

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
MONDAY, DECEMBER 13, 2021

The regular monthly meeting of the City Civil Service Commission was held on Monday, December 13, 2021 via Zoom pursuant to Louisiana Open Meetings Law, specifically, La. R. S. 42:17.1. Ms. Doddie Smith, Personnel Administrator of the Management Services Division, called the roll. Present were Chairperson Brittney Richardson, Commissioner John Korn, Commissioner Mark Surprenant, and Commissioner Ruth White Davis. Commissioner Richardson convened the meeting at 10:11 a.m. The Commission then proceeded with the docket. At 11:39 a.m. on the motion of Commissioner Korn and the second of Commissioner Davis, the Commission voted unanimously to go into executive session. At 12:34 p.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from the September 29, 2021 and October 18, 2021 meetings. Commissioner Korn moved to approve both sets of minutes. The motion was seconded by Commissioner Surprenant and approved unanimously.

Item #2 was the election of Chair and Vice Chair of the Civil Service Commission in accordance with Rule II Section 1.6. Commissioner Surprenant thanked Commissioner Richardson for her service as Chairperson and Commissioner Moore for his service as Vice-Chairperson. Commissioner Surprenant motioned to nominate Commissioner Richardson as Chairperson and Commissioner Korn as Vice-Chairperson. Commissioner Davis seconded the motion, and it was approved unanimously. Commissioner Surprenant then thanked Commissioner Richardson and Korn for agreeing to serve in these roles.

Item #3 was the ratification of Public Integrity Bureau (PIB) extension requests. The Commission deferred this item to later in the meeting.

Item #4a under Recruitment and Selection Matters was a request from the Fire Fighters Association for an exception to Rule V Section 5.3 to extend the Fire Captain Eligible list. Amy Trepagnier, Personnel Director, stated Civil Service Rules permit Civil Service staff to extend eligible lists up to three years and the Commission to extend the lists for an additional two years up to five years. This item came before the Commission earlier this year and the list was extended. She noted that in this case more than five years have passed since the list was established, however the position was tied up in the Achord litigation, so the list sat idle for

almost two years. Director Trepagnier stated staff supports the union's request for an exception to Rule V Section 5.2 to extend the list for an additional eight months. Commissioner Surprenant motioned to approve the request for an extension. Commissioner Davis seconded the motion and it was approved unanimously.

Commissioner Korn motioned to take up items #5 through #7. These items required at least two thirds vote of the Commission to be considered pursuant to La. R.S. 42:17.1. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #5a under Classification and Compensation Matters was a request from the Department of Health/EMS for hiring rates for EMS classifications. Robert Hagmann, Personnel Administrator over Classification and Compensation, stated Health/EMS requested hiring rates to address recruitment and retention issues with Emergency Medical Technician (EMT) positions. The proposed rates would increase the pay for EMT basic by 5%, EMT advanced by 8.75%, EMT paramedic by 7.5%, EMS supervisors by 10% and EMS bureau chiefs by 15%. Commissioner Davis asked about the current vacancy rate at EMS. Bill Salmeron, Chief of EMS, responded they are currently averaging about 65% staff availability. There are 26.75 current vacancies. EMS averages 20 to 25 staff departures a year; this year it is closer to 30. Experienced staff is leaving due to attractive compensation packages and less hazardous work environments at other EMS agencies and the hospitals. Due to a current nursing shortage, hospitals are recruiting EMS personnel with critical care experience to function in nursing capacities. Recruiting is also difficult due to the workload. Commissioner Korn motioned to approve the hiring rates. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #5b was a request from NOPD to amend the special rate of pay for detective and other special assignments to include the rank of Police Officer and to grant retroactive temporary special assignment pay under Rule IV Section 2.2. Robert Hagmann stated this request was initiated by Police in order to extend detective pay to individuals who could not be promoted to Senior Police Officer due to funding availability for those promotions. Under the proposed changes, a Police Officer who meets the experience, training, and certification requirements will now be eligible to receive specials rates of pay for performing detective work or for performing other special assignments.

Mr. Hagmann noted the second part of the request is retroactive temporary special assignment pay of 10% for those Police Officers who performed detective work and met the experience and training requirements. A 2.5% retroactive temporary special

assignment pay is being requested for those Police Officers who did not have the required experience but performed the work. Mr. Hagmann noted the Consent Decree requires specialized training to perform detective work. He stated staff supports NOPD's request. Commissioner Surprenant motioned to approve the request. Commissioner Davis seconded the motion, and it was approved unanimously.

Item #5c was a request from NOFD for hiring rates for 911 Liaison Officer and 911 Liaison Supervisor under Rule IV, Section 2.8. Robert Hagmann explained this Rule allows for salary adjustments based on pay inequities between the same or comparable job classifications. A parity existed between these positions and Fire Captain and Fire District Chief. Due to the recent pay increases for Fire classifications as part of the \$15 minimum wage pay plan changes, NOFD is requesting to increase these hiring rates in order to maintain the previous parity with Fire Captain and Fire District Chief. Staff is recommending approval. Commissioner Davis motioned to approve the request. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #5d was a request from the Fire Fighters Association for equity adjustments for firefighters relative to the 2018 Pay Plan implementation. Robert Hagmann stated the Fire Union is asking the Commission to set a retroactive pay policy relative to fire hiring rates in 2018. These hiring rates were part of a pay plan that adjusted most city salaries by 10%, which brought the base step of most classifications from step 01 to step 09. There were two pay policies associated with this pay plan. In cases where an individual's base step was already above step 01, the first pay policy guaranteed a 5% increase to the lowest paid employees (under pay grade 50). The second guaranteed a 1.25% increase to all other employees. In the case of Fire employees, there were 29 individuals who did not receive the full 10% increase. Twenty-seven received an 8.75% increase and two received 7.5%. This occurred due to those individuals already having an elevated pay step due to previous pay increases. Of concern is the retroactivity of a pay policy that did not exist as well as the uniformity issue created if what is done retroactively is not done for all similarly situated employees. This may apply to several hundred employees service-wide. Staff is recommending denial of the request.

Louis Robein, representing the Fire Union, stated this is a joint request of the City and Union relative to a letter of intent from February 2020 where the City agreed to the retroactive adjustment for these firefighters. It is a matter of mutual agreement. The City has agreed to do it for the impacted firefighters and other employees. This matter was finalized in July of 2020. There is no legal impediment to doing what

the City and union agreed to do, citywide in a uniform fashion. Commissioner Richardson asked what governmental interest this agreement serves and why is this not considered to be a prohibited donation. Mr. Robein reiterated this is an agreement between the union and the City. He stated the issue relative to gratuitous versus onerous donations has been fully briefed by the Attorney General. It is an onerous donation if it is a donation, but it is not a donation, it is an agreement. William Goforth, representing the Administration, stated his research indicated this may in fact be a prohibited donation in that there was nothing extra that was done to earn this additional pay and there was nothing in place at the time the work was performed that indicated they would be entitled to this pay. To go back and change the rule to pay them extra is in essence paying them extra for work they performed not expecting this pay. There is no juris prudence on this specifically, but there are some Attorney General requests for advice that address the issue. Mr. Goforth suggested a request for advice may be appropriate if the Commission is particularly concerned with this issue. The City does not agree that the letter of intent was a collective bargaining agreement or any other binding agreement that imposed any obligations on the City or union. However, the City did declare its intent to propose this retroactive pay increase if it was something that could be approved by the Commission under applicable law. The City has reserved if it supports this measure purely based on financial considerations as the staff members charged with doing so were out sick and have not been able to determine the financial impact yet. Mr. Goforth asked to Commission to wait until January to consider this matter so the financial analysis could be done. The City is reserving its support at this time because it cannot make a determination on the gratuitous donation issue and on the financial impact. It must be determined if sufficient funds have been budgeted to afford this.

Commissioner Surprenant asked Mr. Goforth if the City made a deal and wants to back out of it now due to Covid and the potential financial implications. Jonathan Wisbey, representing the Administration, disagreed. Although it has been agreed to for some time, this was the first effort made to pass it. He has not had enough time to determine the full cost and scope, so he is not comfortable supporting it without that information. It is not a withdrawal of support or change. It is an acknowledgement that seventeen months have passed since the initial agreement. Commissioner Surprenant asked Mr. Robein what the potential real harm would be to defer this item to January in particular if the Commission decided to refer the matter to the Attorney General for an opinion to get clarification on the donation issue. Mr. Robein responded there would be no real harm. The City has committed to paying it, all they need is approval from the Commission. Commissioner Richardson asked how many of the impacted firefighters have retired. Aaron Michler, representing the Fire Union, responded 13 of the 29 have since retired. Mr.

Michler stated this is part of a bargaining agreement that was made with the Mayor to end the overtime boycott for Mardi Gras that year. Mr. Goforth stated it is simply a matter of if it is legal and if it can be funded. Mr. Robein stated the agreement does not include funding considerations.

Commissioner Surprenant stated if an agreement has been made it bothers him that the agreement has not been carried forth and honored. It would be appropriate to defer this to January given there is no appreciable harm that would result to give the City an opportunity to look at it financially which may or may not ultimately have an impact and to explore the prohibited donation issue by asking for an Attorney General opinion. Commissioner Surprenant stated he would be amenable to a special meeting if needed. Commissioner Surprenant motioned to defer to the January regular meeting or a special meeting if the circumstances warrant it. The motion was seconded by Commissioner Korn and it was approved unanimously.

Item #5e was a report on Overtime Earnings relative to Rule IV, Section 9.7 (a) and a request from the Chief Administrative Office (CAO) for an exception to Rule IV, Section 9.7(a). Mr. Hagmann stated Civil Service Rules require advanced approval if a public safety employee or an employee in a special events department is expected to exceed 750 hours of overtime in a year. For all other employees the threshold is 416 hours. Departments who exceed those totals must report the reasons for doing so to the Commission. Mr. Hagmann reported that each year the number of those who exceeded the threshold is getting lower with 141 employees in 2021 down from 229 in 2020. Typical reasons are staff shortages or undesirable assignments. Departments will be working to hire more employees to reduce overtime use. The CAO has asked for an exception to the Rule for exceeding the threshold. Staff supports the CAO's request. Mr. Hagmann also noted there are 172 Sewerage and Water Board employees presently over the threshold. They will be making a request for an exception in January. Commissioner Korn moved to approve the request. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #5f was a request for investigation by Crescent City Lodge #2, Fraternal Order of Police, Inc., New Orleans Firefighters Association, and IAFFF Local 632 for Emergency Pay (on remand, No. 2020-CA-0411 (La. App. 4 Cir. 2/17/21)). Donovan Livaccari, representing the Fraternal Order of Police, stated the one thing we learned from the hearing on this matter is that critical and essential employees are defined using the exact same language. They are circular definitions. There was one group of employees who could not perform their jobs unless they reported in person, this is a group of essential employees. There was another group of employees who did not have to report to work in person, some of whom may have

had to work remotely, that is beside the point. They did not have to expose themselves to the danger that was everywhere. The emergency rate of pay should apply to everyone who was required to work in person during the course of the declared state of emergency pursuant to the Civil Service Rules. Commissioner Surprenant asked if there is anything under Rule VIII Section 11.1 that provides that essential employees should get special compensation because they faced greater health risks from working in person as opposed to those working remotely. Mr. Livaccari stated it does not go into that language, but it is inferred by the situational use of the emergency rate of pay. It is the danger that leads to the emergency declaration which leads to the emergency rate of pay. Commissioner Surprenant asked if the Mayor ever order all non-essential or non-critical workers to stay away from work. Mr. Livaccari responded there was one group of employees who were required to work in person and another who were required to stay home, so I would say yes. Commissioner Surprenant asked if a person who is working remotely is considered to have reported to work, what is that person's employment status. Mr. Livaccari responded they are obviously working, but the fact they did not have to report to work is built into the emergency rate of pay rule. We can look at it as everyone who worked regardless of where is an essential employee and the people who were on civil leave were non-essential. That's a lot of employees. It seems more prudent to go with those who were required to work in person. Commissioner Surprenant asked does the record of the July 15, 2021 hearing show that the City made a distinction between essential and critical during the limited operations time period in question. Mr. Livaccari responded they tried to do that, I don't know that they succeeded. Essential and critical are the same thing. They were circular definitions. Paula Bruner, representing the Fire Union stated it also depends on the application. The testimony indicated the term critical, depending on the department, was permissive. It meant employees could enter City Hall while it was closed to the public. Regarding the Mayor ordering people to report, by virtue of an emergency declaration essential employees report to duty. Non-essential employees do not report to duty.

Mr. Goforth stated they are assuming all you need is an emergency declaration and any time there is an emergency declaration anyone who goes to work is essential and gets emergency pay. However, the Rule says there are two conditions that must be met. One, there must be a declared emergency and two the Mayor has to instruct that only essential employees return to work. Under the petitioners' interpretation, the second contention is meaningless because whoever reports to work becomes essential. That can't be the Rule because it would render an entire condition meaningless. The Rule is designed to be a corollary with the Emergency Leave Rule. Emergency pay is extra compensation for employees who have to work when

everyone else gets an extra day of paid leave. That is not what happened in this case. The rule was designed for a case when regular City operations closed down because of the emergency and a small subset of employees continue to work during the emergency for emergency purposes or for services that have to continue no matter what. What happened here was the exact opposite. People were instructed to work from alternate worksites where possible to ensure that regular governmental operations continued as much as possible.

Mr. Livaccari stated there was a declared state of emergency for the Hard Rock Hotel collapse, but in that case, there was no change to how employees behaved. They conducted business as usual. Following the COVID declared state of emergency the City did not continue with business as usual. The City designated one group of employees who had to report in person and another that did not. Commissioner Surprenant asked Mr. Livaccari weren't there non-essential workers working in-person during the time in question. Mr. Livaccari responded no, if they were working in person then they were essential employees. Ms. Bruner stated there were some employees who were designated as non-essential who went to the office because it was more convenient. We are looking at the people who were directed to or were required to report to work in person. Commissioner Surprenant stated it appears from the record there were non-essential workers who were working in person during the time in question. Mr. Bruner stated she would argue there were, but the question is if they were required to do so. Commissioner Surprenant stated, putting aside the argument regarding if reporting to work means in person, it appears that if there were non-essential employees reporting to work then the requirements of this rule are not met because the Rule requires all non-essential workers to be told to stay away from work. Mr. Livaccari stated the designation of an essential person is an arbitrary label. It could be applied to anyone who exposed themselves to the danger that caused the emergency. Mr. Goforth requested that the Commission make its decision on both the essential employee issue as well as the meaning of "report to work". Commissioner Surprenant noted when the Commission considered this initially, it decided that "report to work" includes report to work remotely. It is clear that "report to work" means in person or remotely. Otherwise, it is an unreasonable interpretation. Mr. Livaccari stated there is another group of employees who were carried on Civil Leave and were not required to work. The Rule envisions one group of employees who don't have to work as do other employees. Commissioner Richardson noted that was required by Federal Mandate.

Christina Carroll, Executive Counsel for the Commission, then noted for the record she had notified the parties regarding supplementing the July record with a March

17, 2020 memo from Gilbert Montañño to Lisa Hudson regarding the reduction, suspension or closure of City departments due to COVID-19.

Commissioner Surprenant stated he respects and admires the Police and Firefighters and their work during COVID, however he is dutybound to consider the Rule's language. He then moved to deny the request for emergency pay because the requirements of Rule VIII Section 11.1 were not met for the following reasons. One, under the plain language of Rule VIII Section 11.1, "report to work" includes working remotely. Two, the Mayor never directed that only essential workers report to work. Non-essential workers were also required to report to work. Three, all critical employees required to report to work were not necessarily essential. Four, the record clearly shows that critical and essential were not the same, but were two different categories. Commissioner Davis seconded the motion and it was approved unanimously.

Item #5g was a motion from Sewerage and Water Board to dismiss a request from Dartagnan Howard for back pay, emergency pay and/or Hazard pay under Rule IV Section 11.1. Ashley Ian Smith, representing Sewerage and Water Board, stated her original request for dismissal was based on Mr. Howard no longer being employed with the Sewerage and Water Board. Based on the Commission's ruling regarding other claims for emergency pay, this is substantially similar. People reported to work in person when it was necessary, when they were not able to work remotely, or did not qualify for some other leave. This is newly moot because the Commission just ruled in the previous matter. This was a resignation, so I believe the request is moot. Commissioner Richardson clarified that Mr. Howard filed his request prior to his resignation. Ms. Smith agreed. Ms. Carroll stated staff had requested documents from the Sewerage and Water Board and those documents have not been provided pending a ruling on this item, so the Commission nor the staff cannot verify the assertion that it is all the same without the underlying records. Ms. Smith stated the records requested would have to be created; they are not records that were kept. It is the same reasoning, not every employee who reported to work was essential. Mr. Howard was not on an essential list. He was not designated as an essential employee nor was he scheduled to work during that time period as an essential employee. I do not think we had that kind of emergency. It was not like Hurricane Ida. The exact same reasoning is applicable. The Mayor did not require that only essential employees report. Director Trepagnier requested that the Board submit their position in writing and include supporting documents. Ms. Smith asked if she was being asked to go to all of the Sewerage and Water Board departments and create the records. She stated she could provide a list of all essential employees. Ms. Carroll noted the Fourth Circuit had notified the Commission that it had not adequately

investigated the request for emergency pay and instructed the Commission to conduct an evidentiary hearing with documents which happened in May and July. Ms. Smith stated she is not understanding the difference in what we discussed regarding City employees. Ms. Carroll responded there was a hearing in front of a hearing officer with two hundred pages of records and an inch thick of exhibits because the Fourth Circuit instructed the Commission to conduct a full evidentiary hearing, so what you are asking the Commission to do is rule on an argument to dismiss this. Commissioner Surprenant stated he believes Ms. Smith knows what she needs to submit for there to be an adequate record from which the Commission can make a ruling. He moved to defer consideration to the next meeting. The motion was seconded by Commissioner Korn. Ms. Carroll asked if the Commission was deferring whether to dismiss it because Mr. Howard resigned. Commissioner Surprenant stated he is motioning to defer it to give S&WB the opportunity to present any records and documents it feels it wants to present so that the record is complete.

Ms. Smith noted Mr. Howard received notice but is not present to argue that the matter should go forward. Ms. Carroll stated the request for the Commission to rule on the merits is premature without providing any information. She recommended that the Commission deny the request to dismiss based on Mr. Howard's employment status and that the S&WB would be obligated to provide documents or file what they need to file. Commissioner Korn stated he thought the motion had changed during the course of the meeting from being based on Mr. Howard's resignation to being based on the decision the Commission recently made. Ms. Smith stated essentially, she has a motion to dismiss based on Mr. Howard's resignation on the table. Commissioner Korn then motioned to deny the request to dismiss and stated Mr. Howard met the requirement of Rule II Section 4.1 at the time the appeal was filed. Commissioner Richardson called for a second of Commissioner Surprenant's original motion on the floor to defer. There was no second, so the motion failed. Commissioner Richardson then seconded Commissioner Korn's motion to dismiss S&WB motion to dismiss Mr. Howard's request. Commissioner Davis stated Mr. Howard no longer works at Sewerage and Water Board and he is not at the meeting. He is not showing that he wants the Commission to take the matter seriously. Commissioner Surprenant stated he saw no harm in deferring this matter to get a better understanding of what we are considering. Commissioner Surprenant noted that Ms. Smith has no issue with deferring the item to next month. Commissioner Korn asked what would change in a month. Commissioner Surprenant stated there is no harm in doing so. He is hesitant to dismiss because he is not fully comfortable with the ramifications. Commissioner Korn asked what the ramifications are if we deny the request to dismiss. Ms. Carroll stated then S&WB

would be required to provide the requested documents or otherwise provide the information about why they don't need to pay emergency pay. Ms. Smith then asked if an evidentiary hearing would be required. Ms. Carroll responded she did not believe it would, staff can conduct the investigation. Commissioner Surprenant motioned to defer the matter. Commissioner Davis seconded the motion. Commissioner Korn objected, noting that it causes no harm to defer the matter, but it would provide clarity if we denied S&WB's motion to dismiss. Commissioner Richardson voted in favor of the motion to defer and it carried.

Item #6a under Recruitment and Selection Matters was the approval of examination announcements 10506-10529. Commissioner Korn motioned to accept the announcements. Commissioner Davis seconded the motion, and it was approved unanimously.

The Commission then returned to Item #3 the ratification of Public Integrity Bureau (PIB) extension requests. Commissioner Richardson called for public comment. There being none, Commissioner Surprenant motioned to approve the extension requests. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #7 was request from the Police Association of New Orleans for Summary Disposition relative to Police Officer James Cunningham. Elizabeth Robins, representing the City, noted that at the last meeting the Commission had addressed a Motion for Summary Disposition (MSD) from Eric Hessler who is representing Officer Cunningham. There was no Civil Service appeal number because there were no disciplinary actions being appealed. The Commission put this on the October business docket and agreed with the City that this was not an MSD. The only thing filed on behalf of Mr. Cunningham is the MSD filed in July. If Mr. Hessler is asking for a petition for investigation, that needs to be put in writing per Civil Service Rule VI Section 6.1. Ms. Robins stated she is asking the Commission to order Mr. Hessler to file a document as a petition for investigation and state specifically which promotion was improperly denied.

Eric Hessler, representing Officer Cunningham, stated if the City's position is there is no disciplinary action pending and the sustained disciplinary actions are not sustained, that needs to be stated. The discipline was sustained but no disciplinary action has been taken in seven years. Officer Cunningham is suffering the denial of due process because of that. The City is saying there is nothing to appeal because nothing has been done to him, but there are open, sustained investigations in his personnel jacket that are reviewed when it is time for promotions/transfers which are

being used to deny him. In seven years, NOPD has not given him a final disciplinary finding to be appealed. If the City is going to say there are no pending disciplinary actions against him, I will take that. It needs to be clarified.

Commissioner Surprenant asked Ms. Robins what additional specifics she feels Mr. Hessler needs to provide. Ms. Robins responded there should be a document in the record that says it is a petition for investigation. Under the requirements of section 6.1a of the Rule, it should specify what list he was on when he was not considered for promotion due to these investigations. Ms. Carroll stated it was her understanding the Commission was exercising its power under Article X Section X of the Constitution and specifically under the promotion and appeal procedure in the Rules. Mr. Hessler responded the petition is quite clear that an open investigation for seven years has deterred Officer Cunningham from being promoted, pursuing a new job in another jurisdiction, or from being transferred within the department. It is unfair and denying his due process. He was been denied even the ability to appeal the sustained findings. Commissioner Surprenant stated that Ms. Robins' request seems reasonable. The more information the Commission has, the better off we are. Mr. Hessler stated it is dilatory. This is to correct from it happening in the future. There are no rules and regulations, but there should be. Ms. Robins stated the point is that Mr. Hessler did not file a petition for investigation, he filed a Motion for Summary Judgement. She is not saying it should not be investigated, she is just asking Mr. Hessler to clarify what he is asking for. Commissioner Surprenant stated Ms. Robins is request that the Commission follow the Rules and put in writing exactly what is being requested. That seems like a reasonable request to put in in the proper form and move forward. Commissioner Surprenant then motioned that Mr. Hessler provide a formal petition for investigation with details. The motion was seconded by Commissioner Davis and approved by all.

Commissioner Surprenant moved for adjournment at 2:53 p.m. The motion was seconded by Commissioner Korn and approved unanimously.



Brittney Richardson (Feb 2, 2022 17:29 CST)

Brittney Richardson, Chairperson



J. H. Korn (Jan 31, 2022 13:01 CST)

John Korn, Vice-Chairperson



Mark C. Surprenant (Jan 31, 2022 13:57 CST)

Mark Surprenant, Commissioner

Ruth White Davis

Ruth Davis (Feb 5, 2022 12:38 CST)

Ruth White Davis, Commissioner