

City of Tacoma Civil Service Board MEETING MINUTES

Date and Time: July 19, 2016 at 5:00 p.m.
Location: Tacoma Municipal Building North, Room 16
Chair: Beckie Summers
Coordinator: Karen Short

Call to Order:

The Civil Service Board meeting was called to order in the Tacoma Municipal Building North, Room 16 at 5:00PM by Chair Summers. Board Members Sexton, Heller and Hansen were present.

Approval of Minutes:

BOARD MEMBER SEXTON MOTIONED TO APPROVE THE MEETING MINUTES OF JUNE 9, 2016. THE MOTION WAS SECONDED BY BOARD MEMBER HANSEN.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 0 ABS. THE JUNE 9, 2016 MINUTES WERE APPROVED AS WRITTEN.

Communication for information: Karen Short shared information with the Board on the Civil Service Conference to be held in Wenatchee on September 12th and 13th and advised if interested in attending to please see Wendy Hobson.

Human Resources Director Report and Requests:

Director St. Germain advised the Board that she had two items this evening. The first item she approved was for a list extension for PAF Maintenance Worker I, List 6014-15.

The second item presented by Director St. Germain was a Request for Waiver of Competitive Exam for Labor Relations Analyst, Kendra McCoy, LEOFF 1 Pension Specialist, Cheri Campbell and Customer Service Training Analysts, Kelly Jack and Beverly Pinkerton

BOARD MEMBER SEXTON MOTIONED TO APPROVE THE REQUESTS FOR WAIVER OF COMPETITIVE EXAM FOR LABOR RELATIONS ANALYST, KENDRA MCCOY, LEOFF 1 SPECIALIST, CHERI CAMPBELL, AND CUSTOMER SERVICE TRAINING ANALYSTS, KELLY JACK AND BEVERLY PINKERTON TO PERMANENTLY APPOINT THEM INTO THE NEW CLASSIFICATIONS. THE MOTION WAS SECONDED BY BOARD MEMBER HANSEN.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 0 ABS. THE REQUESTS FOR WAIVER OF COMPETITIVE EXAM WERE APPROVED.

Action on Matters Still Pending / New Business:

Appeal hearing in the matter of Aaron Setunsky and Sean O'Brien, Tacoma Fire Department Captain's Promotional Exam. Chair Summers stated the Appellants will be first and asked that the Board members wait until the attorneys are done presenting before asking questions of them. Chair Summers also

advised she is aware there may be additional documents that they would like to provide the Board as asked that these be given to the Coordinator for distribution to the Board.

Terrence Costello of Schwerin Campbell Barnard Iglitzin and Lavitt representing the Appellants introduced himself, his colleague Michael Robinson and Appellants Lt. Sean O'Brien and Lt. Aaron Setunsky of Tacoma Fire. He asked that the Board consider three preliminary motions:

1. Grant the appeal without going through the hearing.
2. If you require us to go through the hearing that you engage the City to provide it's proof first.
3. That you not entertain any hearsay evidence what so ever.

Mr. Costello further explained the three preliminary motions. Board Member Hansen stated he was concerned that there would not be a record if there was an appeal if the Board met in executive session as requested by Mr. Costello. He also stated that he thought that a hearing was required to determine if Ms. St. Germain had reason for convening a 2nd review board assuming she had the authority to do so. Board Member Sexton felt the appeal should be granted without sitting for hours and going through all the documents. Board Member Heller shared that she felt the Board should go through the hearing process that this was not a disciplinary appeal and that there was another avenue to address that.

BOARD MEMBER HELLER MOTIONED TO DENY THE THREE PRELIMINARY MOTIONS BEFORE THE BOARD. BOARD MEMBER HANSEN ADDED TO THE MOTION THAT HEARSAY SHOULD BE ADMITTED BUT THE FACT THAT IT IS HEARSAY WOULD GO TO THE WEIGHT OF THE EVIDENCE THAT WOULD BE CONSIDERED BY THE BOARD. BOARD MEMBER HELLER ACCEPTED THE AMENDMENT TO THE ORIGINAL MOTION.

BOARD MEMBER SEXTON SECONDED THE MOTION WITH THE AMENDMENT.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 0 ABS. THE REQUESTS FOR PRELIMINARY MOTIONS WAS DENIED.

Mr. Costello then began with opening remarks on behalf of the Appellants.

Deputy City Attorney, Cheryl Comer followed with the City's opening remarks.

Board Member Sexton shared he was in agreement with the City's argument that the HR Director had the authority for the first review board per the code but he asked if the City had anything as specific on a second review board. Ms. Comer advised that testimony has not been heard with regards to the HR Director's decision and authority. In this instance the HR Director had approval from the City Manager and the Captain of the Tacoma Fire Department to convene a second review board.

Board Member Heller stated that she is hearing something from both parties that she believes to be untrue and wants to state for record that in reviewing our May 5, 2016 minutes, that by rejecting the City's motion to dismiss that the Civil Service Board stated that the HR Director did not have the authority. Board Member Heller confirmed what we voted for was to deny the City's motion and to hear the case. She wanted to make it clear to both sides not to attach meaning other than the Board wanted to hear the entire case.

Board Member Hansen added that assuming the HR Director had the authority to convene the second review board; did she have a reason for doing so? This is one of the things he will be looking for in the proceedings.

Chair Summers added that the issue of dismissal was decided at a prior meeting and we are going to move ahead.

Mr. Costello reviewed what the rule actually states before calling his first witness Jim Scott who was sworn in by Chair Summers.

Mr. Costello handed out Exhibit A-4 "corrected."

Mr. Costello proceeded with questioning of Mr. Scott.
Ms. Comer cross-examined Mr. Scott.

Mr. Costello called second witness, Chris Perry who was sworn in by Chair Summers. Ms. Comer had no questions for this witness.

Mr. Costello called third witness, Lee Reid who was sworn in by Chair Summers. Ms. Comer had no questions for this witness.

Mr. Costello called fourth witness, Pete Klobutcher who was sworn in by Chair Summers. Ms. Comer had no questions for this witness.

Mr. Costello called fifth witness, Jeff Bush who was sworn in by Chair Summers. Ms. Comer had no questions for this witness. Questions followed by Board Members and Chair Summers regarding the timeline of the test, the process of the challenges and the confidentiality document.

Mr. Costello shared that he does not have a witness that can confirm the testing process change.

Mr. Costello deferred to Mr. Robinson who was sworn in by Chair Summers.

Mr. Robinson called Lt. Aaron Setunsky to testify. During this testimony Board Member Heller asked that the questioning be directed to specific changes and/or problems with the process and not to continue questions establishing the existing long time process that the Board is very familiar with. Ms. Comer had no questions for this witness.

Mr. Robinson called Lt. Sean O'Brien who was sworn in by Chair Summers. Ms. Comer had no questions for this witness. Board Member Hansen asked if this witness was aware of who was on the first review board. Lt. O'Brien answered no.

Counsel for the Appellants rested subject to rebuttal.

Ms. Comer called Human Resources Director, Joy St. Germain who was sworn in by Chair Summers. Mr. Costello cross-examined Director St. Germain. Board Member Hansen asked Director St. Germain if she was aware of any evidence that the Appellants used to influence the decision of the first review board. He also asked if there was any evidence that the Appellants ever spoke to the any members of the first

review board and whether or not the objectivity of the first review board was affected by any of the testimony we have heard today. Director St. Germain explained the process she followed in both the first and second review panels. Board Member Sexton asked how the text messages were obtained and what she knew about the actual messages questioning whether or not they were legally obtained. He also questioned the review board findings and how she got from first review board to the second review board. Chair Summers added that these questions have been reviewed and that the Board will again have the opportunity to review in Executive Session indicating she would like to move on. Chair Summers questioned how many were on the list and how long the list was good for. Board Member Heller asked how many vacancies were planned to fill from this list. Ms. Comer objected to the questions and deferred to the hiring administration for the department.

Chair Summers asked for closing statements stating asking that they be brief. Mr. Costello presented the closing statement for the Appellants as well as a proposed order that grants their appeal and places both Aaron Setunsky and Sean O'Brien on the Fire Captains promotional list in the order that they were on the original list and reimburses them for out of pocket expenses in retaining counsel. Copies of the proposed order were given to the Coordinator for distribution to the Board.

Ms. Comer presented a closing statement on behalf of the City stating that Director St. Germain's decision should be affirmed and that the request being made of the Board is beyond their scope of jurisdiction.

Chair Summers announced the Board will be going into Executive Session and will return at 8:35PM.

UPON RETURN FROM EXECUTIVE SESSION, BOARD MEMBER HANSEN MOTIONED TO GRANT THE APPEALS OF LT. SEAN O'BRIEN AND LT. AARON SETUNSKY AND REINSTATE THE CAPTAIN'S PROMOTIONAL LIST AS ESTABLISHED BY THE FIRST REVIEW PANEL ON MAY 29, 2015. IN ADDITION, BOARD MEMBER HANSEN MOTIONED THAT THE BOARDS FINDINGS WHICH WILL BE FORTHCOMING AT THE AUGUST MEETING INCLUDE THE FINDING THAT THE APPELLANTS DID NOTHING IMPROPER OR INCONSISTENT WITH TACOMA FIRE DEPARTMENT PRACTICES.

BOARD MEMBER SEXTON SECONDED THE MOTION.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 0 ABS. THE MOTION TO GRANT THE APPEAL IN THE MATTER OF AARON SETUNSKY AND SEAN O'BRIEN PASSED.

Attest:



Wendy Hobson
Civil Service Coordinator



Beckie Summers
Chair