

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
MONDAY, OCTOBER 17, 2022

A regular meeting of the City Civil Service Commission was held on Monday, October 17, 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 10:06 a.m. The Commission then proceeded with the docket. Commissioner Moore joined the meeting at 10:18 am. At 10:19 a.m. on the motion of Commissioner Korn and the second of Commissioner Davis, the Commission voted unanimously to go into executive session. Commissioner Davis left the meeting during executive session. At 11:12 a.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Personnel Director Amy Trepagnier stated that Eric Hessler had requested that the Commission take up item #7 out of order due to a time constraint he had. Commissioner Korn motioned to take up item #7 first, the motion was seconded by Commissioner Moore 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. Mr. Hessler stated Officer Cunningham has sustained complaints from 2015 and 2013 that remain open to this day. During this period, Officer Cunningham has not been eligible for promotions, transfers, or special assignments. He was terminated for one of these actions and brought back to work. The Commission has not yet received the information it needs to make a decision on this matter. Mr. Hessler stated he is re-urging his motion for summary disposition. If not granted, he urged the Commission to set these matters for hearing. It is only fair to Officer Cunningham to allow him due process. Officer Cunningham has never received a disciplinary letter from the Police Chief so we cannot appeal it and we cannot clear his name.

Director Trepagnier stated that following the Commission's instruction to conduct an investigation, staff sent a letter on June 2, 2022 requesting information from NOPD and the Law Department. The Law Department has been working with NOPD to compile the information, but has had difficulty doing so, in part due to the length of time that has passed by as well as the decentralized nature of the NOPD KSA process for detective assignments. She stated she believes the best way forward

is to assign the matter to a hearing examiner to take testimony to create a record for the investigation.

William Goforth, representing the Law Department, stated the City has been working to obtain the information. This is an investigation and not a disciplinary appeal. Civil Service staff is deciding what information is needed. The problem has been finding the person over each section at NOPD during the relevant time period and locating the relevant documents. We have provided responses, but there are a few outstanding divisions. Mr. Goforth stated the City has no objection to an evidentiary hearing to put everything on the record.

Mr. Hessler stated Officer Cunningham has 16 years on the job and is only in the rank of Police Officer. He asked how we get Officer Cunningham's open complaints resolved. It is simply not fair. Mr. Goforth stated it is his understanding that the complaints are no longer open. He will confirm that after the meeting. If they are, we will act on that immediately.

Commissioner Richardson stated she believes the evidentiary hearing is the best way forward. Commissioner Korn agreed and stated it should be held quickly. Commissioner Korn moved to send the matter to evidentiary hearing. Commissioner Moore seconded the motion, and it was approved unanimously.

Item #1 was the minutes for July 18, 2022, August 12, 2022, and September 19, 2022. Commissioner Korn motioned to approve the minutes. Commissioner Moore seconded the motion, and it was approved unanimously.

Item #2 was the ratification of Public Integrity Bureau (PIB) extension requests. Commissioner Richardson called for public comment. There being none, Commissioner Moore moved for approval. The motion was seconded by Commissioner Korn and approved unanimously.

Item #3a under Rule Amendments was a proposed amendment to Rule IV Section 1.3(b) and Rule IV Section 9.2(b) relative to the overtime pay cycle for non-exempt fire protection employees. Director Trepagnier requested deferral of this item. Commissioner Korn moved for deferral of this item. Commissioner Moore seconded the motion to defer, and it was approved unanimously.

Item #3b was a proposed amendment to Rule IV Section 2.5 Merit Pay and Rule XI Section 1.6(e) Performance Evaluations. Director Trepagnier stated this amendment had been introduced in August. She noted the proposed amendments include a

change from percentage-based pay increases to lump sum payments to those who exceed expectations. The proposal also removes the ability of the Administration to certify that the funding is not available for merit pay. It requires that all parties budget to make the payments. These would go into effect for the 2023 observation year to be paid out in 2024. At the previous meeting the Administration requested that the rule change be deferred so they could submit language to tighten the circumstances under which merit pay increases are not funded rather than removing their ability to do so altogether. Director Trepagnier stated she had requested the administration's proposed language immediately following the last meeting, but she had not received the language until that morning. She had not yet reviewed the language.

Christina Hamilton, representing the Chief Administrative Office, stated the Administration is proposing the addition of language to state that on or before April 30th of the year in which merit-based payments are to be issued, the Chief Administrative Officer may declare that the City possesses insufficient funds for merit pay only if one or both of the following conditions are met. For the year in which merit-based payments are to be issued, if the Revenue Estimating Conference adopts a revenue forecast for a budget year in which the recurring revenue estimate is less than the recurring expenditures approved in the prior year's budget, the CAO shall be authorized to make a determination of insufficient funds; or a declaration of emergency is issued due to act of God, riot, war, or a grave emergency which threatens loss of life or injury to health or property, and there is a reasonable belief the emergency will have a significant impact on City finances.

Commissioner Richardson stated it is difficult for the Commission to rule without reviewing the language. She noted the proposal is based on the concept that the City has not been able to meet the funding for the percentage-based increases. This is based on exceeding expectations so there should not be an issue funding it, but she does want to take what the City has proposed under consideration. Funding merit pay is important in recruiting and retaining high quality employees. Director Trepagnier requested that the Administration provide information regarding how frequently over the past five years either of the two proposed provisions would have applied. Commissioner Moore moved to defer the item. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #3c was an amendment to Rule VI Section 3.5(d) relative to the 45-day limit for the certification of eligibles. Director Trepagnier noted this amendment was introduced at the last meeting. She explained that currently, departments have 45

days to make an appointment from the list of qualified applicants. Our practice is to allow for an additional 45-day extension if they are unable to do so. NOPD and other public safety entities perform extensive background investigations on potential employees, so they often have difficulty meeting the 45-day deadline and frequently request extensions. NOPD has requested a rule change that would allow for a 90-day window for first certifications, eliminating the need to request an extension. Civil Service staff has proposed an amendment that would offer the same 90 days to all public safety entities who perform extensive background checks. Commissioner Korn moved to approve the amendment to the rule. The motion was seconded by Commissioner Moore and approved unanimously.

Item #4a under Classification and Compensation Matters was a request from the Firefighters Association Local 632 for equity adjustments for Firefighters relative to the 2018 Pay Plan implementation. Commissioner Moore moved to defer this item. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #4b was a request from the New Orleans Police Department to create the job classification of Chief Operating Officer. Robert Hagmann, Personnel Administrator, stated this position will serve as the chief strategist and consultant to the Superintendent while assisting with the management of all police operations. The position would be placed at pay grade 104 step 09 with a range of \$100,030 to \$116,110. Director Trepagnier noted the position is part of ongoing efforts to provide NOPD with additional civilian support. Commissioner Moore moved to approve position. The motion was seconded by Commissioner Korn and approved unanimously.

Item #4c was a request from the New Orleans Police Department for five additional unclassified Police Compliance Auditors in accordance with Rule III Section 7.1. Director Trepagnier stated the purpose of these positions is to assist NOPD with documenting compliance with the federal Consent Decree. Staff applied Rule III Section 7.1 relative to the creation of additional unclassified positions and found that the position is not appropriate for the classified service and that it is not feasible to conduct a merit-based examination for the position at this time. Constructing an examination would likely delay Consent Decree compliance. Staff will be auditing the positions in the future to determine if they continue to meet the requirements of the rule. Commissioner Korn moved to approve the positions. The motion was seconded by Commissioner Moore and approved unanimously.

Item #4d was a request from Health/EMS for the advancement of sick leave for EMT Stephanie Jennings under Rule VIII Section 2.9. Director Trepagnier stated the

Commission's rules allow for sick leave advancement for employees who are injured on the job or under other special circumstances. EMS is requesting the advancement of approximately 30 days of leave for Ms. Jennings. Commissioner Moore moved to approve the request. The motion was seconded by Commissioner Korn and approved unanimously.

Item #4e was a request from the Sewerage and Water Board and the New Orleans Fire Department for an exception to Rule IV, Section 9.7(a) relative to individuals exceeding overtime limits for 2022. Director Trepagnier stated there was no request from Sewerage and Water Board this month. The Fire Department has submitted a report for the Commission that includes all employees who are approaching or have recently surpassed the 750 hours of overtime as required by the Commission's rules. The report includes names, the number of overtime hours worked and the reasons for doing so. Director Trepagnier noted that Fire has been working with the Civil Service staff to hire additional Recruits. She stated staff would also be reviewing the overtime threshold for the Fire Department based on the overtime that is built into their schedules. Commissioner Moore motioned to approve the request. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #5a under Recruitment and Selection Matters was the approval of examination announcements 10712-10738. Director Trepagnier noted there were multiple new civilian positions open at NOPD. Commissioner Moore motioned to accept the announcements. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #6 was a request from City Planning employees for an exception to Rule III Section 4 to grant back pay for performing work in a higher classification. Director Trepagnier stated the Commission had considered this request at the last meeting. The request does not meet the provisions of the rule because there was not a vacancy created by the departure of an employee and there was an eligible list at that time. She noted at the last meeting, the Commission had requested to hear from the Director of City Planning. Robert Rivers, Executive Director of the City Planning Commission, stated that for various reasons the staffing of City Planning has gone from 27 to a low of 13 in August of 2021. He stated he had worked with the administration and Civil Service staff on a plan to rebuild the department that included restructuring to provide for more promotional opportunities. In July of 2021, the administration had informed him they were approved for American Rescue Plan funds for a midyear adjustment to the 2021 budget. He submitted a proposal for 29 positions including several promotional opportunities. Negotiations between the Council and Administration continued through early December of 2021. The

midyear adjustment was approved in November, but he was told by the Finance Director he could not act on it until the 2022 budget was adopted. On December the 6th the requestions for new hires and promotions were placed on hold and on December 31st they were all cancelled. They were not given the go ahead to submit new requestions in March of 2022. Commissioner Richardson asked when and how the individuals received written notice that they were being promoted to the positions in January. Mr. Rivers responded they were part of the conversation all along. He does not know if there was an official communication. Commissioner Richardson asked if the employees were informed that the department was unable to move forward in November. Mr. Rivers responded they were kept informed every step of the way. He stated the staff went from 27 to 13, but all of the work performed could not stop. These individuals stepped in early on to fill a roll that had been vacated. Part of the restructuring is that we did not have the personnel to handle the work in the same way it had been performed pre-pandemic. Everyone's job expanded to include different rolls. Commissioner Richardson stated she understands the intent, but she is missing where the approval happened. What direct information was provided that from January to April they were put into those positions, they would be paid in those positions and those would be their new rolls. Mr. Rivers responded you can read into the Administration's initial support of the mid-year budget adjustment. In March of 2022, we got the approval to move forward, and we did. The conversation then became what do we do about these individuals having performed this work up to that point. Mr. Rivers stated the Chief Administrative Officer indicated verbally to him that he would be fine with backdating the promotions to January of 2022. Mr. Rivers stated his understanding is the issue here is there is a rule that allows for backpay for filling positions that were vacated, but not for positions that are newly created.

Director Trepagnier stated the rule is designed to be objective. If a person who is performing a particular body of work leaves and a person is drafted to perform that body of work in the absence of a Civil Service eligible list, our rules allow them to be compensated. The problem here is that these were newly allocated positions in a career series. There was no person's body of work to replace. Typically, individuals are not promoted until the requisitions are approved by all parties.

Mr. Rivers stated the issue here is the positions were created in 2021 and could have been filled at that time, but for the circumstances that were beyond our control. We were in a position as a department where we had no choice but to have people do that work because we had a department that went from 27 to 13. Christina Carrol, Executive Counsel for the Commission, asked Mr. Rivers if he would be able to identify the high-level employees who left and those that took on their duties so that

the request would then meet the conditions of the rule. Mr. Rivers said it becomes difficult where we went into triage mode.

Lorey Flick, City Planning Commission Chairperson, stated she in favor of the employees' request. We were very concerned with getting the work done during the pandemic with minimal staff. The work they do is all tangible deliverables. They did a job that was beyond their title and pay.


Catherine Witry, a City Planning Commissioner, requested three months of back pay for the five employees. Over the past three years the City has experience uncharted terrors. City Planning has already budgeted for the pay. There is not always a policy to grant appeals or approve requests, but as a Commission you can use your authority to approve these requests.

Kyle Wedberg, former City Planning Chairperson, stated this is a technical issue. We are asking for compensation for people who stayed and did the work. We were able to reward these women for the work they did with new job classifications. The work they did before they were moved into them should not be ignored. We are not asking you to step outside the letter of the law, we are asking you to have a nuanced response to a technical issue.

Paul Cramer, Planning Administrator, stated he supports the appeal.

Commissioner Richardson stated the Commission supports equal pay for equal work. There are some nuances that need to be worked out. She stated she would like Mr. Rivers to meet with Director Trepagnier to talk about how to solve the issue to support the work that was done before the Commission makes a ruling. Commissioner Richardson stated we must comport with the Civil Service Rules because it does open the door for others to make the same argument. Commissioner Korn stated he does not want to close the door on an exception, but he would like to explore the possibility of getting the proper pay within the rule. Commissioner Korn motioned to defer the item so that a solution can worked out within the rules. Commissioner Moore seconded the motion, and it was approved unanimously.

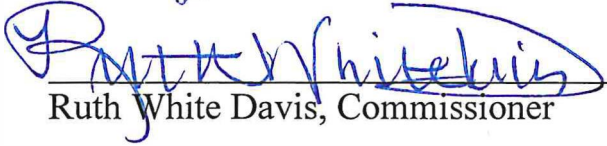
Commissioner Korn moved for adjournment at 12:36 p.m. The motion was seconded by Commissioner Moore and approved unanimously.



Brittney Richardson, Chairperson



John Korn, Vice-Chairperson



Ruth White Davis, Commissioner