

Asheville Civil Service Board Meeting
July 19, 2013, 1:00pm
HR Training room on 6th Floor of City Hall

Present Board: Marv Rosen, Virginia Robinson, Alan Coxie, Carolyn Worthington,
Lynn Moffa

Staff: Kelley Dickens and Derrick Swing, HR; Maggie Burleson, City Clerk

Guests: Patsy Brison (Board Legal Counsel)

I. Welcome by Marv Rosen

- Introduce new members: Carolyn Worthington and Lynn Moffa
- Thanks to Councilman Hunt and Council for appointing him as chair
- Thanks to legal support for continued assistance

II. Procedural issue question by Virginia Robinson

- Virginia Robinson
 - Appears that Council has made three appointments in appointing Mr. Rosen as Chair. They have appointed two new members and a chairperson.
 - Not that I have a problem with Marv as Chair but the matter in which it was handled. It appears that the Counsel has the “cart before the horse”.
 - The four who will be appointed once election occurs have not elected the 5th member. Yet the City Council has gone ahead and appointed a Chairperson.
 - It was my understanding that Chair was appointed for one year term.
- Patsy Brison
 - I am prepared to address that. I propose two new members should be sworn in prior to further discussion.
- Virginia Robinson
 - I propose that if they are sworn in now and Marv Rosen is not elected, then what will we do? The City Council will have to go back and appoint another chairperson.
- Marv Rosen
 - Has had similar questions. Exactly who am I serving as the 5th member? Would want to understand from legal counsel why two members should be sworn in first.
- Patsy Brison
 - Otherwise, they cannot participate. If the four members have to choose a 5th, you would only have three.
 - Patsy pulled files and looked back at March meeting and found notes on 5th seat and selection of that individual. Patsy prepared some review of terms. Marv was selected March 4, 2011 (last time but also once before). The Civil Service Law indicates that 5th member appointed after election of other 2 members - within 30 days after

election and those new members sworn in. Election was on September 12, 2011 and sworn in November 4, 2011 and 5th member should have been appointed in December but was not. So suggested that Marv be appointed to continue term until after the election. That was requested by former Chair Larry Harris and agreed upon by CSB in March 2012. Marv's term was extended until that 30 day timeline after the 2013 election. He could then be appointed by the other four.

- Virginia Robinson
 - Why did City Council appoint someone for a year when they may not be on board for a year and that is 6 months longer than his current term? How can they appoint someone when their term is up before the appointment?
- Patsy Brison
 - I can't answer why the City Council decided to do what they did. It could go that Marv's term goes to November. The board will pick a 5th member. If it's Marv, he stays as chair. If it's not, the Council will have to select a new chair from the 5.
- Kelley Dickens
 - I believe that is what Council understands. Marv serves until after the election. The 5th member will be chosen and it could or could not be him. If it's not, they will have to appoint a new chair.
- Virginia Robinson
 - Why didn't City Council appoint an interim chairman until November 1st and then appoint a permanent chair for a term?
- Marv Rosen
 - Aren't I essentially operating as an interim chair? Then there would be a process as to who that 5th member is. It's almost defacto interim.
- Virginia Robinson
 - But if you go look at Council minutes, it says that they have appointed Marv Rosen for one year. It doesn't say any terms. In that, it gives the appearance of appointing three members which they are not allowed to do. Almost seems like Council has appointed three personnel.
- Patsy Brison
 - I'm sorry; I just wasn't involved in that decision. I can't answer why the City Council decided to do what they did.
- Virginia Robinson
 - The issue is not with Marv. It's the way that the City Council has chosen to operate. It makes me think that they are trying to pull something over on us. They're saying "We've already appointed him so you have to elect him". That's where I get my feathers up, when

someone says “you have to do this” and I don’t go along with that. It seems the City of Asheville has reputation of trying to do these sort of things. If we don’t make an issue of it now, down the road somewhere it could be a problem. We might have to appoint three people again. That’s my issue.

- Marv Rosen
 - For informational purposes. I wasn’t aware that I was Chair until I watched the City Council meeting and then Maggie was kind enough to send me a note affirming that. I told her I would accept but I hadn’t had any prior conversation with anyone, which surprised me also.

- Virginia Robinson
 - I think the City Council should go back and rescind appointment and then appoint him as interim. Their minutes say they’ve appointed you for one year.

- Alan Coxie
 - I do share concerns that we are not following procedure. We tend to look back at history and see how it’s been done. And procedures adopted inadvertently can cause problems moving forward. The second concern is appearance. Procedures are put in place so employees have confidence in the board and confident it has a neutral makeup of the board. I see her point that it appears the City has appointed 3 members. Also think that it might be different if minutes would indicate he were chair and not chair for a period of a year. Just strike the year part.

- Patsy Brison
 - Hands out chart with all Board members and terms. This helps explain all of the dates and there is obviously another election this fall. These are the decisions we made in March. Unless staff has other information

- Kelley Dickens
 - Staff weren’t involved in the discussions about the election of the Chair other than other than the City Manager’s office asking who were the members of the Board. At that point we had three minus the two new appointed members. They asked about terms and we shared information on all three members and dates elected and when terms would be up. If any one of you was appointed chair, there was potential that they would have to appoint a new chair if any of your terms did not continue beyond those dates. They were aware that it was the potential with any of you.

- Virginia Robinson
 - And yet they went ahead and gave the appearance of appointing someone beyond their term. That’s my issue. They gave the appearance of “the heck with that, we’re just going to do what we want to do.”
- Kelley Dickens
 - But Council was aware that any one of you could leave the Board and they would have to appoint a new chair.

- Virginia Robinson
- But that's not what they did. If a City employee reads the minutes, it gives the appearance that Marv has been appointed for a year and that's what they see. The City employees are all in a turmoil anyway. I don't see what we need to do to make it more of a turmoil.

- Kelley Dickens
- If the Board would want to go to Council....

- Virginia Robinson
- I don't know Mark Hunt. I have never met him.

- Kelley Dickens
- He has been to several meetings...

- Virginia Robinson
- He has never spoken to me. He sits over there and then gets up and leaves. In my opinion, a liaison is supposed to communicate with the 5 of us. He doesn't communicate with board, and he has not done.

- Marv Rosen
- In this case he has not.

- Maggie Burleson
- I can take concerns to Board and Commissions meeting on August 13th and let them know of your concerns and see if they want to bring it back up. If that is something you'd like me to do. I was not aware of Mr. Rosen's term ending before the one year either. I can take some of that blame just not knowing. I agree with staff and Ms. Brison that obviously if Mr. Rosen does not stay on the Board, we would select another chair.

- Marv Rosen
- I am willing to act as interim chair until go to Boards and Commissions in August to get some guidance on how to move forward. I will look for direction from that Committee

- Virginia Robinson –
- Again states that issue is that it appears that Council has appointed 3 members given they've appointed him as Chair for one year.

- Marv Rosen
- I suggest that Alan, who has been vice chair possibly take over as acting chair.

- Patsy Brison
- Don't think we can do that since you are already here.

- Marv Rosen
- Any concerns about swearing in of two new members?

- Virginia Robinson
- No

- Alan Coxie
- No, feel they were duly appointed with process by council and should move forward

- Patsy Bryson
- Swearing in is procedural and those appointed by council were done so after process.

- Virginia Robinson
- I have no problem with that. I have no problem with anything except the appearance of what has happened.

- Marv Rosen
- Do we need to do anything to take that concern forward?

- Virginia Robinson
- Do we need to do so in a formal motion

- Patsy Brison
- No don't need to do formally, can do so with consent and ask clerk to take concerns forward

- Marv Rosen
- I recommend that City Clerk take concern to Boards and Commission regarding appointment of 5th member being appointed as Chair beyond the term of that 5th member.

- All in agreement - 3 members

- Patsy Brison
- Report will come back from City Clerk or City Council liaison

III. MR - swearing in of new members

MB - swearing in of Carolyn Worthington and Lynn Moffa

MR - now that full board, he will continue in performing as chair

LM - question if he can decline appointment of Chair and then full 5 member board convene and appoint him as chair until further clarification.

PB - suggest not engage in any quasi judicial matters until this issue is figured out.

AC - for the record can we ask marv if he wishes to continue as chair?

MR - yes he would be happy to do so.

5 Minute break - Move made by MR - 2nded VR

MR - motion to postpone approval of minutes until next meeting and time to review.

HR Staff and Policy review – followed Powerpoint delivered in CSB orientation notebook.

KD - hit overview of notebook, city organizational structure, city departments, HR department, city workforce,

DS - overview of outline of city personnel policy when it comes to disciplinary and grievance process

DS - rest assured that anything that comes to CSB has gone through management review and at least through City Manager

PB - Roles and responsibilities

Start with Article II Civil Service - Civil Service Law

Adopted by NC General Assembly and last major modification is in 2009.

If you want to find it online - go to municipal code corporation website

Drop down box - North Carolina, City of Asheville, and get ordinances.

Local government, when it established are charter. This is in the related law, Subt B to the charter.

General Assembly does modify from time to time.

Section 31 establishes part of government

Section 32 is what we've talked about this morning - how members are elected and selected

2nd full paragraph of A - City Council shall establish for election and in Chapter 2 of city code, division 2 - sets out election procedure.

Subsections - conflict of interest provisions reviewed and business transactions - and PB instructed that if you ever do business with City to let her know.

If you have immediate family member or spouse who would benefit directly or indirectly.

Subsction C - City Clerk or designee to serve as clerk. City Clerk has designated HR as clerk at this point.

Statute requires minutes of the board to be taken.

Question about employee wanting to come and get a copy of something. If related to grievance proceeding, then attorney may get involved.

Subsection D - board shall meet in January to adopt a regular meeting schedule. Can have special meetings.

Deadline for receiving info for regular meetings

Regular meetings and also special meetings - but have to give 48 hour notice and limited to topics advertised.

Subsection E - employees can show up in uniform

Section 33 - defines which employees have rights - classified service - all officers and employees except those elected, appointed by council, directors, assistant directors, members of advisory boards, employees of independent boards now choosing own employees.

Section 34 - rules that the board can adopt.

1. substantive rules - promotional processes (limitation on them on down in the section).
2. procedural rules

Rules submitted to council for approval -- and practice had been that all rules adopts goes to city council for approval and public hearing. (example, update to rules and procedures updated earlier this year).

Section 35 - promotional processes in police and fire - what will see the most of outside of grievance - member of police or fire department will come with presentation and ask that those changes be approved.

Section 36 - authority to conduct investigations and can't think of any in recent history. If employees come to board and ask for review. Back in 2009/2010 and ultimately handed over to District Attorney for further review.

Section 37 - grievance process to Civil Service Board

Short list of what they can come to board to consider

* discharged, suspended, reduced in rank, transferred against his/her will, denied any promotion or raise in pay to which he or she entitled.

After this board, either employee or the City can file a petition for a new trial before Buncombe County Superior Court - trial de novo - and then can go to court of appeals.

O'Donnell case - police officer claimed denied promotion to which he was entitled. Court stated it was a discretionary action to whether promoted.

Unlike Pay policy adopted by the City that indicates if meet qualifications and City Council appropriates the money then would be entitled to it.

Difficult cases where someone discharged - referenced Aly that is now in court of appeals.

Subsection B - talks about process for getting to this board, file request within timelines set for in city policy

Subsection C - attorney representation

Subsection D - subpoena power

Subsection E - City has the burden to justify action in hearing process

employee entitled to inspect documents presented by

Subsection F - render decision withing timeline

Once hearing concluded then PB provides written order

LM - question about decision making and defference

PB - can't go beyond stating whether jsutified or not - can't direct what action would have been correct. If board determines action not justified shall render unjustified.

Superior Court decision stating that CSB cannot tell city what to do only that action was unjustified. 1997 CSB appeal City of Asheville v Shelton

It is the decision of the Court that the Board has not been empowered by General Statutue to impose disciplinary action on employee.

Section 38 - political activities limited

38.1 - legal representation of board - independent

Rules of Procedure - updated and approved in March by City Council

Grievance notification - Employee, complaint type, and list of witnesses.

This way the board can pre-identify any conflict of interest. (City of Asheville vs Morris)

Reason you don't see anything else prior is don't want you to have pre-hearing bias/knowledge. Create fairness for both parties.

(referenced crump vs board of education - tainted and pre-hearing bias)

Subsection E - meetings - regular/special meetings/ work sessions/ quorum

PB passed out grievance hearing outline

Reviewed closed/open hearings

If closed - city employee ask for other members not needed to leave the room.

Reviewed outline of grievance hearing process - up to decision and order

Record reflect consideration of march 1 and april 1 minutes until next meeting.

Next scheduled meeting Friday August 2nd

Meeting schedule right now is reviewed with new board members.

LM - formal rules on confidentiality - everything is public record

MR - thanks for being here today

wait and hear back from City Clerk

MR - AC motion to adjourn 3:14

VR second

All in favor