

CIVIL SERVICE COMMISSION MEETING MINUTES

Monday, May 16, 2016

5:15 p.m. – City-Service Building – Front Conference Room

Present: CSC Members: Chairman S. Korhn, L. Myers, N. Walker, And Clerk A. Scribner
Guests: T. Schroeder, HR Manager, M. McCann, Mayor, Police Chief Tim Tobias, Police Lt. Lee Martinez, Law Director D. Williams, Sgt. George Moser, Finance Director John Lehner, Crescent News Report Todd Helberg

CALL TO ORDER

The meeting was called to order at 5:15 pm in the front conference room at City Hall, 631 Perry Street by Chairman S. Korhn. Clerk Scribner reported that all Sunshine Law notices have been complied with.

1. **Approval of January 18, 2016, 2015 Civil Service Commission Meeting Minutes.**

Motion: The motion was made by N. Walker, seconded by L. Myers to approve the Civil Service Commission (CSC) meeting minutes of January 18, 2016. All members voted aye, the motion carried.

2. **Certification List Extension:** T. Schroeder noted that the entry level police and fire certification lists created on June 15, 2015 are due to expire June 15, 2016. Both lists have viable candidates and the City requests the Civil Service Commission grant a one year extension. Chairman Korhn stated he was shocked that in review of the lists how few individuals are from Defiance. Mayor McCann stated this was one area discussed with the Police union during recent discussions. He hopes to somehow generate some interest in our local schools so that students consider a career in local fire or police department.

Motion: The motion was made by S. Korhn, seconded by L. Myers to extend the entry level police and fire certification lists for an additional year; expiring June 15, 2017. All members voted aye, the motion carried.

3. **Retire – Rehire:** Chairman Korhn noted that Local Rule 60.17 states that the Civil Service Commission does have to approve a retire/rehire. D. Williams questioned to what extent does the Civil Service Commission want to be involved and are they willing to consider changing the rule? He noted that the City has an employee who is eligible to

retire receiving the maximum pension without a reduction in their benefits. Recent changes to the PERS retirement structure penalizes those who do not hit milestones, your pension is reduced 5% for every year you are shy of 65. There is a current City employee who qualifies for a 35 year retirement (not age 65), who does not want to retire but would like to take his pension and continue to work at the City. If the employee continues to work his benefit will increase when he retires. He can take their pension and go find work somewhere else in the public or private sector and draw his PERS pension while still earning an income from another employer (which assumes the employee can find a worthwhile job somewhere else – not an easy task these days). There is a statute ORC 124.32 (b), if a person resigns without disciplinary action pending; they can be reinstated without examination if they apply for reinstatement within one year. D. Williams outlined a recent incident in Canton, Ohio where there was a number of employees who had no intention to retire and were approached by their immediate supervisor who told them they could collection their pensions and continue to work. When signing the retirement paperwork retirees sign an affidavit stating that they are terminating their employment with the government. Yet these particular employees continued at their jobs without applying for re-employment. A number of newspaper articles were published about double-dipping which caused a public outcry. In this instance the HR Manager was the only one who knew these individuals had actually retired. The City manager did not know and once the information was made public; the City Manager fired the individuals who had retired. The City Manager stated that the individuals would not have been rehired if he had known they were retired and they were fired from their positions. The Civil Service Commission in Canton felt that since the individuals had signed an affidavit stating that they had resigned and they were not officially “reappointed by the City manager” the Commission did not have any jurisdiction to hear the appeal of the firing. Currently there is a motion to the Supreme Court for discretionary review of the case. According to D. Williams PERS is willing to accept that someone had been re-employed but they dock them two months pension and the individual continues to work. State law gives PERS exclusive authority over the pension fund.

D. Williams stated that in reading RC 124.32(b); if the employees wants to file a truthful affidavit they have to resign. The City administrator can reappointment them or not based on his own judgement. The statute give the “retiree” the right to seek reappointment without going through the Civil Service hiring process within one year. D. Williams stated that 3 seconds is less than one year. If the employee handed the City Administrator a letter of retirement and stated he wanted to stay on if the City Administrator wanted to keep them; D. Williams states that they meet the statutory requirement and the employee could be rehired without the consent of the CSC under the state statute.

S. Korhn stated that present Local Rule 60.17 modifies the statute and states that the Civil Service Commission is involved with reinstatements. D. Williams countered asking,

"Does the Civil Service Commission want to be involved with this decision? He continued stating the local CSC rules is more proactive than the state statute which is being used state-wide by many municipalities.

D. Williams encouraged the CSC to change the local rule to conform to the statutory standard. N. Walker noted that the CSC is only in the discussion stage today to determine whether the CSC should have a say in the retire – rehire of a City employee. The question was posed to those present if their respective union had discussed the matter; to which they answered no. G. Moser posed the question of the retire-rehire and how would this affect seniority? S. Korhn cautioned a retire – rehire could open a Pandora's box of problems. Those present felt it could create problems with the AFSCME union. The individual currently seeking to retire-rehire is a non-bargaining position. D. Williams noted that with the PERS statute, if the individual is someone in a senior position whose appointment has to be legislatively approved; Council has to be notified. A public hearing is typically held. But these are political jobs to begin with and don't involve CSC.

S. Korhn stated that although ORC 124.32 (b) has been used and allows retire/rehire to be done the actual purpose of the statute was not to allow retirees to rehire. Many public bodies are now trying to close it off because of the collateral unintended consequences that have resulted from allowing retire/rehires. S. Korhn stated that if the Civil Service Commission amends the Local Rule; this is just passing the buck. D. Williams stated that is what the Civil Service Commission should consider if the Commission did not want to be involved with approving/denying retire/rehire requests as that is what the state statute does allow. S. Korhn said that Amending Local Rule 60.17 is not on this agenda. The agenda item was to discuss the CSC consent of a contemplated retire/rehire.

G. Moser inquired if someone is interested in the retire – rehire; could they submit their application to the CSC to get their approval first before actually submitted retirement documents to PERS; that way the person knows not to submit the application if the CSC intends not to approve it. There was no answer to the question as this is the first time a retire- rehire has come before the Commission.

Much discussion ensued with various similar retire/rehire scenarios that have occurred within the City school system. The motion as made by S. Korhn, 2nd by N. Walker to place on the CSC June agenda, an amendment to Local Rule 60.17 which presently provides that the CSC has input reinstating "retired" employees (other than police and fire). The amended Rule would provide that the CSC would not have input in retire-rehire situation. The motion carried.

4. **Police Chief and Assistant – Discussion on Promotion:** Much discussion was held on whether to hire from within or include outside candidates when the Police Chief retires. The following bullet points generally summarize the lengthy discussion:

Civil Service Commission Meeting
May 16, 2016

- D. Williams stated that he participated in the 1994 Charter Review Commission and is aware of the language intent in Section 6.05 of the Charter that was changed in 1994. He stated that under general Civil Service law, individuals are selected for employment after originally appointed with advancement then by promotion. In 1994 the Defiance Fire Department had no one interested in the position of Assistant Chief mostly due to compensation disparities; i.e. Fire Division officers could earn overtime while the assistant and chief positions are salaried (and the Chief and Assistant Chief work 8 hour shifts versus 24 hour shifts by everyone else.)
- D. Williams stated that while the Charter was changed in 1994 to allow for promotional testing for police and fire to include outside candidates; the Civil Service Commission has maintained a two-step process with internal testing conducted if there are at least two internal candidates interested in the promotional positions. If there was insufficient interest internally; the promotional testing was opened to the outside. D. Williams stated that the actual intent of the Charter change was that these positions would be filled by original appointment; (although the Charter does not state that according to S. Korhn and the law is that a statute/Charter that is not ambiguous is not subject to review of the legislative intent. An unambiguous law is to be applied as written.)
- N. Walker stated that if there is a request by the City that the next Police Chief vacancy be filled by original appointment; they should come to the Civil Service Commission and articulate why. At this time Police Chief T. Tobias distributed an outline (copy attached to the original minutes) of reasons why he felt the Police Department and City would benefit by filling the position by original appointment. Reading the three points allowed (1. New People/New ideas; 2. Creates Competition; 3. Better Decision Making). As it stands now, the DPOA union contract stipulates, there would only be two internal candidates eligible to take a promotional test for the Police Chief. By allowing promotional testing by original appointment this does not disqualify those internal candidates from competing for the position; it simply allows outsiders to vie for the position as well.
- G. Moser inquired if the position was filled by original appointment; would the same qualifications be required of the outside candidates as the internal? He stated that the City has hired a lot of police officers who now have a lot of prior experience and there may be a "junior officer" who qualifies to take this test. It was noted that all candidates must have the qualifications set forth by the Civil Service Commission which would include Lieutenant level supervisory experience comparable to Lieutenant experience with a department of Defiance's size.
- Past testing practices for the assistant chief and chief positions for police and fire were reviewed. In the past the City has purchased reference materials for candidates to utilize in preparation for the written exam. An assessment center is conducted by an outside agency and typically features a variety of scenarios for the candidates to work through. The agency (consisting of experienced police or fire chiefs) provides written evaluation of the candidates on their performance in the situations offered. In response to another

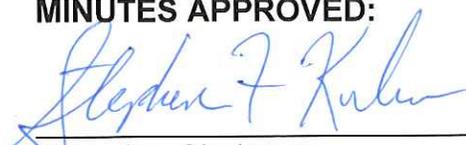
Civil Service Commission Meeting
May 16, 2016

question posed, the personal and professional references of the original appointment candidates are verified following completion of the testing.

- S. Korhn inquired of the Union's position on this matter. G. Moser stated that there are union employees interested in the position that have spent their time advancing through the ranks that want to test for the position. It was noted that if the position is filled by original appointment; this would not prohibit otherwise eligible internal candidates from taking the test. While the union contract governs promotions the CSC tests for original appointments. There is a one year probationary period no matter what.
- It was noted that if the testing were by original appointment, qualifications required for the position would be advertised in the testing announcement. Applicants would be screened by Civil Service Commission to ensure they meet the minimum qualifications established. J. Lehner exited the meeting at 6:35 pm. T. Schroeder noted that when the open Fire Chief position was last advertised there were few background issues with the applications received.
- Chief Tobias stated that the Police Chief position will need to be filled eventually and suggested the decision on whether to fill the position by original appointment be made prior to his retirement. He stated that his opinion is that the City would be best to fill the position by original appointment; opening the testing to outside candidate.
- G. Moser stated that fresh ideas for the department can come from simply networking with other agencies; not necessarily from hiring an individual from the outside.
- N. Walker stated that if the City will be asking permission to fill the future vacancy by original appointment; this will not preclude anyone within the department who is eligible from taking the test. The Civil Service Commission is not ready to make that decision today and suggested that the request be placed on the June Civil Service Agenda as "Determine Procedure for Appointment of Police Chief". It was also stated that the Civil Service Commission will need to determine the manner of testing each time a promotional vacancy occurs.

There being no further business, the meeting adjourned at 6:50 pm.

MINUTES APPROVED:



S. Korhn, Chairman



Ann B. Scribner, Commission Clerk

THE ABOVE MINUTES REPRESENT OUR UNDERSTANDING OF THAT WHICH SHOULD BE RECORDED. IF CHANGES SHOULD BE MADE, PLEASE FORWARD PROMPTLY SO THAT AN ACCURATE RECORD CAN BE MAINTAINED FOR THE BENEFIT OF ALL.

Cc: Mayor Bob Armstrong, Jeff Leonard, David Williams, Tracey Schroeder, Council Members, Division Heads.