

MINUTES
AGENDA FOR A REGULAR MEETING OF THE CIVIL SERVICE COMMISSION
TO BE HELD AT 6:00 P.M., THURSDAY EVENING, AUGUST 24, 2006
CITY COUNCIL CHAMBERS, #2 CIVIC CENTER PLAZA – 2ND FLOOR

All matters listed under the Consent Agenda below will be considered by the Commission to be routine and will be enacted by one motion in the form listed below. There will be no separate discussion of these items unless members of the Commission or persons in the audience request specific items be removed from the Consent agenda to the Regular Agenda for discussion prior to the time the Commission votes on the motion to adopt the Consent Agenda.

MEMBERS PRESENT: Boureslan, Ali - Chair
 Gezelius, Ken
 Graham, Elijah
 Mosher, Fran
 Reynolds, Thurman
 Ruck, Lance
 Scott, Valerie
 Brannon, Edith

MEMBERS ABSENT: Schwartz, Elma

The meeting convened at 6:01 p.m. with 8 Commissioners and Chair Boureslan presiding. Chair Boureslan began the meeting by introducing the new Civil Service Commission Recorder, Laura Acosta. Chair Boureslan also sent the Commission's condolences to Commissioner Schwartz on the loss of her father. Chair Boureslan then asked if there were any changes to the agenda. Ms. Thomas requested that Item 1B be tabled because the minutes from July 24, 2006 still needed to be proofed. Ms. Thomas also requested that Item 9B on the regular agenda be moved to executive session and said it should have been listed as 8.1.d.4 instead of 8.1.d.1. Ms. Thomas then asked the Commissioner's to move up item 10 to the top of the regular agenda and informed the Commission that there were employees present who wanted to speak on the item. Ms. Thomas also made a correction to the date on Item 11B and said the correct date is 5/04/06. Commissioner Ruck asked that Item 3B be moved to the regular agenda.

CONSENT AGENDA

1. Discussion and Action on Approval of Minutes:
 - A. August 10, 2006
 - B. July 24, 2006

2. Notice of Promulgation of Eligible Lists:
 - A. Business & Financial Manager = Promulgated 08/14/06 (P-1) (CR-1) (O-8)
 - B. Automotive Service Field Worker = Promulgated 08/11/06 (P-1)
 - C. Well Production Field Operator = Promulgated 08/11/06 (O-2)
 - D. Automotive Technician II = Promulgated 08/10/06 (P-5) (CR-1) (O-4)
 - E. Automotive Technician III = Promulgated 08/10/06 (P-11) (CR-0)
 - F. Engineering Associate = Promulgated 08/09/06 (P-5) (O-20)
 - G. Lead Planner = Promulgated 08/08/06 (O-3) (P-2)
 - H. Archives & Records Analyst = Promulgated 08/08/06 (O-6)
 - I. Arts Programs & Education Specialist = Promulgated 08/08/06 (P-1) (O-5)
 - J. Desalination Plant Superintendent = Promulgated 08/08/06 (P-4)
 - K. Mechanical Engineer = Promulgated 08/08/06 (O-1)
 - L. Strategic Budget Advisor = Promulgated 08/08/06 (P-3) (O-7)
 - M. Secretary I = Promulgated 08/04/06 (CR-0) (O-3)
 - N. Secretary II = Promulgated 08/04/06 (CR-2) (O-8) (P-2)
 - O. Secretary III = Promulgated 08/04/06 (P-4) (O-3)
 - P. Electronics Technician = Promulgated 08/02/06 (P-1) (O-8)

- Q. Automotive Shop Helper = Promulgated 06/02/06 (P-3) (O-14)
- R. Guard = Promulgated (O-38)

3. Discussion and Action on request to assign pending appeal cases:

- A. Amor, Armando – Termination – Library
- B. Segura, Rafael – Termination – Sun Metro

Commissioner Ruck requested that Item 3B be moved to the regular agenda and said he was confused by this posting because the last time the Commission met the item was posted as "Discussion and action on employment status of Rafael Segura (Mass Transit) and appropriate remedial action." Commissioner Ruck said that at the time it was determined that Mr. Ellis' original appeal did not suffice and therefore he should use the proper form and re-file it. Commissioner Ruck said now it was re-filed totally different by sending it to a hearing officer and asked how that happened. Commissioner Ruck referred to the Charter under Section 6.13-4 which states "any permanent classified employee, except a department head removed or demoted under Article VI, Section 6.3-2B....." Commissioner Ruck said this was done last time, though the Commission didn't accept it. Commissioner Ruck said they came out with a form that Mr. Ellis had to fill out and that form didn't have any place to specify the provision. Commissioner Ruck said the real problem he has with the case is that it appears that the City used a voluntarily leave of absence demand on an employee who under the rules was under sickness. He said there is a difference between a voluntary leave of absence that ends after one year and a leave of absence for sickness, military and exempt service and Rule 13 makes it clear that sickness exempts service. Commissioner Ruck said he is not sure why this person was given an involuntary separation under an inapplicable clause. Assistant City Attorney Lupe Cuellar said that the previous posting did not state properly what order was violated and this one does. She also said she still thinks that the form needs to be amended which she will do but she said Commissioner Ruck was talking about two separate things – a leave of absence that the Commission does not have jurisdiction over and the appeal under the specific section of the charter where the Commission does have jurisdiction. Ms. Cuellar said if Mr. Segura is appealing the termination then it is properly before the Commission and the Commission can refer it to a hearing officer but if Mr. Segura is appealing the fact that he was not given additional leave of absence then that is not properly before the Commission. Commissioner Ruck asked Ms. Cuellar that assuming that Mr. Segura is appealing that the Charter was violated, would the Commission have the right to determine that action. Ms. Cuellar said that Mr. Segura is appealing the order of the department head to terminate him. Commissioner Ruck said that the Charter states under Section 6.10-5 that "upon the expiration of a leave of absence, an employee shall be reinstated except as otherwise provided in the Rules." Commissioner Ruck also said that under Section 6.10-6 it states that "failure to report at the expiration of a leave of absence will be cause for separation from the service." Commissioner Ruck said if he failed to return ..i.e. he came back on the 21st he would be terminated legally. But since Mr. Segura came back on the day he was told to come back he should not have been terminated. Commissioner Ruck asked Ms. Cuellar how that could be corrected. Ms. Cuellar said that she agreed with Commissioner Ruck that Mr. Segura can appeal the termination and that is within the Commission's jurisdiction that they can assign it to a hearing officer or they can assign it to be heard by the Commission as a whole at a later date. Commissioner Ruck said he thought it should be assigned to the Commission as a whole because assigning it to a hearing officer may take three to four months. Chair Boureslan asked Ms. Cuellar if the Commission could hear the termination and Ms. Cuellar said the Commission needs to look at Section 6.13-6 and then the Commission can decide to appeal it or refer it to a hearing officer. She said the Commission needed to provide both parties the opportunity to provide evidence. Commissioner Brannon said she was reluctant to hear cases as a Commission as a whole because the Commission has hearing officers who are able to do it and follow the rules of the City.

MOTION TO HAVE APPEAL HEARD BY A HEARING OFFICER MADE BY COMMISSIONER BRANNON AND SECONDED BY COMMISSIONER MOSHER.

DISCUSSION

Commissioner Ruck said generally cases that the Commission assigns to hearing officers are discipline cases and this was not a discipline case. He said this was an involuntary termination and a clear violation of the charter unless the city proved that the gentleman did not come back according to the deadline.

Commissioner Ruck said Mr. Baltoon and Mr. Ellis would be ready in two weeks to argue their position. Commissioner Ruck said the Commission should just deal with it.

MOTION TO CALL FOR THE QUESTION MADE BY COMMISSIONER MOSHER AND SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY 4 TO 3.

Ayes: Commissioners Brannon, Gezelius, Scott, Mosher
Nays: Commissioners Graham, Reynolds, Ruck

Discussion

Commissioner Ruck directed the Commissioners to look at Section 6.13-6.B – Action by Commission - in the Charter and suggested that that was why they do not refer it to a hearing officer and instead schedule it for the next meeting. Ms. Cuellar directed the Commissioners to refer to Section 6.10-4 regarding Leave of Absence and said the only person who can grant a leave of absence is the Mayor and not the Civil Service Commission.

MOTION TO HAVE APPEAL HEARD BY A HEARING OFFICER MADE BY COMMISSIONER BRANNON AND SECONDED BY COMMISSIONER MOSHER AND FAILED BY A VOTE OF 5 TO 2.

Ayes: Commissioners Brannon, Mosher
Nays: Commissioners Graham, Reynolds, Gezelius, Scott, Ruck

MOTION TO HAVE ITEM POSTED AS IT WAS PREVIOUSLY POSTED ON 08/10/06 AGENDA MADE BY COMMISSIONER RUCK AND SECONDED BY COMMISSIONER GRAHAM AND GEZELIUS AND PASSED BY A VOTE OF 5 TO 2.

Ayes: Commissioners Graham, Reynolds, Gezelius, Scott, Ruck
Nays: Commissioners Brannon, Mosher

- 4. For Notation and if appropriate, assignment of Hearing Examiner: Request(s) to have appeal(s) heard in accordance with Article 21 of the Collective Bargaining Agreement between the City and the El Paso Municipal Police Officers Association.

Carrizal, Jr., Jose – Suspension – Police Dept. (IA06-046)

- 5. Discussion and Action on request to have named placed on Transfer List:

- A. Vasquez, Fernando– Equipment Operator II – Street
- B. Castillo, Pauline – Personnel & Accounting Clerk – Human Resources
- C. Mary Ann Higgins – Automotive Maintenance Ticket Writer – Sun Metro

- 6. Discussion and Action on request to have name placed on Reinstatement List:

- A. Hernando, Angela – Library Information Specialist I – Library

- 7. Discussion and Action on Request for Temporary Promotion:

Pazos, Cesar – Mass Transit (Extension)
From: Coach Mechanic III
To: Acting Coach Maintenance Supervisor

- 8. Discussion and Action on Request for Extension of Eligible Lists for an additional six months:

Building Maintenance Supervisor.....Extended through 03/13/07

Grant Technician.....Extended through 03/07/07

Parking Meter Service Worker.....Extended through 02/28/07

MOTION TO APPROVE CONSENT AGENDA MADE BY COMMISSIONER GEZELIUS AND SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

REGULAR AGENDA

9. Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rule 8.1.d.1.:

A. Claudio, Juan – Airport Maintenance Worker

Mr. Claudio was not present.

MOTION TO DENY MADE BY COMMISSIONER RUCK AND SECONDED BY COMMISSIONER BRANNON AND UNANIMOUSLY APPROVED.

B. Simpson, Dwight – Airport Maintenance Worker

MOTION TO FORGO EXECUTIVE SESSION APPROVE MADE BY COMMISSIONER RUCK AND SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY APPROVED.

10. Discussion and Action on Amending the current Civil Service Policy on Equivalency Guidelines to Allow for Substituting Experience for Education. (Tabled 8/10/06)

Per the request of Human Resources Director, Linda Ball Thomas, the item was moved to the top of the regular agenda. Chair Boureslan said the Commission would allow members of the public to speak for two minutes each. City Manager Joyce Wilson thanked the Commission for moving the item to the top of the agenda and urged the Commission not to reverse their previous decision. Ms. Wilson said she feels this policy is a milestone in terms of setting minimum educational requirements as part of the professional management and executive classification system. She said since this change took effect, the number of employees participating in the City's tuition reimbursement program is rising. Ms. Wilson said that as an organization, the City is very supportive of continuing education and professional development. Ms. Wilson said that based on the way the job specs and the ordinance were structured, the minimum requirement is very specific for education. City Attorney Elaine Hengen said the circumstances with respect to the job classification and how those were written have changed since 1992 when the original equivalency guidelines were passed. At that time, the job specifications did allow the equivalency. She said in 2006 all of the job descriptions were modified when the Commission progressed to the new guidelines which don't allow substitution pertaining to educational requirements. Ms. Hengen said the Commission is not in a situation where it can go back to the old rule without the need to address what would happen to the job specifications. She said the City Attorney's office would need to work with the Commission if the Commission wishes to make changes to the policy. Director of OMB David Almonte, Director of Aviation Pat Ablen, Police Chief Richard Wiles, Director of Public Libraries Carol Brey-Casiano, Fire Chief Roberto Rivera and Environmental Services Director Ellen Smyth spoke before the Commission in favor of keeping the current equivalency guidelines. Commissioner Graham said the Commission was in favor of the current rule however, there was room for adjustment and asked if there were any department heads in the audience who were in favor of amending the current guidelines. Commissioner Ruck said even though he voted for the guidelines he had one concern. He said he wanted to know if employees who were working in a position for 10 or 12 years would not be retroactively taken out based on the new guidelines. He wanted to know what happened to employees who qualified for a position under the old guidelines who had the experience but not the degree. Ms. Thomas said these employees kept their jobs and every employee who was on a list was grandfathered and no one was removed or demoted so they still can be promoted and go for an interview. Chair Boureslan said if a position became vacant then the new rules would apply. Commissioner Reynolds said he was the one

who asked this item be put on the agenda. He said that experience was just as important as a degree. Commissioner Reynolds said he had a degree in engineering, math and physics. He said he went to school for three years and a half and stopped but 15 years later he finished his degree. He said during those 15 years he went through some experiences. He said he is not advocating deleting the degree requirement but he said experience is important and overlooking the fact that experience is important is wrong. He said he thinks the Commission needs to take a look at that. He said experience is also important and ought to be considered. Daniel Kitka, a Street Operations Supervisor said he does not believe he is not an educated person because he lacks a degree. He said he got his education in the street department and has worked very hard to learn everything he can about his job and has performed many different functions over the years. He said that some positions in his department do require a degree but he feels that there are some positions in the Street department and other departments that he believes he can do and he would like the opportunity to show the education and training that he has received from performing those jobs and the ability to be compared to other people. He would like the opportunity to interview for a position. He said people who do the hiring for the departments are experienced and capable administrators and know what they are looking for in a position and they should have the opportunity to make a choice between someone who may have a degree and very little experience and someone who has quite a bit of experience but lacks a degree. Commissioner Graham asked Mr. Kitka what the morale was like between people who have a degree but less experience and those who don't have a degree but do have experience. Mr. Kitka said he doesn't feel that anyone likes to have someone put in a position above them who they don't feel earned the position. He said if the exam is open to anyone who has a shot at it, he doesn't believe the City would have that issue. Commissioner Brannon asked the Commissioners if there was any situation in which the Commission should take a second look to see if the equivalency guidelines were too strict and to see if there was any room for compromise for any positions. Assistant City Attorney Elaine Hengen said there could be some positions that they could look at if the Commission wants them too and come back with some recommendations or work with a committee of the Commissioners. Commissioner Gezelius said that part of the problem was that the job descriptions were changed and they still have the old language that talked about the old equivalency. He said he Commissioners understood what it meant but many employees read it and they may have done the substitution or equivalency in their head. He said they didn't have access to the different guidelines the Commission has been talking about. Commissioner Graham said he agrees with Ms. Hengen and Commissioner Brannon and feels they should go back and review the guidelines because the morale problem is brewing.

MOTION TO TABLE ITEM AND HAVE HUMAN RESOURCES, LEGAL AND DEPARTMENT HEADS SEE IF THERE IS ANY PLACE WHERE THE REQUIREMENTS ARE STRICT AND IF THERE IS ANY OPPORTUINTY TO CHANGE THESE POSITIONS MADE BY COMMISSIONER BRANNON AND SECONDED BY COMMISSIONER REYNOLDS.

Discussion

Commissioner Ruck said he would not support the item and would instead have it deleted because Ms. Hengen said they are going to do what they can and managers are going to face the dilemma where employees like Mr. Kitka can't test. He said supervisors are going to be faced with a great employee who can do the job but he/she can't do it because he/she can't test and instead they will have to hire someone with very little or no experience. Commissioner Brannon asked if Commissioner Ruck wanted to amend her motion and Commissioner Ruck said he didn't know if there was any amendment.

Ms. Thomas asked Commissioner Brannon to amend her motion to delete and Human Resources would look at the policy in those areas where they could have some movement and bring a proposal back to the Civil Service. She said if the item is tabled for the next meeting, she will not have enough time to adequately research the matter.

MOTION TO DELETE MADE BY COMMISSIONER BRANNON AND SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

11. Discussion and Action on EEO Discrimination Complaint

- A. Raymundo Ceballos, Sr. – Resubmitted

Mr. Ceballos was present and passed out evidence to the Commissioners. Mr. Ceballos said this was a complicated matter and said he was facing continuous harassment and discrimination. He asked the Commissioners if they had any questions. Mr. Gezelius said the documentation Mr. Ceballos provided was very difficult to read and most of what he found was a basis for a criminal complaint and the Civil Service Commission did not hear criminal actions. Commissioner Gezelius said Mr. Ceballos was in contact with the Police Dept. and FBI and asked Mr. Ceballos if he was coming before the Commission to ask the FBI to back off. Mr. Ceballos said he tried to resolve this issue a long time ago. He said he was going by the rules of the Civil Service Commission. He said he does not understand why the Civil Service is not entitled to hear his complaint because this is where it originated. He said at the beginning it was not a criminal complaint but it escalated to that. He said he understands that the Commission does not have any jurisdiction regarding this but all the conditions originated with the City. He felt he needed to address it to the Commission because of a resolution that states that employees should come forward if there are any illegal acts occurring. Chair Boureslan said that he sees this as a criminal complaint and the Commission cannot hear it. Assistant City Attorney Lupe Cuellar told the Commission that they have no jurisdiction to hear criminal activity. Mr. Ceballos said that since he came forward he feels he is being retaliated against. Aviation Director Pat Abeln said that to the very best of his knowledge there is no conspiracy by any airport employee against Mr. Ceballos. He said he thinks Mr. Ceballos is well liked and there is no agency that he has control over that provides any level of surveillance against Mr. Ceballos. Mr. Abeln said Mr. Ceballos has given him a series of names of employees who he believes were talking about him but no specific incidents. Mr. Abeln said he has given no authority other than to Mr. Ceballos' direct supervisor to do that and that is normal supervisory authority. Commissioner Graham asked Mr. Ceballos what he wants the Commission to do regarding his complaint. Mr. Ceballos said he wants the Commission to take it seriously and go by the rules because all he wants is justice. Commissioner Graham said that they just heard from Mr. Abeln who said Mr. Ceballos' complaints had been investigated. Mr. Ceballos said he doesn't have any paperwork that any investigation was done. Commissioner Graham told Mr. Ceballos that Mr. Abeln is the supervisor and he should accept that Mr. Abeln investigated the allegations and again asked what Mr. Ceballos wanted the Commission to do. Mr. Ceballos said he wanted the Civil Service Commission to investigate whatever they have jurisdiction on. Commissioner Graham asked Mr. Ceballos if he wanted the Commission to investigate each and every allegation he made in his complaint and Mr. Ceballos said no. He only provided the documentation to give the Commission an idea of what is going on. Commissioner Graham said that the Commission can only look into or investigate the basis of his complaint and Mr. Ceballos has not convinced him.

MOTION TO DENY MADE BY COMMISSIONER BRANNON AND SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

B. Lilia Fierro -- 7/31/06

Lilia Fierro was present and said she was not notified prior to the meeting. She said a friend told her that the item had been placed on the agenda. She asked that the item be tabled until the next meeting because her attorney was out of town. Human Resources Director Linda Ball Thomas said Ms. Fierro was not notified directly because Ms. Fierro's attorney asked that all correspondence be sent to the attorney.

MOTION TO TABLE MADE BY COMMISSIONER GEZELIUS AND SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

12. Discussion and Action on Hearing Officer Bruce Yetter's backlog of cases.

Commissioner Ruck asked that this item be moved up to the second item on the regular agenda. Hearing officer Bruce Yetter was present. Commissioner Ruck asked if Mr. Yetter had more cases than the other hearing officers and Ms. Thomas said she would have to look into that to make sure that they were equitable. Ms. Thomas said she put the item on because of the first case listed on the back up. She said a case came before her regarding the gentleman and one of the items listed on his new discipline was this case that had been appealed but there was no resolution since 2004. She said That is when she started to look at how many cases Mr. Yetter had that were outstanding. Mr. Yetter informed the Commissioners on the status of each case and which cases were settled and which were pending. Commissioner Ruck asked Mr. Yetter if by pending he means no hearings have been held or evidence taken. Mr. Yetter said not necessarily because pending could also mean he has completed the hearing

but he still owes the recommendation. Commissioner Ruck asked Mr. Yetter if after looking to see if the other hearing officers had less cases, if Mr. Yetter would have an objection to moving the cases where he still had not heard any evidence to the other hearing officers. Mr. Yetter said certainly. Commissioner Gezelius asked Mr. Yetter why cases that were assigned in 2004 were just being finalized. Mr. Yetter said the Gerardo Rodriguez case was an unusual situation because when it was set up for hearing, Mr. Arballo, the representative for Mr. Rodriguez became ill. It was rescheduled and Mr. Rodriguez then went on workers compensation and it was not rescheduled until Mr. Yetter was advised that Mr. Rodriguez was capable of going through a hearing. He said it took a lot longer than normal but it was at the request of the employee. Mr. Yetter said regarding Mr. Acosta, they spent 25 hours or more collecting evidence. It was to be set earlier this year but was postponed at the request of the employee. Mr. Acosta now has counsel and has been set for Sept. 1. Chair Boureslan asked Mr. Yetter if the cap on the hours that hearing officers can spend hearing cases affects his ability to finish the cases. Mr. Yetter said he was not aware of the policy change and asked for the cap on the cases. Assistant Attorney John Batoon said hearing officers can ask for an extension if necessary and ultimately it was the decision of the Commission to grant an extension under reasonable circumstances.

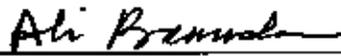
MOTION TO EVALUATE DISTRIBUTION OF HEARING OFFICERS' CASES MADE BY COMMISSIONER RUCK AND SECONDED BY COMMISSIONER REYNOLDS AND UNANIMOUSLY PASSED.

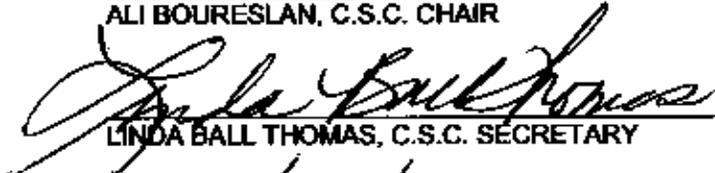
The Civil Service Commission may retire into Executive Session pursuant to Civil Service Commission Rule 1, Section 11(a) and the Texas Government Code, Section 551, Subchapter D to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the Commission may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act.). The Commission will return to open session to take any final action.

Section 551.071 CONSULTATION WITH ATTORNEY
Section 551.074 PERSONNEL MATTERS

THERE BEING NO FURTHER BUSINESS BEFORE THE COMMISSION, A MOTION TO ADJOURN WAS MADE BY COMMISSIONER GEZELIUS, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

THE MEETING ADJOURNED AT 8:31 P.M.


ALI BOURESLAN, C.S.C. CHAIR


LINDA BALL THOMAS, C.S.C. SECRETARY

9/14/06
DATE APPROVED