

CIVIL SERVICE COMMISSION  
REGULAR MONTHLY MEETING  
Monday, March 22, 2021

The regular monthly meeting of the City Civil Service Commission was held on Monday, January 25, 2021 via Zoom pursuant to the 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, Vice-Chairperson Clifton Moore Jr., Commissioner John Korn, Commissioner Mark Surprenant, and Commissioner Ruth White Davis. Commissioner Richardson convened the meeting at 10:01 a.m. The Commission then proceeded with the docket. At 10:12 a.m. on the motion of Commissioner Korn and the second of Commissioner Moore, the Commission voted unanimously to go into executive session. At 11:08 a.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Commissioner Richardson noted that the Commission would take matter #3 of the Executive Session, pending Litigation relative to New Orleans Firefighters Association, Local 632, International association of Fire Fighters, Michael Salvaggio, Paul Helmers, Edward Poole, and Jay Fielding V. New Orleans Fire Department and Timothy McConnell, in his Official Capacity as Superintendent of the New Orleans Fire Department, under advisement and issue a written opinion.

Item #1 was the minutes from February 25, 2021. Commissioner Korn motioned to approve the minutes. The motion was seconded by Commissioner Davis. The motion was approved unanimously.

Item #2 was a declaration by the administration that the City possesses insufficient funds in fiscal year 2021 for merit increases in accordance with Rule IV Section 2.5 (a) 2. Personnel Director Amy Trepagnier stated that the Rule provides for merit-based pay increases absent a declaration by the administration that the City possesses insufficient funds. The administration submitted a document stating that they do not possess the funds to pay merit pay in 2021. Commissioner Moore asked if merit pay ever been paid. Director Trepagnier responded that merit pay was paid for the three consecutive years following adoption of the Rule, but it has not been paid since then.

Item #3 under Recruitment and Selection Matters was a request from the Fire Department to extend the register for Deputy Fire Chief for an additional year. Director Trepagnier stated that under the Rules staff can extend an eligible list up to three years. After that, the list can be extended by the Commission for up to five years. The list will reach three years in existence at the end of the month. Chief Roman Nelson has asked that the list be extended for an additional year to allow for more appointments. Staff supports the request. Commissioner Surprenant motioned to approve the extension for an additional year. The motion was seconded by Commissioner Korn and approved by Commissioners Surprenant, Korn, Richardson and Davis. Commissioner Moore abstained from voting on this item.

Item #4 was the ratification of Public Integrity Bureau (PIB) Extension Requests. Commissioner Richardson called for public comment. There being none, Commissioner Korn moved for approval of the 30- and 60-day extension requests. The motion was seconded by Commissioner Davis and approved unanimously.

Commissioner Surprenant motioned to take up items #5 through 8. These items required at least two thirds vote of the Commission to be considered pursuant to L.A. R.S. 42:17.1. Commissioner Korn seconded the motion to take up these items. The motion carried unanimously.

Item #5a under Rule Amendments was a request to amend Rule VI Section 6.1 and Rule VII Section 2.9 relative to investigations of appointments and promotions. William Goforth, representing the administration, stated that the administration had worked with the staff to make a joint proposal of the Rule amendment. The proposal allows for a more efficient and expedient challenge to promotions. The proposal extends the probationary period of the challenged appointment to ensure the person does not gain permanent status if it is determined the promotion was not merit based. If the promotion was merit based, the person gets credit for the time served in that position. There is no mandatory time limit, but the investigation is supposed to take less than 90 days. Louis Robein, representing Local 632, stated this amendment does not address the remedy question. Mr. Robein asked if the Director or Commission ordered a person retroactively promoted does this prevent them from awarding the person back pay. Mr. Goforth responded this would not come up under this Rule because the only remedy would be to remove the person. The Commission or Personnel Director would not be identifying who

should be in the position. It would just go back and the appointing authority would make a new appointment or promotion prospectively. Mr. Robein stated this proposal eliminates the remedy the Commission implemented two years ago. Mr. Goforth agreed. Mr. Robein stated that is the intent, but that is not stated in the proposed Rule. Mr. Goforth stated it is clear from the final paragraph. That is the only result. Mr. Robein asked what the remedy would be for the person who filed the appeal. Mr. Goforth replied the remedy is that the promotion is undone and that person would then be eligible for promotion to the vacant position. Mr. Robein noted this eliminates the remedy that the Commission historically implemented that was approved by the 4<sup>th</sup> Circuit.

Eric Hessler, representing the Police Association of New Orleans, stated he opposed the changes to the Rule. He noted that the timeframe is a legitimate problem. It is unfair to the person to have their probation extended through no fault of their own. The timeliness issue can be better addressed by putting some timeframes on it. Commissioner Surprenant noted the Commission wants things to be as efficient as possible. He has a problem with an open-ended timeline. It is better to have a time limit that we stick to.

Donovan Livaccari, representing the Fraternal Order of Police, opposed the Rule change without the Commission's normal practice to let the Rule lay over. He noted that this is the first time that CAO Policy Memo 143 is in place for a Police promotion. It is unknown how this process will work. It is important to see how it works before implementing a Rule change that will make appeals more difficult. Commissioner Surprenant stated he wants to make sure the union representatives have input into the issue. He recommended deferral in order for that discussion to take place. Mr. Goforth stated some departments are reluctant to make promotions under the current Rule. If the Commission is not going to act today he asked that the Rule when passed is retroactive so that any promotions made after today are subject to the new procedure. Christina Carroll, the Commission's Executive Counsel, stated she is not sure we can have retroactive Rules that change people's appeal rights. Commissioner Surprenant motioned to defer the item or hold a special meeting later if necessary. The motion was seconded by Commissioner Korn and approved unanimously.

Item #6 was a request from Dartagnan Howard for back pay, emergency pay and/or hazard pay under Rule IV Section 11.1. Director Trepagnier noted that Sewerage and Water Board had asked for a deferral of this item. Mr. Howard stated when the Mayor closed the city and told everyone to stay home unless

you are an essential worker that essentially shut the government down even though you have certain people in the government who operate under an emergency situation. Effectively, the government had shut down. There are certain services that were not available for example, building inspections. Police, Fire and water are essential services. The government was closed but still had certain functions and duties performed by certain people, but it was not available or open to the public. Once City Hall closed its doors to the public it was officially closed even though there were certain functions still in existence. Ashley Smith, representing S&WB, noted that this request is substantially similar to one the Commission discussed at its executive session earlier today. Consideration of this matter is premature until the Commission has rendered a determination. It is essentially the same request. Ms. Carroll recommend, based on the ruling from the 4<sup>th</sup> Circuit to conduct an evidentiary hearing relative to the fire and police claim for emergency pay, we should also conduct an evidentiary hearing in this matter because although the facts may be different, the claim is basically the same. Commissioner Korn motioned to consider the request the same way as the Police and Fire request, by either an evidentiary hearing or with the agreements of all parties to the review of documents by staff. The motion was seconded by Commissioner Surprenant and approved by Commissioners Surprenant, Korn, Richardson and Davis. Commissioner Moore abstained from voting on this item.

Item #7a under Classification and Compensation Matters was a recoupment of funds from Octavio Baldassaro relative to removal from the assignment of Police Captain. Robert Hagmann, Personnel Administrator over the Classification and Compensation Division stated that at its February meeting the Commission had granted back pay to Anthony Caprera for performing additional duties associated with commanding the 8<sup>th</sup> District prior to his transient appointment to Captain on May 3, 2020. Lt. Baldassaro's appointment to Police Captain and temporary pay should have been removed by NOPD on March 13, 2020 when he was removed from the special assignment. Special rates of pay and provisional appointments are specifically related to performing those special assignments. They are contingent upon the employee performing the duties of those job assignments. The city is paying twice for one assignment of Police Captain.

Dante Bidwell, representing NOPD, stated a complaint was received in March of 2020 regarding Captain Baldassaro and a subordinate. He was administratively reassigned in keeping with NOPD policy. In situations like this, NOPD separates the two parties. NOPD had an allocation of 21 Captains.

One retired, leaving us with 20 Captains. We reshuffled internally and slid some folks over. We had a vacancy but there was no place to put Captain Baldassaro, so he was administratively reassigned pending investigation. In May, based on the investigation, the Captain's assignment was removed. Up until that point we did the same thing we would do with anyone else. He was moved to separate him from the situation. This comes down to a budget code issue.

Director Trepagnier stated that when Mr. Baldassaro was removed he was moved into a district that already had a Captain in charge. It was a removal of the duties and responsibilities of a Captain in conjunction with an administrative reassignment. Mr. Hagmann stated this person does not have permanent status and you are relying on a temporary appointment and the special assignment Rule which is specific in stating that pay must be removed following the removal of that special assignment.

Eric Hessler, representing Octavio Baldassaro, stated Mr. Baldassaro legitimately held the Captain's position. The department chose to continue paying him. He was never notified prior to being demoted that his salary was being reduced as required by Rule III Section 3.1. It is not his fault the department did not place him in a Captains position to continue to do the work. Fairness requires he be paid for that brief period. Commissioner Richardson asked if he performed the work during that time. Mr. Hessler responded that he was working in the Second District which did have a Captain at the time however it would be the stroke of a pen to properly notify him of his demotion and his decrease in salary as opposed to coming at this late date and recouping money from him. Commissioner Surprenant asked why it took NOPD so long to notify him. Mr. Bidwell responded that NOPD did not plan on demoting him at the time. He was administratively reassigned. Director Trepagnier stated that removal from a provisional appointment is not a demotion because an employee has no right to a provisional appointment. It is a temporary appointment used when there is no list in existence. It is assignment based. Ms. Carroll stated the Rule requires that you perform the special assignment in order to get special assignment pay. Commissioner Surprenant asked if the person is notified in writing that if the allegation proves to be correct then they are subject to returning the pay. Director Trepagnier stated the Civil Service staff does not provide that notice. We tell the departments what needs to be done. Mr. Hagmann noted the Rule states that if you are not doing that work you do not get the pay. When people are in provisional appoints or are receiving special rates of pay, it is based on performing the work. Anytime

the employee ceases to perform that work they should no longer receive the compensation for performing that work. Commissioner Surprenant asked if the person has notice that they are no longer entitled to that pay once the work ceases. Director Trepagnier stated that once we find out about it they do. For provisional appointments there is no entitlement to continued employment in that job classification. There is no requirement to do so because the payment is tied to the job classification. Removal from a provisional appointment is not an appealable action. Director Trepagnier stated employees receive a notice on the front end when they receive a provisional appointment. Ms. Carroll stated by Rule, the employee is supposed to receive notice that the special assignment pay is ending. Mr. Hessler quoted Rule III Section 3.1 relative to a reduction in pay by an appointing authority for cause which requires prior notice of the action. Director Trepagnier noted that removal from provisional appointments does not have to be for cause. Ms. Carroll stated that Rule X section 1.3 allows the removal of pay when the department abuses its discretion. Director Trepagnier agreed that allowing the special assignment pay to continue after Mr. Baldassaro was reassigned was an abuse of discretion. Commissioner Richardson motioned to recoup the special rate of pay. The motion was seconded by Commissioner Davis and approved unanimously.

Item #7b under Classification and Compensation Matters was a request to create the position of Health Project & Planning Senior Administrator in the Health Department. Robert Hagmann stated staff is recommending the new classification following a job study. The position will be responsible for the administration and management of multiple community health programs and services for example, the WIC and Healthy Start federal programs. It is being allocated at the level of a city bureau chief with multiple layers of supervision. The position would have an entrance rate of \$74,242 with a mid-point of \$81,999. He noted the Health Department is somewhat concerned with the salary recommended. The salary recommended is based on salary survey information. The department wanted a higher salary but the comparators from other jurisdictions did not support it. If the position is posted and no one applies then we can raise the salary based on the documented recruitment issue. Commissioner Surprenant motioned to approve the creation of the position. The motion was seconded by Commissioner Korn and approved unanimously.

Item #8 under Recruitment and Selection Matters was the approval of examination announcements 10379-10398. Commissioner Moore moved to

approve the announcements. Commissioner Davis seconded the motion and it was approved unanimously.

Commissioner Surprenant moved for adjournment at 12:31 p.m. The motion was seconded by Commissioner Korn and approved unanimously.



Brittney Richardson (Apr 19, 2021 13:41 CDT)

Brittney Richardson, Chairperson



CJ Moore (Apr 30, 2021 16:37 CDT)

Clifton Moore Jr., Vice-Chairperson



J H Korn (Apr 20, 2021 09:28 CDT)

John Korn, Commissioner



Mark C. Surprenant (Apr 19, 2021 13:55 CDT)

Mark Surprenant, Commissioner



Ruth White Davis (Apr 19, 2021 21:46 CDT)

Ruth White Davis, Commissioner