

SUMMARY OF PROCEEDINGS

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

Special Meeting

Monday, November 19, 2018

5:30 p.m.

PRESENT: Commissioners Agbalog, Burrow, Holt, and Price

ABSENT: Commissioner Rose

OTHERS: Brittany Bonilla, Devin Brown, Michael Goulart, Maria Murbach, Keri Pharris, Brian Van Wyk, Brenda Villanueva, 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 5:34 p.m.

PUBLIC SESSION

1. Public Presentations

None

2. Discussion of Concerns Regarding Human Resources Division Responsiveness. DISCUSSED; DEVELOP REFERRAL AND/OR RECOMMENDATIONS FOR IMPROVEMENTS.

President Price stated that Civil Service Rule 1800 includes specified investigation timelines, but does not include any specified actions that the commission may take if those timelines are not met. He opened the floor for discussion and asked Devin Brown if he would like to comment.

Devin Brown, Chief Human Resources Officer, provided some background history and stated that the Human Resources Division (HRD) was formulated in June 2015 by the Board of Supervisors (BOS) when they combined the employment relations and health benefits functions of the County Administrative Office with the personnel department. At that time, there was a separation of duties, the Employee Relations Officer reported directly to the County Administrative Officer (CAO), and still reports directly to the CAO under the title of Chief Human Resources Officer. When the HRD was created, the Commission Secretary position was also created as the individual responsible for administering the business of the Civil Service Commission (CSC). During the first several months of the HRD, the CAO's office and other departments looked at specific rules, which may or may not be viable under the new structure. Civil Service Rule 1800 was one of those rules. In November of 2015, during a Commission meeting, HRD brought forth a proposal to eliminate five rules, one of which was CS Rule 1800.

That meeting was the first reading of the proposed elimination of the rule and it was calendared again for December of 2015 to have a second reading of the proposed elimination. At the same time, the HRD and CAO added a policy number to the Kern County Administrative Policy and Procedures Manual. This BOS policy duplicated CS Rule 1800. The purpose was to make sure that the BOS, who now has control over the HRD, has a similar policy to ensure that compliance can be made. The auditor controller also audits the policy compliance of the HRD office and any other department in the county.

It was recognized that there was an issue with the Commission's ability to enforce certain rules under the CSC with the new change in structure and proposed deletion of that rule. It was eventually retained by the Commission in December of 2015, but at the same time, they added the same rule and policy under the BOS policy manual. The HRD office is trying to maintain compliance with timelines. They have not met them at times and they have worked with complainants in those cases to ensure they know that the office is investigating their complaints. Some employees have sometimes appeared before the Commission asking for a status of their complaints. It is very rare in those instances that they have actually reached out to the HRD office prior to appearing before the Commission and ask for a status update, which would be given to them.

At the last meeting, there was an individual who questioned the status of a complaint and HRD conducted a thorough record of complaints received. The department's ITS department and HRD's ITS department both verified that no such email was sent to Mr. Goulart or Mr. Brown. He stated that they only received it the day following the meeting. He informed the Commission that they have initiated a formal investigation due to the two-month delay due to the technical error of that email not being transmitted. HRD is open to suggestions to improve the process. The HRD office has put together a revised policy that would include any investigations related to hostile work environment, discrimination, retaliation, sexual harassment, as well as proposed training and education related to those topics for supervisors. In addition, how those complaints may be reported to the HRD office and how they are investigated. HRD is working with county counsel at this point to review that policy. The next step after that would be to negotiate the policy change with employee associations before bringing that proposed policy to the BOS for their consideration and adoption.

President Price stated he remembered the rule deletion request was withdrawn by HRD because Commission counsel, Mark Nations, opined that it was a rule change that would have changed the fundamental role of the Commission as set out by the ordinance.

Mr. Brown stated that they did withdraw the request for deletion of that rule after Mr. Nations gave that opinion, but they still moved forward with the adoption of that policy under the BOS guidance and supervision.

Commissioner Agbalog thanked Mr. Brown for the background history he provided on this topic. He asked in a situation where there is a problem in terms of implementation or enforcement of a specific rule, what recourse does the employee have and what options are at the discretion of the Commission to resolve such a situation. This is an open question, what would the Commission do in such a situation.

Brian Van Wyk, Deputy County Counsel, explained that the Commission is charged with enforcement of the Civil Service Rules, to the extent that something falls within the procedures that the CSC has pursuant to those rules. For example, there are various hearings that are set forth in the rules where the Commission has very clearly delineated powers. It can exercise those powers. For some matters, if it goes beyond the powers that the Commission has, at that point, typically the most common power that the Commission has would be to develop some sort of formal opinion for recommendation to make to the BOS. Such that the BOS might adopt, to the extent those recommendations would be the Board's authority rather than the Commission. The Commission has the power to make such recommendations to the BOS.

Commissioner Agbalog stated this was not specific to any case brought before the Commission. Hypothetically, if there is an individual who filed a complaint with the respective department, and did not receive a response, could that person appear before the BOS, requesting that the BOS initiate a follow up.

Mr. Van Wyk, explained that would be an option. A county employee could address the BOS on their own, independent of what the Commission could do.

Commissioner Agbalog asked if employees would know they could do that.

Mr. Van Wyk stated he was not aware if employees would know they could do that.

Commissioner Agbalog asked if an employee appeared before the commission, stating a complaint was made to the department, received no response, and then filed a complaint with the Equal Employment Opportunity Officer (EEOO), and received no response, what is at the Commission's discretion in terms of rectifying the situation.

Mr. Van Wyk explained that this is an issue where, to an extent, may relate to a case before the Commission but redirected to focusing more broadly on process and responsiveness of HRD as far as what the Commission can do. It would be up to the Commission to discuss the matter with HRD to provide more information. Mr. Van Wyk stated that it is important that while a matter is pending, the Commission retain its ability to remain an impartial judge in that specific matter. He would like the focus on some recommendations related to process, which may involve referring Commission staff to consult with HRD, if the Commission has particular recommendations they want to make, the Commission does have the power to make them. Recommendations may be made directly to the HRD or to the BOS. The BOS would have the option to receive and file the recommendations, or they may choose to adopt them. It would be at their discretion.

Commissioner Agbalog asked what happens to an employee and their due process rights and any remedy regarding a situation if it ended up before the BOS.

Mr. Van Wyk explained that it has been the county's practice to try to address these issues without escalating them. When employees have a problem such as a hostile work environment, discrimination complaints, or other various types of issues, ideally these get resolved at an informal level with HRD or at the level with the Commission or at the level of the BOS before the employee goes outside and seeks other legal remedy. Ultimately, if an employee believes there is some sort of illegal treatment going on, they do have their remedy to the courts.

Commissioner Holt observed that Mr. Van Wyk's earlier remarks stated the employee might appear in front of the BOS and so developing a recommendation and passing it on to the BOS regarding rule 1800 is needed.

Mr. Van Wyk agreed that would be correct, and to work with the HRD office.

Commissioner Burrow asked why these timelines are delayed so much. If there is a matter of harassment or hostile work environment, the longer that something like that goes on, the more it festers, it should be dealt with quickly. Those situations should be top priority.

Bryan Alba, Deputy County Counsel, addressed the Commission and stated he wanted to make sure they are not talking about a case that is pending before the Commission. He is aware Mr. Van Wyk already addressed it, but some of these pending matters include a disputed claim or disputed findings, and he wanted to make sure the Commission remains open and impartial.

Commissioner Burrow stated this has nothing to do with a case.

Mr. Alba stated that even talking about the timing would be inappropriate.

President Price stated that the goal is to discuss the process and the Commission's discretion. There is a rule in place that has a specific timeline laid out to it, what it does not have is a remedy for the Commission if the timeline is not followed. Right now, the rules have something in place if there is an appeal process and how that works. However, the problem is that rule predates the change to the HRD from the Personnel Department. When it was the Personnel Department, there was a way to address a situation if the timelines were not met. The employee would appear before the Commission and ask the Commission to compel the Personnel Department to adhere to the rules and meet the timelines. Tonight's focus is on what to do moving forward. The rule is still in place. It is in place because the opinion of Commission counsel, at that time, was that deleting it would fundamentally change the relationship as pertains to the ordinance that was passed. Which the BOS cannot do without another ordinance. How is this to be remedied so that in the future, someone appearing before the Commission complaining about a timeline has a remedy in place. There is no remedy in place currently.

Mr. Alba stated that if Mr. Nations had said it would fundamentally change the purpose of the Commission to have the rule over with the BOS, it is confusing to have two rules. If that is the fundamental issue related to the Civil Service Commission, then that should be the primary issue to discuss.

President Price stated this was exactly the issue the Commission is addressing tonight and this has nothing to do with any case. The issue at hand is the relationship of the Commission to enforcing its rules and now there has been a change where the Personnel Department is not the HRD. He stated this is the first of a myriad of examples where he can point out where there might be conflict where the Commission is now tasked to enforce a rule without remedy and without power to do so. He explained that he is seeking the Commission's pleasure, and from counsel, how to untangle this going forward. How to enforce a rule when the relationship has fundamentally changed.

Mr. Van Wyk explained that the Commission might request that HRD respond directly to their concerns, see how they respond to that request, and if that response is to their satisfaction.

Commissioner Agbalog asked what is at the Commission's discretion if the response were to come back in an unsatisfactory manner.

Mr. Van Wyk explained that they would then take their concerns to the next level, to the BOS.

Mr. Brown disagreed with Mr. Van Wyk and stated that the CAO has the power to ensure that he is following the CSC Rules, has the power to discipline, and the power to remedy the situation. He stated that would be an appropriate first step if the Commission is not satisfied with the HRD office's response, but he would hope the Commission would give them a chance to respond.

Commissioner Agbalog stated that there would be a going back and forth with the HRD and the CAO's office, and eventually even the BOS if the answer to a concern is unsatisfactory. He wondered what happens to the employee and their circumstance and at what point, do they finally get their issue resolved one way or another. What does the Commission do in such a situation. The Commission could make a ruling before, but now it is not so clear.

Mr. Van Wyk stated Commissioner Agbalog raised a valid point, as the communication going back and forth could take a lot of time. He explained that the Commission has the option to call special meetings to address the issues and to address staff to pursue resolution of the issues.

President Price stated he would like direction from the BOS

Mr. Van Wyk suggested going to the CAO first.

Commissioner Burrow stated that if department or the department head was not doing their job, then the concerns should be elevated to the next level. Going to the CAO is a logical best first step.

Mr. Brown informed the Commission that HRD has instituted a new internal process to make sure that they are identifying the complaints, meeting with complainants, and meeting deadlines. Staff is trying to clean up some of the complaints where they have not met particular timelines, and they have discussed the status with the complainants. The new policy will eliminate the informal investigation period so that they do not waste 30 business days investigating complaints. They will initiate formal investigations for all complaints.

Commissioner Agbalog stated that he sees the Commission as a custodian of these rules. Within those rules, there is a due process for employees who have grievances. He sees these rules and struggles because a rule that is not enforced is not a rule. He is in agreement with Commissioner Price in specifying a way moving forward, but he does not need direction from the BOS. He stated he would make a motion and directed the Commission Secretary, Mr. Van Wyk, and President Price to meet with Ryan Alsop, CAO, and Mr. Brown. To have a candid discussion about moving forward. The process to ensure that the rules in place today are not just implemented but enforced. To discuss the sorts of things that can be put in place,

anticipating perhaps, situations where timelines may be stressed, or when an individual comes before the Commission asking for a hearing. There should be a process specified within the rules that tells individuals how they can file a complaint. Out of that meeting, there should be some sort of document with some recommendations, some process to take before the BOS for their affirmation, not so much direction as to the Commission's authority to carry out the intent of the rules.

President Price repeated Commissioner Agbalog's motion for clarity. The motion was to have the Commission Secretary, Mr. Van Wyk, Mr. Alsop, Mr. Brown, and President Price to meet about some sort of memo of understanding with the CAO's office for when there is a conflict and how these rules will be enforced.

Commissioner Agbalog confirmed the motion. Commissioner Burrow seconded the motion.

3. Commission Member Presentations or Announcements:
None

CLOSED SESSION (Government Code § 54957) – No Closed Session Items.

6. President Price adjourned the meeting at 6:26 p.m. to the next Special Meeting to be held on Monday, December 3, 2018 at 5:00 p.m.