

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
Monday, October 24, 2016

The regular monthly meeting of the City Civil Service Commission was held on Monday, October 24, 2016 at 1340 Poydras Street, Suite 964. Ms. Doddie Smith, Personnel Administrator of the Management Services Division, called the roll. Present were Chairperson Michelle D. Craig, Vice-Chairperson Ronald P. McClain, Commissioner Tania Tetlow and Commissioner Joseph Clark representing a quorum. Chairperson Craig convened the meeting at 10:10 a.m. The Commission then proceeded by sounding the Commission's docket. At 10:26 a.m. on motion of Vice-Chairperson McClain and seconded by Commissioner Clark, the Commission voted unanimously to go into executive session.

At 11:41 a.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from the September 26, 2016 meeting. Commissioner Tetlow moved to approve the minutes. Commissioner McClain seconded the motion and it was approved unanimously.

Commissioner Tetlow moved to add an item to the agenda regarding performance plan personnel matters. Commissioner McClain seconded the motion and it was approved unanimously.

Commissioner Tetlow then moved to adopt performance evaluations for the Executive Counsel and Personnel Director that were previously communicated to them. Commissioner McClain seconded the motion and it was approved unanimously.

Item #2 was a challenge by the City Attorney's Office to the Commission's use of its Executive Counsel as hearing examiner. Elizabeth Robbins, representing the Administration, stated that Civil Service Rule 2 Section 7.2 requires the Special Counsel to protect the interests of classified employees if so charged by the Commission. The rule does not mention the interests of the Appointing Authorities. She sees this as a conflict of interest.

Commissioner Tetlow stated that a conflict of interest would be if people who work for the Appointing Authorities serve as hearing officers. She stated that

the Commission is trying to find efficiencies to hold hearings after the money to pay the hearing examiners runs out. The Commission directs its counsel to be a neutral arbitrator of the cases which are then brought to the Commission for a decision.

Ms. Robbins stated that special counsel asks questions that have not been asked by the Appellant's counsel and that this information factors into the decision. Other hearing officer do not do this. She suggested the use of hearing officers currently under contract with the City in other departments. She also stated that Jim Mullaly stated he would be okay with hearing cases now and being paid for that work in 2017.

Commissioner Tetlow asked Ms. Robbins if she would be okay with using hearing officers under contract with the Unions. Commissioner Tetlow also clarified that Ms. Robbins was suggesting that using people who currently work for the Administration would be less of a conflict than using Mr. Greene who currently works for the Commission.

Ms. Robbins stated that the hearing officers are not City employees, but that they are independent contractors.

Commissioner Tetlow stated that the Commission wants someone who sees the real issues and asks questions to get at that point just as a judge would. She stated there is no rule against that.

Ms. Robbins stated that independent hearing officers should be used and that the Commission should not take cases away from these individuals.

Donovan Livaccari, representing the Fraternal Order of Police, stated that in his ten years of experience, the hearing officers have always asked questions. He stated he is fine with Mr. Greene hearing cases.

Nick Felton, representing the New Orleans Firefighters Association, asked what happens when the case goes to the Fourth Circuit Court of Appeals. Mr. Greene would be hearing the case and then representing the Commission before the court.

Commissioner Tetlow stated that in that scenario the Commission is not a litigant. Like a trial judge, the Commission either gets overturned or upheld in those cases.

Elizabeth Robbins stated she is asking the Commission to hear the concerns and take it under advisement because she does not want to end up with the 4th Circuit undoing the work that has been done.

Item #3 was a report on delegation of authority to the Sewerage and Water Board (S&WB). Brendan Greene, Executive Counsel for the Civil Service Commission, reported that two additional S&WB employees are being trained five days a week in the afternoon on the delegation manual adopted by the Personnel Director. Staff is meeting with S&WB twice a month regarding vacancies, priorities, and urgent staffing issue. He stated S&WB had not identified any urgent staffing issues at this time. He stated S&WB is trying to staff up and that there are lots of vacancies with active eligible lists.

Chairperson Craig asked if staff received a vacancy report prior to the meeting. Mr. Greene responded that the vacancy report had been received the day prior to the meeting.

Chairperson Craig then asked if staff had received access to the new payroll system. Mr. Green responded that they had not yet received access but that Executive Director Cedric Grant is setting a time for the consultant to walk staff through the system.

Chairperson Craig asked if S&WB understood that staff needs to be given access prior to the go live date so that staff can do what is required by the Constitution. She stated that issue is of concern to the Commissioners.

Item #4 was an update on the selection of a new contractor to administer psychological assessments to NOPD Police Recruit Applicants. Brendan Greene reported that the one respondent to the Request for Proposals (RFP) was approved unanimously by the selection committee. Amy Trepagnier had served as the Civil Service representative on the committee. He stated that it would have been nice to get more responses, but we needed to move forward. In drafting the contract we need to make sure Civil Service, NOPD, and the City are comfortable with the contents including performance standards and monitoring. He reported that Dr. Dralle is still performing the psychological screenings at this time.

Chairperson Craig stated that the Commission appreciates her keeping the process going.

Jon Wisbey, Deputy Chief of Staff for NOPD, reported that NOPD had shared the selected applicant's qualifications with the Federal Consent Decree Monitor.

Item #5 was the New Orleans Fire Department's award of millage payments for certain select civilians in 2016. Alexandra Norton reported that it was determined that these payments were made in error and the Administration would be working over the next several weeks to restore the pay the firefighters would have received if the erroneous payments had not been made. She said the City will also work with the administrative employees on a payment plan to repay the money they should not have received.

Nick Felton sought confirmation that the money would be returned and reallocated to the firefighters. Mr. Felton commented that he was concerned that there were no repercussions for violating the Civil Service rules.

Commissioner McClain asked Mr. Felton if he had a specific recommendation as to what should happen.

Mr. Felton asked for the Commission's suggestion. He stated that Chief McConnell should be held accountable for his actions.

Commissioner McClain stated that it was unclear what Mr. Felton was asking for. He stated that the City had agreed to make the firefighters whole as Mr. Felton had requested. He suggested that the best remedy may be through the supervisor of those that who broke the rules.

Brendan Greene stated that since Chief McConnell is an unclassified employee the Commission does not have the option to discipline him.

Commissioner Tetlow stated that the Chief is already taking the only action the Commission could order him to do.

Gwen Wiggins, an NOFD employee who received overpayment, stated that Chief McConnell advised the administrative employees that they would receive the millage payment. Four months later they were notified that they were in jeopardy of paying the money back. She asked that the employees be allowed to retain the funds based on the fact that the employees were in no way negligent, they were told they had earned the money, it will cause and

undue financial hardship, and some of the affected employees had already retired. She stated Civil Service had already established a precedent to allow overpaid employees to keep the money they received. She said that Fire Chief had been overpaid due to a long standing faulty interpretation of the Civil Service rule that gave holiday pay on top of their regular salary. Civil Service staff had advised NOFD to cease the practice when it was discovered during the implementation of the new ADP payroll system. However, the practice continued until the rule was changed. She stated the administrative employees should be extended the same courtesy. She went on to say that Robert Hagmann had advised that Fire Recruits receive the millage even though they are on a 40 hour work week and are civilians until they complete training. Additionally, Fire Communications personnel were previously included. Ms. Wiggins also questioned how Fire Division Chiefs who perform administrative duties are eligible to receive millage pay.

Brendan Greene stated that Article 7 Section 14A of the Louisiana Constitution prohibits gratuitous payments even if they were wrongful. The Attorney General has issued several opinion papers on what constitutes gratuitous payments. He also stated that the State legislature cannot set minimum rates of pay for classified employees (other than Police and Fire). Awarding millage pay to civilians would amount to a pay plan amendment made by the legislature.

Robert Hagmann, Personnel Administrator of the Classification and Compensation Division, stated that the pay plan denotes who receives the millage and that Fire Recruit is listed in that document. The inclusion of the classification had been approved by the Commission.

Lisa Hudson stated that in the situation referenced by Ms. Wiggins with Fire Chief's receiving additional pay, the rules were not clear. Staff did not know the practice was occurring until the ADP conversion. She stated this is why it is important for Civil Service staff to audit payroll. She further stated that the Commission had since addressed the ambiguity issue through a rule change.

Clifton Moore, of the New Orleans Firefighters Association, stated that the action by the Administration had an adverse effect on several employees. He asked that the Commission keep this in mind when considering other issues before them.

Joseph Lieteau, Personnel Officer for NOFD, asked for clarification on the Commission's opinion on whether Fire Recruits should receive the millage since they are not yet firefighters.

Commissioner Tetlow stated that that issue is not currently before the Commission.

Nick Felton stated that while payment to civilians had not been made in ninety-six years, he did agree that these employees are underpaid and should receive a pay raise. He stated that Chief McConnell should be paying this bill. He quoted Judge Lombard's ruling that the goal of providing the City's emergency responders with extra pay via the millage is sound public policy. He stated millage is granted to recruit and retain these responders.

Commissioner McClain stated that employees are being allowed to work extra hours to pay the money back in order to help to minimize the negative impact on these employees.

Chief McConnell stated that he still believes that his interpretation of the law is correct, but the City and Commission attorneys do not agree. Civilian Fire Communications employees have received it in the past. He said that since Civil Service was not aware that the payment had been made, just like they weren't aware of the additional payment to the Chiefs, the overpayment should be treated the same.

Chairperson Craig stressed the importance of making sure similar issues are not created in the future.

Item #6 was a request from the Police Association of New Orleans for investigation and evidentiary hearing in accordance with Fourth Circuit Decision Orazio vs. City of New Orleans No. 2012-CA-0423.

Eric Hessler, representing the Police Association of New Orleans, asked the Commission to authorize an investigation into the implementation of the commander's special rate of pay that occurred in 2012. He stated PANO had filed for an investigation at that time and had been denied by the Commission. In 2014 the 4th Circuit Court of Appeals issued a ruling that found the Commission had arbitrarily and capriciously denied the request for the investigation. He stated since then very little has been done in terms of an investigation and he is asking that it now be enforced.

Raymond Burkhardt stated that the instructions that were given by the 4th Circuit were to do an investigation based on Civil Service Rule 3 section 7.3 and Article X Section 10 of the Louisiana State Constitution which also mandates investigations. He stated that a job study will find that most Captain and Major positions have been replaced by people receiving Commander pay who are Lieutenants. He went on to say that it is now time to do as the 4th Circuit instructed to find out if the Administration has replaced the Captains and Majors with Commanders and refused to give a Captains or Majors promotional exam.

Eric Hessler stated that the Commander position was highly contested at the time it was created. Then Chairperson William Forrester stated it should be reviewed in one year.

Brendan Green stated that the Commission had delegated this investigation to Jim Mullaly who had conducted a one day hearing in April. The manner in which the Commission conducts the investigation is to delegate it to someone who will receive all of the evidence provided by both parties. Mr. Mullaly is for all intents and purposes the investigator. He stated it is fair to create a record for the Commission by collecting testimony. The request is to reach out to the existing Captains, Majors and Commanders to find out what they do on a daily basis. The best course of action would be to have these employees come in and state the information for the record rather than have staff collect the information.

Elizabeth Robbins stated that the 4th Circuit Court stated the employees had the burden to specify their claim regarding how they felt they were unfairly denied the position. We already had this hearing. The Commission put this before Jim Mullaly in response to the 4th Circuit's finding. The plaintiffs were asked to identify their position before testimony is requested. That hasn't been done. Mr. Mullaly is waiting for them to specify their claim.

Raymond Burkhardt stated there was a status conference with Mr. Mullaly. The City's position was to have a hearing and question people. Mr. Burkhardt asked for a job study to be performed to determine the duties performed by Captains and Commanders.

Brendan Greene stated that the core allegation is that the Commission created a de facto unclassified position. This would be an investigation into what the Commission did when creating a special rate of pay for Commanders.

Elizabeth Robbins stated that appellants should be required to submit a specified petition of what their position is so that the City can prepare.

Commissioner McClain asked how do you square that with the language that created a de facto unclassified position. To be clear, the court has stated that what the Commission had done investigatively was not good enough.

Director Hudson stated that there was some discussion that the hearing examiner would then assign the staff to do the investigation. This practice has never been done. The hearing examiner did not think he had the authority to do so. Director Hudson requested clarification from the Commission on what staff should do. She suggested that the Commission can have the staff or the hearing examiner hold and investigation.

Raymond Burkhardt stated that the hearing officer cannot drill down and get organizational charts like staff could.

Chairperson Craig suggested ordering the staff to conduct a job study and then have it come before the hearing examiner.

Commissioner McClain stated that the 4th Circuit Court is ordering an evidentiary and contradictory hearing into the creation of the Police Commander special rate of pay.

Brendan Greene suggested combining the evidentiary and contradictory hearings and collecting the information necessary for the Commission to make a decision through testimony and submissions by the parties.

Director Hudson suggested that staff should only be asked to conduct an investigation if the Commission wants the staff to weigh in with a conclusion.

Eric Hessler stated staff expressed concerns at the time the position was created.

Commissioner McClain moved that there be an investigation performed by the staff and subsequently an evidentiary and contradictory hearing.

Commissioner Tetlow seconded the motion and it was unanimously approved. Please see Attachment A.

Item #7(a) under Classification and Compensation Matters was a recommendation from staff to retitle and increase the grade for the Library Branch Manager II. Commissioner Clark recused himself. Robert Hagmann stated this recommendation was a result of a job study request. Staff is recommending this change to better reflect the assigned duties and responsibilities of the position since the position is now responsible for a region instead of just one branch. He proposed retitling the position to Library Branch Manager and increasing the pay grade from 81 to 84 which would result in a salary increase from approximately \$51,000 to \$55,000. He stated that the Library Director had indicated his approval with the recommendation.

Commissioner McClain moved to approve the recommendation. Commissioner Tetlow seconded the motion and it was approved by all Commissioners with the exception of Commissioner Clark who had recused himself.

Item #7(b) was a request from Finance for Accountant and Auditor Hiring Rates. Director Hudson stated that Finance had agreed to defer the request because they had submitted information requested by staff on October 12th at 3:30 pm the day before the meeting. However, Alexandra Norton wanted to proceed with the request.

Commissioner McClain stated that it is not fair to the staff if the City indicated a desire to defer and now brings the item forward. He went on to state that he understood it was a urgent issue as expressed by Councilmember Stacy Head.

Robert Hagmann stated the request will affect over one hundred employees and approximately thirty job classifications. Commissioner McClain stated that was debatable. Lisa Hudson stated that there are accountants in other departments.

Alexandra Norton stated that we can handle the group that is most important to handle and then come back if there are issues. We think we are affecting eight classifications. We are asking for a hiring rate for auditors and accountants due to a retention and recruitment problem. The City often loses auditors to the State. She stated that the hiring rate does not change the base

salary. Director Hudson disagreed, stating that it becomes the minimum for the job classification in the pay plan. Ms. Norton stated that the hiring rate is a tool that is available for this very purpose.

Commissioner McClain asked Director Hudson what was her understanding of a hiring rate. Ms. Hudson stated it is an amendment to the classified pay plan. It changes the salary from the minimum to a rate above the minimum in order to recruit and retain employees. She went on to state that the information submitted on Friday at 3:30 p.m. is what staff needs to review.

Ms. Norton stated that the City did not need to provide salary information in the first place since it isn't a salary study. Director Hudson disagreed.

Commissioner McClain told Ms. Norton that if she didn't think the salary information was required she should have responded to that effect on October 12th. That would have moved this along.

Commissioner McClain clarified that we are talking about raising the minimums to attract people needed going forward.

Item #7 (c) was a request for the Police Department for the creation of new classifications of Crime Analyst and Senior Crime Analyst. Lisa Hudson stated that staff had received a request to create the crime analyst series and that staff had approved the use of the Management Development job series. NOPD disagreed with the recommendation and we met to discuss the issue. NOPD submitted a new proposal on the Thursday prior to the meeting. They had met with Office of Inspector General (OIG) and the OIG was agreeable to allowing NOPD to leverage the existing Inspector and Evaluator job series since it was comparable. Then Jonathan Wisbey asked on Friday to lower the min qualifications for that series.

Alexandra Norton agreed that the Inspector and Evaluator job series is comparable to what NOPD was requesting. She stated that the specifications and minimum qualifications are fine for NOPD to mirror. She asked if Civil Service was willing to let NOPD use that as a model and mirror the series to create a new series for crime analysts. Jon Wisbey stated that NOPD is comfortable with the minimum qualifications for this series.

Commissioner Tetlow moved approval of the new crime analyst job series. Commissioner McClain seconded the motion and it was approved by all Commissioners.

Item #7(d) was a request from the Police Department for creation of new classification of Application Manager. This item was deferred. Jon Wisbey stated that NOPD is still working with Civil Service staff.

Commissioner McClain then made a motion to amend the agenda to consider a request by NOPD to amend the salary of Police Academy Legal Instructor. The motion to add the agenda item was seconded by Commissioner Tetlow and approved unanimously.

As part of the Federal Consent Decree, Judge Morgan had requested that the hiring rate for Police Academy Legal Instructor be raised from pay grade 84 step 01 to pay grade 84 step 32 resulting in an increase in salary from \$55,102 to \$80,897. Commissioner McClain moved approval. Commissioner Tetlow seconded the motion and it was approved by all Commissioners.

Item #8(a) under Recruitment and Selection Matters were announcements #9425 to #9444. Commissioner Tetlow moved to approve the announcements. Commissioner McClain seconded the motion and it was approved unanimously.

Item #9 was ratification of Public Integrity Bureau (PIB) 60 day extension requests. Chairperson Craig called for public comment. There being none, Commissioner Tetlow moved to approve the extensions. Commissioner McClain seconded the motion and it was approved unanimously.

Item #10 (a) under communications was a report on ADP ongoing issues. Robert Hagmann stated staff will be working to convert NOFD to new ranges.

Item #10 (b) was a report on Civil Service Budget and Staffing. Director Hudson stated that the department's budget hearing is on Wednesday. The Department was approved for a \$227,647 increase in personal services which will fund five positions. It is our understanding that three positions were approved in the 2016 without the funding in the budget and this funds those positions and two additional Analysts. The money is not enough to fund the additional five people as requested.

Nick Felton asked if we are still having problems with funding for hearing officers. Director Hudson responded affirmatively. She stated that the department did not get approved for the additional funding requested.

Item #10 (c) was a report on comprehensive classification and salary study. Director Hudson reported that the selection committee had selected SSA consultants. There had been a three to two vote with the Administration preferring one respondent and the Civil Service staff preferring another. The Administration is negotiating to reduce the cost and be sure that the vendor understood the scope since the two bids came in at approximately \$600,000 and \$188,000.

Alexandra Norton stated that if we are unable to negotiate we can always go with the other bidder. We would like to get it done as soon as possible and will expedite the contract.

Clifton Moore asked if there were any time tables in the contract. Ms. Norton replied that the contract had not yet been drafted, but timetables can be included.

Nick Felton stated that NOFD was eager to work with SSA.

There being no additional business to consider, Commissioner Tetlow moved for adjournment at 1:34 pm. The motion was seconded by Commissioner McClain and approved unanimously.

**IN RE: Norvel Orazio v. Department of Police, Civil Service Commission for
the City of New Orleans, et al.**

No. 7893 – Civil Service Commission

MINUTE ENTRY

On October 24, 2016, the Commission entertained oral argument from the Parties to the above-captioned matter regarding the Petitioners'/Appellants' "motion for an audit and investigation." During the presentation of its case, the Petitioners/Appellants requested that the Commission direct the Civil Service Department to conduct a job study of the "positions currently held by police personnel designated by the superintendent of the police department as a commander."

The New Orleans Police Department and the Commission's executive counsel opposed Plaintiffs'/Appellants' motion and argued that the hearing examiner, appointed by the Commission to conduct an evidentiary and contradictory hearing, could accomplish an investigation through the collection of testimony and the submission of evidence.

The Commission GRANTED-IN-PART Plaintiffs'/Appellants' motion by ordering that the staff of the Civil Service Department conduct an investigation into the duties and functions of an NOPD Commander. The Commission left the scope and substance of the investigation to the Civil Service Staff to determine.



Michelle Craig, Chairperson



Ronald McClain, Vice Chairperson



Tania Tetlow, Commissioner