

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
MONDAY, MARCH 16, 2015

#1

The regular monthly meeting of the City Civil Service Commission was held on Monday, March 16, 2015 at 1340 Poydras Street, Suite 964. Ms. Doddie Smith, Personnel Administrator of Management Services, called the roll. Present were Commission Chairman, Michelle D. Craig and Commissioners Joseph S. Clark and Ronald P. McClain and Tania Tetlow. The Chairman convened the meeting at 10:07 a.m. Chairman Craig moved to defer item number one until later in the meeting and address item two first. The motion was seconded by Commissioner Clark and approved unanimously. The Commission then proceeded by sounding the Commission's docket. After completing the docket, the Commission returned to item one and Chairman Craig administered the oath of office to the new Commissioner, Ms. Cordelia D. Tullous, Loyola University's representative. At 10:31 a.m., on motion of Commissioner Clark and seconded by Commissioner McClain, the Commission voted unanimously to go into executive session to discuss matters taken under advisement and pending litigation. At 11:15 a.m., the Commission completed its executive session and proceeded with the business portion of the meeting.

The first item on the agenda was the minutes of the February 9, 2015 Commission meeting. The minutes were approved unanimously on motion of Commissioner Clark and seconded by Commissioner Tetlow.

Item #2 on the agenda was the Civil Service staff's report on New Orleans Fire Department (NOFD) employees working out of class. The New Orleans Firefighters Association had requested that the situation be investigated. Robert Hagmann and Shelly Stolp, Personnel Administrators, presented this report. The report outlines a large number of incidents in which Firefighters and Fire Apparatus Operators were required to work shifts in the higher classes of either Fire Apparatus Operator or Fire Captain. Representing the City Attorney's Office was Ms. Cherrell Simms, Senior Chief Deputy City Attorney.

Mr. Hagmann noted that this request for pay for working out of class falls under Rule III, Section 4, which has eight conditions: 1) the employee must be a regular (permanent) employee; 2) the employee must be non-exempt (hourly-paid); 3) the work assigned must be that of a higher class; 4) the assignment

must be of a temporary nature; 5) the duties must be full-time; 6) the work must be done for five days; 7) the vacancy must be a budgeted vacancy; 8) the Director must approve.

Mr. Hagmann stated that there are a number of incidents of people working out of class which did not meet these eight criteria. Those incidents were not included in the report. However, all of the other incidents in Attachment H of the report were cases in which the staff recommended pay for working outside of one's classification. This attachment contains the NOFD employees who worked out of class, the class in which they worked, and the days of that work. Mr. Hagmann, in explaining the breadth of the problem, indicated that in 2013 there were 6,290 incidents of people working out of class. Commissioner McClain asked about the costs. Mr. Hagmann said that this was unknown, but it could run hundreds of thousands of dollars.

Mr. Hagmann noted that there is no contention regarding most of these eight conditions, except for the presence of a budgeted vacancy to be filled. He noted that the payroll system during the time in question, AHRS, was used to determine if a vacancy existed. The discussions that followed centered on two issues: 1) the number of budgeted vacancies; and 2) whether prior approval from the Director was required to sanction this pay.

Commissioner Tetlow asked if these were budgeted vacancies or if employees were just filling in for someone who was out on extended leave. Personnel Director Lisa Hudson responded that these are actual vacancies. Speaking for the City Attorney, Ms. Simms noted that they were still looking at vacancies. NOFD Superintendent Timothy McConnell stated that there are different numbers of vacancies in his department depending on the source of the information. He cited the City Council approved budget book and the payroll system as having different numbers of vacancies.

Mr. Hagmann noted that, because of mid-year budget changes and other workforce changes, you could never get a single definitive count of vacancies. Director Hudson noted that the vacancies used from AHRS were approved by the budget office. Ms. Stolp added that Chief McConnell, in a letter requesting provisional Fire Captain positions, stated that he had 26 vacancies at that time.

Both Ms. Simms and Chief McConnell were asked whether the pay would be approved if all could agree that these were budgeted vacancies. Chief

McConnell noted that he needed more time to look over the staff's report and that he does not have money for this pay in the 2015 NOFD budget. Ms. Simms said that, if the budgeted vacancy issue were settled, the issue of prior approval would remain.

Commissioners McClain and Tetlow inquired if Rule III requires prior approval before the payments could be made. Director Hudson responded that it did not. Ms. Simms proffered the opinion that the Rule could only be used prospectively. Director Hudson noted that retroactive pay was approved by the Commission and upheld by the Fourth Circuit Court in the *Samuel Bua v. New Orleans* case. She further noted that the use of Rule III to address pay for work done outside of one's class, by its nature, normally occurs after the work has been done. Chairman Craig asked to receive a copy of the *Bua* case.

Commissioner Clark added that, given the NOFD requirement to work in the next higher class and the Rules regarding working out of class, it is clear that there is a legal requirement that those working above their class be paid for doing that work. Commissioner Clark also suggested that a Rule change may be needed to clarify its intent. He requested a draft of such a change be considered at the Commission's next meeting.

Speaking in favor of the report's finding for payment due under Rule III was Mr. Nicholas Felton, President of the Firefighters Association. He noted that, in other cities, those who work above their job class for as little as two hours receive the pay of the higher class. Mr. Felton also noted that this issue has been discussed for at least 15 months. He claimed that not paying people, yet requiring them to do the work of a higher class is a systematic way to avoid promotions, while still being able to get the work done. Chairman Craig asked Mr. Felton if he could provide these rules used by other jurisdictions. Mr. Felton agreed. He also noted that working out of class in NOFD is an on-going problem, stating that there are employees working out of their class every day.

Commissioner Tetlow asked if there was a solution to allow payment to those NOFD members working out-of-class correctly in the future. Director Hudson responded that there were issues with getting this done with the new payroll system, ADP. Chairman Craig emphasized the need to fix this issue going forward. Ms. Alexandra Norton, Director of Innovation, who addressed the Commission on behalf of the Administration, stated that there is a need to work together on this issue.

Commissioner McClain asked if consensus could be reached prior to the next meeting. He also asked for a fiscal note detailing the expense of the actions contemplated. Mr. Hagmann replied that such information could take some time to put together. Commissioner McClain asked if two months were needed. Chairman Craig stated that it would be better if the same information regarding this item were not discussed again. Mr. Felton opined that fixing the issue going forward would be a positive first step. The discussion on this item ended with Commissioner McClain suggesting that further conversations are needed and asking Director Hudson if she would take the lead in those meetings.

Item #3 on the agenda was the status of back pay related to Hurricane Katrina as requested by Mr. Robert Gebrian. Director Hudson provided background. She noted that in September 2014 the Commission had asked that its previous order be honored. That 2010 order directed the City to make back pay to affected employees. The pay was to cover the period from 8/28/2005 to 12/17/2005 and was to compensate all those overtime-exempt employees who were required to work after Katrina because they were considered by the City to be essential employees. The Commission had cited Rule IV, Section 2.2 in its order. Ms. Hudson noted that the Commission had, in its earlier actions, waived the requirement in this Rule for prior approval of this pay. Correspondence between the Director and the City Attorney's Office has not resulted in an understanding on this matter.

Mr. Gebrian addressed the Commission asking that they remember that the Landrieu Administration had supported this request knowing that FEMA would not pay a reimbursement without the City first running the payroll. Ms. Norton noted that, when this type of pay was granted for Police, Fire and EMS employees, FEMA had attempted to "de-obligate" that payment – that is, FEMA had required the return of funds spent for this purpose. The City fought that order from FEMA and was able to get the funds spent for these employees reimbursed. Ms. Norton also stated that 62% of all employees were laid off after Katrina.

Ms. Norton noted that the Rule requires a request from the employee's appointing authority. Furthermore, while the Aviation Board had made such a request, there were no requests from any other appointing authorities. She indicated that no one from Senior Administration made such a request on the behalf of the other appointing authorities. Ms. Norton suggested that the

Commission listen to the tape of the 2010 Commission meeting for a further understanding. She also noted that a cost analysis showed that honoring the Commission's order would cost the City \$6.5 million.

Director Hudson read the minutes from the June 2010 meeting when the Commission's order granting an exception to the Rule's requirement for prior approval and allowing the pay was first issued. In these minutes, Asst. Chief Administrative Officer Courtney Bagneris stated that Deputy Mayor Greg St. Etienne had agreed to the importance of processing this request quickly because of a FEMA deadline and had ordered the cost estimate. Mr. Gebrian noted that the FEMA reimbursement issue was a red herring; that the Commission clearly knew that a payment by the City would need to be made prior to an attempt at getting a reimbursement. He stated that the May and June 2010 meeting minutes and the memo from Deputy Mayor St. Etienne requesting cost information supported this point.

Commissioner McClain asked the Commission's Attorney, Gilbert Buras, if the Commission might change a previous order. Mr. Buras said that he saw no legal impediment to doing so. Commissioner Tetlow noted that the Commission used its discretion to grant an exception to its Rule and should be able to change a prior order. She further noted that there was not currently a request to change their prior order before them and suggested that this matter could come before them again in the future. Commissioner McClain noted that the Commission's order is in question, not the details of the payment and reimbursement. Mr. Gebrian asked that he be included in any discussions on this matter.

The next item on the agenda was #4, Classification and Compensation matters. Item #4(a) was a request from Mr. Alvin Porter to address the Commission regarding temporary pay for acting in a higher classification. Mr. Porter is an employee of the Sewerage and Water Board who took over duties that were formerly performed by Mr. Alton DeLarge. Mr. Hagmann explained that similar situations may not come before the Commission, but Mr. Porter was acting in a higher capacity filling this vacancy while there was a Civil Service list from which Mr. Porter could have been hired. Mr. Hagmann stated that, although the Sewerage and Water Board did not avail itself of this more straight forward way to properly compensate Mr. Porter, staff supported this request. A motion to approve the request was made by Commissioner McClain, seconded by Chairman Craig and approved unanimously.

Item #5 on the agenda was Recruitment and Selection Matters. Item #5(a) was examination announcements #9057 through #9067. On motion of Commissioner Clark and seconded by Commissioner Tetlow, the announcements were approved unanimously.

Item #6 on the agenda was the Ratification of Public Integrity Bureau (PIB) 60 Day Extension Requests. There were three speakers on this item. They were Sgt. Nicholas Gernon, Sgt. Henry Burke, and Mr. Donovan Livaccari, attorney for the Fraternal Order of Police (FOP), who spoke on their behalf. Mr. Livaccari made the point that, in neither case, was there proper notification of the 60-day extension request hearing, as required by state law and Civil Service Rule IX. Sgt. Gernon noted that he was number one on the recently produced Lieutenants' promotional list and that a PIB investigation would hurt his chances at promotion. He also stated that the investigation involved interviewing NOPD employees, who should be easily accessed. Sgt. Burke stated that he did not know the nature of the complaint against him and that he knew nothing of the complaint until the request for a 60-day extension was made. Commissioner Tetlow made a motion that all of the hearing officer's recommendations for granting extensions be accepted, with the exception of the two cases discussed. This motion was seconded by Commissioner McClain and passed unanimously. Chairman Craig clarified the Commission action by reading the PIB case numbers, PIB Case # 2015-0049-C (Sgt. Gernon) and PIB Case # 2015-0061-R (Sgt. Burke), into the record.

Item #7 on the agenda was Communications. Item #7(a) was a report on ADP ongoing issues. Speaking were Ms. Stolp, Mr. Hagmann, and Mr. Roy Guercio, Comptroller with the Finance Department. Ms. Stolp noted that on-going projects are as follows: 1) efforts to create a functioning position control system; 2) work to bring over historical payroll data; and 3) attempts to properly pay those in dual assignments (as discussed earlier with the Firefighters working out of class). Director Hudson asked if paying those with dual assignments would require two timecards in ADP. Mr. Guercio stated that they have yet to ask this of ADP and they are unsure what would be needed. He stated his desire to look for the easiest way to handle issues, within the capabilities of ADP. Director Hudson suggested that the request of ADP be made. Mr. Guercio stated that he wanted a consensus from NOFD and Civil Service prior to making that request. Ms. Stolp suggested that a current feature of ADP, the Secondary Assignment Key, discussed during implementation may be designed for this purpose, but it

is currently disabled. Mr. Guercio said that he would ask about that feature. Director Hudson noted that the Dual Assignment Rule may need to be revised.

Mr. Felton added that there are two additional issues with ADP. First, it is taking out too much for the Fire Pension deduction. The second issue is that overtime pay for Firefighters is not being calculated correctly. He noted that these errors could result in problems that would add up to big numbers.

Chairman Craig stated that lawsuits on either the pension or overtime issues would be problematic and should be avoided. She also pointed out that waiting for a consensus from people who do not know that such a consensus was needed is unacceptable.

Additionally, Director Hudson reiterated her concern expressed last month regarding an issue with an employee of the Police Department. This employee worked for two weeks without approval from the Civil Service Department and then received a payroll check (manual check) while in terminated status. Mr. Guercio replied that the Chief Administrative Office planned to issue a process to address this concern. Director Hudson requested input into this process.

Ms. Stolp added that ensuring the proper payment of merit pay increases with the ADP system will soon also be an issue. It was noted that there had not been a Payroll Governance Committee meeting for some time. Commissioner McClain noted that it is time to begin these meetings again as more issues remain. Chairman Craig also noted the importance of these meetings and requested a detailed report of the actions taken on all of the ADP issues that need to be addressed.

With no other communications to consider, on motion of Commissioner Tetlow and seconded by Commissioner Clark, the Commission voted unanimously to adjourn the meeting at 1:26 p.m.




Michelle D. Craig, Chairman



Joseph S. Clark, Commissioner



Ronald P. McClain, Commissioner



Tania Tetlow, Commissioner



Cordelia D. Tullous, Commissioner