

SUMMARY OF PROCEEDINGS

CIVIL SERVICE COMMISSION – COUNTY OF KERN 1115 Truxtun Avenue Bakersfield, California 93301

Regular Meeting

Monday, March 11, 2019

5:30 p.m.

PRESENT: Commissioners Agbalog, Burrow, Holt, and Price

ABSENT: Commissioner Rose

OTHERS: Devin Brown, Michael Goulart, Kendra Graham, Maria Murbach, Keri Pharris, Brian Van Wyk, and others.

NOTE: Ag, Bu, Ho, Pri, and Ro are abbreviations for Commissioners Agbalog, Burrow, Holt, Price, and Rose. For example, Bu/Pri denotes Commissioner Burrow made the motion and Commissioner Price seconded the motion. The abbreviations “ab” means absent and “abd” abstained.

COMMISSIONER ACTION IS SHOWN IN CAPS AFTER EACH ITEM

President Price called the meeting to order at 5:30 p.m.
Commissioner Burrow arrived at 5:39 p.m.

PUBLIC SESSION

1. **Public Presentations**
None

***CONSENT AGENDA**

- *2. **Approval of Minutes**
Regular Meeting on February 11, 2019; NO PUBLIC COMMENT; **APPROVED**; Ag/Ho – 3 ayes/2 ab (Bu, Ro)
- *3. **Examination Schedule:** The following examinations have been scheduled in accordance with Civil Service Rules and established procedures. NO PUBLIC COMMENT; **APPROVED**; Ag/Ho – 3 ayes/2 ab (Bu, Ro)

7476) Sheriff's Program Specialist
7477) Human Resources Specialist I-II-DP-Human Resources-CAO
7478) Health Plan Representative I/II
7479) Vocational Nurse I/II
7480) Human Services Technician – Shift
7482) Fiscal Support Specialist
7481) Electronic Health Record Support Supervisor
7483) Fiscal Support Supervisor
7484) Sheriff's Detentions Lieutenant
7485) Sheriff's Detentions Sergeant
7486) Supervising Child Support Officer

- 7487) Deputy Probation Officer III – DP
- 7488) Child Support Officer IV
- 7489) Child Support Officer II/III
- 7490) Emergency Medical Services Coordinator
- 7491) Equipment Operator
- 7492) Groundskeeper III – Ridgecrest
- 7493) Victim/Witness Services Specialist I/II – Bilingual
- 7494) Supervising Mail Clerk
- 7495) SR Legal Secretary – Department Promotional
- 7496) Senior Health Educator – Department Promotional
- 7497) Office Services Specialist – Department Promotional
- 7498) Electronic Health Record Specialist I/II
- 7499) Senior Accountant
- 7500) Paralegal
- 7501) Fiscal support Supervisor-DP
- 7502) Senior Child Support Customer Service Representative
- 7503) Children's Medical services Manager
- 7504) Technology Services Supervisor-DP-BHRS
- 7505) Supervising Communications Technician-DP-CAO-General Services
- 7506) Contract System Supervisor
- 7507) Fire Heavy Equipment Specialist II-C
- 7508) Human Resources Specialist I/II
- 7509) Therapy Aide
- 7510) Public Health Nurse III
- 7511) Deputy Sheriff Trainee
- 7512) Sheriff's Detentions Deputy Trainee

4. **Abolish Eligible List(s);** Abolishment of the following eligible list(s) is recommended by the Chief Human Resources Officer and by the affected Department Head; **APPROVED; Ag/Ho – 3 ayes/2 ab (Bu, Ro)**

- Technology Services Supervisor – County-Wide Promotional, No. 7247

Devin Brown, Chief Human Resources Officer, provided a brief overview. No Public Comment.

5. **New Specification(s):** The following job specification(s) have been created and approved by the Chief Human Resources Officer and are submitted for the Commission's review in accordance with Civil Service Rule 204.21. **REVIEWED, RECEIVED, AND FILED; Ho/Ag – 3 ayes/2 ab (Bu, Ro)**

- a) Behavioral Health Credentialing Specialist & Senior Behavioral Health Credentialing Specialist, Items No. 3217, and No. 3216

Devin Brown, Chief Human Resources Officer, provided a brief overview. No Public Comment.

6. **Revised Specification(s):** The following job specification(s) have been revised and approved by the Chief Human Resources Officer and are submitted for the Commission's review in accordance with Civil Service Rule 204.21; **REVIEWED, RECEIVED, AND FILED;** *Ho/Ag – 4 ayes/1 ab (Ro)*

a) Deputy Sheriff, Item No. 4493

Devin Brown, Chief Human Resources Officer, provided a brief overview. No Public Comment.

Commissioner Burrow asked if there were any efforts between the Kern County Sheriff's Office (KCSO) and Bakersfield Police Department to develop a pipeline of candidates to bring to either department. He wondered what other efforts are being developed other than raising salaries.

Mr. Brown explained that their office will meet with the KCSO Personnel Administration, Marketing, and Promotions Team to develop a cohesive strategy to recruiting deputies into the ranks but to his knowledge, they have not teamed up with the Bakersfield Police Department.

7. **CS Rule 1800 Proposed Revisions Progress Report; DISCUSSED; TABLED;** *Ag/Ho - 4 ayes/1 ab (Ro)*

Mr. Van Wyk reported to the Commission that the proposed revisions were reviewed by the County Counsel's Office, Human Resources Division (HRD), Commission staff and Commission's legal counsel. The revisions include HRD proposed changes, which would essentially remove Civil Service (CS) Rule 1800 hearings from the Commission. In reviewing this, he determined that they meet with the Commission's role under the ordinance as it still provides a process for discrimination and leaves the Commission with some oversight role over this process. He stated that HRD is currently developing the County's Respectful Workplace Policy.

Mr. Van Wyk explained that CS Rule 1800 is an old rule and the changes in the Civil Service Ordinance, which relate to discrimination complaints, were enacted back in the 1980's and predate most of modern discrimination type law. The HRD is trying to address the fact that the body of law has grown beyond what is currently provided for in this rule. This rule speaks strictly to protecting class type discrimination and HRD is really working to develop a policy that is broader than that. The alternative revisions draft in the packet contains some of the changes previously discussed, relating to the Commission's oversight role with HRD and the process previously spelled out for resolving issues that arise between the Commission and HRD.

One issue he noted with HRD's proposal is that it does not provide a clear process for an employee who has a problem with the findings report. This is something that could potentially be an issue. One of the historical roles of the Commission is that this process provides employees an outlet, short of going to the Board of Supervisors (BOS). It provides employees a place where they can appear before the Commission and seek a remedy for their issues. HRD's position is that there are other administrative bodies, which are well suited to receive these types of complaints. He informed the Commission they have the discretion to accept these changes, to accept them in part, or to make revisions as the Commission sees fit. To

that end, he presented the alternative document, which includes minor procedural revisions to CS Rule 1800. There were still a couple of outstanding issues in the alternative document and he asked for guidance from the Commission as to the most appropriate path forward. In summary, this is a situation where employment law has changed quite a bit, such that CS Rule 1800 is outdated. There are revisions that could be made to address this and that is something that the Commission needs to think about, and what the Commission's role should be, concerning these types of complaints.

Commissioner Holt stated that HRD's proposal removes the appellant function away from the Commission, which is not what is stated in the ordinance. Mr. Van Wyk explained he was requesting direction from the Commission.

Mr. Brown explained that this proposal was jointly submitted by HRD and County Counsel. HRD is putting together a respectful work place policy in place, to combine all the County's sexual harassment, discrimination, hostile work environment, retaliation investigations and training processes in to one document. Many of the concerns brought to the Commission during public session were related to employees not knowing a specific place to locate information on how to file complaints. That is the purpose of the respectful work place policy, to give clarity as to the process for making complaints and how the County conducts the investigations. The County's requirement under the law is to conduct a thorough and prompt investigation of all complaints and they take that obligation very seriously.

There are well-established bodies of law under federal and state law, which have state and federal agencies that have jurisdiction over these claims and complaints such as the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC). There have been many times where employees file these complaints jointly with the Commission or HRD and those two state and federal agencies. This causes a lot of confusion on who is the lead agency to investigate and respond to the complainants. He explained that they recently uncovered a policy that the County received from EEOC, which stated that their office took precedence over any and all other investigatory bodies when they receive complaints. He stated HRD wants to make sure employees are aware of their rights under those laws, which is why they included that procedure, to make sure they know they have the right to file with those agencies.

Mr. Brown explained that the purpose of the policy was not to remove an appeal right, but to make sure the County is providing access to have complaints investigated consistently by one agency. In addition, to ensure that the County is protecting its liability as well, when it comes to responding to complaints and making sure that information is received and treated confidentially. Those are the reasons they are proposing to pull back from the hearing requirement. The current hearing requirement allows for a public hearing at the discretion of the complainant and many times, we will find that much of the information provided during those hearings is confidential personnel information about other employees in the County. They are also concerned about the remedies that the Commission might recommend if a hearing is conducted; it could include disciplinary action against civil service protected employees. Those civil service protected employees should retain a right to appeal any disciplinary action to the Commission for review. There is some concern that if a hearing is conducted on a discrimination appeal, and the Commission recommends discipline, that those

rights will be somewhat curtailed to appeal, even if there is a hearing officer hear the case because at the end of the day the Commission makes the decision on whether or not a discipline should be upheld. The Respectful Workplace Policy will be implemented at some point after they finalize negotiations with the employee associations.

President Price asked Mr. Van Wyk who can make changes to the Respectful Workplace Policy and if it fell under the purview of the Commission. Mr. Van Wyk explained it is a Human Resources Division policy that will be included as part of the general County policy manuals. Historically, this is something that prior Commission counsel has discussed with the Commission. He stated that the County Administrative Policy and Procedures have historically been very closely aligned with the Commission's Civil Service Rules, but that they do not necessarily have to do so. However, there can be problems and drawbacks to having duplicate policies that speak to the same issue.

Mr. Brown clarified that the BOS have to adopt this policy as part of the official employee County manual.

Commissioner Holt asked, to be clear, if there is an appeals process if the employee disagrees with HRD's findings report. Mr. Brown stated that the proposal does not include an appeals process. He stated that the law does not require an appeals process. HRD conducts these investigations on an impartial basis with trained Human Resources (HR) professionals, weighing the facts presented during the investigation, making findings based on those facts, and providing those facts to the employees themselves. The current rule is not necessarily an appeal process, it is really a De Novo investigation, as you will find going forward with future hearings. They are not really re-litigating the actual investigation report that is provided by HR, they are re-interviewing witnesses about what has happened or has not happened, as alleged by the complainant. The Commission will be making determinations based on their own actual findings rather than what HR uncovered.

President Price explained he reviewed the proposed changes based on the events that triggered this discussion and stated the following:

- May 14, 2018 – County employee addressed the Commission during Public Session and informed them a complaint was submitted to HRD's Equal Employment Opportunity Officer (EEOO) on February 26, 2018 and she had not yet received a response. CS Rule 1820.01 states that the EEOO has 30 days to conduct an informal complaint and that timeline lapsed. HRD did explain that the employee filed a CS Rule 1800 complaint but subsequently filed the complaint with DFEH and HRD had stepped back to allow DFEH to complete their investigation. The employee should have received a response from the EEOO at the end of July.
- October 8, 2018 – The same employee appeared and stated no response was received to the complaint filed on February 26, 2019. HRD stated that their investigation would be completed at the end of October 2018. The employee was notified of the findings on November 9, 2018. That was 181 workdays after the initial complaint was filed with HRD's EEOO.

President Price stated that while the above case was proceeding, multiple additional employees appeared before the Commission during public presentation and alleged they too had not received responses to their EEOO complaints within the time frame laid out in CS Rules 1820.01 and 1820.02. These recurring and concerning allegations caused the Commission to schedule a special meeting on November 19, 2018. At this meeting, they discussed several different routes to address a practice for the employees to follow should they feel the timelines laid out in CS Rule 1800 were not being followed. Clarification of the rules was one of the solutions discussed. However, remember the problem for which we are searching a solution; CS Rule 1800 does not currently enunciate a practice for an employee to follow should HRD not adhere to the very specific CS Rule with very specific timelines. The proposed change to CS Rule 1800 is to take it outside of the Commission's role, put it in a policy the Commission has no purview over, there are no timelines, and no appeal process. He asked if this was correct. Mr. Van Wyk stated that accurately reflected the proposed changes by HRD.

Vice President Agbalog thanked President Price for his summary and stated he was always a proponent of government by the people for the people for the people. He stated that the proposed revisions were for HR by HR for HR and he was not pleased with the recommendations. Now, there is a rule in place with parties who have different interpretations of the rules and the employees do not have a clear process. He thanked everyone for their work but was not willing to accept the proposed changes. He stated that 181 days to receive a response to complaint is unacceptable.

Commissioner Holt thanked President Price for the recap. He stated that the Commission requested proposed revisions to try to fix the timeline but the proposed changes remove the appeals process. He did not understand how the appeals process was removed from trying to fix a timeline issue.

President Price asked Mr. Van Wyk if he was asking for direction on how to proceed. Mr. Van Wyk stated that was correct; there are two different proposals for the Commission's consideration. The second is a proposal that adds a process by which an employee, who has an issue with the timelines in the rule, will report to the Commission Secretary who will place the matter on the next meeting agenda. He stated the Commission has the power to edit this rule as they see fit.

Vice President Agbalog motioned to table the matter to bring back at a future date at the Commission's discretion. Commissioner Holt seconded the motion.

8. Commission Secretary Monthly Report

Mrs. Murbach reported that she attended the monthly meeting scheduled with HRD and Commission's legal counsel. She informed the Commission the monthly meetings are productive.

6. Human Resources Division Items/Report:

None

7. Commission Member Presentations or Announcements:

None

8. **Adjourn to Closed Session:** at 6:17 p.m., the Commission adjourned to closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of public employees and/or to hear complaints or charges brought against employees by another person or employee.

CLOSED SESSION (Government Code § 54957)

10. PUBLIC EMPLOYMENT – Evidentiary Hearing Request
Social Service Supervisor (Human Services) – Case No. 2019-0003; **CONTINUED TO THE NEXT REGULAR MEETING ON APRIL 8, 2019**; *Ag/Bu - 4 ayes/1 ab (Ro)*
11. Reconvened from Closed Session. President Price adjourned the meeting at 6:23 p.m. to the next regular meeting to be held on Monday, April 8, 2019 at 5:30 p.m.