7 was a request for investigation from the Police Association of New Orleans relative to the disciplinary status of Police Officer James Cunningham. Elizabeth Robins, representing the Law Department, stated the current petition for investigation satisfies what the Law Department has been seeking for several months. Her understanding is that the next step would be for the Commission to order an investigation. She stated the City would prefer for staff to investigate the matter first and then issue a report as to their finding and then submit it before a hearing officer. Commissioner Korn moved for staff investigate and if needed move to hearing. The motion was seconded by Commissioner Davis and approved unanimously.

Item #8 was a request from Ashanti Ross relative to the designation of her separation reason from NOPD. Ms. Ross stated she had worked as a Police Technician from 2008 to 2012. She stated that in 2012 while she was working in Central Evidence and Processing, she was questioned regarding a missing bag of marijuana and a missing piece of crack. She stated she had been a victim of a scam and as a result NOPD had also been contacted by a store who reported she had cashed a bad check

while in uniform. Ms. Ross stated she was also questioned regarding that incident. She stated the investigators asked her to resign and told her she would be fired eventually. Her attorney advised her not to sign the resignation form, but she did so anyway. Her resignation was given the designation of resigned under investigation. That designation is still following her ten years later. She applied for and began work at a correctional facility but was terminated a few days later due to the resignation under investigation. She has also applied at Jefferson Parish and Tulane Police Department.

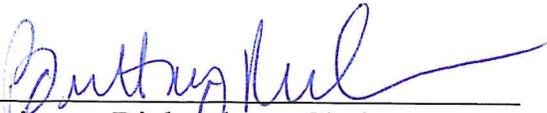
Shontee Smothers, representing NOPD, stated NOPD Policy 52.1 paragraph 91 stated the designation of Resigned/Retired under investigation (RUI) is rendered if a person resigns or retires prior to the completion of an investigation or before disciplinary actions are taken. Commissioner Richardson asked if the case was ever closed or concluded. Ms. Smothers responded the case will be fully investigated, but the only designation that can be made is RUI because the person is no longer an employee, so they cannot be disciplined. There is a designation of either sustained/not sustained, exonerated, or unfounded/RUI. Commissioner Richardson asked if the designation was sustained or not sustained. Captain Simon Hargrove stated that in one investigation the allegations had been sustained, but there had not been a hearing. Had a hearing been held, the likely discipline would have been termination. In the other, the investigation did not go forward because the employee had removed themselves from the department. Commissioner Davis asked exactly what information follows the employee. Captain Hargrove stated the RUI designation is provided. The former employee can also sign a form for the department to release additional information. Commissioner Davis asked if the designation was ever removed. Captain Hargrove responded only in instances when a person returns to the department and subsequently serves the disciplinary penalty. Commissioner Richardson stated it is a difficult issue because you don't want to contribute to negligent hiring, but the person is also trying to move on with their life. Captain Hargrove stated in this case the allegation was sustained but the hearing was not held because she was no longer an employee. Had the hearing gone forward unless there was something different that she brought out, it would have resulted in termination.

Ms. Ross stated she just wants to be able to apply for an occupation in law enforcement. She wants the designation removed because she didn't do anything wrong. Commissioner Richardson asked if that would make a person eligible for rehire. Captain Hargrove stated it does not necessarily prevent them, the Superintendent would review the request. Ms. Robins stated she had previously handled a case where an investigation was completed, and the employee retired prior

to the hearing. An agreement was signed by all parties that he would retire under investigation. It is a designation that NOPD uses to annotate for themselves that an investigation was being performed. In that case the employee later asked for Civil Service to remove the designation and Civil Service said that is a police designation. The RUI is something NOPD marks to show they could not complete the investigation because the person left. In this case the problem is that if you felt you were forced to resign there should have been an appeal at that time. The Commission has consistently heard those appeals as long as they were done within thirty days of signing the document. The employee did not appeal when they had the opportunity to do so. There is a prescriptive problem now. Ms. Ross stated that she did appeal. Ms. Robins stated she would not object to looking back at the record to see what had been filed with Civil Service and when it had been filed. Ms. Robins stated can get back to the Commission with the full record at the July meeting. Commissioner Richardson stated the item would be taken up after the June meeting once the Commission has more information.

Item #9 was a report on 2021 Performance Evaluation Completion. Director Trepagnier stated the information is for the 2021 observation year. The ratings were due on April 1st. Approximately 48% of employees who were required to receive an evaluation had been rated. Of the employees rated, 45% had received ratings of “exceeds expectations”, 55% had been rated as “meets expectations”, and 1% had received ratings of “does not meet expectations”. The 2021 ratings received were consistent with the 2020 ratings of 42.5% having received “exceeds expectations”, 56% “meets expectations”, and 1.58% receiving “does not meet expectations”. Director Trepagnier stated some department like Fire, Library, Parks and Parkways, and Aviation consistently ensure that all employee complete the evaluations. They assign a point person to ensure they are done. Other departments do not prioritize completion at all. Hopefully the upcoming Human Resources consolidation will lead to a better response rate next year. Numerous reminders regarding completion were sent out to the departments. She noted the lack of funding for the merit pay tied to the ratings is a contributing factor. The system includes goal setting, so some supervisors are reluctant to do the work of creating the goals if there is no direct tie to pay. We want to emphasize that even if the merit pay is not funded, the evaluations are a very important tool to let employees know where they stand and to help them to be effective at their job.

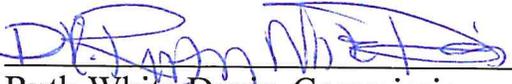
Commissioner Davis moved for adjournment at 1:19 p.m. The motion was seconded by Commissioner Korn and approved unanimously.



Brittney Richardson, Chairperson



John Korn, Vice-Chairperson



Ruth White Davis, Commissioner