

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
MONDAY, OCTOBER 18, 2021

The regular monthly meeting of the City Civil Service Commission was held on Monday, October 18, 2021 via Zoom pursuant to Louisiana Open Meetings Law, specifically, La. R. S. 42:17.1. Ms. Doddie Smith, Personnel Administrator of the Management Services Division, called the roll. Present were Chairperson Brittney Richardson, Commissioner John Korn, Commissioner Mark Surprenant, and Commissioner Ruth White Davis. Commissioner Richardson convened the meeting at 10:08 a.m. The Commission then proceeded with the docket. At 10:53 a.m. on the motion of Commissioner Korn and the second of Commissioner Davis, the Commission voted unanimously to go into executive session. At 11:41 a.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from the September 29, 2021 meeting. Commissioner Korn asked that staff review the discussion of item #4a in the minutes.

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

Item #3a under Recruitment and Selection Matters was a request to extend the Police Lieutenants eligible list under Rule V Section 5.3. Personnel Director Amy Trepagnier explained the current eligible list for Police Lieutenant promotions will reach three years on November 12, 2021. Under the Civil Service Rules, staff can extend eligible lists up to three years. The Commission can extend the list up to an additional two years after that. Staff and NOPD are asking for an extension of the current list until March 12, 2022 when a new eligible list is anticipated to be established. Commissioner Surprenant motioned to approve the extension. Commissioner Korn seconded the motion, and it was approved unanimously.

Commissioner Davis motioned to take up items #4 through #9. 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 #4a under Rule Amendments was a proposed amendment to Rule XI section 1.5(a) and 1.5(e) to allow for an overlap period for goal setting and performance ratings. Director Trepagnier stated the proposed revision came from focus groups held with human resources representatives and other employees to identify opportunities for efficiencies in the performance evaluation system. One suggestion was to allow for an overlap period between goal setting for the upcoming year and the performance evaluation for the previous year to enable supervisors to perform both tasks in one meeting. Commissioner Korn moved to adopt the amendments to the Rule. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #4b was proposed Rule II, section 9.2 Waiver or Reduction of Costs. Commissioner Richardson noted this proposed rule was introduced at the previous meeting. It is intended to assist those employees who may have difficulty with paying fees to the courts. Commissioner Surprenant moved to adopt the proposed rule. Commissioner Davis seconded the motion, and it was approved unanimously.

Item #5a under Classification and Compensation Matters was a request from Property Management for hiring rates and a title change for the classifications of Plant Engineer and HVAC Services Manager. Robert Hagmann, Personnel Administrator over the Classification and Compensation Division stated stationary engineer positions are supervisory and require a first-class license. Staff is proposing a 15% increase from \$53,000 to \$62,000 for Plant Engineer and an increase from \$59,000 to \$68,000 for HVAC Services Manager in order to recruit and retain skilled trades people. Staff is also recommending a title change to Chief Operating Engineer to reflect the terminology used in the private sector. Changes to the City code have increased the demand and the labor supply is scarce. These changes will help the City compete with hotels and universities for these positions. Commissioner Korn moved to adopt the approve the request. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #5b was a request from Sewerage and Water Board for a revised job series for the division of Water Purification. Mr. Hagmann explained this is an enhancement of the current Water Purification Operator series to give it a more comprehensive career ladder that focuses on the level of certification. The proposed changes include a new supervisory level to assist Sewerage and Water Board with motivating people to take on supervisory responsibilities. There are also four non-supervisory levels dependent on the individual's certification level. These changes also provide two more opportunities for advancement for non-supervisory employees. Commissioner

Surprenant moved to approve the request. Commissioner Korn seconded the motion, and it was approved unanimously.

The Commission then took item #6a under Recruitment and Selection Matters out of order while it waited for one of the parties for items #5c, d, and e. Item #6a was the approval of examination announcements 10502-10505. Commissioner Korn motioned to approve the announcements. Commissioner Surprenant seconded the motion, and it was approved unanimously.

The Commission then returned to Item #5c and d which it heard together. Item #5c was a request from Mubashir Maqbool regarding the pay disparity between the classified employees and unclassified employees working at the Sewerage and Water Board of New Orleans. Item #5d was a request from Mubashir Maqbool regarding equal pay for his work as SELA Program Manager.

Mubashir Maqbool, a Sewerage and Water Board employee, stated unclassified employees are doing less work and getting paid more than classified employees. The Louisiana Constitution is supposed to remove this disparity. He stated in his case he is managing the largest program in history, yet he is not getting the salary he deserves. He stated he has a document to show that a classified employee's salary more than doubled when she went to the unclassified service in the JIRR program. Commissioner Richardson stated that the Commission oversees classified pay. While the Commission authorized the unclassified positions, it does not have jurisdiction over the pay rates for unclassified positions. Commissioner Surprenant motioned to deny the requests. Commissioner Korn seconded the motion to deny, and the motion to deny was approved unanimously.

The Commission then heard item #5e. Item #5e was a request from Mubashir Maqbool regarding the reclassification of his position in November 2018 without awarding the midpoint salary. Mr. Maqbool stated that in 2018 he was demoted for no reason after serving as a Principal Engineer for over ten years. Commissioner Richardson stated that it is her understanding that at that time, Mr. Maqbool did not possess an engineering license. Mr. Maqbool clarified that he possessed a license, but it was not a Louisiana license. He stated he was reclassified due to retaliation. He stated he lost about 20% of his salary. Robert Hagmann stated Mr. Maqbool was hired as an Engineer which required a professional engineering license but allowed those registered as engineers in other states to get their Louisiana license during the probationary period. Mr. Maqbool did not pass the licensing test, but S&WB kept him in that job classification for nine years. The S&WB demoted him because he failed to meet the legal requirements of the job. Staff worked with S&WB to identify

a non-licensed classification for him to move into. Since the new position does not require an engineering license, it does not command the same pay. This led to a 16.25% pay reduction. Mr. Hagmann stated Mr. Maqbool is asking for retroactive extraordinary qualifications pay, but the rule does not apply because this was a disciplinary action. Mr. Maqbool responded that S&WB took his Texas and Tennessee engineering license as equal to a Louisiana license and that is why they let him work as a Principal Engineer. Mr. Maqbool then recounted his issues with the Louisiana Engineering Board. Commissioner Richardson asked Mr. Maqbool if he had appealed the demotion to the Commission. He responded that he had not. Director Trepagnier stated that Mr. Maqbool is asking for retroactive compensation under Rule IV Section 2.7 Extraordinary Qualifications Pay. The Rule requires a request from the appointing authority, which S&WB did not submit at the time of the demotion. Additionally, the rule requires the pay to be granted at the time of appointment. Under the rules, a demotion is not considered to be a type of appointment. Even if S&WB had requested extraordinary qualifications pay, staff would have denied it because it does not meet the requirements of Rule IV Section 2.7. Commissioner Richardson noted Mr. Maqbool did not file an appeal of his demotion and she noted he had just recently received his engineering license. Commissioner Richardson motioned to deny the request. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #7 was a request from the Police Association of New Orleans for investigation and evidentiary hearing relative to the practices of the NOPD Public Integrity Bureau (PIB). Eric Hessler, representing the Police Association of New Orleans, stated this petition raises various transgressions regarding violations of due process and fairness and a lack of quality in regard to investigations. There is an apparent lack of review by supervisory members of PIB or higher ups. It is clear that evidence has been either ignored, hasn't been sought out or even when the allegation is quite clear on its face, PIB decides it is not a serious violation or the violation did not occur. He stated he submitted a list of these allegations to NOPD in December of 2020. Mr. Hessler provided examples including that a Lieutenant in PIB fabricated a highly incriminating quote which was used against an officer in a use of force investigation. Mr. Hessler stated this was brought to the attention of three Deputy Chiefs, and it was ignored. It was only investigated after he and the officer made a complaint. It was then determined to be "unfounded" meaning that it did not happen. Mr. Hessler stated PIB noted it was determined to be unfounded because the Lieutenant apologized for it. These investigations and their very serious flaws were all approved by supervising officers. The Commission should exercise the powers granted to it by the Home Rule Charter to investigate these allegations. They all

concern personnel matters that directly impact employment and promotions, demotions, suspensions and reductions in pay.

Commissioner Surprenant asked Mr. Hessler what provides the Commission with the jurisdiction to review the practices of the PIB from a global standpoint. Mr. Hessler responded you have subpoena powers for the regulation and administration of the classified service including the ability to adopt rules to regulate employment and promotions, demotions, suspensions and reductions in pay. Section 8-104 of the City Charter says you have the power to investigate the operations that affect the personnel provisions of the Charter itself. The Commission has powers over all of the personnel matters within the City of New Orleans. This is a personnel matter that affects every facet of a police officer's career. Commissioner Surprenant asked Mr. Hessler if this isn't something the Commission should be focusing on from an individual standpoint instead of a global review of the overall practices. He noted the Commission does so on an individual basis relative to disciplinary appeals. If the Commission feels that in individual cases there is an issue with PIB we address that in the appeal. Commissioner Surprenant stated he does not know if this would be appropriate under the Commission's jurisdiction. Mr. Hessler responded that while this Commission does a good job in its review of individual cases, it also has the ability to bring about accountability for the overall system. Commissioner Richardson noted that there was a question of jurisdiction. Mr. Hessler stated your staff attorney could investigate to see why some people get away with violating the rules and others don't. He asked where do we turn when it is clear that officers are violating the rules and it is clear that PIB is covering it up. That affects personnel and disciplinary matters greatly. Mr. Hessler stated his belief is that the Commission has the jurisdiction.

Mr. William Goforth, representing the Law Department, stated the petition at issue does not allege any violations of the Civil Service Rules or of the Louisiana Constitution as it pertains to Civil Service matters. The Commission's powers come from the Constitution. The Commission's investigatory powers are limited to violations of the rules, statutes, or ordinances pursuant to Article X of the Constitution; what Mr. Hessler is talking about here are violations of NOPD's own policies regarding conduct. That is an internal matter. PANO is asking for oversight over the day-to-day operation of an aspect of NOPD, the PIB. That is not within the Commission's jurisdiction. Mr. Hessler stated he agrees that he is alleging violations of NOPD policy. He stated it is the same thing the Commission hears on appeal, so there is jurisdiction. Mr. Hessler quoted section 8-103-2f of the Home Rule Charter and stated it requires the Commission to investigate violations of the Charter or rules and regulations adopted thereunder. Mr. Goforth responded it is the

City's position that the Charter does not create the Commission's power and authority because it is created by the Constitution directly. Commissioner Surprenant asked shouldn't the question of whether the Commission has the jurisdiction to do what you're asking be put to the 4th Circuit. He suggested to Mr. Hessler he may want to certify that question to the 4th Circuit or bring some other declaratory action because it seems like a pure legal question of jurisdiction. Mr. Goforth stated there is also a question about what relief is being requested. Mr. Goforth added there are a number of organizations that exercise oversight of NOPD and PIB specifically. Several of those are more appropriate to conduct these investigations. Commissioner Surprenant moved to deny the request. Commissioner Davis seconded the motion, and the motion to deny the request was approved unanimously.

Item #8 was a request from the Police Association of New Orleans for injunction, investigation and evidentiary hearing into the NOPD Sergeant's, Lieutenant's, and Captain's promotional policy and CAO Policy 143(R). Mr. Hessler stated that the petition alleges violations of Article X Sections 7 and 10 of the Louisiana State Constitution and the Home Rule Charter Sections 8-107.2 a, g, and j. The Great Place to Work changed the rules of promotions but when the Commission approved the changes it promised to revisit them. It has not done so yet and there have been extensive problems, for example the Achord decision. The name of the CAO policy itself undermines the Commission's power vested in it by the Constitution. The Commission has the power to establish the procedures for promotion. CAO Policy 143(R) dictates the whole second half of the test. The problems is all three criteria of the second half: Performance Evaluations, Disciplinary History, and Job History are subjective and can be manipulated. PIB can pick and choose whose discipline is sustained and what the penalty will be. For Performance Evaluations, some evaluators are harsher than others. Job history can be manipulated. NOPD sends people to special schools and makes assignments to high profile positions. The candidate who does a good job in the same place is penalized. Mr. Hessler provided an example of a person with twenty-four years on the job who got a zero score on job history. She got a 100 on discipline, so she has done her job without complaints. The conditions are vague and have not been explained. A person who was number one on the written test moved twenty-four spots on the final test with no explanation other than three vague scores that have never been vetted by Civil Service. Policy 143R is a clear infringement on the Commission's authority. It takes 50% of your power away from you immediately.

William Goforth stated that Rule VI section 6.1 sets detailed provisions for after the fact challenges of individual promotions. That is the process by which these

promotions should be challenged. There is no need for injunction or investigation on the front end. NOPD is confident it has complied with the law. The City will be ready to address any and all challenges when they are raised in accordance with this rule. Commissioner Davis asked if there were any current legal challenges. Mr. Goforth responded that Sergeant appointments are currently being litigated in Federal Court. Dante Bidwell, representing NOPD, noted NOPD had walked the labor groups through the scoring rubrics. The individuals who tested were notified that they could receive their scores as well as a breakdown of how they were scored. A comment card from Terrance St. Germain in support of PANO's request was then read into the record. Commissioner Davis moved to deny the request at this time due to pending litigation. Commissioner Korn seconded the motion and the motion to deny the request was approved unanimously.

Item #9 was a request from the Police Association of New Orleans for summary disposition relative to Police Officer James Cunningham. Eric Hessler stated that these cases were initiated in 2013 and 2015. Commissioner Richardson asked if these appeals had been docketed. Mr. Hessler responded that formal discipline had not been issued, so there is no appeal, but for the past seven years the officer cannot be promoted, can't take a test and get a pay raise, can't apply for a transfer because the complaints were sustained. It is retaliation. Mr. Hessler stated that in May of 2021 PIB published a Brady/Giglio list and listed Officer Cunningham as being terminated. He cannot appeal because there have not been any official disciplinary instances. He cannot be promoted to Senior Police Officer due to the open complaints. Seven years is indicative of a failure to prosecute.

Elizabeth Robins stated she had filed an opposition to this motion for summary disposition in September. There is no docket number because it is not about specific discipline. Rule II Section 6.1 provides for six specific grounds that a motion for summary disposition can be sought, but the starting point is that there has to be a docketed appeal. This is a general request to look into an investigation done in 2013 and 2015. Every PIB investigation does not have to end in discipline. This request for a MSD does not fit Rule II Section 6.1. It is not related to any specific discipline. There is no basis to grant the summary disposition to deny the discipline because there isn't any. Mr. Hessler stated this is a specific case with a specific investigation that is listed as sustained on his "short form". It is concerning that there is no discipline after 7 years. Commissioner Surprenant asked isn't this a different situation from items seven and eight because there is not a global investigation; it is an individual. He asked why this Commission can't treat this as a request for investigation based on an allegation of denial of due process and set it before a hearing examiner. Ms. Robins responded the problem is that it is not certain what he

is suggesting occurred and he provides no documents. She is not sure what his claim is. Ms. Robins stated he says there was an investigation, and he doesn't get disciplined but that it is being used against him in a promotional process.


Mr. Hessler stated these are terminable offenses that have been sitting around for seven years as sustained and nothing has been done except use them against him at every turn. He stated he would appreciate an investigation into the violation of his due process. Shontee Smothers, representing PIB, stated that Officer Cunningham was dismissed from the department in 2016 as a result of a separate investigation not associated with these investigations. He was reinstated in 2019. In 2019 the City suffered a cyber-attack and in 2020 Covid slowed down PIB hearings. Captain Sabrina Richardson, representing PIB, stated this case has not been sitting around for seven years. She then described the timeline of events. Commissioner Richardson asked how many times Officer Cunningham had been denied promotion since he was reinstated. Mr. Hessler responded twice, as well as, being denied the opportunity for a detective assignment. Captain Richardson stated the investigations are complete and the case has been sustained, we just have not had the hearings for those cases. Elizabeth Robins asked if the matter could be differed for one month and in the interim work with Mr. Hessler and PIB to identify the issues raised and come back next month as a petition for investigation. Commissioner Surprenant stated there is a need for more information to be provided. He stated he supports what Elizabeth suggested. Commissioner Surprenant then motioned to defer the item to the next meeting to allow the parties to work together to present any additional information prior to the November meeting. Commissioner Korn seconded the motion, and it was approved unanimously.

Commissioner Surprenant moved for adjournment at 1:33 p.m. The motion was seconded by Commissioner Korn and approved unanimously.



Brittney Richardson (Dec 18, 2021 21:15 CST)

Brittney Richardson, Chairperson



J. H. Korn (Dec 16, 2021 13:06 CST)

John Korn, Commissioner

Mark C. Surprenant

Mark C. Surprenant (Dec 15, 2021 17:08 CST)

Mark Surprenant, Commissioner

Ruth White Davis

Ruth Davis (Dec 16, 2021 20:12 CST)

Ruth White Davis, Commissioner