
City of Tacoma Civil Service Board MINUTES

Date and Time: February 7, 2013
Location: Tacoma Municipal Building Council Chambers
Chair: Beckie Summers
Coordinator: Wendy Hobson

Call to Order:

The Civil Service Board meeting was called to order in the City Council Chambers of the Tacoma Municipal Building. Board Members Summers, McKenna, Sexton, Latch and Kielian were present.

Approval of Minutes:

BOARD MEMBER SEXTON MOTIONED TO APPROVE THE MINUTES OF THE DECEMBER 6, 2012 MEETING. BOARD MEMBER LATCH SECONDED THE MOTION. BOARD MEMBER KIELIAN MOTIONED TO AMEND THE MINUTES STATING THERE WAS A SECOND AND A VOTE TO EXCUSE CHAIR SUMMERS AND BOARD MEMBER MCKENNA FROM THE JANUARY MEETING. THE COORDINATOR WAS ASKED TO REVIEW THE AUDIO AND AMEND AS NECESSARY.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS AND 2 ABS.

Communication for Information/Action: (none)

Action on Matters Still Pending/New Business:

Request for an appeal received on January 7, 2013, on behalf of Lt. Mark Feddersen, Tacoma Police Department. Chair Summers asked the parties to come forward and indicated tonight's meeting was to decide jurisdiction and that the parties would have 5 minutes to address the board as to why they should grant the appeal.

Jared Karstetter, Legal Counsel representing Lt. Feddersen introduced himself and stated he was prepared to argue merits of why the commission should sustain the appeal but understood that this was not the purpose of tonight's meeting. Chair Summers confirmed that the purpose of tonight's meeting was to decide jurisdiction and that the grievance filed by Lt. Feddersen may take the board out of play.

Mr. Karstetter asserted that no grievance was necessary under the labor law of customs and practice where the actions of an employer end up substituting for the actual language in the CBA. This grievance was filed by Lt. Feddersen himself and not the union under direction of his counsel to preserve the timelines under the CBA in the event that the request for appeal is denied.

Board Member Sexton questioned if the grievance had been withdrawn and stated it was his understanding that the board would have to yield to the grievance and the CBA.

Board Member Latch asked if the grievance had been denied. Mr. Karstetter stated that the 1st step grievance had been denied which he expected. He also stated the next step is at the Chief's level and he expects that to be denied as well and that if it goes to the final step and is denied, there is no guarantee that Lt. Feddersen gets his day in court if this request for appeal is denied.

Board Member Sexton stated he agreed that the CSB should be first remedy however the grievance is in the way and must be dealt with before the board can take action. Board Member Latch stated it was her understanding that the final result of a grievance is binding arbitration and that it is not subject to this board's appeal. Board Member Latch also addressed Mr. Karstetter and advised him that we are a board and not a commission.

Chair Summers requested to hear the City's view point from Deputy City Attorney, Cheryl Comer. Ms. Comer stated that the board has jurisdiction over matters arising out of the personnel rules but not over matters which must be or have been adjudicated under the terms of an existing and applicable CBA. She further stated that the grievance must be followed through with and that the board does not have jurisdiction in this case. Ms. Comer referenced a like case for another City of Tacoma Police Lieutenant which she argued on the city's behalf and the board ruled that they did not have jurisdiction in that case. Ms. Comer further stated that Lt. Feddersen is a member of Local 26 in which the CBA states in article 1 that any provisions of the city charter or city ordinances that conflict with or are different than the provisions of the agreement then the provisions of the CBA are paramount and shall prevail. She also asserted that the board does not have jurisdiction as all of the issues being brought forward by Lt. Feddersen are arising out of the CBA. Mr. Karstetter responded with his rebuttal.

Board Member Kielian stated it is her understanding that because this process is part of a CBA, even if there wasn't a grievance in place, we would still not have jurisdiction. Deputy City Attorney stated this was correct.

BOARD MEMBER KIELIAN MOVED THAT THE APPEAL BE DENIED BASED ON THE FACT THAT THE BOARD DOES NOT HAVE JURISDICTION. BOARD MEMBER SEXTON STATED HE WAS NOT READY FOR A MOTION.

Board Member Sexton asked for Counsel to speak on this matter and advise the board. Deputy City Attorney Martha Lantz stated that the issues being brought forth arise out of the CBA and for that reason this is a matter that is not covered in the personnel rules and the board should not hear the appeal as it does not have jurisdiction.

Board Member Latch stated that hearing the different approaches and interpretation of the law she is really struck by the mission and charge of this board. She is concerned that we only deal with employees covered by a CBA and that the scope of our jurisdiction is so narrowly construed and she has begun to question where that construction comes from. She also stated that Mr. Karstetter's argument is quite compelling if past practice has become the way it is done we should judge this case based on the merits of that scenario which brings into question the very thing this board is compelled to act on and that is inequitable application of rules.

BOARD MEMBER LATCH MOVED THAT THE BOARD DOES HAVE JURISDICTION AND THAT A HEARING BE SCHEDULED.

Board Member Sexton questioned whether or not the appeal can be filed again in the future if the board at this time denies the request for appeal. Deputy City Attorney Lantz reminded the board that if the facts and circumstances presented were the same, it would not change the outcome. Mr. Karstetter then asked if a more palatable decision would be for the board to defer on its decision at this time awaiting the outcome of the grievance and that if the grievance process was denied, then the request for appeal would be brought back here.

BOARD MEMBER SEXTON MOVED THAT THIS MATTER BE TABLED UNTIL NEXT MONTH. BOARD MEMBER LATCH SECONDED THE MOTION.

A VOICE VOTE WAS TAKEN: 2 AYES, 2 NAYS. THE MOTION DID NOT PASS.

Deputy City Attorney Cheryl Comer reasserted the City's reasons as to why this appeal should be denied.

BOARD MEMBER SEXTON SECONDED BOARD MEMBER KIELIAN'S EARLIER MOTION TO DENY THE APPEAL BASED ON JURISDICTION.

A VOICE VOTE WAS TAKEN: 3 AYES, 1 NAY. THE MOTION PASSED AND THE REQUEST FOR APPEAL WAS DENIED.

Consideration of Matters Set for Public Hearing: (none)

Coordinator Report: (none)

Chair Summers welcomed new Deputy City Attorney Martha Lantz who is filling in for Jennifer Taylor while she is out on maternity leave and asked Martha to share a little bit about herself with the group. Chair Summers asked Martha to please wish Jennifer the best for us.

Human Resources Director Report and Request:

Human Resources Director Joy St. Germain had no report this evening.

Comments by the Public: (none)

Comments by Board Members:


Board Member Kielian requested a study session be scheduled in the future to address jurisdictional clarification. Chair Summers thanked Board Members for their comments this evening pointing out that she appreciated the tactful way that Board Member Latch addressed Mr. Karstetter pointing out that this was a board and not a commission. Chair Summers asked that Wendy schedule a study session and to include any others that might be able to contribute to the topic.

Adjournment:

BOARD MEMBERS SEXTON AND LATCH MOTIONED TO ADJOURN. THERE WAS NO SECOND AND NO VOTE. MEETING WAS ADJOURNED.

ATTEST:


Beckie Summers
Chair, Civil Service Board


Wendy Hobson
Civil Service Coordinator