

CIVIL SERVICE COMMISSION  
SPECIAL MEETING  
Wednesday, July 28, 2021

A special meeting of the City Civil Service Commission was held on Wednesday, July 28, 2021 via Zoom pursuant to the Louisiana Open Meetings Law, specifically, La. R. S. 42:17.1. Amy Trepagnier, Personnel Director, called the roll. Present were Chairperson Brittney Richardson, Commissioner John Korn, and Commissioner Mark Surprenant. Commissioner Richardson convened the meeting at 3:05 p.m. On the motion of Commissioner Surprenant and the second of Commissioner Korn, the Commission voted unanimously to go into executive session. At 3:35 p.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Commissioner Surprenant motioned to take up items #1 and #2. These items required at least two thirds vote of the Commission to be considered pursuant to La. R.S. 42:17.1. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #1 was a request to amend Rule VI Section 6.1 and Rule VII Section 2.9 relative to Investigations of Appointments and Promotions. Christina Carroll, Executive Counsel for the Commission, stated that the only remaining difference between staff's version of Rule VI Section 6.1 and the Administration's version is the remedy provision. She noted an issue with sending back the decision to an appointing authority who has already exhibited that they will violate the State Constitution. They should not be permitted to remedy their own violation. A court might say it is the Commission's job to remedy that. Commissioner Surprenant asked what happens if the Director or Commission determines that the person who was promoted should be someone other than the petitioner. Ms. Carroll responded someone has to file a petition in order to have their claim considered. We are looking at this from the point of view of the petitioner. Commissioner Surprenant clarified then the only person who could be considered to be promoted would be the petitioner. Ms. Carroll agreed. Commissioner Surprenant asked if it is clear in the rule that the Commission is only going to consider the petitioner for the spot as opposed to anyone else. Ms. Carroll responded it is clear in the staff's version. She stated she does not see anything in the City's version that would prohibit the appointing authority from deciding to promote someone who is not a petitioner.

William Goforth, representing the Administration, stated the City's version leaves open the possibly for the Commission to handle these matters in different ways. Leaving out the ability to remand back is problematic. Leaving in subsection two in

the City's version would give the Commission the ability to address these matters on a case by case basis as they see fit. It would not require the Commission to handle it that way. It would simply be one tool. Commissioner Surprenant stated that the City is asking for a second chance to get it right. They should not get a mulligan. They get one shot to get it right. Knowing that they are not going to get a second chance puts the pressure on the appointing authority to do it correctly the first time. Ms. Carroll noted the court has addressed that in the Achord case. The Commission has an obligation to protect the merit-based system and to make the promotion that is appropriate. Mr. Goforth responded that case was unique because it was impossible to remove the individuals who had been promoted from those positions and have the department go back and do it again because the individuals who had been promoted had gained permanent status. Under the proposed rule that would not happen. Achord does not necessary create the only way these matters can be remedied because it was decided under the specific fact pattern where the individuals who had been promoted could not be removed because they had permanent status. Commissioner Surprenant asked what happens if the person who is selected by the appointing authority is not the one who should have been selected, but the one who should have been selected is not the petitioner. Ms. Carroll responded that the Commission will be looking at if a merit-based decision was made with the appointee in comparison to the petitioner. Mr. Goforth stated if there is one vacancy no more than one person should be promoted. If there are multiple petitioners then he would not believe the Commission is prohibited from promoting the person they believe is entitled to that promotion. If you are saying that the person who was number one on the Civil Service list should have been promoted, then it shouldn't matter who actually filed the petition.

Eric Hessler, representing the Police Association of New Orleans, stated because of the way promotions are being done you are going to have multiple candidates on every list as petitioners. The Commission has the responsibility to determine who is the most qualified. A person is entitled to a promotion if they have scored the highest on the test, if the minimum qualifications are met, and they are determined to be the best. The fact that the City is willing to let the Commission pick when there are multiple petitioners shows the Commission does have that power.

Dante Bidwell, representing NOPD, asked if number four on the Civil Service list was promoted and number three on the list filed a petition, but not numbers one and two would NOPD be forced to promoted number three. Ms. Carroll responded that is the way the Rule is written. You have to file an appeal that the promotion was not merit based in order to be promoted under this Rule. Mr. Bidwell asked could number two then file an appeal and get promoted over number three. Ms. Carroll

responded number one would be time barred from filing an appeal over number three because it is retroactive to the date of promotion. The Commission is not the appointing authority. That scenario could happen if the Commission remands it to the appointing authority and the appointing authority makes a new decision.

Commissioner Surprenant stated he still has an issue with the lack of guidance in the rule regarding the issuance of back pay. His preference is to clearly say that back pay will be awarded or that there is no back pay. Ms. Carroll stated in Achord, retroactive promotions were made and the parties agreed that there would be backpay to the Captains. In the District Chief's case the City has also agreed that there should be backpay. In both of those cases there was a long delay in having the issue decided. We are trying to fix these violations, if they happen, much more quickly. Mr. Hessler stated PANO supports backpay to any successful petitioner. The City should not be able to victimize the person twice. Mr. Goforth stated the City is not willing to concede the question of if remedying a violation always requires a retroactive promotion and backpay. If the violation itself is the failure to promote a certain individual, then the remedy would be to promote that person and give the pay they would have earned had they been promoted. The City would not be prepared to concede that any individual has a right to be promoted at a certain time. The rule as worded allows the Commission to implement the remedies that are determined to be appropriate by the Commission or following litigation. If the only remedy the Commission will use is a retroactive promotion, then I cannot find where backpay would not be appropriate. Ms. Carroll stated in Achord, it is a personal right to the candidate who was passed over. Mr. Goforth stated the court did not determine that in Achord, they accepted it without contest. Commissioner Surprenant stated the whole purpose of this rule is that if someone feels that someone else was promoted for a non-merit-based reason, they have a right to have this investigation done. If it is determined the promotion was improperly done, the person is going to be put in that position and that pay would be appropriate. It seems like that is the whole purpose. If the investigation determines it was non-merit based it seems like a given that the person gets backpay. Mr. Goforth stated he would have no objection to moving the backpay provision to part one of the remedy and adding that appointment or promotion of the petitioners would be with backpay on the date of the original promotional decision. Ms. Carroll and Ms. Hessler agreed with this change. Commissioner Surprenant stated this change directly addresses his concern.

Mr. Goforth then thanked Ms. Carrol and Ms. Trepagnier for their work and consideration on this Rule amendment. He also thanked Paula Bruner and Donovan Livaccari for their contributions.

Mr. Hessler stated Achord said that promotions need to be for competitive and merit based reasons. It seems that these rules leave out competitive. He suggested that "for non-merit-based reasons" is overly broad. The way the rules are being applied is that anyone who is on the register is promotable regardless of the competitive criteria. Commissioner Richardson asked Mr. Hessler how does the Commission define competitive. Mr. Hessler responded it says competitive testing, and the only competitive testing is the written test. Everything else is subjective and can be manipulated by NOPD. For job history NOPD decides where you will be assigned, what type of duties you will have, and what kind of training you will have. It is not okay that others may score very high on the test and then with CAO policy 143R the subjectivity comes in and it is not competitive.

Mr. Bidwell stated when there is an established rubric each individual is graded on the same rubric, with the same scores, with the same interview questions, and with the same panels. He stated he is not sure how you say it is non-competitive. Mr. Hessler responded the rubric has never been approved by Civil Service. Mr. Bidwell stated it was vetted by the Department of Justice and the Law Department. Commissioner Richardson stated there needs to be a collaborative and transparent discussion about objective standards.

Commissioner Korn stated if the original promotion is found to be non-merit based then why is reconsideration of who to promote limited to the complainant. It seems like it should be open to anyone, otherwise we are incentivizing people to complain. If it was unconstitutionally made then everyone should be back in the game not just the person who complained. Mr. Goforth stated he believes staff's reasoning was that if you do not file a petition you waive your claim to a retroactive promotion. He suggested leaving that in, but adding the ability for the Commission to make prospective appointments of non-petitioners. Mr. Goforth and Ms. Carroll agreed upon remedy language that includes the prospective appointment or promotion of any candidate whose name appears on the eligible list and whom the Director or Commission determines should have been promoted or appointed.

The Commission turned to Item #2 while Ms. Carroll and Mr. Goforth reviewed a document with the changes to the proposed language.

Item #2 was a request from the Administration to reduce the allocation of Unclassified Consent Decree Compliance Managers by one and increase the allocation of Unclassified Consent Decree Police Performance Auditors by one. Director Trepagnier explained that Chief Ferguson made the request. In 2014 and 2015 the Commission approved a total of nine unclassified positions to help NOPD

get into compliance with the Consent Decree. There were five Compliance Managers and four Compliance Auditors. They had similar roles with some distinctions. Due to business necessity NOPD wants to reduce the Compliance Managers by one and increase the Auditors by one. Staff supports the request. Commissioner Surprenant motioned to approve the request. Commissioner Korn seconded the motion, and it was approved unanimously.

The Commission then returned to item #1. Commissioner Surprenant motioned to approve the joint version of the amended rule as agreed to by the staff and the City. Commissioner Korn seconded the motion, and it was approved unanimously.

Commissioner Surprenant moved for adjournment at 4:39 p.m. The motion was seconded by Commissioner Korn and approved unanimously.



[Brittney Richardson \(Oct 14, 2021 09:26 CDT\)](#)

Brittney Richardson, Chairperson



[J. H. Korn \(Oct 14, 2021 11:38 CDT\)](#)

John Korn, Commissioner



[Mark C. Surprenant \(Oct 14, 2021 16:49 EDT\)](#)

Mark Surprenant, Commissioner