

SUMMARY OF PROCEEDINGS

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

Special Meeting
Monday, May 1, 2023
5:00 p.m.

PRESENT: Commissioners Agbalog, Holt, Price, and Rose

ABSENT:

OTHERS: Devin Brown, Stephanie Bouey, Tracey Eldridge, and Robyn Lipscomb.

NOTE: Ag, Ho, Pri, and Ro are abbreviations for Commissioners Agbalog, Holt, Price, and Rose. For Example, Ho/Pri denotes Commissioner Holt 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 5:00 p.m.

PUBLIC SESSION

1. Public Presentations

None

2. Civil Service Rule 615 Limited Appointments:

Devin Brown, Chief Human Resources Officer, provided a brief history of the BOS May 17, 2016, ordinance revision that removed language regarding rulemaking authority over extra help positions from the Civil Service Ordinance. The decision was part of a large broader action that realigned responsibilities for personnel administration between the BOS and Commission. At the time of the action, the term of the extra help positions was nine-months. In 2021, the BOS approved a MOU with SEIU extending the extra help term to two years.

Commissioner Agbalog recalled the transition as part of the idea of transitioning from the Personnel Department to the Human Resources Department under the CAO. This change was part of many other changes including increasing the number of candidates from three to seven and allowing departments additional time to decide. Commissioner Agbalog expressed concerns between the rules and practice and how we can move forward from this discrepancy.

Commissioner Rose recalled many of the same conversations and shares Commissioner Agbalog's concerns. Commissioner Rose asked counsel what to do at this point and what would be the best way to move forward.

Stephanie Bouey, Deputy County Counsel, reported that there does not appear to be a legal pathway to enforce Civil Service Rule 615 and that the Commission may want to consider working with HR to understand which qualifications prevent permanent employment but allow employees to perform similar duties as extra-help.

Commissioner Agbalog recalled that previous counsel, Mark Nations, warned the Commission of future attempts to try to usurp Commission authority. We must see if this does open the door to further infringement. The length of time would not have been in the rule without reason. The Commission must address this from a policy standpoint. Individuals from the Roads Department may only be able to work for a nine-month term, but an individual from Animal Control may be allowed to work for a two-year term. Mr. Nations advised this Commission that this is a slippery slope.

Commissioner Holt appreciated the chart¹ provided by CHRO Brown demonstrating the number of extra help employees from 2014 to present and questioned the MOU's ability to define extra help or excluded and exempt employees. How long can extra help be stretched, several decades?

President Price indicated that the term would not have been included if it were not part of the Commission's purview and stated that the BOS cannot rule on application. Just calling an employee extra help does not make it true. If extra help can go from nine-months to two years, can it go to ten years. Asking counsel for any case law to substantiate this newfound authority. At the baseline, a civil service employee cannot be removed, but if duration is not a factor, couldn't this be used as a work around? President Price does not believe anyone proceeded with ill intent, but this action cannot set a precedent to eliminate employee protection².

Commissioner Agbalog found this to be a big stretch and referred to previous court decisions in 1984 and determinations in San Joaquin County in 1974. While he understands that extra help can assist the departments especially in times of tight budgets, the determination of who qualifies for civil service protections and who does not cannot be arbitrary.

DCC Bouey explained that she had researched back several decades and there were no findings to support that the Commission's purview includes extra help or the determination as to the length of time that that would include. The Commission could request a legal paper to analyze which employees are placed in the civil service system. DCC Bouey referenced section 31106 of the County Civil Service Enabling Law under which the county ordinance creating the civil service system shall designate the employees to be placed in the system.

Commissioner Rose recalled several reasons for the restructuring of the Civil Service Ordinance but could not recall the genesis. It was never intended that the changes would usurp the Civil Service Commission's authority.

President Price will look forward to the legal paper from counsel and expressed concerns related to liability of rules not being rules and rules being incongruent with others. He felt employees

¹ Attachment A

² Attachment B

may feel entitled to benefits or protections as they had been employed more than the nine-months as Civil Service Rules indicate extra help terms may not extend beyond that. He fears there could be great costs and liability to the County if several employees felt they had not received the benefits and protections of civil service.

CHRO Brown expressed that extra help terms were the maximum not the minimum, and even a nine-month extra help employee was not guaranteed the limit of their term. Many extra help durations were only three months for a season or project may only last that long. While there was a recent increase in the number of extra help employees, there may be other factors contributing to the increase. Over the last ten years, there has not been a significant increase and it has ranged from 500-700 employees. It is not the intent of the department to avoid hiring permanent employees and he would have to dig more deeply as to all the causes. Extending the term may increase the number as the individuals were able to stay longer. The two-year term was of great benefit to Public Health through the pandemic and currently the IT system replacement. These projects can be managed by permanent staff but require extra help to initialize the projects.

CHRO Brown stated the term limit duration of two years is also used by Kern County Employee Retirement Association (KCERA) and the Social Security Administration. While the County also has per diem employees that are not two years, the two-year limit is only a maximum. Despite extra help not receiving all civil service benefits, they have paid leave and access to voluntary benefits, just no pension.

President Price expressed that the primary purpose of this Commission is to ensure merit-based hiring or job security with a relatively high assurance of tenure. The changes made in relation to the extra help maximum term are in direct conflict with the Civil Service Commission Rules. To reiterate Commissioner Agbalog's analogy we are left to figure out how to unscramble this egg.

Commissioner Agbalog stated that he believes there was no intention to reduce protections to civil service employees. He appreciated the chart provided by CHRO Brown and understands the budgetary benefits of extra help and that the extra help term has always been a maximum. He also shared President Price's concerns and agrees we must find a resolution without the courts.

Commissioner Rose agreed we want no quagmire, no courts, and we appreciate the opportunity to discuss this and find resolution prior to an incident.

3. Commission Member Presentations or Announcements:

None

CLOSED SESSION (Government Code § 54957) – NO CLOSED SESSION ITEMS SCHEDULED FOR THIS MEETING

4. President Price adjourned the meeting at 5:45 p.m. to the Regular Meeting to be held on Monday, May 8, 2023, at 5:30 p.m.