

CIVIL SERVICE COMMISSION
SPECIAL MEETING
Monday, April 10, 2017

A special meeting of the City Civil Service Commission was held on Monday, April 10, 2017 at 1340 Poydras Street, Suite 964. Ms. Doddie Smith, Personnel Administrator of the Management Services Division, called the roll. Present were Chairperson Michelle Craig, Vice Chairperson Ronald McClain and Commissioners Stephen Caputo and Tania Tetlow representing a quorum. Chairperson Craig convened the meeting at 1:11 p.m. and proceeded with the business portion of the meeting.

Item #1 was a request from the Police Department to create 16 unclassified Police Commander positions.

Personnel Director Lisa Hudson reported that at its February 20, 2017 regular meeting, the Commission requested that staff complete its investigation and report back to the Commission regarding the New Orleans Police Department's (NOPD) use of a special rate of pay granted to recognize the special assignment of Police Commander. In addition, at the February 20th meeting, the Police Department requested that the Commission approve the creation of sixteen unclassified Police Commander positions. Director Hudson reported that staff issued the report on April 3, 2017.

Robert Hagmann, Personnel Administrator over the Classification and Compensation Division, proceeded to give a summary of the report. He stated that the objective of the report was to provide the results of staff's investigation into NOPD's use of a special rate of pay granted to recognize the special assignment of Police Commander and to include an examination of the appropriateness of the Police Commander position for the unclassified service. Mr. Hagmann reported that the first finding is that a special rate of pay is being used as a substitute for a job classification. Police Commander is included in the Police Department's hierarchy of authority. There is currently no classified or unclassified job classification of Police Commander. Prior to the creation of the most recent special rate of pay, these assignments were performed by Police Captains and Police Majors. Police Lieutenants were not traditionally required to perform assignments at the executive and professional level. This means that Lieutenants are now acting as third level supervisors. Since the creation of the Police Commander special rate of pay, there has been a decline in the use of the Police Major and Police Captain job

classifications. Mr. Hagmann noted that the report includes a chart to that effect. Mr. Hagmann went on to state that this illustrates that the special rate of pay took away opportunities for promotion. Since April 2010 to present, the number of Police Majors and Captains has been drastically reduced by 93% and 75% respectively.

Mr. Hagmann went on to describe staff's second finding. A review of Civil Service Commission Rule III, Section 7 relative to the creation of unclassified positions demonstrates that these positions do not meet the requirements of the rule. Staff determined, after thorough review and analysis of the duties and responsibilities, that the work performed is appropriate to be performed by a classified employee. The job description and questionnaires provided by the Police Department are very comparable to, and not distinctively different from, the classified Police Captain job description. The position has been in the classified service and is appropriate to remain in the classified service. The second section of the rule requires that the position have considerable discretion and policy making authority which is not subject to further review or modification. Mr. Hagmann stated that based on the job description provided by NOPD, Police Commanders do not have discretion in policy making and authority which is not subject to further review or modification. The intent of the Constitution is to limit unclassified positions to the first two levels, the director and deputy director. Staff's interviews confirmed that Commanders participate in policy making forums, committees or identify policy and process reforms. The word participate denotes group decision making and not independent policy making as required by the rule. The questionnaires completed by the sixteen current Commanders do not provide support relative to the policy making authority condition required by the rule. Consequently, based on these factors it is appropriate for this work to be performed by a classified employee. Mr. Hagmann reported that the third finding was based on staff's survey of police departments accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA). Eleven of twelve respondents with Civil Service systems indicated that their department maintained the Captain position or higher in the classified service. Creating these unclassified positions would make NOPD inconsistent with their counterparts in other jurisdictions. The survey data confirmed that classified positions perform the class of work that is being proposed. CALEA is considered the gold standard of police organizations. Only three of twelve survey respondents indicated that their first unclassified rank fell below the Deputy Chief level. Most jurisdictions only had two levels of political appointees. Careers are not capped at Lieutenant for the eleven respondents

who indicated that their highest Civil Service rank was at Police Captain or above. Mr. Hagmann further stated that this request is not consistent with how some of the best practices organizations are set up. The majority of jurisdictions surveyed had at least two classified promotions beyond the Police Lieutenant level. Promotions are correlated to retention and increased job satisfaction. If unclassified positions are approved by the Commission, NOPD would have the most disproportionate ratio of classified to unclassified positions of survey respondents. Mr. Hagmann noted that the report includes a chart that illustrates promotions available after Lieutenant. Only the City of Atlanta indicated that those positions are not Civil Service competitive promotions. Baton Rouge and Charlotte have three levels and Mobile has four. The structure is that these positions should be in the classified service. Mr. Hagmann further noted that an additional chart shows the impact of approving these positions on classified promotional opportunities. Right now there are two positions available for promotions: Major and Captain. Given what NOPD is proposing, there would be none. The end of career opportunity would be at a non-exempt position. Mr. Hagmann stated that the Commission must balance the needs of both management and its employees. They are the greatest asset of an organization. Mr. Hagmann further stated that regarding accountability, if there is a competitive process in the classified service that can pick leadership, then traits are permanent. If a person possess these traits they are not likely to go away. He also noted that if these positions are approved, it would triple the complement in the Police Department and the ratio indicated by the survey data. Mr. Hagmann cautioned to take survey data with a grain of salt because people can show you other cities, for example the City of Minneapolis which does not have many civil servants. However, they have collective bargaining with the city. So it's an apple to oranges comparison. The organizations staff selected were CALEA certified.

Mr. Hagmann stated that the use of the Commander special rate of pay as a substitute is not appropriate and it should cease. The Commander position if created is appropriate for the classified service. He noted that there is no formal selection process for Commander. A formal selection process ensures that the same information is gathered on all candidates and used in a similar way in employment decisions. This transparency limits the perceived unfairness of a non-standardized process and helps to prevent discriminatory practices. He again noted that eleven of twelve survey respondents cited for best practices by CALEA maintained the Captain position or higher in the classified service.

Mr. Hagmann stated that staff had used a job description submitted to the Commission by NOPD and entered into the record on February 20th. The Personnel Director did not receive notice that another Police Commander job description existed until April 5, 2017. She received that notice from the Commission's attorney after staff's report had been issued on April 3, 2017. Staff reviewed the amended job description and did not see enough new information that would require staff to amend its report.

Mr. Hagmann stated that NOPD notes that the job specification for Captain and Major are outdated. He noted that staff recommends that changes be made to the specification when a job analysis is performed and demonstrates that changes are needed. The last job analysis was conducted in 2004 for the Police Captain exam and did not show that changes were necessary. NOPD has not requested any updates to these job specifications since that time. Staff's investigation found that the duties assumed by Commanders were the same as those in the job specification for Police Captain regardless of the date.

Mr. Hagmann noted that the comparison of ratios of classified to unclassified positions in City government is a specious argument. The basis for the Commission's approval of unclassified positions should not be based on comparison of numbers, but essentially on the constitutional requirements, the Civil Service Commission's rules and the authority and responsibilities inherent in the unclassified position being requested.

Mr. Hagmann stated that staff's first recommendation is to create a new job classification of Police Commander in the classified service with an entry salary of \$79,987. The position would entail police management work as a commanding officer of a police district or major division. The proposed minimum qualifications would be permanent status as a Lieutenant or higher, two years of experience as a Lieutenant or higher and a Bachelor's degree from an accredited college or university. Mr. Hagmann noted that the job description and minimum qualifications are a draft, so the department can work with staff to modify it. The Commission would have final approval. This position would be in the classified service and it addresses the needs that are before the Commission.

Staff's second recommendation is to redefine the role of the class of Captain to assisting the Commander in directing and coordinating the activities of a police district or bureau or assuming management responsibility for the

services and activities of an assigned division within the Police Department where professional and exempt level work is required.

Commissioner McClain asked how many unclassified positions there are currently in City Government. Mr. Hagmann provided a chart of the information. He noted that, after excluding the Mayor's Office, Law Department, state entities like the courts, and the capital project positions the ratio is very low. The total number is 638. Commissioner McClain asked how many of those positions are subject to the provisions of Rule III, Section 7. Mr. Hagmann responded that the chartered departments that have been given three positions are very few. He approximated a ratio of 150 to 1. Commissioner McClain questioned how Rule III Section 7 had been interpreted for those positions that are currently unclassified. Director Hudson noted that there are a lot of positions that the Commission approved for capital projects. Those positions vary from very low level positions that do clerical work to very high level positions. Commissioner McClain asked if they were subject to those rules. Director Hudson responded that they were. Commissioner McClain asked how that provision had been interpreted for those positions. Director Hudson responded that she did not know. The Commission agreed to do that despite recommendations from the staff. Commissioner McClain asked if Director Hudson was saying that staff recommended that all of those positions not be unclassified. Director Hudson responded maybe not every one of them. The capital projects positions were before the Commission a few months ago. Staff was trying to do an audit of those positions, but had not completed the audit and the Commission agreed to approve those. Ms. Hudson continued by saying they were really low level positions up to administrative positions. It varied. It was over 100 or 200. Mr. Hagmann noted that they were temporary positions that are going away. Commissioner McClain asked if they were subject to the rule. Director Hudson and Mr. Hagmann responded affirmatively. Commissioner McClain asked how many of those the staff had recommended for approval. Director Hudson responded that she believed that staff never recommended approval of those. She believed those were asked to be temporary because of the capital project work being done. Staff was supposed to audit them, but staff did not get to complete its audit. Commissioner McClain asked if the staff didn't recommend approval of those positions. Director Hudson responded that there were actually new positions that were not even looked at and the Commission approved those for Cedric Grant. Commissioner McClain stated that he was just wondering how that rule had been interpreted previously particularly in regard to autonomy in policy making decisions. Director

Hudson offered to compile a report. She noted that there are so many over the past and that staff would have to go back and do an investigation. Robert Hagmann stated that he could go through the unclassified list and tell you exactly what those allocations mean. Commissioner McClain emphasized he was particularly interested as to how the staff interpreted Rule III Section 7. Mr. Hagmann stated that what staff is looking at when making a recommendation is does the position contain the same level of responsibility as a Director or Deputy Director. It is true that not many people have final policy authority, which is to enjoin the City into actual contract, but the standard is either the department head or the proxy. Commissioner McClain asked if the standard was used for the Police Department, but not other departments. Mr. Hagmann replied that it is used for all departments. He noted that City Planning only has two unclassified positions, Aviation has six due to the nature of the organization of the department. Commissioner McClain asked shouldn't it be based on Rule III Section 7. Ms. Hudson replied that for the most part that is how staff interpreted it, unless you can tell staff otherwise. She noted that the Commission has allowed for exceptions to that based on temporary appointments.

Commissioner Tetlow asked if civilian employees were included in the ratio calculations. Mr. Hagmann cautioned against getting hung up on the numbers, but advised to get hung up on the position and the position's responsibilities. The ratio is a metric and the metric only says so much. The ratio increases with the inclusion of civilians because there are a few hundred extra. Commissioner Tetlow stated that looking at other departments it is apples to apples because it is looking at sworn officers, but internally within city government it included officers, not total employees. Mr. Hagmann stated that the chart it is broken down strictly by rank and file. In the report there is a chart that breaks it down by each category in each city. Director Hudson stated that it sounds like Mr. Hagmann is saying he compared the police rank and file not civilians and one police department to another police department. Commissioner Tetlow noted that it makes perfect sense among departments, but not internally to compare Finance to Police. Ms. Hudson stated that staff did not do that because the Constitution limits the agencies to three unless the Commission agrees to do something else. She stated she doesn't think decisions to increase a department's unclassified should be based on the numbers. Commissioner Tetlow stated that she had the impression that staff was presenting that information because sometimes we imagine that we don't want to get above a certain percentage of unclassified.

Director Hudson replied that staff never does that because we don't think that should be a basis for considering unclassified positions.

Commissioner McClain asked if there are only twelve departments that are part of CALEA. Mr. Hagmann responded that the survey was sent to the top 21 or 22 departments. Out of the fifteen who responded, three did not have civil service systems. He cautioned that where there is no civil service you generally have collective bargaining. Commissioner McClain asked if the interpretation was made that those eleven were more consistent with New Orleans than Atlanta. The eleven, with the exception of Atlanta, had ratios that were totally different than those proposed by NOPD. He questioned if there was an interpretation that New Orleans was more different from Atlanta than they were different from those other eleven. Mr. Hagmann responded that in order to have an objective standard, the criterion to be selected into that pool was that the department was CALEA certified. Commissioner McClain asked if Mr. Hagmann thought that those eleven compare more favorably to New Orleans than Atlanta. Mr. Hagmann responded that their unclassified to classified ratio is less. At some point you have to identify your pool as comparable cities. NOPD submitted Cleveland and Minneapolis as comparison cities, but they are not CALEA certified and they have a collective bargaining agreement. Commissioner McClain indicated that he was referencing the twelve listed that were CALEA certified.

Police Superintendent Michael Harrison stated that the request for 16 unclassified positions is critical to securing the progress that has been made over the last several years under the nation's most robust and expansive Federal Consent Decree. He stated he recognized that a request like this is an exception and not the rule. Leaders are required to make exceptional decisions and take exceptional measures to get things done because we are in exceptional times. The special assignment authorized by the Commission has enabled many of the reforms required under the Consent Decree. It is not a perfect solution and there is still more work to be achieved. Chief Harrison stated that he thought that staff's recommendations represent another version of something that NOPD has already tried in the past. NOPD had tried granting Captains special rates of pay to Commanders and provisional appointments to the Major position, but it didn't achieve the flexibility needed, so we went back to the special assignment pay that exists today. Staff is proposing another classified position that will not have the flexibility or the policy making authority that we believe Commanders need to respond to the needs of 21st century policing. Commissioner Craig asked what about it does

not allow for flexibility on policy making. Chief Harrison responded that we want Commanders to have flexibility and autonomy to be able to take recommendations from members of their own community and from their own knowledge and work experience to create policy and create initiatives without micromanagement from the Superintendent or Deputy Chiefs. An example would be taking a recommendation from the Police Citizen Advisory Board and having the authority and autonomy to implement that recommendation. Commissioner McClain asked why a classified Captain/Commander wouldn't be able to do those things. Chief Harrison responded that it is when the Commander fails to do it in a classified position that as a leader he can't immediately put someone in a position who can and then have a department that shares his vision, shares the vision of what 21st century policing is and be able to implement that because they share this vision. Commissioner McClain asked Chief Harrison if he had the ability through the civil service process to sanction and/or take other personnel actions with a classified Captain if they were in a Commander position. Chief Harrison responded that to the extent that is true. What happens is the bureaucracy when the person either fails to perform or doesn't perform to a standard or there are other issues that make the leader have to move that person and put another person who can accomplish those tasks. The person who is classified is locked into the civil service position. Then we get into a department where that person has people who have loyalties to that person, but that person is no longer in the position. Commissioner McClain asked if a classified Captain couldn't be demoted. Chief Harrison responded that it could, but NOPD has tried that and it has not worked. That has created a culture that has led us into a Consent Decree. Commissioner Craig questioned what Chief Harrison meant that that he had tried that and it did not work. She noted that he has the power to demote. Chief Harrison stated he has the power but it is a bureaucracy that is extremely hard to penetrate and navigate through. Commissioner Craig questioned what that meant. Chief Harrison responded that it means that it requires more than the leader having the ability to appoint somebody to get that specific job done, and at that moment remove them from that position, return them to their civil service rank and then put the correct person in. We have to go through a democratic process where we collect evidence, hold a hearing, and then there is a number of appeals, so there is not the flexibility that is needed in the evolving policing that exists today. It will allow Commanders to implement innovative solutions as they determine what is necessary for their given assignments.

Commissioner McClain asked if an objective criteria is anticipated for making the decision as to who would become a Commander. Chief Harrison responded affirmatively. Commissioner McClain asked if it had been shared with Civil Service staff. He noted that one of staff's recommendations was that there was no formal process for decision making relative to who would occupy that position. Chief Harrison responded that when this was started with the special assignment, there were not rules about how the Commanders were selected. It was at the discretion of the Superintendent. Up until we created a vision of how we make assessments on management and leadership abilities there were no rules. Commissioner McClain stated that he was hearing that there are some criteria now and they have been shared with the Civil Service staff. Chief Harrison agreed. Director Hudson asked when staff had received those because she did not recall getting them. Eric Melancon, Deputy Chief of Staff for NOPD, stated that those had been delivered to the Commission's Executive Counsel who he believed had delivered it to staff last week. It provided a selection process that starts with the Deputy Chiefs putting out information requests for all Lieutenants and above in the department who would be qualified under NOPD's job description. Commissioner McClain asked if they would be able to apply for the position. Mr. Melancon responded by saying absolutely. He noted that the same thing was actually done when these special assignments took place in 2011. A job posting was circulated to all Lieutenants Majors and Captains in the Department. Commissioner McClain stated that we have the criteria and an objective selection process identified. Mr. Melancon stated that it was delivered to Executive Council on March 10th. Director Hudson asked if it was provided along with the job description provided to Executive Counsel on March 10th. Mr. Melancon responded affirmatively. Director Hudson stated that staff did not receive the job description until after the report was released. She noted that staff has the March 10th job description. It only lists minimum qualifications. Mr. Melancon stated that NOPD had provided a separate document regarding selection criteria. Ms. Hudson stated that staff had not received that document.

Brendan Greene, the Commission's Executive Counsel, stated that he takes responsibility for that. He stated that pursuant to a request made by the Commission, he asked NOPD for an organizational chart and an updated job description. In answering that, Eric Melancon provided him with framework for what NOPD envisioned to be the selection criteria. Commissioner McClain asked if that was shared with Civil Service staff. Mr. Greene stated that he did not forward it to the staff. He just sent it to the Commissioners.

Director Hudson stated that when staff did its investigation, staff talked to the Commanders about how they were selected and no one could indicate that. Commissioner McClain stated the Chief has acknowledged that that process was not in place when those appointments were made two years ago or so. Mr. Melancon noted it was five years ago. Director Hudson, responded by saying there have been more recent appointments. Commissioner Caputo asked if NOPD was developing a whole new standard. Mr. Melancon responded that NOPD is developing a new unclassified position that would have this standard in place. Chief Harrison stated that with this request he is asking the Commission to grant them the authority to be effective and accountable policy makers that they know they can be. The request has the support of Judge Morgan and the consent decree monitors and the New Orleans Business Council, Forward New Orleans, and the Executive Director of the Police Executive Research Forum. He stated that Commanders need the authority and autonomy to create, adapt and execute the policies that are needed to achieve success in the districts and divisions. The best solution to achieve this is the creation of the unclassified positions.

Commissioner McClain responded that the recommendations from those various sources are important, but at the end of the day the Commission has to look at the Rule as to if we should approve unclassified. He asked how these positions are in compliance with Rule III, Section 7, particularly as it relates to seven, one "b" and the fact that that it is not appropriate for a classified employee. Mr. Melancon responded that part of the challenges NOPD is facing is to be able to implement broad sweeping reforms and make sure those on the front lines are given that authority to implement policy at their discretion on their own. Part of what NOPD disagrees with staff's evaluation is the standard, the threshold staff is placing for policy making is so high that final and sweeping authority, with all due respect to the Chief, even he does not have some of that authority if the Mayor comes in and countermands it. Commissioner McClain stated that it seems like it is not as clear cut as to how staff has interpreted Rule III Section 7.1(b). Mr. Melancon stated that it has been identified that the special assignment did not have that level of authority for all of the different Commanders. The unclassified request would give NOPD the ability to get out of the Consent Decree and establish long lasting reforms. Commissioner McClain asked how autonomous policy making is interpreted. Mr. Melancon stated it means to be able to adapt policy on how we police on a moment's notice.

Commissioner Craig stated that NOPD must have some examples of what employees can do outside of the classified system as opposed to inside the system. She asked NOPD to provide the specifics on what they can't do as classified employees. Chief Harrison stated that someone who is a Commander now is creating legislation, partnering with state legislators on state legislation that is in the session that starts today without any micromanagement from him, that could turn into NOPD policy. There are a number of Commanders right now who work on policy making initiatives, for example jail depopulation, who work on other committees with other stakeholders in criminal justice. So it helps to draft policy for NOPD since the Superintendent or the Deputy Chiefs can't be everywhere at all times. Commanders can represent the department and then come back and without micromanagement from the Deputy Chiefs or me, can make policy. Police Citizen Advisory Boards make recommendations to Commanders where Commanders in the district could be able to create a policy about deployment strategy and how they want to deploy their resources that may be unique to that assignment. Commissioner McClain asked if they would be available to do that without coming to the Chief or the Deputy Superintendent. Chief Harrison replied absolutely. He noted that a Deputy Chief, while as a Commander, implemented a deployment strategy that was very different than what the department was doing under a previous Superintendent that was adopted by the department. Commissioner Caputo asked NOPD to explain why a classified employee can't do that. Mr. Melancon stated that since 2007, NOPD has had classified Captains who had to be incentivized to take on these Commander roles. Now we are hearing that it is part of their job description. Then we went to a Major position, another classified role, they had provisional appointments for two years, after those two years they would have become permanent Majors. We are trying to make certain we have an efficient, effective leadership structure because if a person is not performing and they are in a permanent position, then the only alternative is to promote someone else from within and then find another position for that person to occupy. He noted NOPD has tried this before in both a Captain position and a provisional Major position. Now we are being recommended another classified position. These are not the solutions that we need. We need not just the flexibility to change leadership, but the structure that makes it an efficient and effective form of leadership throughout the NOPD.

Director Hudson stated that it is not inherent in the idea of being classified that prevents someone from making policy. She noted that she is a classified

employee and there are other classified directors in the Pay Plan who make policy.

Director Hudson noted that the 10% special assignment pay that was given to Captains was because the job of district Commander wasn't the role of a Captain and there was a recruitment issue trying to get those Captains to take on that difficult assignment. She noted that there was a recruitment issue in trying to get those Commanders to take on that assignment because it was so difficult. There were only eight of those assignments. Now we are talking about 16 positions and eight of those don't have to Command a district. The eight were Captains and it was an incentive for them to take on a difficult assignment of being over a district. Now we have 16 Commanders, eight of them are over a district and the other eight are in other various administrative positions.

Robert Hagmann noted that the Superintendent's recommended structure is essentially the same as that recommended by Chief Riley in 2009. There were 13 allocations of Police Major which did the type of work NOPD is describing.

Commissioner Craig asked NOPD to respond to Director Hudson's comments that policy making can happen in the classified service. Eric Melancon responded that part of NOPD's focus is to make sure that when policies are implemented they work and they are responsive to the needs of the community. Part of what is needed in an unclassified position is the ability to change leadership when changes don't work because part of what we see in the classified service is a bureaucratic structure that does not quite allow for the speed we need in having flexibility in leadership if policies are not effective. He noted that the policy making credential is one part, but the positions are unfit for the classified service due in large part to that accountability. Commanders need to be held accountable if they are not performing at the level of excellence that NOPD requires due to the requirements of the consent decree. Commissioner McClain asked if NOPD would you say that what's being proposed in terms of the duties and responsibilities with policy making authorities is different than what is currently in place with the special rate of pay. Mr. Melancon responded it was. Having the flexibility to assign a special assignment pay has been a big part of what's been able to achieve many of the reforms NOPD has made, but the failings of it are the command and control issues. He noted that NOPD is trying to make certain that the level of authority is clear in the rank structure.

Commissioner McClain asked if the command and control issue would be solved by moving to the unclassified. Mr. Melancon stated that it would definitely be resolved. The positions would become the third level rank after the Superintendent and Assistant Superintendents and would fall into a permanent rank. Director Hudson stated that that could also be accomplished by the classified service. Mr. Melancon stated that it would create that rank, but it would not allow for the flexibility and the ability for the Superintendent to make sure that policies that are required are pushed down toward the top level managers.

Commissioner McClain asked how NOPD would respond to a Lieutenant who was eligible and indicates he did not get a fair shake. Chief Harrison stated that this opens the door for the glass ceiling to be removed. There are a lot of people who have opportunities now who perhaps would not have had them when we only relied on test taking aptitude to be selected. A lot of people who test well do not perform well and they wash out. Because those people have been selected based on their energy, merit and work ethic and not on longevity and seniority, we are now in a position where the citizens trust the department. Commissioner McClain asked how you respond to complaints that your selection process is not transparent and how that would be remedied moving forward. Mr. Melancon replied that under the rules for special assignment pay there are no real standards. NOPD is trying to create an unclassified position that has a clear job description and a clear process for evaluation. In 2011 when the special rate of pay was established, the department did invite all Lieutenants and above to apply. Commissioner McClain asked if the new selection criteria had been shared with the union. Chief Harrison responded that it had not.

Commissioner Tetlow stated that she understood that in some ways the rule is about that a position shouldn't be unclassified if classified can do it, but on the other hand the notion that policy making authority is being part of the decision to do unclassified. She noted that most heads of departments are unclassified, but that Director Hudson is not because of the nature of the protection of Civil Service. It's not that you couldn't have a head of Finance who is classified, so that reading of the rule would swallow the whole because of course a classified employee could do any of these jobs. So it's more of the nature of what level of leadership and how far down you go and policy making and accountability not in the sense that a classified employee can be held accountable, but that the kind of accountability that is not about firing someone for wrong doing or not performing, but accountability in terms of

rising to the occasion and being willing to take initiative. Commissioner Tetlow then asked Director Hudson if based on her reading of the constitution should there be more than three unclassified people in any department ever. Director Hudson responded that staff had agreed to allow Aviation to take on additional unclassified positions based on the application of the rule. The positions are given the level of discretion, and they were Deputy Directors of the department. It's not that staff doesn't ever think it happens. When it is at the appropriate level of decision making in the department, we do agree to allow for that. Commissioner Tetlow asked how you define that. She asked if there's a rote level of one step down is okay but two steps aren't. Director Hudson responded that when you get to levels lower than the deputy director you have to go up those levels to decide what policy can be created. You do not usually get that authority at the lower level.

Commissioner Craig stated she needed to make a motion to amend the agenda to discuss Orazio vs the City of New Orleans and its relation to this request. Mr. Greene stated he deferred to the commissioners on whether or not they would want to entertain a motion to add an executive session to the agenda either before or after public comment to discuss litigation strategy pertaining to the remand from the Fourth Circuit involving Orazio vs the City of New Orleans Et al. Commissioner Tetlow motioned to do so, but expressed her desire take public comments prior to entering into executive session. Commissioner McClain seconded the motion. Commissioner Craig called for public comment. There being none, the motion was approved unanimously.

David Crosbey, Pastor of First Baptist Church of New Orleans, stated that the job is to protect and serve and we ought to empower this chief who is an expert in NOPD and understands what he needs.

Jerry Davis, a former Civil Service employee and former Commission member, stated that organizations fail when management can't articulate the mission of the organization. Agencies fail when they can't articulate the expectations of their employees. NOPD is failing badly because good employees can't see a fair and equitable career path, so they quit. Turnover is getting worse rather than better. Employees need to know what they need to do to be considered outstanding. The public needs to know that a person is qualified because they have been through a number of steps and have achieved a certain level of expertise. That engenders public respect for the officer based on their rank. Criteria for all jobs other than policy makers ought to be public and enforced via examination. Generally, unclassified employees do not have

autonomy because they are responsive to the person who appointed them and they can be removed at will with no control over when they get hired or fired. Mr. Davis noted that he was an unclassified appointee under the first Landrieu administration. He stated he got no job description and was simply told here's your job title, go do it. Various groups have complained about the bureaucracy and the time it takes in taking employees out of jobs and putting them in jobs, but that is a function of the cooperation received from the departments themselves. Every department head is entitled and encouraged to provide input into the nature of the examination that is to be given, the examination process and what the qualifications are. If a department head fails to exercise that responsibility, Civil Service cannot be faulted. He stated he does not support the move to the unclassified. It is a violation of the Commission's responsibilities. Given the arguments that have been made, there has not been anything close to a compelling argument to move these positions into the unclassified service. Commissioner Craig asked Mr. Davis what he thought a compelling argument would be. Mr. Davis responded that at the third level of the Police Department, it is hard to imagine that these people have true policy making authority. That is simply not the nature of police organizations or quasi police organizations. You cannot have policy makers gifting down into the third, fourth and fifth level. It confuses the public and the officers themselves who may be transferred from one division to another. He noted he was a little disturbed to hear the Superintendent feel that he may delegate the responsibility for policy development down to the second or third level of the department. That's the Superintendent's job. Commissioner McClain asked Mr. Davis if he was on the staff when Rule III was approved. Mr. Davis noted that it that probably predated his appointment. Commissioner McClain stated that it seems like that Rule would anticipate unclassified positions that are above and beyond the constitutional piece that gives unclassified status to the director or deputy director. Mr. Davis stated that it has been applied a number of ways in the past. He noted that in his own example, it was a federal program that no one knew the life of the program. That's been a frequent valid argument for the unclassified. It's a temporary position as opposed to an ongoing function of the City of New Orleans. The nature of jobs always needs to be looked at by Civil Service. That's part of their responsibilities. They have to consider is this likely to be a permanent function of government and can it fit within the classified service in terms of the responsibilities assigned to the position.

Michael Glasser, representing the Police Association of New Orleans, stated that he wholeheartedly agreed with staff's report on this position. He stated

that this is not a new idea. The idea came about in 2010. It was formalized in 2011 through the special rate of pay that has been in place for six years. It is interesting that we now have a set of criteria for a selection process as of last week. There has not been one for the six years that this has been going on. Commissioner McClain noted that what is being proposed now would include a formal selection process. Mr. Glasser responded that when Chief Serpas first proposed this position he articulated an entire selection process conducted by a panel. It never happened. We are concerned that the same thing will happen here. The Superintendent indicated he wants to create a Commander position and select people who share his vision. At the same time he states he wants people who are going to be autonomous and create their own policies in the districts. I'm not sure how you reconcile those two. He is asking for the ability to move people out who don't share his vision. Commissioner Tetlow stated that you can have a vision and then have the autonomy of policy makers under you on how to implement that. If the definition of policy making is so final that no one can countermand that, then that applies to no one in city government. Director Hudson stated that Mr. Glasser is questioning how independent one can be if you fear losing your job. Mr. Glasser stated that we are confusing following instructions and coming up with policy. He noted that he can come up with all of the policies he wants and present them to the Superintendent, but in the end, he has to do what he says. Commissioner McClain asked wouldn't a classified employee have to do that as well. Mr. Glasser responded by saying exactly. He stated he had not heard one word to say why a classified Captain can't do exactly what they want them to do. He stated he has heard that the Superintendent doesn't have flexibility. Mr. Glasser stated he does not agree with that. Everyone in the classified service has one year of probation. A person can be dropped down for any reason during that year. Mr. Glasser stated he would think a year is a good timeframe to determine if someone is going to be participatory in your programs and thinking the way you want and presenting good ideas or not.

Chief Harrison stated that is a good point. He noted that what happens is that everyone puts their best foot forward for the first year. Mr. Melancon stated that when the Commission gave provisional Majors they actually extended it to two years. Director Hudson stated that is not the case. She noted there was no open decision on when to limit the provisional appointment. There was no decision to extend a provisional from one year to two. It was based on when Civil Service could give a test and staff was seeking funding to produce the test. Mr. Glasser agreed with Director Hudson.

Commissioner Craig stated that the question is why the year doesn't provide the flexibility. Chief Harrison stated that it is both the appointment and the removal that work together. It is at the point that the person has to be removed from the position it is really difficult to navigate and it requires a lot of work. We can move the person out of the position, but the person remains a classified Captain. Now we have put another person in a position for which we must find work commiserate of that duty in the department while we put someone else in the position that is vacant. Commissioner McClain requested an argument for why it is not appropriate for a classified position. Chief Harrison stated that it is both appointment and removal working together and not separately. He stated it is his vision that everyone in the organization does the right thing for the right reasons all of the time for the people. It is about being transparent and professional and accountable. It is about downline logistics and knowing that everything downline to the newest employee is being done for the right reason.

Commissioner McClain asked Mr. Glasser if he saw the Association of Police Chief's report that supported the unclassified position. Mr. Glasser responded that he is not surprised. He appreciates and respects that the Superintendent wants full autonomy to pick everyone, but unfortunately that is not the system we work in. There is a reason why Civil Service was enacted to begin with, to prevent arbitrary and capricious demotions and promotions and hiring and firings and to set a standard. The Superintendent has this to some extent; his upper management is at will. Below that, the classified service makes more sense. The Superintendent says he needs people who are responsive to his needs, but he has never said why a Lieutenant who passes the Captain's test can't do that. The Superintendent said he wants to promote healthy competition. That's exactly what the Civil Service Commission does. It creates a standard with a test, tells everyone what will be on the test, and tells you what periodicals and text books and rule to study, and then tests for that. The Superintendent has great authority with determining what those testing items are going to be. Once that happens you have healthy competition. As it stands now, the only competition is how favorably you are viewed by the appointing authority. He stated that while he agreed with Chief Harrison that a test doesn't always guarantee a good outcome, he didn't think any of the Commissioners became attorneys without passing the bar. He stated we are looking for a reasonable base level of performance and ability that goes into the upper level management. He continued by stated that he doesn't think that a one year Lieutenant who has 260 working days as a line supervisor is prepared to make autonomous policy for the Superintendent. The consent

decree determines NOPD policies. Even the Superintendent cannot enact policy without approval from the Federal Judge. These individuals can suggest policy and participate in creating policy to bring to the judge, but they do not create and implement policy independently. He went on to state that even staff's report says that current Commanders said that they don't have that autonomy. Mr. Melancon interjected that NOPD is trying to grant that autonomy. Mr. Glasser stated that you can grant that to a classified employee. Mr. Melancon countered that you can't do it and hold them accountable. Mr. Glasser stated that he disagreed.

Chief Harrison stated that the NOPD writes and creates policy. It is an order of the Consent Decree that we submit those to the monitor, the Department of Justice and the Judge for review and edits, but we write, create and implement the policy. He stated that he has gone to Judge Morgan to remind her that he is the Chief and we implement policy. We are the decision makers, the managers, not the monitors.

Mr. Glasser stated that the Superintendent says he can't remove people. He noted that NOPD started off in 2010 with 39 Captains. That is down to six now, where did they go. Commissioner Tetlow, questioned if any of them had retired or were they were all fired. Mr. Glasser responded that they weren't all fired but they all left. Commissioner Tetlow asked how is that an example of him removing them. Mr. Glasser responded by saying because he removed them from their command and replaced them with Commanders. Commissioner Tetlow stated that he had to pay them as Captains. Mr. Glasser stated that the fact that they weren't written up for being underperformers is not their fault, it's the Chief's. If you have an underperforming employee, write it up deal with it. There is a process for demoting people who underperform; Rule IX. Commissioner Caputo asked how long it takes before you can remove that person. Director Hudson stated that you can remove them immediately. If a person decides to appeal the removal, then they have a right to an appeal before the Commission. The person is no longer in that position at the time the appeal is going through. The person could go back to their former position or be gone from Civil Service if they have no status. Commissioner McClain asked if the person is successful with their appeal wouldn't it create a situation where they have to go back to their position. Director Hudson asked shouldn't it if they are successful. Commissioner McClain noted that then you have to remove the person who was put into the position in their place; that's the bureaucracy they are speaking of. Commissioner Craig stated that if the person has a successful appeal, then

theoretically there is a reason. Chief Harrison noted that there is a major difference between removing a person from an assignment and demoting them from the rank that they hold. Demoting them from the rank requires an enormous evidence gathering about the lack of performance. Commissioner Craig clarified that a probationary employee cannot appeal and that the department has a year during the probationary period to determine if a person can do the job or not. She stated that there is very little bureaucracy there. Mr. Melancon stated that while the position itself may have a one year probationary period, the job itself is consistently changing over time. The position needs to change with it. NOPD needs a leadership structure that can adapt as the challenges change. Chief Harrison stated that not all issues are discipline that requires demotion. Sometimes there is a performance issue that requires removal or demotion, so it does become cumbersome. He stated that the Superintendent needs immediate flexibility to satisfy internal and external concerns. We are all accountable to the constituency we serve. Mr. Glasser stated that the classified service gives you that authority on the front end with the probationary period and on the back end with transfer, discipline or demotion immediately. Director Hudson stated that the Chief said when you remove someone and return them to their lower class you have to find a position for that person. She stated it was her understanding that if we grant these unclassified positions the Chief will allow those promoted to Commander to take a leave of absence from the classified service to the unclassified service, so that same situation would exist with the unclassified positions. Mr. Melancon disagreed, stating that the level being proposed by staff is the Commander level. If folks have permanent status as a Commander in a classified system, if someone is demoted for nonperformance, they couldn't be demoted to Lieutenant. They would be a Commander still and you would have to find a Commander level position to put them into. Under NOPD's proposal they would go back and serve as a Lieutenant or as a Captain. There are many more Lieutenant positions in the department. Director Hudson stated that if the person is demoted they would go back to their previous rank. Mr. Melancon, stated that would be the case if they were demoted but not if they were removed from their assignment. Director Hudson stated that if they are on leave to the unclassified and you restore them, the issues are the same. Mr. Melancon stated that he disagreed, noting that there are many more positions at Lieutenant rather than Commander.

Mr. Glasser stated that this is for the patrolmen, Sergeants and Lieutenants who 20 years from now want to be in these positions. They have to be incentivized to stay on this job. This is part of the recognized attrition

problem. In the classified service, I know what I have to do to be eligible for promotion. I have no idea what that is now. Commissioner McClain noted that the Superintendent and Mr. Melancon say the criteria has been shared as of March 10th. Mr. Glasser stated that we need to raise that level of experience and exposure and tenure to something reasonable for a management level position. He stated that what is being proposed is too low and selection criteria need to be transparent to incentivize staying on the job.

Peter Hansche, a Police Sergeant, stated his opposition to the Commander position. He stated he supports the vast majority of what Chief Harrison is talking about. The Commander position as it currently stands is disruptive to the rank structure of the Police Department in terms of if a Commander can give an instruction to a Captain. He stated he had skipped the most recent test for Lieutenant because he didn't want to be considered for Commander because he didn't want to be in a job that he would be into and out of on a whim and he didn't want to advance more quickly than what was good for his career. He noted that the Commanders he has encountered seem scared. Commissioner McClain questioned if he thought it was because they are Lieutenants as opposed to Captains. Mr. Hansche replied affirmatively and stated it is because they can be moved and there will be much public comment on that. If there is a test, the Superintendent already enjoys the ability to choose from whoever is on that list anyway and can remove them during the first year.

Commissioner McClain asked Chief Harrison why the Great Place to Work provisions wouldn't give him flexibility. Chief Harrison responded that we are talking about long term both in terms of removal and demotion. Once they are permanent they cannot be removed at will. He noted he had not demoted or removed anyone arbitrarily in his three years. When a person is permanent they cannot be removed long term. Mr. Hansche stated that under the current position, the Commanders feel like they are restricted in what they can say. The Civil Service system exists for a reason, that system gives us a process, if that process takes time it is time well spent.

Jim Cook, General Manager of the Sheraton New Orleans spoke next on behalf of the Business Council of Greater New Orleans and the River Region. Mr. Cook stated that he serves on the Criminal Justice Task force. He stated he supports the declassification of this particular rule because it is important for the executive team to be able to simplify the activities especially within the leadership group. He stated he applauds the Chief on the work he did to

seek external opinion. This is an opportunity to provide the executive team an opportunity to make the changes that need to happen within in each of those commands and align their senior leadership team.

Commissioner McClain asked Mr. Melancon or Chief Harrison to articulate what the selection criteria would be. Mr. Melancon stated that the five Deputy Chiefs review all applications and come together as a panel interview with a preset set of questions and make recommendation to Superintendent. What we are looking for with this position is to institutionalize that process.

Director Hudson asked if it was true that another Superintendent could come in and change that process. She questioned what institutionalizing the process meant. Mr. Melancon stated it means creating a policy and procedure. We want to have a process that is open and fair, but we need to have a leadership structure that is responsive to adjust to the needs of the consent decree but also the needs of the community as they change. Commissioner Caputo asked for the proposed minimum qualifications. Mr. Melancon stated they are ten years of experience as a law enforcement officer, five of which at NOPD is preferred and at least one year as a Lieutenant. Commissioner Caputo noted that others had voiced the opinion that one year as a Lieutenant is not sufficient. Chief Harrison stated there may be people who rise up who have exemplary skills.

Donovan Livaccari, representing the Fraternal Order of Police, stated that unclassified positions are the exception to the rule. That means we need to provide evidence that we can't go with what the rule is. Everything we've heard today is that a classified employee can do everything that the Chief wants to ask of them. There is nothing in the Civil Service rules to prohibit the Chief from giving whatever authority he wants to give to a classified employee. Classified employees are the rule; we need evidence to go otherwise. He stated that in 25 years, he'd only seen maybe one person demoted during the working test period. So maybe it is time to take a close look at the working test period. There are more Captains than there are district Commander assignments. The Chief has the authority to transfer people out of Commander assignments at his whim. The fact that he may need cause to demote someone is a good thing. The fact that someone can appeal when they are discriminated against is a good thing. The courts have held that the classified service is the rule and that unclassified positons are the exception. The Commission has an obligation to protect the classified merit-based system of employment. He cautioned the Commission that they are not a good government folks and their obligation is to act in furtherance of the merit

based employment system. He stated that we have the rules to guide our way. If this Commission is to uphold the integrity of its rules it will deny this request. The Commission approved a special rate of pay for Commanders in the spirit of compromise after denying a similar request. Sometimes the Commission just has to say no. We have played fast and loose with the Civil Service Rules as of late. Sooner or later that will come back to haunt us.

Commissioner McClain asked Mr. Livaccari for his opinion of Rule III Section seven. Mr. Livaccari stated that he doesn't think the Commanders hold the type of policy making authority that is envisioned by this rule. He stated that we can sit here and say that nobody has out and out discretion to do whatever they want and is not answerable to anybody. I'll go along with that. However, Captains and District Commanders have always had the authority to deploy their personnel as they wanted. Those decisions are always subject to review and revision by the Deputy Chief of Operations and his decisions are always subject to review and revision by the Superintendent. The District Commanders simply don't have the type of authority that is envisioned by these rules. We expect them to participate in policy making and serve on committees that develop policy. They can't just go and do it in a manner that is not subject to review and revision. We have not seen evidence that these positions are not suitable for the classified service.

Keith Joseph, representing the Black Organization of Police, stated his group is opposed to the unclassified positions due to morale. We do not have opportunities. Before, we had a lot of opportunity to become a Commander. There were 39 Captain positions. He stated right now he has no opportunity. There are only 16 positions and if you are not one of the chosen ones who is liked by the Chief or Deputy Chief, you will not be picked. Commissioner Tetlow noted that that's when the Police Department was 30% bigger. Mr. Joseph stated he believed NOPD had 1600 at the time. He stated he would have opportunity to take a test and be level with everyone else. Mr. Joseph stated with the new criteria a person may have an opportunity to apply, but if they are not liked they still may not be picked. Classified, a person has more opportunity. Unclassified, a person can only be picked if they are liked. Morale is down. Lieutenants who want to speak about this are afraid if they do so they won't be a part of the sixteen.

Kisha Garrent, representing New Orleans Regional Black Chamber of Commerce (NORBCC), had to leave the meeting but left a statement. Director Hudson read the statement into the record. It said that the NORBCC

supports the approval of the unclassified position to allow for transparency and allow the best qualified candidate be allowed to apply and it would allow for diversity in this rank that is reflective of the community as a whole. The most qualified applicants should be able to apply and not be discouraged by a length of service selection that does not take in best qualified.

Keith Twitchel, President of the Committee for a Better New Orleans (CBNO), stated that CBNO is in favor of the proposal. He stated that leadership is a privilege to be earned, not a right. There are aspects of leadership that are universal across all types of organizations. One of those is that the person at the top be as free as possible to select his or her leadership team. If we are going to hold someone accountable for running a large organization, we cannot tell them who they can and cannot pick to work with them. We should do as little as possible to restrict the pool from which they can select their leadership team.

Caitlin Berni, Vice President of Policy and Communications for Greater New Orleans INC (GNO INC), stated that GNO INC is in support of the request for 16 unclassified policy making leadership Commander positions. This change will institutionalize the many successful reforms made over the past seven years. Allowing for the creation of these positions will give the NOPD additional tools to make our City safer. Creating these positions clarifies the chain of command, removes legal ambiguities and aligns the NOPD more closely with other City Departments. These roles would have wide autonomy, empowering Commanders to drive key operational policies, hire personnel, manage divisional budgets, implement major projects and participate in policy making efforts.

James Gallagher, representing the Fraternal Order of Police, stated that in an unclassified position, the minimum qualifications can be changed anytime a new Chief comes in and also at the Superintendent's whim. There is nothing in the Civil Service system that says that an unclassified has to meet these criteria. The Chief of Police will be the Chief for about one more year. Historically Chiefs of Police have served about three years. In the past we have talked about replacing the upper management of the department when a Chief is replaced. Now we are talking about potentially replacing the middle management of the Police Department. Can you imagine what that does to the rank and file to see the entire management structure, upper and middle, replaced every three years. The biggest problem faced by the police department is manpower. Policies and decisions the Mayor made put us in

this position. Cutting off career paths is not the answer to fixing that problem. You have already taken lower level management and made it a simple pass fail exam. There is not a real merit promotion system left under this administration. The Superintendent passed over the number one finisher on the Lieutenant list to make number 64. Now you are taking even the pass fail test away from middle management. He is basically saying he wants the ability to promote people who can't pass a Civil Service test. Commissioner McClain asked if employees had to be at the rank of Lieutenant before they are eligible. Mr. Gallagher responded that everyone knows the criteria set by Civil Service and that it is permanent. Commissioner Craig stated that in the event that the Commission granted the unclassified position, you would know what the criteria are as well. Mr. Gallagher responded that he would know what they are today, but they can be changed at the Superintendent's whim.

Commissioner McClain asked what would stop a new person from coming in and wiping out the Superintendent, Deputy Superintendents and 16 Commanders in one swoop. Chief Harrison responded that he didn't think any Superintendent would do that. Commissioner McClain noted that it could be the Mayor. Chief Harrison stated that it could be, but he or she would be undoing what is working. They would be reducing citizen satisfaction from 68% to something lower. He also noted that NOPD is still under a Consent Decree. Mr. Gallagher stated that many of us would have assumed that the Police Department would not have been reduced from a 1600 department to an 1100 man department either because certainty that is not best practices. Mr. Gallagher noted that the Consent Decree gets brought up a lot here. I don't recall making unclassified positions as a mandate of the consent decree. Commissioner Craig stated that she was not sure the Chief is saying that. Commissioner McClain stated that his inference is that the Consent Decree would probably preclude a new Mayor from coming in and wiping out all of those new positions because it is being monitored. Mr. Gallaher stated that what we are saying here is that we are going to make the middle management of the Police Department at will positions similar to what exists in our Sheriff's Department. The whole reason Chief Harrison is stressing this is so he can remove them at will because they don't agree with his vision. So the next Superintendent may very well have a different vision and the people this Superintendent chose who agree with his vision by definition would not agree with the next Superintendent's vision so therefore they would potentially all be replaced. Mr. Melancon stated that if something like that happens, the Commission could take away what they have given. Mr. Gallagher stated that

it is clear to the organizations that represent 100% of police officers that this is a bad idea and his organization is asking the Commission not to do it.

Simon Hargrove, representing the Black Organization of Police, stated that the classified system protects diversity in many ways including thought. The classified position of Captain could be tweaked to meet some additional accountability if needed. Allowing the classified system to work will encourage the department to develop all of its members and not the few who are selected based on the criteria at that time. He asked if anytime there is a crisis in any department the solution is to allow an unclassified and, if so, for how long. He stated that Mr. Melancon mentioned an individual being successful for a few years and then struggling. He noted that could be the task at hand, so should the person be supported and given assistance to get them through that difficult moment or should the person be moved because of political pressure. It seems the issue is to ensure the classified system can meet the demands of today and tomorrow. Commissioner McClain asked if Mr. Hargrove was suggesting that if there were 16 unclassified police Commanders that would somehow wipe out the entire classified system. Mr. Hargrove responded by saying no. He went on to state that he was saying we are going down a slippery slope. He asked if another agency has a crisis and they ask for more unclassified positions is that is the path we are headed down. Commissioner Craig stated that the Commission wants to be clear that these are special times and this is a very special circumstance. She stated there has been a lot of reference to the Consent Decree, but there is a reason for that, so she thinks we have to look at that and say if there is an emergency or not in another department that will this create the same situation. She noted it is somewhat apples to oranges because it's critical for everything to run smoothly in New Orleans. That's not the case in every other department, there may be some, but we need to make it clear that this is a unique set of circumstances because of the Consent Decree. Mr. Hargrove noted that the Consent Decree is pushing us in a certain direction, but it does not require that a person be unclassified. There is no reason why the classified system cannot work. If a person runs into struggles after a year, my thought is that the person should not automatically be removed, but they should be removed for cause. I think the Superintendent's concerns are somewhat valid but they can be tweaked within the classified system.

Raymond Burkhart Jr., a Police Major, provided a breakdown of major crime and policing from 2010 to 2016 be placed into the record. He stated that crime is directly related to the management of the organization. Commissioner

McClain asked about other social factors. He stated if Mr. Burkhart is saying that crime is directly related to the command structure he is forgetting the other pieces that police and others often talk about. Mr. Burkhart agreed that that's not the only factor. He went on to say that we have heard with no data how successful the six year journey we've had. In 2009, when he was writing policy that was done to expand the rank of Major, not to do probationary status or to do away with the rank of Captain. It was to expand it because the district Captains were doing exceptional work beyond what a normal Captain would do. He stated he wrote policy as a Sergeant and helped write bills with respect to DWIs. If the Superintendent thinks you are capable, you can be a patrolman and write policy.

Commissioner McClain stated that some people were arguing that they don't have autonomous policy making. Mr. Burkhart replied that's because the Superintendent chooses to do that. Mr. Burkhart stated that he told you he would have criteria. This whole administration is going to be gone in a year. We've had six years to do this in what's called extraordinary times. Commissioner McClain asked Mr. Burkhart if he believed that the Commanders have policy making authority. Mr. Burkhart replied that they do not. Commissioner McClain stated that Mr. Burkhart said that Sergeants make policy. Mr. Burkhart replied by saying no, that is according to the Superintendent's definition of policy. That's not policy because of the ultimate approval and it's called the chain of command. You make a recommendation where it goes up and is finally approved. If you are going to let a Commander in a district create policy then you are talking about fiefdoms. Their definition of policy is suggestions where everything has to go up the chain of command to be approved. There is no district Commander or any district Captain in the past that could make their own policies. You would have to get approval from the Superintendent. Commissioner Craig asked for the two definitions of policy. Mr. Burkhart replied that first there is a law; second there is the overall policy administration of the Mayor's office which is then formulated into the Operations Manual. There is no Commander that can change the Operations Manual. He can suggest it and ultimately the Superintendent either approves or disapproves it. The civil servants run the day to day operations based on the overall policy.

Mr. Burkhart stated that the Police Department is becoming dysfunctional. Nobody trusts the chain of command anymore. The 16 Commanders are scared to death to talk. The Superintendent said they weren't at the last meeting because they were working, but that was everyone's day off. They

are at will. What they are promoting is an at will employment situation. He suggested that the Civil Service Commission thoroughly study this. Commissioner McClain asked Mr. Burkhart if he had seen the public opinion poll on satisfaction with the Police Department. Mr. Burkhart stated that he had, but it depends on population, how you were selected and what questions you were asked.

Eric Hessler, representing the Police Association of New Orleans, stated that nothing that has been said thus far has overcome the unequivocal recommendation of the Civil Service staff who has found that this can and should be a classified position. There is a rule, a law that says this is what unclassified employees must be and must be able to do. The department cannot, should not, and will not give third line Commanders that particular portion that requires them to have ultimate policy making decision. The 8th district policy shouldn't be different than the 1st, 2nd or 3rd. It's not that you can't be responsive to the community. That makes it opposite to being an unclassified position. Mr. Hessler asked if they could have done it and wanted to do it, why isn't it in the job description that they just completed. It doesn't give you policy making decision. It is a political move. It is to have political pressure, power and patronage for certain persons. The first time you do or say something I don't want you to do then you are gone. That's where the political pressures come in. It would be improper, unwise, and reckless and especially in complete disregard to the law, the Constitution and the recommendation of the staff to allow this to be an unclassified position. If due process is somewhat time consuming, well so be it.

Terry Hampton, representing Local 632 New Orleans Firefighters Association, stated that his group is opposed to this position. He went on to say that the previous Civil Service Commission got rid of merit based testing. Now you don't even have to take a test. They just pick who they want. The Fire Superintendent has abused our promotional system. Over the last year, one hundred guys left. Something has gone wrong. There is no future. You will not get promoted here unless the Chief likes you. It's who you know. It doesn't matter if you are the best qualified. We are losing 10 to 20 people a year.

Richard Hampton, representing the New Orleans Association of Fire Chiefs, stated he represents all upper tiered management of the Fire Department excluding the unclassified. He stated he couldn't agree more with the police representatives. He stated he has served as a Deputy Chief with over two

hundred members under his command and incident Commander during Katrina with 750 people under his command as a classified officer. He stated he worked hard to attain that rank. It is not necessary to appoint anyone. He noted that the Association spoke out against that position in 2010 and is equally opposed to it now. Every other department in the city is going to use a "crisis" in order to get their unclassified employees appointed verses those who pass a test and qualify merit-wise to serve. He went on to say that as Mr. Livaccari said, the Superintendent has the tools in his tool box now to appoint classified employees to do these unclassified positions. When these were first mentioned in 2010, our fear was that the Fire Superintendent would do exactly what the Police Superintendent was and, in fact, he tired. We worked with Civil Service and the Superintendent and we came to the conclusion that we hope you come to today, that the classified employees are the best persons to handle these jobs. You can work within the system in order to have good classified employees to serve in these jobs and if they don't do the job the supervisor has every tool to remove them immediately and that the burden for getting his job back is on the employee to show that there was not just cause for his removal. It does not impede the Superintendent's ability to run the Police Department.

Commissioner Tetlow motioned to go into executive session to discuss the Commission's pending case.

Chief Harrison stated that the Commission has heard from a lot of people on both sides. You have heard from Captain Simon Hargrove who until recently was the president of BOP, Captain Mike Glasser who served as the president of the New Orleans Police Association for many years. So you have heard from the executive tier of leadership, but whose mind and heart speak not to senior leadership issues, but to labor issues. They speak because they see themselves, not as a senior leaders, but as one of the rank and file. That is the crux of the issue. Even people who make it to Captain sometimes envision themselves as part of the labor than as part of the leadership

Commissioner Tetlow's motion was then seconded by Commissioner McClain. Commissioner Craig called for any comment related to the Commission going into executive session

James Gallagher stated that he was not certain that moving into executive session on an item that was not on the agenda is legal and that that decision is

being made without a representative of the rank and file employees on the Commission.

Brendan Greene stated that pursuant to LA RS 4219 there was adequate notice of this particular meeting. If there is not an item on the agenda, the Commission can unanimously vote to add an item to the agenda even if it is to go into executive session, provided the reason for going into the executive session is provided with specificity. He stated he believed that this Commission has done that. It has allowed for public comment with respect to adding that agenda item.

The motion was then approved by all and the Commission entered into executive session at 3:54 pm.

At 4:08 pm, Commissioner McClain moved to come out of executive session. The motion was seconded by Commissioner Tetlow and approved unanimously.

Commissioner Tetlow motioned to approve the request for an unclassified Commander position. Commissioner Caputo seconded the motion. Commissioner McClain asked Mr. Greene if can there be a sunset on a rule. Mr. Greene sought clarification on the question. Commissioner McCain asked if the Commission can make a motion that something is approved for a certain time and then be subject to review. Mr. Greene stated that the request is being made pursuant to Rule 3 Section 7 of the Rules. Part of that is that the Civil Service Commission and its staff audit the position. If the Commission finds that the requisites of the rule no longer exist, the Commission can take action to remove the unclassified status of the position. Commissioner McClain noted that he had heard good arguments on both sides. He stated that he felt strongly that this Superintendent will proceed in a transparent manner and ensure that unclassified Commanders are given a process that has a criteria and that all members who apply would get a fair shake. He stated he is not sure what would happen should there be another Mayor and Superintendent and was considering whether or not it would be possible to approve a rule that would sunset in December of 2018 which would give the next Mayor and Superintendent a year and half to review and prepare for its ending. Mr. Greene stated that the selection criteria suggested by the Superintendent, while robust, isn't one of the elements that the Commission relies on. Commissioner McClain stated that as part of his consideration of those three elements, one that it is not appropriate for the

classified service, two that the position has the ability to make autonomous policy decisions and are audited on a regular basis by the staff. He stated his concern with the auditing is that he is not sure he has seen that done in a robust manner previously. Unless there is more specificity in terms of how often auditing is taking place and a report is made to the Commission. Mr. Greene stated that the Commission can require that an audit be conducted and completed within a certain period of time to determine whether or not the Police Department has delegated the authority necessary to satisfy the parameters of the rule. If all of a sudden the selection criteria were changed and the Commission was unhappy with that, that's not one of the things on which unclassified status would be revoked.

Director Hudson stated that staff did its report and looked at this. Staff did not, at that time, believe that it met the test of the rule. If the Commission believes that it does meet the test of the rule and staff is supposed to audit the position, what standards would staff be looking for in order to apply that it meets the test of the rule. Commissioner McClain told Director Hudson he would recommend that she would do some research and give the Commission several options to choose from. Director Hudson asked if it meets the test of the rule and staff could not see that it did, could the Commission express to us how it meets the test. Commissioner McClain replied no because auditing is part of the rule. Director Hudson stated that she is asking what she is auditing. Commissioner McClain stated you are going to audit the compliance with the first two. The first two are that it is not appropriate for the classified service and that there is policy making authority connected with it. You are in a position perhaps better than me to determine that. Do the research and make a recommendation on how the audit should go. Director Hudson asked if staff did the investigation and believe that it doesn't meet the rule and you believe that it does then what did staff miss. Commissioner McClain stated he was aware of other situations where the Commission made decisions that were inconsistent with what staff has recommended and that doesn't create a situation where you are not responsible for carrying out the provisions of your job.

Commissioner Caputo stated so you are saying that the criteria you evaluated in the past has not met the qualification for unclassified, but with the changes being implemented moving forward, you can evaluate and vet on that basis if it now meets the criteria for being unclassified. Commissioner McClain added particularly since auditing is a part of the rule. Mr. Melancon stated that the department is more than willing to have a preset time to do that audit. He

stated he had a concern over the positions being temporary which is what a sunset rule would do, trying to create that certainty of management. Commissioner McClain stated that what resonates with me is the ability to wipe out your whole command structure if they are all unclassified, particularly if there is a new administration. We, or another Commission, would be in a position to pull it back. If the Commission makes a rule, we have the opportunity to revisit it.

Commissioner Tetlow stated that the Commission can do that anyway if we try to appoint people to jobs and tell them they may or may not have one at a date certain, that creates its own uncertainty. Commissioner McClain asked wouldn't that be that same for all appointed to an unclassified position. Commissioner Tetlow noted it is for a different reason. Director Hudson suggested that the Commission could order that staff review it at a date in the future just to look at it and the Commission would make a decision at that time based on staff's review whether you want to proceed with the unclassified or revert it back to the classified.

Mr. Greene stated that part of the staff's review and part of the struggle is that in the past the Commander special assignment did not meet the criteria of the rule. So their struggle is if the position moving forward is going to be different than what we've seen in the past. Commissioner McClain stated that his concern is that we will have a new Mayor in May of 2018 and he was suggesting sometime after that. He stated if there is an opportunity to mitigate the extreme possibility of wiping out all sixteen becomes a reality, that's what he is suggesting. Mr. Greene stated that Article X allows the Commission to generate rules with respect to the creation of other unclassified positions. Rule III is an example of that. Commissioner McClain stated that he was hearing that the Commission would have an opportunity to revisit this matter based on an audit or investigation if it appears this is not getting the desired or anticipated result. Mr. Greene agreed.

Commissioner McClain motioned to amend the to motion to direct staff to complete its initial audit by April 30th 2018 pursuant to Rule 3 Section 7.1 c. The amendment was approved unanimously.

Commissioner Craig stated that she wanted to make it clear that this is in no way a slippery slope. This is unique situation for a unique set of circumstances. The Commission will look at this and take this power away if

it is abused. We do not expect for this to be used as precedent for any other appointing authority.

There being no additional business to consider, Commissioner McClain moved for adjournment at 4:22 p.m. The motion was seconded by Commissioner Tetlow and approved unanimously.



Michelle Craig, Chairperson

Tania Tetlow, Commissioner

Stephen Caputo, Commissioner



Ronald McClain, Commissioner


IN RE: Request from the Police Department to create 16 Unclassified Police Commander Positions

MINUTE ENTRY

This matter came before the Commission on April 10, 2017. After entertaining public comment, the Commission unanimously GRANTED the Police Department's request to create 16 Unclassified Police Commander Positions pursuant to Rule III, Section 7.1(a)-(c). The Commission further directed the Civil Service Department to complete the audit of the 16 Unclassified Commander Positions required by Rule III, Section 7.1(c) by April 30, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION


COMMISSIONER


DATE


COMMISSIONER


DATE


COMMISSIONER


DATE