

SUMMARY OF PROCEEDINGS

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

Regular Meeting
Monday, December 10, 2018
5:30 p.m.

PRESENT: Commissioners Agbalog, Holt, Price, and Rose

ABSENT: Commissioner Burrow

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.

PUBLIC SESSION

1. Public Presentations

Monica Fitzgerald – Department of Human Services (DHS) employee, stated that she had appeared before the Commission during last month’s meeting regarding a complaint she filed with the Human Resources Division (HRD) in February 2018. After the meeting last week, it was agreed by both herself and HRD that they would reopen her complaint to conduct a thorough investigation, interviewing all witnesses, but that was not conducted. Ms. Fitzgerald stated that she felt HRD failed to conduct a complete investigation after 10 months of having her complaint. Last Friday, she received new findings and in those findings, a previously substantiated finding was now determined to be not substantiated which raises some confusion on her part. She felt that she had no choice but to submit her resignation today as she is no longer able to work in a hostile environment and she requested a hearing.

President Price stated that hearing dates had previously been set at the last meeting but that both parties had requested to vacate those dates. He asked Ms. Fitzgerald if she had agreed to vacate those previously set dates and Ms. Fitzgerald stated yes. She stated that she believed the investigation was incomplete and not all persons involved had been interviewed, HRD was going to reopen it and complete a thorough investigation. That still has not been done and her complaint has not been fairly processed.

Commissioner Agbalog asked Ms. Fitzgerald how many days had been agreed upon by both parties to conduct the hearing and Ms. Fitzgerald stated it had been scheduled for 3 or 4 days.

Commission Agbalog asked Brian Van Wyk, Deputy County Counsel, if an employee appeared before the Commission requesting hearing dates and dates were set but then vacated, what is within the Commission’s discretion at this point.

Mr. Van Wyk informed the Commission it would be proper to place this matter on the next meeting agenda and schedule dates at that time.

Commissioner Agbalog expressed his concerns regarding the timeline. Ms. Fitzgerald claimed that she was under the understanding her investigation would be complete, but if that did not occur, he found it problematic if she would have to wait for another Commission meeting to schedule dates. He stated he would not be opposed to holding a special meeting to set dates.

President Price agreed and called for a special meeting to be held on Monday, December 17, 2018 at 5:30 p.m. and asked Ms. Fitzgerald if she would be able to attend to set dates. Ms. Fitzgerald stated that she would.

Rey Ramirez – Battalion Chief with Kern County Fire Department, stated he had a presentation and handouts for the Commission. Mr. Ramirez appeared during last month's meeting regarding concerns he had about the recruitment process. He stated that he recently took a test for a Deputy Chief position with the Fire Department. During that exam process, there were a noticeable number of inconsistencies in the testing process. He filed a complaint with HRD and they explained their interpretation of the rules. As an employee, he felt their interpretation was very biased towards the department heads. He stated that rights are being taken away from employees when they get to a certain level in the testing process, feels this is unfair, and disenfranchises the employee. The problem was when he met with HRD, they advised him about the process of making a short list, and the application process is all that was required to establish a short list. He stated he has been a Battalion Chief with 10 years of experience, has worked 5 out of 8 Battalions Countywide, dealt with all state and federal agencies in the county, gone to more city council meetings than any other candidate, as well as many other attributes. Another candidate with 3 years of experience, who has worked 6 months in the field and 2 ½ years in the dispatch center, is ranked equal to him with a score of 70. All five candidates were given an equal score of 70 and that way the department head gets to interview all five candidates and gets to choose who he decides he likes.

Mr. Ramirez stated this violates the rule of 3's. The process promotes the Chief's ability to hire whomever he is friendlier with or more comfortable with, and not necessarily, the best candidate more qualified for the job. When he brought this up with HRD, they stated that, at that level, it would be inconvenient to set up a panel, so they decided this would be the best way to handle that. The employee should have the all the rights that are afforded to everyone in the promotional process up and down the ranks. At last month's meeting, Mr. Brown informed everyone that this happens countywide and it has been happening for a long time. At the last Commission meeting, no action was taken as the position was filled. Mr. Ramirez requested placement into the vacant number two position or at the end of the month, there will be a number three position open. His second request was to make a motion to instruct HRD to correct the inadequacies department wide.

President Price stated that during the public presentation portion of the meeting, the Commission might refer to staff or place an item on the next meeting agenda. At the last meeting, he had asked the Commission members if anyone wanted to place this item on the agenda and no request was made, as it seemed the department had followed the rules. He asked the Commission members if anyone wanted to place this item on the next meeting agenda.

Commissioner Agbalog stated he would refer this item for placement on the December 17, 2018 special meeting agenda and Commissioner Rose agreed. Mr. Van Wyk stated there was no need to motion or vote.

Nick Kott – County employee, asked the Commission to make the necessary changes in order to ensure that hostile work environment investigations are completed in a reasonable amount of time. In the October Civil Service Commission minutes, at least one DHS worker had been waiting 7 or 8 months for such an investigation to be completed. While the need for a careful investigation is obvious, no amount of care

could excuse that amount of time. In his duties as a shop steward, he was asked by a co-worker what options were available, as they felt they were being treated unfairly and in a hostile work environment. When he told them the only option was to file a complaint with the Commission, they opted not to pursue for fear of retaliation, which is exactly what the DHS worker described was happening. In order to mitigate this negative consequence, these investigations need to be completed in a timely matter.

Commissioner Agbalog asked, in light of Mr. Kott's comments to the Commission, to take item number five on the agenda out of order and hear the Secretary's Report next, to share with the public about some discussion that took place last week, related to this specific issue of timing.

Commissioner Rose asked Mr. Brown if there is an annual review process with the department heads over these kinds of situations, about the process and the timeliness of it. She stated that she has heard the word retaliation, it is a serious word, and she wondered what is being done for the education of the department heads and how employees go about reporting these situations and how they fall into that timeline.

Mr. Brown stated that department heads are managers in the county who are required under California state law, to undergo two hours of training every two years. The training, provided by the County Counsel Office, is provided to all managers and supervisors in the county. A new state law was recently passed that will require us to provide that same training to all employees. They are currently working on policy adoption to have it ready before the required date of 2020. He explained that in the context of employee investigations, retaliation is generally looked at as some sort of adverse personnel action against an employee for filing a complaint or speaking up in the workplace, and that is what they look at when they investigate that particular claim or allegation. That is part of the required training.

Item No. 5 on the agenda, Commission Secretary Monthly Report, heard next.

***CONSENT AGENDA**

***2. Approval of Minutes**

Regular Meeting on November 13, 2018; Special meeting on November 19, 2018; NO PUBLIC COMMENT; **APPROVED**; Ro/Ag – 4 ayes/1 ab (Bu)

***3. Examination Schedule:** The following examinations have been scheduled in accordance with Civil Service Rules and established procedures. NO PUBLIC COMMENT; **APPROVED**; Ro/Ag – 4 ayes/1 ab (Bu)

- 7405) Public Health Project Specialist – Department Promotional
- 7406) Deputy District Attorney
- 7407) Air Quality Administrative Manager
- 7408) Deputy Public Defender
- 7409) Deputy County Counsel I/II/III/IV/V
- 7410) Elections Process Supervisor-DP-Auditor/Controller/Elections
- 7411) Sheriff's Lieutenant – DP – Sheriff
- 7412) Social Service Worker I/II-Aging and Adult Services
- 7413) Airports Finance Manager
- 7414) Light Vehicle Driver
- 7415) Assistant Registrar of Voters
- 7416) Chief Deputy Registrar of Voters
- 7417) Public Health Aide I/II
- 7418) Office Services Specialist

7419) Elections Process Clerk I
7420) General Services Manager

4. **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**
- a) Assistant Division Director of Health Services, Formerly Director of Disease Control, Item No. 1975; *Ag/Ho – 4 ayes/1 ab (Bu)*
 - b) Children's Medical Services Manager, Formerly Assistant Director of Public Health Nursing, Item No. 1973; *Ro/Ag – 4 ayes/1 ab (Bu)*

Devin Brown, Chief Human Resources Officer, Provided a brief overview. Commissioner Rose thanked Mr. Constantine and the Public Health Department employees for all that they do for the county. No Public Comment.

5. **Commission Secretary Monthly Report**

Commission Secretary Mrs. Murbach informed the Commission that during the past month, she visited the Information Technical Services (ITS) Department and met with Mac Avancena, Chief Information Technology Officer. She toured the new building and met some of the awesome staff who assist on the help desk.

Mrs. Murbach reported that at the November 19, 2018 Special Meeting, Commissioner Agbalog requested that Commission staff meet with County Administrative Officer (CAO) Ryan Alsop, and Devin Brown to discuss Civil Service Rule 1800. On Thursday, December 6, 2018, President Price, Commissioner Agbalog, Secretary Murbach, and Brian Van Wyk, Commission's Legal Counsel, met with Assistant County Administrative Officer, Nancy Lawson, Devin Brown, and Margo Raison, County Counsel. President Price and Commissioner Agbalog discussed their concern that the current rule has timelines in place but does not offer a remedy for the Commission to act and resolve if those timelines are not met. They informed CAO staff that the Commission would be working with the Commission's legal counsel, Brian Van Wyk, on drafting some language to eliminate ambiguity relating to HRD and Commission processes. Discussion followed about the internal processes that HRD is working on, to improve the tracking of complaints and process status, and they will report to the Commission on a regular basis.

President Price stated that the meeting did not violate the Brown Act. They did not speak about any specific case pending before the Commission, rather specifically about Civil Service Rule 1800. Rules that have specific directives written into them without remedies. Currently, there is a timeline but nothing written about what it triggers if the timeline has elapsed.

Vice President Agbalog directed Mr. Van Wyk to begin drafting some language specific to CS Rule 1800 and some issues that were brought up at that meeting. He suggested that if any other Commission members had any other items they would like Mr. Van Wyk to look into, now would be the appropriate time to bring them up.

Commissioner Rose stated it would be helpful if Mr. Van Wyk would provide a tentative list of items to look at and see if there were anything else they would want to add to that list.

President Price agreed and directed Mr. Van Wyk to draft specific language in regards to what happens if the timeline has elapsed. There is no rule in place for when the timeline has elapsed, and he finds this unacceptable.

Mr. Van Wyk stated he had notes from that meeting and would bring forth some recommendations at the January meeting.

Mr. Brown stated he wanted to let the Commission know what the HRD has done so that they are aware of the seriousness and their intent to make sure they are meeting their obligations under the rules. On November 20, 2018, after the Special Meeting, he instructed staff to follow specific procedures with regard to how the investigations, both informal and formal are conducted by HRD. To ensure they are meeting the 30 business and 45 business day timelines outlined in the rules. His expectation is that they will process all investigations according to those timelines and process them consistently across the division to ensure fairness. HRD staff was instructed to do the following:

Informal Investigation – 30-business days:

- Send an official notice to the complainant and the department within two business days of receipt of complaint.
- Provide the department and county counsel with a copy of the complaints.
- Interview complainants within five business days of the receipt of complaint.
- Request for department response on the complaint within 5 days of interviewing the complainant.
- Receive the department's response within 10 days of the request and make a determination whether the complaint can be resolved with the parties within five business days of receiving the department's response.

This should ensure that the 30-day timeline is met.

Formal investigation- 45 business days:

- Send notice of a formal investigation to the department/complainant upon closure of the informal investigation.
- Interview all relevant witnesses within 20 business days of initiating the formal investigation.
- Complete a draft investigation report with findings/recommendations within 15 days of the completion of the investigation interviews.
- Review the draft report internally within 5 business days of the draft report being completed
- Provide notice of findings/recommendations to parties within 10 business days of completion of the draft investigation report.

Mr. Brown stated HRD would be maintaining a communication log for all complaints to ensure they are documenting the processing of each investigation accurately and would provide updates on that log monthly or more frequently if the Commission requests. If they can complete an investigation quicker than the timeline, that is their intent as well. Mr. Brown stated he appreciates the interest and looks forward to working with Mr. Van Wyk on additional solutions and rule language that the Commission finds necessary.

6. Human Resources Division Items/Report:

Mr. Brown introduced HRD's newest talent recruiter, Deonka Rufus. Ms. Rufus recently promoted as a talent recruiter from her role as a Senior Human Resources Specialist. One significant recruitment she has launched is for the Airport Finance Manager where they are hoping to find good candidates. HRD has been happy to have her for so many years, and they are excited for her continued progression through the department.

7. Commission Member Presentations or Announcements:

Commissioner Rose announced that she had recently visited the Animal Services Department. The department was promoting a donation drive for blankets and other winter items for the animals. She complimented the employees at the department for all their hard work.

8. **Adjourn to Closed Session:** at 6:09 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)

9. PERFORMANCE EVALUATION - Consideration of the evaluation of performance of the Civil Service Commission Secretary (Govt Code § 54957(b) (1)); **NO REPORTABLE ACTION**
10. President Price adjourned the meeting at 6:30 p.m. to the next special meeting to be held on Monday, January 7, 2019 at 5:30 p.m.