

SUMMARY OF PROCEEDINGS

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

SPECIAL MEETING
Monday, February 29, 2016
1:00 P.M.

PRESENT: Commissioners Agbalog, Burrow, Prince, and Rose

ABSENT: Commissioner Price

OTHERS: Maria Murbach, Mark Nations

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

COMMISSIONER ACTION IS SHOWN IN CAPS AFTER EACH ITEM

President Rose called the meeting to order at 1:02 p.m.

PUBLIC SESSION

1. Public presentations

None

2. Proposed Amendments to Civil Service Rule 1735

Introduce Proposed Amendments.

Mark Nations, County Counsel, addressed the Commission and introduced the proposed modifications to existing Rule 1735 which governs the hearings that are held on appeals of employee disciplinary matters. The proposed changes were circulated to the unions and County Counsel attorneys and reflect their comments. Commissioner Prince asked for a walk-thru of the significant changes and Mr. Nations explained the following:

1735.10 - The ordinance requires hearings to begin in 20 calendar days from the filing of the appeal. Language has been added reflect actual practice. If the commission cannot accommodate, then hearing dates outside the time frame will be set.

1735.13 – Added language to reflect current practice. Quite often, the parties will agree to postpone a Civil Service Commission hearing beyond the time prescribed. Once a hearing is set, they agree on whether back pay will be awarded or not.

1735.19.10 – Established two sets of hearing dates. If the hearing is set to commence outside the 20 day time frame, the appellant is required to file their motions 10 business days prior to the first day the matter is scheduled for hearing. The department is required to respond within 2 full business days. This was done to give staff time to review these motions and propose rulings. The union was concerned that if the hearing was set within the 20 calendar day time provided by the ordinance, the 10 business day modification would not work. Added language to reflect if the hearing actually commences within 20 days from the filing of the appeal, then time limits currently in the ordinance would be in effect.

1735.21,22,23,24, and 25 – Added language designed to streamline the hearings. There are limits placed on re-cross and redirect, it is only allowed when necessary. It provides that each side may ask a single series of follow-up questions. No other questions may be asked unless there is a showing of good cause.

1735.23 – Requires the parties to pre-mark the exhibits, they have to agree ahead of time which exhibits will be admitted, without objection, and to identify those exhibits. At the outset of the hearing, one of the first orders of business will be to admit all exhibits not objected to.

1735.24 – No less than five calendar days before the hearing, the parties have to submit to the secretary – a witness list, a list of exhibits to which they agree, a list of exhibits to which they do not agree, a realistic time estimate for the full length of the hearing, a one page summary of the case setting forth the charges, the proposed discipline, and any defenses to be raised by the appellant. These things are patterned after federal court rules.

1735.25 – Requires the parties to be present at the times and dates set for the hearing. Prior to opening statement, they are expected to cover those items listed. Which exhibits are to be admitted. Any pre-hearing motions, not yet resolved, and if there are any problems with witnesses or scheduling to avoid delays. This provides methods and requirements that, if observed, should streamline everything that is going on at the hearing.

1735.30.10 (f) – Added compliance with the Commission hearing rules as one of the obligations that are placed upon the parties when they appear before the Commission.

President Rose asked who would meet with the parties when reviewing their exhibits prior to the hearing. Mr. Nations explained that the parties would meet on their own and the Commission does not participate in that process.

Commissioner Agbalog thanked Mr. Nations for his presentation and asked what the Commission can do if there is a party who slows down the process. Mr. Nations explained that the Commission may censure the party who is failing to maintain the standard.

Commissioner Prince congratulated Mr. Nations for his hard work on his presentation and asked, in reference to Rule 1735.24, does it make a difference if the appellant does not have proper representation. Mr. Nations explained that those representing themselves are expected to hold the same rules as everyone else and the rules are simple enough to comply with them.

Vice President Burrow asked for clarification with Rule 1735.10, which refers to calendar days, business days, and full days. He asked what the difference or benefit is to have the days addressed as they are instead of making them all business days. Mr. Nations explained that 20 calendar days is in the ordinance. The ordinance would have to be amended to change that. However, the reality is that hearings have not been calendared that fast. Business days have been provided to give maximum amount of time and the 5 full days is currently in the ordinance. This was put back in, at the request of the union, in the event a hearing is set within the 20 day time frame. Vice President Burrow asked if there have been any significant concerns from the Human Resources Division (HRD) or the union. Mr. Nations explained that the union agreed, except that one calendaring issue which was accounted for. The attorneys from the County Counsel Office were very supportive. They had comments along the way and they were incorporated into the current version. HRD is aware but these changes do not really impact HRD.

Commissioner Prince – Regarding 1735.21, asked if there is a limit for direct and re-direct. Mr. Nations explained that the presiding officer has to make a call on that at the time. If there is still information that is being received from the witness, there is no cap and it is left to the discretion of the presiding officer. Discussion followed about adding language asking the parties to submit a written stipulation so they do not have to present evidence on something they both agree. Mr. Nations suggested adding, in Rule 1735.24, sub-division (f) stating they are to submit any stipulated facts to the Commission. He will add the language and have it ready for review at the next Commission agenda on March 14, 2016.

No public comments on any of the above.

3. Proposed Rules and Standards for Civil Service Commission Hearings

Mark Nations, County Counsel, introduced a proposed memo/letter outlining the proposed Rules and Standards for Civil Service Commission Hearings. The Commission Secretary will send out the memo to the representatives of anyone having a hearing scheduled. This will notify them of the rules that they will be operating under when in front of the Commission. It is a restatement of the above rules, except for paragraph 5, which explains that they can conduct

telephone testimonies for witnesses who are outside the area, and how direct and cross examination are to proceed. There are no technical rules relating to witnesses and evidence. The objective is that anyone appearing before the Commission will know well in advance what is expected of them. If the Commission approves of the format, we ask to authorize the secretary to send this out to parties who are scheduled to appear before the Commission.

Vice President Burrow asked if a witness can be called to testify ahead of other witnesses in the line-up. Mr. Nations explained that is correct.

President Rose asked if it is evident the appellant has not made the appropriate arrangements in scheduling a telephone interview with a witness, how long does the Commission have to sit and wait. Mr. Nations explained that if the other side wants a witness by telephone but did not make arrangements, the Commission can move on to the next witness. He recommended adding a paragraph stating that the Commission reserves the right to direct either side to call a witness out of order if there is a gap. All agreed, and he will add the language.

Commissioner Prince asked if language could be added to item 6 stating which party begins with opening statements, closing arguments, and rebuttals. Mr. Nations will add the language.

President Rose asked the Commission Secretary to include Rule 1735 and the Hearing Standards documents in the hearing binders for future hearings. Ms. Murbach will include as requested.

Mr. Nations recommends revising Items No. 2 and 3, and will bring back for final approval on the next Commission agenda on March 14, 2016.

No public comments on any of the above.

4. Commission Member Presentations or Announcements

Vice President Burrow announced that department visits have been scheduled for the following week. Commissioner Price will join him, along with the Commission Secretary, to visit the Parks and Recreation Department as well as the Sheriff's Office.

President Rose shared that the Commission Secretary has been invited by John Nilon and Devin Brown, to participate in the Kern County's Leadership Program for County employees. She may teach a couple of courses.

5. Commission adjourned the meeting at 1:45 p.m. to reconvene at the next Regular Meeting to be held on Monday, March 14, 2016 at 5:30 p.m.