

Regular Civil Service Board Meeting

Quorum present

Present: Board members: Chairman Marv Rosen, Carolyn Worthington, Lynn Moffa, Virginia Robinson, and Alan Coxie. Patsy Brison, Board attorney; Kelley Dickens, HR Director; Kelly Whitlock, Assistant HR Director; Derrick Swing, Human Resources Manager; Jennifer Johnson, HR Technician; Meredith Troughton, HR Administrative Assistant; Robin Currin, City Attorney; Paul Fetherston, Assistant City Manager; Mike Knisely, Chief Division Officer, Asheville Fire Department.

Absent: None.

Welcome and Call to Order

Marv Rosen called the meeting to order and welcomed guests.

I. **Approval of Minutes**

Marv Rosen asked if there were any corrections to the minutes at hand to be approved. Alan Coxie asked that on the April 3rd 2014 meeting minutes that his comments be corrected. On page 3 *emotion* needs to be changed to *a motion* and on page 7 of the May 1, 2014 minutes under *points during the discussion* to change Mr. Coxie's statement to that he was not aware 2 years ago that the policy was that the Police Chief has sole discretion to promote.

- Derrick Swing stated we could go to the recording to review and correct these statements.
- Marv Rosen asked if there were anymore comments or a motion to approve April 3, 2014 and May 1, 2014 Civil Service Board minutes.
- Alan Coxie seconded the motion to approve April 3, 2014 and May 1, 2014 minutes with the revisions he previously stated.
- Carolyn Worthington seconded the motion.
- **Action taken: The motion is passed unanimously with the changes to Mr. Coxie's statements.**

II. **Asheville Fire Department Promotional Criteria Advisory Committee Recommendations**

- Chairman Rosen greets Mike Knisely, Chief Division Officer of the Asheville Fire Department and asks him to present his material for consideration.

- Chief Officer Knisely presents a requested component change to the August 2014 Engineer promotional process. The fire department would like to replace the structured interview to a pre-trip inspection for safety reasons and all other components remaining the same. The weight of the pre-trip inspection will be weighted the same as the structured interview. The engineers operate apparatus and their primary job is safe operation. The pre-trip inspection is done before the apparatus is moved.
- Chief Officer Knisely answered questions defining structured interview and pre-trip inspection with the following points being made:
 - Structured interview is sitting down with the candidate with a panel asking questions of that individual on a variety of topics pertaining to the position itself.
 - The pre-trip inspection displays a wider range of technical skills.
 - Someone certified from the NC Department of Motor Vehicles would be assessing the candidate. The pre-trip inspection is modeled after the Commercial Driver's License pre-trip inspection. It also could be someone from another department that is qualified but is always an outside assessor.
 - Engineers drive the apparatus.
 - Engineer process has several engines involved and that the candidates will be tested on and are the same for each candidate.
 - No problems will be put into the truck for the candidate to find, they will only go by the check list.
 - They want to replace the structured interviews because the fire department feels that it is best to have the largest percentage of practical skills for safety and technical ability.
 - Chief Knisley will get the details of how many can be missed on the test for Mr. Coxie.
 - This would be available to the candidate before the testing process itself.
 - It would not be feasible to do both at the same time (structured and technical) because of the elements of checking the truck.
 - Checklist is written but the candidate would not have the list only assessors would have access to that.
 - The fire department uses outside assessors that have instructor qualifications from the state or other personnel from other fire departments.

A. Motion to approve changes for the Engineer promotional process to change the structured interview to the pre-trip check

- Chairman Rosen asked for comments or questions about the change to the Engineer promotional process. He also also asked if there was a motion to approve the change.
- Alan Coxie made a motion to replace the structured interview with DOT pre-trip check for the Asheville Fire Department's promotional Engineer process.
- Virginia Robinson seconds the motion.
- **Action taken: Motion to approve the changes to the Engineer promotional process is passed unanimously.**

III. Request for increase in funding for CSB consulting attorney discussion:

A discussion was held on the possibility of requesting an increase of funding the Civil Service Board's consulting attorney's hours. Chairman Rosen stated that he would like to find a way to make sure the Civil Service Board has proper representation when it is needed.

Points brought up in discussion:

- State Legislature says what amount of time a board's consulting attorney is covered by State law that being 20 hours.
- The hours available for a grievance are not affected. The hour limitation is for hours other than grievances.
- The law doesn't specify calendar year or fiscal year. The City uses the fiscal year.
- Ms. Brison's last bills are paid up and she thinks we're OK for now but fiscal year is coming up and should it be checked on. If the grievance related hours are included the regular hours should be OK in Ms. Brison's opinion. She wanted to bring it up since the fiscal year is coming up soon and wanted to point out the need to check into and discuss. She happy to be here whenever she is needed.
- The time limit is referred to in the related laws section 38.1 and in the last version of the session law it is in section 8.1.
- The City recommends fiscal year because the City budgets on the fiscal year.
- The time limit has not been an issue before this year. Patsy stated that she usually contacts HR and the Civil Service Chair to see if she needs to be present at the meeting.
- Chairman Rosen stated that it seem to have been a very active year requiring counsel this year at the Civil Service Meetings.

- Chairman Rosen asked if there were concerns or if this generally works itself out.
- City attorney, Robin Currin, stated that the City would follow the statute and go by what it says.
- The Civil Service Board can vote to ask the City to provide an attorney if there is not a conflict with issue being considered.
- Patsy stated that she thinks the Board is OK with the hours used for this fiscal year.
- Chairman Rosen asked Patsy to keep the Chair advised on hours in the next fiscal year and stated the he would not be adverse to her coming to the meeting for a portion of the meeting and then leave when the issue that concerns her has concluded.
- **Action taken: The Board will not exceed the limit for attorney hours for this fiscal year and Patsy will keep the Chair advised on her hours billed for Civil Service.**

IV Discussion of Aly Lawsuit:

A discussion of the implications of the appellate court's ruling on the Aly lawsuit and its implications. Chairman Rosen asked Civil Service Council Patsy Brison to summarize the ruling and give some background on it. Chairman Rosen also stated that he hoped someone would be available from the City to address it.

Patsy Brison's points on the Aly Lawsuit.

- The court of appeals decision was filed on 6/20/14. It was a unanimous decision. It doesn't get automatic appeal since it was a unanimous decision.
- The Civil Service Board acted on the Roger Aly grievance. Either the City or the employee has the right to appeal to a trial court. That would mean that it would be a new full hearing to start all over again. Then the court of appeals could look at the decision of the trial court and it could go higher in court.
- A previous ruling was made in the City versus Shelton. A copy of the City versus Shelton ruling was passed out by Patsy Brison. Based on the trial court decision the Shelton decision was that the Board couldn't direct that the City take certain actions such as terminations. In the Aly case, it was to order reinstatement and back pay. This contained advice from a previous Civil Service attorney.

(Copy of City versus Shelton attached.)

- a. Patsy stated that there are 2 key elements concerning the Board's authority:
 1. Defining what justified means.

2. Civil Service Act does not include “just cause” as stated by the State’s personnel.

In her opinion the law gave the Board broader authority to hear grievances when a employee has been discharged, suspended or other actions of that type not limited just to terminations. She stated that whatever the law is at the time of the ruling be applied to the Board’s next grievance decision.

The City is still working on their position on the Aly grievance at this time and need to keep their response confidential. City attorney stated that a decision would be made next week and would like to wait on an opinion or facts.

Patsy Brison then answered questions. Chairman Rosen thanked Ms. Brison for the summary of the Appellate Court’s decision.

No Action taken at this time.

V. Discussion of Asheville Police Department’s promotional Policy 1073

1. Policy 1073 was revised in 2012 and the testing process is fairly clear.
2. Chairman Rosen stated that the Board’s intention was not take action at this time but wanted to get some of their concerns on record.

Issues the Board would like to raise with Policy 1073:

- When comparing APD to AFR each has specific needs and ways to select employees for promotions. What stood out for the Board is when people are declared eligible for promotion there is not a published list for APD but there is for AFR.
- There was a decrease in the length of time in grade for a Lieutenant to be considered for promotion to Captain. It went from 3 years to 18 months.
- The Chief conducts an interview with eligible candidates and at this time there is no quantifiable value for the interview. The Board would like to put weight and value to it as done with other components in the assessment process.
- Chief can choose whomever he likes regardless of the ranking of the candidate. The Police Chief encourages candidates to ask why they weren’t promoted, but under current policy the boards feels that candidates cannot grieve promotional decision to the Board at this time.

Chairman Rosen stated that he didn’t believe that a valuable discussion could be held without the Chief here to participate. He recommended that the Board not go into the discussion any futher about the specific aspects of their concerns until the Chief is present. The subject has come up in several meetings and the Board has not been able to resolve these issues.

Chairman Rosen would like to have the Board discuss making a non-binding resolution today requesting that APD withhold any promotions on the current promotional process for Sergeant until they have had an opportunity to sit down and ask questions and reach informed decisions. The Police Chief has stated that he could attend the next Board meeting on July 3, 2014 (changed to July 9th, 2014)

The Board discussed that there was a disagreement with the City whether or not the Board has the authority to make a revision to a process without it being brought by the City to the Board. There is a difference of opinion between the two on the Board's authority.

Points discussed:

- There is a question if the Board can review a process and amend those that have already been approved.
- Last meeting, Martha objected that no action could be taken because it wasn't on the agenda. They could be overreaching their authority at the previous meeting.
- Lynn Moffa stated that they need to decide what law they are working under to discuss and review this and thinks they have the authority to do this and submit to the City Council. The City and Civil Service Board should be working under the same law.
- Robin Currin, City Attorney stated that the statutes are in the wrong order and that they don't match. 1999's doesn't have everything in it, section 6 is missing. The cross references don't match. Ms. Brison had given copies of this at a previous meeting. Sections 4 and 5 are correct. She stated they need to work off the statute as it stands.
- Mr. Coxie suggested that Ms. Brison look at the information that the City attorney has on the statutes. Ms. Currin agreed to share her information.
- The Board is here to make sure processes are fair for the employees and parts of this policy need to be revisited.
- The City attorney stated that a complete copy of the statute should be figured out and then go forward.
- Alan read and pointed out Section 10 concerning the duties of the Civil Service Board stating it should be part of the discussion.
- APD has regular meetings with the criteria advisory committee to review and improve.
- APD has a separate strategic plan process going on at this time.

- Patsy Brison stated that consolidating Civil Service law since there are 2 versions at this time and it would be best that the law be assimilated before proceeding
- Ms Currin summarized the Board's question they would like answered. She stated that the Board wishes to make changes to the processes to review what it had done and basically go back and say even though this is the way you have been doing it Chief, we may want to tell you must change it. The question is whether or not with the law combined together permits that to be done without going to the City Council. Chairman Rosen agreed that this is the issue in question.
- Virginia Robinson stated that the concern is that the Chief can still have a process to promote before the law issue is resolved and it would be good if he would agree to wait to promote anyone.
- Chairman Rosen stated that there might be circumstances where he must promote right now, not knowing the vacancies, etc., in the department. But he would like to just state the Board's concerns and their point of view publicly if the Board is agreeable.
- Lynn Moffa cited not enough information is available to do that at this time and hardships it could cause on the Police Department. She stated she could agree to this statement with the qualification it doesn't put an undue hardship on the department.

Guests were invited to make remarks and give opinions.

- Paul Fetherston, Asst. City Manager, stated that a Board resolution at this point without the Chief being here might not be the best way to convey cooperation. It could be seen as a possible attempt to influence the process.
- Chairman Rosen stated that there is a history of tension that occurs when an outside organization seems to interfere with management decisions and it seems to be on a rising plane which we would like to avoid. The board has serious questions about the potential of abuse with regard to this policy and if this could be conveyed to the Chief, he is agreeable to standing where they are. He wants to see each employee have the right to grieve a promotion that is not given.
- Kelley Dickens stated there is no concern from Human Resources point of view of any abuse happening and they have reviewed the promotion processes. Some are automatic promotions and they are the only promotions that can be grieved.
- Alan Coxie stated he is not concerned about the Chief's interview but with how policy 1073 plays out for employees to have the ability to grieve with the Civil Service Board and he is amiable to the Assistant City Manager passing on the

information in good faith to Chief Anderson and making sure that he understands the issue.

- Chairman Rosen stated that he feels that employee promotions could be grieved, not just the automatic ones and it is a real issue with the Board.
- Lynn Moffa stated that she would hope the Chief would respond and could make a presentation at the next meeting that would be an act of good faith and then when the legal issue is worked out they can move forward.
- Chairman Rosen asked for any comments or suggestions. None on the subject.

Action taken: Paul Fetherston will pass the information to the Chief and convey the concerns the Board and no formal resolution was taken.

Other Business:

Derrick stated that the Chief could be at the meeting on 7/3/14. Patsy Brison and Virginia Robinson can't be at the meeting on 7/3/14. Chairman Rosen asked Derrick to see if there is another time for a meeting so Ms. Brison can be there. The Board's preference is for Ms. Brison to be present.

Kelley introduced Meredith Troughton who will be working with the Civil Service Board as secretary.

Virginia Robinson wanted clarification of election of the Chair and Board members so it would be clear what City Council can and can't do. In response to Virginia's question of can the City appoint a chair from outside making 6 on the Board if Chairman Rosen was not appointed as the Chairman after his term is up; Ms. Brison answered that there can be no more than 5 members of the Board in her recollection and she'd like to look at the Town of Swansboro Board of Adjustment case saying you can replace the whole Board and start over, but not individuals before responding to that question.

Chairman Rosen asked for any more subjects. None.

VI. Adjournment:

Chairman Rosen asked if there was a motion to adjourn:

- Virginia Robinson made a motion to adjourn.
- Lynn Moffa seconded the motion.
- Meeting is adjourned.