

CIVIL SERVICE COMMISSION
SPECIAL MEETING
THURSDAY, NOVEMBER 3, 2022

A special meeting of the City Civil Service Commission was held on Thursday, November 3, 2022 at the Civil Service Department at 1340 Poydras Street. Ms. Doddie Smith, Personnel Administrator over Management Services, called the roll. Present were Chairperson Brittney Richardson, Vice-Chairperson John Korn, Commissioner Clifton Moore, Jr., Commissioner Mark Surprenant, and Commissioner Ruth White Davis. Commissioner Richardson convened the meeting at 1:14 pm. The Commission then proceeded with the docket. At 1:16 p.m. on the motion of Commissioner Surprenant and the second of Commissioner Davis, the Commission voted unanimously to go into executive session. At 1:46 p.m. the Commission completed its executive session and proceeded with the business portion of the meeting

Item #1 was the minutes for October 17, 2022. This item was deferred.

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 Surprenant seconded the motion, and it was approved unanimously.

Item #3a under Rule amendments was an amendment to Rule IV Section 2.5 Merit Pay and Rule XI Section 1.6(e) Performance Evaluations. Personnel Director Amy Trepagnier stated the proposed amendment to these rules was introduced at the August Commission meeting. The changes include the replacement of percentage pay increases with lump sums to lessen the budgetary impact while rewarding employees who receive ratings of exceeds expectations with a \$2,000 lump sum. It removes the ability of the administration to certify annually that funding for merit pay is not available. She noted that at the last Commission meeting, the administration proposed some amendments in lieu of removing that provision. Director Trepagnier stated staff had requested information regarding if the administration's proposed changes had been applied, would merit pay have been paid out over the last few years. She reported that information had not been received. Part of the impetus for these proposed changes is that merit pay has not been funded since 2017. Merit pay and performance evaluations are an essential component of a high performing workforce in City government. Director Trepagnier noted that a letter had been received from Council President Helena Moreno in support of merit-based pay and performance evaluations.

Commissioner Richardson stated merit-based pay is a wonderful way to start supporting the recruitment and retention of City employees. We must attract and retain talent and incentivize excellent performance. Commissioner Surprenant stated he supports what has been said. This sends a message to those people who are outstanding in City government that their work is valued. It sends the wrong message not to fund merit-based pay. Commissioner Surprenant motioned to approve the amendments as submitted by Civil Service staff. Commissioner Korn seconded the motion, and it was approved unanimously.

items #4a to #4g were discussed together, Gilbert Montañó, Chief Administrative Officer, stated this is an incentive package to address the recruitment of new recruits and lateral hires accompanied with a retention piece for longstanding officers.

John Casbon, founder of the New Orleans Police and Justice Foundation, stated he is representing the business community. He stated we are in dire need. He is afraid that we will lose citizens and companies if we do not rise to the occasion and do what the Mayor is asking for. The quality of life in New Orleans must be restored immediately. Economic development and policing are one in the same. This is a chance to build a department where people can build careers. One of the quickest ways to rebuild this is to get people back who left as laterals.

Shaun Ferguson, Superintendent of Police, stated we must invest in retaining who we have right now. The bottom line is we want a safer city. This profession has been under such scrutiny in recent years that people have lost interest in it. This is a noble profession. We need to invest in it and build this team up. We are competing for people nationally. This is a robust plan that puts us at a level higher than other agencies in the country. He asked the Commission to support the proposals.

Bill Salmeron, Chief of EMS, stated the safety of EMS employees is dependent upon the police. Staffing shortages at NOPD delay the ability of ambulances to respond and treat patients. Medics are frequently attacked on the team. This has gotten worse over recent years. We are teaching healthcare providers how to physically thwart an attack. Not having enough police officers will cost lives. He asked the Commission to support the proposals.

Mr. Casbon indicated that the Business Council of New Orleans had sent a letter of endorsement of the proposal to the Commission.

Roman Nelson, Superintendent of Fire, stated NOFD faces the same issues as EMS with medical calls. Delays caused by waiting for officers to respond keeps fire

companies out of service. The administration and police department have come up with a sound option to help with retention. Give it a try and if it does not work it can be adjusted.

Mr. Montañó stated his greatest fear is that we maintain the status quo and do nothing. There is an opportunity to rebuild the department from within. Based on the current staffing levels we could go as low as 700 officers in 2025. We believe the incentive piece will change the trajectory of applications. It is hard to causally say that something does or does not work. If we have the one-time funding to do it, we should try it. This is a temporary fix to a longer-term issue. The longer-term issues are predictable cost of living raises, housing allowance, and educational assistance. This is happening in cities all over the country right now. We are being as bold as we can to try to get officers. We are proposing a 5% raise for every officer for the next three years. We have a three-year plan due to the mix of funding sources. There are American Rescue Plan Act funds of almost \$400 million, \$200 million of unused fund balance, and reoccurring dollars. In the fourth year we should be able to determine what that long term aspect looks like which is the recurring raise and cost of living adjustments that most places have. New Orleans is financially strong. We need to manage those resources over the next period of time to maintain that future opportunity for long term recurring raises. He noted the administration is also proposing free healthcare for Police, Fire, and EMS. This does not fall under the Commission.

Kevin Hill, Chief Deputy City Attorney, stated the initial proposal included a \$20,000 lump sum payment to new hires after one year of service. The Commission had instructed the administration to work with Civil Service staff and the Commission's Executive Counsel to come up with a proposal everyone could agree upon. The City worked to understand the uniformity concerns raised by the Civil Service staff. Alternative proposals were presented. The Law Department has conducted its own research and review of cases. We understand there is an unreadiness by staff to support differences within classifications that are not strictly merit based. We believe the overall package falls within the acceptable parameters of the Louisiana Constitution. Uniformity does not mean that individuals in the same class are required to make the same amount, but rather it is within the same pay ranges for those in that classification. There is significant case law which supports the Commission's authority to make decisions that may not be rooted in the law the attorney general has opined on but the courts are reluctant to overturn valid City goals and objectives to satisfy what we believe is a public safety emergency. Absent something definitively telling the Commission it cannot pass this incentive package, that it clearly violates the constitution, we think we can get past it.

Commissioner Richardson asked Director Trepagnier to define uniformity and to explain staff's concerns regarding uniformity. Director Trepagnier stated uniform pay does not mean that everyone is paid the same amount. There are permissible differences in pay for things like merit, additional education, additional certifications, or longevity. The problem here is that no rational basis has been provided to pay employees who were hired two years ago less than those who will be hired next week. Christina Carrol, Executive Council for the Commission, noted the difference in pay cannot be merely for a rational basis, the difference in pay must be merit based.

William Goforth, representing the Law Department, stated the research they have done shows that merit-based is not a requirement for a uniform pay plan. A uniform pay plan is part of the merit system, and the purpose of the merit system is to prevent political favoritism. That is different from merit-based appointments and promotions. It is not the same requirement. He stated there are two cases under which differences in pay were upheld on non-merit-based reasons. In one case, employees received a raise purely for the purpose of bringing their pay above that of their subordinate. Others in the job classification who were not making less than their subordinate did not receive a raise. That was not merit based but there was legitimate governmental purpose of doing so based on the compression issue. Mr. Goforth noted another case in which the courts upheld one group of Fire District Chiefs receiving an increase and others in the class not receiving the raises because they were out on disability leave. Non-merit-based reasons are acceptable for legitimate governmental purposes. What we have proposed is designed to stay within the pay schedule that has been established. In no year are the incentives going to take the recruits or officers outside the maximum range of pay for their classification. They will not make more than a classification that is higher than their own classification. We have demonstrated that the governmental purpose here is to use these economic incentives to bring in recruits to build our police force to the level that is needed for public safety.

Commissioner Korn stated one of the issues is that new hires will be paid more than people who are doing the same work and were hired a year before them. For three years in a row these employees with more experience will average about \$5,000 a year less, which is not good for morale. Commissioner Korn asked how that meets a uniform pay requirement. Mr. Goforth responded that is not what the Constitution requires. The Constitution requires a schedule of pay that avoids political favoritism. This is short term. They will not be making more than more tenured officers in perpetuity. The needs of the community are what justifies this. The cases say that

is acceptable. Commissioner Surprenant noted that one of the cases Mr. Goforth is relying on is the Rameriz case and that his position is that you can have non-merit-based raises. Mr. Goforth stated you can have differences in pay within a classification that are not merit based. In this case it is based on the significant need to recruit new people. Commissioner Surprenant asked Mr. Goforth how we would address the statement from the court in the Rameriz case that says that uniformity does prohibit the pay plan from making non-merit distinctions between members of the same class. Mr. Goforth responded that case took into account that the State Civil Service Commission had its own rules against non-merit discrimination. Mr. Goforth stated there is a difference between raises and differences in pay.

Commissioner Surprenant stated we are all looking for the same thing, but he is concerned about the issue with recruits potentially making more money than people who are already on board. We are all about recruitment and retention. He asked why the City cannot tweak the proposals to include a provision so that no recruit during the three years of the program is going to make more money than a police officer who is presently employed. That would take care of the uniformity issue. We are all in favor of doing everything we can to encourage recruitment and retention. Mr. Goforth stated he believes the plan already does so. This has been planned so that a recruit never makes more than a police officer. Director Trepagnier noted they are only recruits for nine months and then they are promoted to the rank of Police Officer. Commissioner Surprenant stated that once they finish the nine months then you have a problem. He asked why should we have our present officers at a potential disadvantage economically. That would send a bad message to the existing officers as opposed to a positive message that we can all get behind.

Mr. Montañño responded that it boils down to a financial question. If we could bring everyone up to these levels, we would do it across the entire city. We must stagger how we are doing this. It is not just money, it is vehicles, facilities, and uniforms. It is all of these other pieces, not just that final paycheck. Where we are right now in not getting applicants in is the most dire we have ever seen it. This is just a piece of a larger solution.

Commissioner Korn noted the administration of the plan will be difficult, but the Civil Service Department is committed to making it happen. We are talking \$5000 to bring current Police Officers up to the pay of new recruits to avoid these pay equity problems. He asked how many police officers there are, not including senior police officers and above. Chief Ferguson stated that there are 156 officers. Commissioner Korn said I know we have that much in one time money. Commissioner Davis noted she is supportive. We live in New Orleans too and we

want to be safe. We are on the same page, so how do we get there. This is about recruitment, but also retention. She asked who has spoken to the officer already on the ground about how that officer feels about new recruits making more than them. Commissioner Korn stated mechanically it is a \$5k difference for 156 officers for three years. This seems well within the City's ability to fund. Commissioner Surprenant stated if you are the City, do you want to walk out without part of the plan due to not meeting uniformity or do you want to address it so we can all be on the same page and make more of an impact on our community. Mr. Montañó stated he stands ready to work with whomever and however to make this right. If this would cost less than \$800,000 per year for three years, the City can do this and would like to get the language in the proposals fixed in this meeting. Commissioner Surprenant motioned to briefly adjourn so that an amendment could be drafted. Commissioner Moore seconded the motion, and it was approved by all.

At 3:19 pm the Commission returned from its a recess following a motion to do so from Commissioner Korn, seconded by Commissioner Surprenant and approved by all.

Director Trepagnier stated Mr. Montañó's staff has drafted language that Civil Service staff believes satisfies the uniform pay provisions of Article X. Staff reserves the right to come back together to make any tweaks necessary since this was drafted on the spot. The provision provides for all employees in the classification of Police Officer to receive payments that mirror those already proposed for those newly hired or laterally transferred. The Commission then voted on each of the individual proposals.

Item #4a under Classification and Compensation Matters was a request from the Administration to increase the hiring rates for commissioned Police Department job classifications by 5% effective the first full pay period in 2024. Director Trepagnier noted this proposal replaces the 2.5% increase previously approved by the Commission. Commissioner Korn motioned to approve the request. The motion was seconded by Commissioner Surprenant and approved unanimously.

Item #4b was a request from the Administration to increase the hiring rates for commissioned Police Department job classifications by 5% effective the first full pay period in 2025. Director Trepagnier noted this proposal replaces the 2.5% increase previously approved by the Commission. Commissioner Surprenant motioned to approve the request. The motion was seconded by Commissioner Moore and approved unanimously.

Item #4c was a request from the Administration to amend the Special Rate of Pay for Police Retention to provide for a lump sum \$10,000 retention payment for current commissioned Police Department employees if they remain employed with NOPD through October 21, 2025. Mr. Montañó stated there is currently a recruit class that started on August 29th which we would like to benefit from these same opportunities. Commissioner Surprenant motioned to approve the request with the August 29th effective date. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #4 d was a request from the Administration to amend the Special Rate of Pay for Police Retention to provide for a lump sum \$10,000 retention payment for commissioned Police Department employees hired between October 21, 2022 and October 21, 2024 if they remain employed with NOPD for three years after completion of the formalized training program conducted by NOPD. Director Trepagnier noted the new effective date for this proposal would also be August 29, 2022. Commissioner Korn motioned to approve the request. The motion was seconded by Commissioner Davis and approved unanimously.

Item #4e was a request from the Administration for a new special rate of pay to provide for additional pay equivalent to the supplemental pay established under state law for employees in the classes of Police Recruit and Police Officer who are hired between October 21, 2022 and October 21, 2024. Director Trepagnier noted the new effective date for this proposal would also be August 29, 2022. Commissioner Moore motioned to approve the request. The motion was seconded by Commissioner Davis and approved unanimously.

Item #4f was a request from the Administration to amend the Special Rate of Pay for Police Retention to provide for retention payments at the completion of nine months, two years, and three years of service for individuals hired as Police Recruits between October 21, 2022 and October 21, 2024. Director Trepagnier noted the new effective date for this proposal would also be August 29, 2022. Commissioner Surprenant motioned to approve the request. The motion was seconded by Commissioner Korn and approved unanimously.

Commissioner Richardson briefly left the meeting.

Item #4g was a request from the Administration to amend the Special Rate of Pay for police retention to provide for retention payments at the completion of nine months, two years, three years, and four years of service for individuals hired as lateral transfers or reinstated officers between October 21, 2022 and October 21,

2024. Director Trepagnier stated there was an amendment to the proposal which reads, "Individuals in the classification of Police Officer and who are not eligible for payments under subparagraph three or five this section shall receive retention payment of \$5,000 at the last pay period of each fiscal year in which payments under subparagraph three or five of this section are made. Payments must be earned while the individual is in the classification of Police Officer."

Commissioner Surprenant motioned to approve the request. The motion was seconded by Commissioner Moore and approved by all commissioners present. Mr. Montañio thanked the Commission for its support.

Commissioner Richardson returned to the meeting.

Item #4h was a request from the Firefighters Association Local 632 for equity adjustments for Firefighters relative to the 2018 Pay Plan implementation. Louis Robein, representing the Local 632, indicated that a memorandum of understanding had been signed by the City and most provisions with the exception of this one have been honored. At this point we are only talking about backpay. About one half of the thirty affected parties have since retired. It is not unlawful, and it does not violate the uniform pay plan. It is to be applied to all City employees. We had an agreement, and the agreement should be complied with. There is no statutory or constitutional impediment to applying this agreement. Commissioner Surprenant stated there is no question there was an agreement. An important part of this is just because the City and the Union agreed to something, that does not mean the Commission automatically approves of it. He asked why the City and union did not contact the Civil Service Department when this was being negotiated so that we would have had a meaningful dialogue and possibly have come to a resolution. It is a retroactive attempt to amend a pay plan that was approved by the Commission and the City Council.

Mr. Robein responded he knows there was interplay between the parties regarding promotions. Director Trepagnier stated those are separate issues. Mr. Robein responded that everything in this collective bargaining agreement relates directly or indirectly to the Commission's authority. We put it in the agreement that we would come to the Commission as we are now. Director Trepagnier asked what rule allows us to go back and put in pay policies three years later that were not in effect at that time. It is not a correction to an error; it is clear what the pay policies were in terms of guaranteed increases. Mr. Robein responded it is called rulemaking. The rules have been amended retroactively for years to comply with the law. Director

Trepagnier asked what law we are asking the Commission to create a rule to comply with. Mr. Robein responded we are asking you to create a rule to comply with a collectively bargained arrangement permitted by law.


Mr. Goforth stated Mr. Robein is intentionally misrepresenting the nature of the agreement. In the agreement it says it is not intended to create binding legal obligations. It is not a collective bargaining agreement because it is not binding. This is a policy decision of the Commission; the City is not taking a position. Director Trepagnier stated the pay policies in effect four years ago resulted from a pay study performed by an outside contractor which found the pay rates for city jobs to be ten percent behind the market. As a result, the base rate for the job classifications was raised by ten percent. The distance individuals were from the base rate dictated how much they received with the exception of two pay policies which guaranteed a 1.25% increase for all employees and a 5% increase for our lowest paid employees. There was not a pay policy that guaranteed that everyone would receive a ten percent increase. It did not exist and that is what you are being asked to do, to add a policy retroactive to 2018 that did not exist.

Commissioner Surprenant stated he has a real problem when someone agrees to do something, and they do not do it. The City did not seek the necessary approval as they said they would do. Even if they had done so, it does not mean the Commission had to approve it, but from a credibility standpoint the message that should go back to the Administration is that when you say something you should do it. Mr. Robein stated that is why we filed the lawsuit, because they did not do what they committed to do. Commissioner Richardson stated it is always good to include Civil Service staff because when the Commission needs to make a decision it makes it easier to support. The other issue is that we are not asking for current employees, we are asking for retired individuals. Mr. Robein responded about half are retired. Director Trepagnier noted that a lot of employees service-wide who would be impacted are gone as well. Commissioner Surprenant stated most times we go with the recommendation of our staff unless there is a compelling reason to do otherwise. We are not going to be swayed by politics, we are going to do the right thing. He stated Mr. Robein has good points but he would go with the recommendation of staff. We have given this full consideration. Our staff has a better perspective of the potential ripple effect this has. Commissioner Richardson stated it is not clear cut. We support our public safety personnel within the rules. Commissioner Surprenant moved to deny the request. Commissioner Korn seconded the motion. Commissioners Surprenant, Korn, Richardson, and Davis voted in favor of the motion to deny the request. Commissioner Moore abstained. The motion carried.


Item #4i was a request from Sewerage and Water Board to establish a new Safety Coordinator job series. Robert Hagmann stated this career series will provide for growth opportunities. Commissioner Korn motioned to approve the new series. Commissioner Moore seconded the motion, and it was approved unanimously.

Item #5a under Recruitment and Selection Matters was the approval of examination announcements 10739-10754. Commissioner Moore motioned to approve the examination announcements. The motion was seconded by Commissioner Davis and approved unanimously.


Commissioner Richardson moved for adjournment at 4:01 pm. Commissioner Surprenant seconded the motion, and it was approved unanimously.



Brittney Richardson, Chairperson



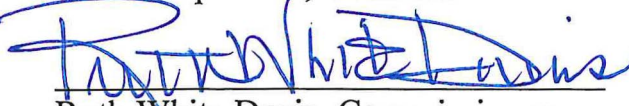
John Korn, Vice-Chairperson



Clifton Moore, Jr., Commissioner



Mark Surprenant, Commissioner



Ruth White Davis, Commissioner