



Career Service Board Meeting #2322

Minutes

Thursday, October 19, 2017, 9:00am

Webb Municipal Building

201 W. Colfax Ave, Fourth Floor, Room 4.G.2

Neil Peck (Co-Chair)
Patti Klinge (Co-Chair)
Karen DuWaldt
Patricia Barela Rivera (Absent)
Tracy Winchester

I. Opening: *Meeting was called to order at 9:02am*

1. **Approval of the Agenda for the October 19, 2017 Board Meeting**
The Board unanimously approved the agenda for the October 19, 2017 meeting.
2. **Approval of the Minutes for the September 21, 2017 Board Meeting**
The Board unanimously approved the minutes for the September 21, 2017 meeting.

II. Board Comments: *None.*

III. Public Comments: *None.*

IV. Public Hearing:

1. Public Hearing Notice 552-Proposed Revision to Career Service Rule 13

Heather Smith, HR Compliance Officer, introduced Public Hearing Notice No.552-Proposed Revision to Career Service Rule 13 (Pay for Performance).

Patti Rowe, Director of Learning & Development, reviewed the 2017 Performance Management process. Ms. Rowe noted the Office of Human Resources (“OHR”) strategy has been to improve performance management through a multi-phase collaborative process in which performance is an ongoing conversation, rather than just an annual event, reducing surprises when managers conduct year-end performance evaluations. Ms. Rowe stated the result is accurate performance ratings to use in merit planning, allowing managers to reward and motivate high performing employees.

Nicole de Goia-Keane, Director of Classification & Compensation, presented the 2017 Merit Planning Table, in which raises will no longer be based on employees’ quartile position within a pay grade, which Ms. De Gioia-Keane noted may have penalized high-performing employees with salaries in the upper quartiles, instead now being based on their performance.

The new merit planning system will grant agency appointing authorities/executive leaders the ability to allocate their total available dollars for merit increases based on each employee’s performance rating. This new method will allow leaders to reward higher rated employees with a larger merit increase, regardless of where their pay falls within the grade, encouraging managers to ensure employees receive accurate performance ratings.

<u>2017 Performance Rating</u>	<u>2018 Merit Increase Percent*</u>	<u>2018 Lump Sum Merit Payment Percent**</u>
<u>5: Exceptional</u>	<u>2.60% - 4.60%</u>	<u>1.80% - 3.20%</u>
<u>4: Exceeds Expectations</u>		
<u>3: Successful</u>	<u>0%</u>	<u>0%</u>
<u>2: Below Expectations</u>		
<u>1: Unacceptable</u>		

Ms. de Gioia-Keane stated both performance management and merit planning would be implemented this year in Workday, allowing for one payment in February 2018 to reflect merit increase or lump-sum payments, instead of multiple payments in the past.

Ms. Smith noted the Mayor's 2018 Budget proposal includes an average 3.27% merit increase and the City Council is scheduled to vote on the budget in early November. As such, if approved, the rule change would be provisional and subject to the Council's final approval.

Board member Karen DuWaldt asked what training OHR is providing managers to ensure available merit dollars are being allocated based on appropriate performance ratings. Ms. Rowe stated OHR would be providing job aids and ensuring HR Business Partners were trained to support all agencies in using performance differentiation in evaluation.

The Career Service Board unanimously approved Public Hearing Notice No. 552.

2. Public Hearing Notice 556 - Prevailing Wage: Tree Trimmer

Alena Duran, Classification & Compensation Analyst, presented Public Hearing Notice No. 556 to adopt a change in the pay and/or fringe benefits of the prevailing wage of the classification of workers "Tree Trimmer," in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Based on this review, the following wage rate revisions were proposed:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Tree Trimmer	\$16.77	\$2.48	\$19.25	\$19.39	\$6.65	\$26.04

The Career Service Board unanimously approved Public Hearing Notice No. 556.

3. Public Hearing Notice 557 – Prevailing Wage: Baggage Handler

Alena Duran, Classification & Compensation Analyst, presented Public Hearing Notice No. 557 to adopt a change in the pay and/or fringe benefits of the prevailing wage of the classification of workers "Baggage Handler," in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Based on this review, the following wage rate revisions were proposed:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Baggage Handling System Maintenance						
Entry-Support Mechanic	\$15.26	\$6.03	\$21.29	\$22.32	\$6.99	\$29.31
Machinery Maintenance Mechanic	\$21.26	\$6.72	\$27.98	\$25.68	\$7.37	\$33.05
Controls System Technician	\$24.90	\$7.14	\$32.04	\$30.12	\$7.89	\$38.01

Board Co-Chair Patti Klinge asked what Management’s reaction was to the proposed adjustment. Ms. Duran replied Classification & Compensation had worked closely with DIA’s management team and they were positive about the change.

The Career Service Board unanimously approved Public Hearing Notice No. 557

4. Public Hearing Notice 558 – Prevailing Wage: Building Engineer

Alena Duran, Classification & Compensation Analyst, presented Public Hearing Notice No. 558 to adopt a change in the pay and/or fringe benefits of the prevailing wage of the classification of workers “Building Engineer,” in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Ms. Duran noted OHR was asked to review the wage for this classification and, after considerable analysis, concluded the 2017 Mountain States Employer Council – Colorado Benchmark Survey for HVAC Mechanic was still an appropriate match for the position. Ms. Duran stated HVAC Mechanic was not a 100% match, however, standard practice was an 80% match is acceptable.

Ms. Duran stated OHR had difficulty finding a 100% match since building engineers in the metro area usually work in larger and newer buildings, which are currently limited in Denver. With the growth in ongoing construction activity in the metro area, OHR believes the market data for the position will expand and a 100% match may be found in the future. Ms. Duran also stated OHR had asked the Mountain States Employers Council to include this classification in their future surveys. The Service Contract Act was used to determine the fringe benefits.

Based on this review, the following wage rate revisions were proposed:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Building Engineer	\$28.20	\$7.52	\$35.72	\$28.67	\$7.72	\$36.39

Board Member Tracy Winchester asked Ms. Duran to explain why they were unable to find a 100% match. Ms. Duran responded most building engineers work in the convention center and have a significant electronic component to their responsibilities. Ms. Winchester asked if it was possible to look at other areas to find an appropriate match, to which Ms. Duran replied OHR is required to use the Denver Metro area in the survey.

Board Member Karen DuWaldt asked what kind of buildings would be considered comparable in determining an appropriate match. Ms. Duran stated larger hospitals and universities would be considered appropriate, however, OHR was bound by statute to use the methodology set forth in Davis-Bacon, which limits flexibility in modifying various classification factors for the position.

Board Co-Chair Patti Klinge noted there were two individuals who have signed up to speak on this Notice.

Bill Lingerfelt, Representative of the Western Region for the International Union of Operating Engineers ("IUOE"), and John Sutton, Representative of Local 1, International Union of Operating Engineers, introduced themselves. Mr. Lingerfelt noted the union represents the building engineers based at the convention center.

Mr. Lingerfelt stated the wage determination process conducted by OHR did not use the Service Contract method and the proposed prevailing wage, including fringes, was low. He stated the prevailing wage determination is irrelevant as the collective bargaining agreement establishes wages and fringe benefits, which provides an exact match for the Building Engineer classification.

Mr. Lingerfelt noted the IUOE had submitted a collective bargaining contract to the City Auditor's Office, which provides for base wages of \$34 to \$35/hour. Ms. DuWaldt asked whether the collective bargaining covered positions in the agreement are the same as those being evaluated by OHR, to which Mr. Lingerfelt replied they are.

Ms. Winchester asked Bob Wolf, City Attorney to the Board, if there was any reason why the rates submitted by the union should not be considered. Mr. Wolf replied he did not think so, however, the Board could ask OHR to work with the City Auditor's Office to determine if additional evaluation is needed.

Mr. Wolf stated the City Auditor also has a role in determining prevailing wages and there is overlap between the role of OHR, the City Auditor, and the Career Service Board in determining compliance with the ordinance. Mr. Wolf also noted there is a provision for the union to contest a prevailing wage determination and ask for a hearing. Mr. Wolf concluded the Board may evaluate whether sufficient information is being provided to render a decision regarding approval of the Notice.

Board Co-Chair Neil Peck asked Ms. Duran whether OHR had considered the point being raised by Mr. Lingerfelt. Ms. Duran stated OHR did analyze using the service contract method, however, at the time, the building engineers were not represented and had only recently become organized. Ms. Duran also noted the ordinance does not allow OHR to use a union contract to evaluate prevailing wages.

Ms. Duran introduced Dani Brown, currently working in the Classification & Compensation Department, to further explain the ordinance, but noted OHR was working with the City Attorney's Office to review what factors should be evaluated in the future when determining prevailing wages. Ms. Brown noted the ordinance requires OHR to first review Davis-Bacon rates to evaluate prevailing wages, if the position is included there. If not, a survey of pay rates in the metro area is used next, followed by the service contract analysis method.

Ms. Klinge and Ms. DuWaldt both asked why the union's rates would not be used if the City has an agreement. Ms. Duran stated OHR had informed the union they had the option of submitting the rates through Davis-Bacon. Mr. Lingerfelt responded the building engineer classification is not included in Davis-Bacon, which is limited to construction-based positions.

Ms. DuWaldt stated it was unclear to her why there is disagreement between OHR and the union as to whether the collective bargaining rates should be used. Ms. Brown noted OHR was limited by statute to using either the Davis-Bacon, a metro area pay survey, or the service contract method in determining prevailing wages. Ms. Brown noted there is a process for the union to submit their rates for inclusion in the service contract analysis, but this was not done.

Mr. Lingerfelt reiterated the service contract analysis should reflect collective bargaining rates with union-represented building engineers in the area. Ms. Klinge asked whether anyone from the City Attorney's office was present to clarify this issue, which there was not. Mr. Peck stated the Board cannot vote on the Notice until these issues are worked out.

Ms. Klinge asked if there was anyone else present who would like to comment. Jeff Garcia, Executive Director of the Prevailing Wage Division at the City Auditor's Office, introduced himself.

Mr. Garcia stated the IUOE contacted the City Auditor's Office and presented six contracts for review of the Building Engineer classification. While the IUOE requested a hearing under the City Auditor's rules, Mr. Garcia stated the City Auditor's position is the matter is a prevailing wage determination, not an enforcement issue, and therefore, the rates in the contracts should be analyzed by OHR under the Service Contract Act since the Building Engineer position is not in Davis-Bacon.

The contracts have been submitted to the City Attorney's Office for review and OHR will be asked to review the wages using the service contract analysis. Ms. Klinge commented that it sounds as if the issue is in-process and there is additional work to be done. Ms. Klinge thanked everyone for their comments.

The Career Service Board agreed to defer consideration of Public Hearing Notice No. 558.

5. Public Hearing Notice 559 – Prevailing Wage: Pest Controller

Alena Duran, Classification & Compensation Analyst, presented Public Hearing Notice No. 559 to adopt a change in the pay and/or fringe benefits of the prevailing wage of the classification of workers "Pest Controller," in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Based on this review, the following wage provisions were proposed:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Pest Controller	\$20.41	\$6.63	\$27.04	\$20.41	\$6.77	\$27.18

The Career Service Board unanimously approved Public Hearing Notice No. 559.

6. Public Hearing Notice 560 – Prevailing Wage: Fire Extinguisher Repairer

Alena Duran, Classification & Compensation Analyst, presented Public Hearing Notice No. 560 to adopt a change in the pay and/or fringe benefits of the prevailing wage of the classification of workers "Fire Extinguisher Repairer," in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Based on this review, the following wage provisions were proposed:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Fire Extinguisher Repairer	\$18.97	\$6.46	\$25.43	\$19.57	\$6.67	\$26.24

The Career Service Board unanimously approved Public Hearing Notice No. 560.

7. Public Hearing Notice 554 – Proposed New Career Service Rule 20 (Disciplinary Appeals to the Career Service Hearing Office Filed by Deputy Sheriffs)

Heather Smith, HR Compliance Officer, introduced Public Hearing Notice No.554-Proposed New Career Service Rule 20 (Disciplinary Appeals to the Career Serving Hearing Office Filed by Deputy Sheriffs). Ms. Smith noted Robert Nespore of the City Attorney's Office would be presenting additional information regarding the proposed new Rule.

Ms. Smith indicated the Rules Committee had been working on changes to the Appeals rules to update language where needed and to make the process more efficient. Ms. Smith noted

the proposed revisions to Rule 20 would track the changes being proposed at the next Board meeting on November 2nd for Rule 19, however, there are a few differences for the Deputy Sheriffs, which are being carved out separately under Rule 20. Ms. Smith stated she would turn over the discussion to Rob Nespor of the City Attorney's Office to further explain the reasons for the proposed new Rule.

Mr. Nespor introduced himself, noting he was the Director of the Employment Labor Law Section of the City Attorney's Office. Mr. Nespor stated the appeals process for the Deputy Sheriffs are currently governed under Rule 19 with all other Career Service employees. The Deputy Sheriffs are employees of the Department of Public Safety, which consists of three groups; the Sheriffs, the Police Department, and the Fire Department.

Mr. Nespor noted the appeals rights of the Safety Department employees differ depending on whether they are Career Service employees or are members of the Classified Service, which includes the Police and Fire Departments. In 2013, the Civil Service Commission significantly amended their Rule 12, which governs their appeals and disciplinary action, to change the burden of proof among the parties in their administrative hearing process. As a result, there is a different process for appeals among employees in the Department of Public Safety, which needs to be changed to ensure consistency. Ms. Nespor stated Rule 20 is designed to eliminate these differences going forward.

Mr. Nespor reiterated only the appeals relating to disciplinary action for Deputy Sheriffs would be covered by the proposed Rule 20. All other appeals related to other matters would continue to be covered under Rule 19, which also will be modified to conform to certain revisions stated in Rule 20. Mr. Nespor stated he would focus today on the changes to the hearing process itself, which will be different under Rule 20 versus Rule 19.

Mr. Nespor explained the investigative process for Deputy Sheriffs is different than the process for the civilian employees in the Career Service. The process for civilian employees may be truncated, very brief, and quite informal. The investigation is usually handled by the employee's immediate supervisor or manager, or depending on the issue being addressed, a professional from OHR, and in some cases, an independent investigator.

Mr. Nespor noted that alleged misconduct in the Denver Sheriff's Department, however, is an entirely different matter, requiring a much more complex and intricate investigation. One of the key components is the Office of the Independent Monitor oversees the investigation and is required by ordinance to decide whether any disciplinary action is warranted, and if so, what level of disciplinary action will be imposed. The investigation is conducted in a very detailed and regimented process and provides the Deputy Sheriffs with considerable opportunity to participate and contest any disciplinary action.

Mr. Nespor stated the Career Service employees, in contrast, are only given a seven-day notice of contemplation of discipline, a much narrower window of opportunity to present their side of the story and address any alleged misconduct.

Mr. Nespor concluded that Rule 20 will bring consistency in the way all safety employees are treated by the Department of Safety. He indicated the Deputy Director of the Safety Department and the Executive Director of the Civil Service Commission were present to answer any additional questions the Board may have about the proposed new Rule and the rationale behind it.

Board Co-Chair Patti Klinge restated for clarification to everyone present a summary of the proposed change as presented by Mr. Nespor, noting a slightly different Rule for the Deputy Sheriffs was being proposed to align with the disciplinary process currently in place for the Police and Fire Department. Ms. Klinge reiterated the rationale for the change was there is a much more formal and rigorous investigatory process undertaken for the Deputy Sheriffs in the Safety Department, compared with all other Career Service employees.

Mr. Nespor replied that Ms. Klinge's summary was correct. He noted the current hearing process also states the Department of Safety has the burden of proof to prove an employee

engaged in misconduct and the discipline imposed was within the range of options that were available to a reasonable administrator.

Mr. Nespor explained Career Service hearings are also currently conducted with a de novo standard, which means they are conducted as if a decision had not been rendered by the Executive Director of the Safety Department, and the burden is on the City to prove every fact that supports the finding there was misconduct, and the discipline imposed was reasonable and justified.

Mr. Nespor also noted there is a large Internal Affairs Bureau ("IAB") file which may or may not be entered into evidence at a Career Service Hearing. Most of the discipline with the Deputy Sheriffs involves conduct relating to inmates and it is nearly impossible to get an inmate to testify at a Career Service Hearing Office proceeding.

Rule 20 will allow the IAB file to be admitted as part of the record, providing the focus for the hearing and presenting the justification for the disciplinary action taken. The Appellant would have to prove the decision was erroneous, eliminating the de novo standard applicable to Career Service Appeals, which is the case for Rule 12 Appeals under the Civil Service Commission.

Board Member Tracy Winchester asked if the members of the IAB were internal, to which Mr. Nespor replied the group is comprised of Deputy Sheriffs, Sergeants, and Captains. Mr. Nespor noted all IAB investigations were reviewed by the Independent Monitor, the Administration, and the employee, giving everyone the opportunity to question the facts or ask for additional review.

Board Member Karen DuWaldt asked what statute or Rule places the burden of proof on the employee in this context. Mr. Nespor responded there was no statute and the Rule is created by the Board, which has the right to determine what procedures will govern the appeals process. There is no mention of de novo in the statute and the ordinance grants the Board the right to set all processes in relation to the Career Service.

Ms. DuWaldt asked if historically the burden of proof was placed on employees in the Deputy Sheriff category, to which Ms. Klinge responded the new Rule is designed to address. Ms. Klinge noted there are two different processes for managing disciplinary action, which the changes will eliminate, making the appeals process for the Deputy Sheriffs the same as the Police and Fire Departments.

Ms. Klinge noted the change would require the Hearing Office to start over at some level, which Ms. DuWaldt clarified means a change from a de novo standard to an administrative review with use of discretion. Mr. Nespor confirmed this would be the case as the Deputy Sheriffs already have a significant pre-deprivation due process, as is currently the case with the Police and Fire Departments.

Ms. DuWaldt asked if the pre-deprivation due process was required by statute or a Rule, to which Mr. Nespor responded it was required by the City's internal investigative process and monitored by the Independent Monitor. Ms. DuWaldt asked whether the process could be changed by an Agency or does it require additional review. Ms. Nespor stated it could be changed, but he highly doubted that would happen.

Ms. Klinge asked if there any more questions or comments from the Board, noting they could continue asking questions. Ms. Klinge asked whether Mr. Nespor or Ms. Smith had additional comments before moving on to the public hearing, as this was a substantial change.

Ms. Smith affirmed this would be a substantial change and noted Rule 20 would require the IAB file be initially disclosed to the employee, and there would be no need to request it as part of discovery. Ms. Klinge commented she thought this was good so the employee knows in advance what is going on and the entire case is available to review.

Ms. Winchester asked whether there would be any reason not to approve these changes, or would there be any drawbacks to not aligning the process with the rest of the Safety departments. Mr. Nespor responded he could only offer his opinion, but he believed he could not see any drawbacks to making changes so that all Safety employees are treated the same.

Mr. Nespor noted it was important to remember the Deputy Sheriffs would still be able to appeal all discipline, present arguments and evidence, produce witnesses, present exhibits, and make closing arguments at the hearing. The only factor that would change is the burden of proof.

John Sauer, City Attorney and a member of the Rules Committee, commented it was important to understand that ultimately what you want the Hearing Officer to do is to ensure the accuracy of the decision made by the manager at the Safety Department. Throughout the process at the Denver Sheriff's Department is a series of checks and balances, before the decision is made, to ensure the accuracy.

Mr. Sauer also noted that in terms of presenting the evidence at hearing, there's almost no dispute as to the material facts at issue in these cases. Additionally, almost all evidence presented in high-level use of force cases is indisputable video evidence of what happened and how severe the situation was.

Mr. Sauer stated when there is no dispute as to the facts, what you need is a Hearing Officer to be able to review the evidence and determine whether the decision made by the manager at the Safety Department was accurate or not. This does not require a high-level of de novo review, which provides a standard where the glass starts empty and all the evidence must be poured in by the City, as the checks and balances on the accuracy of the decision being made have already taken place prior to the point of coming before the Hearing Officer. Ms. Klinge and Board Co-Chair Neil Peck both thanked Mr. Sauer for his comments and noted his clarification was very helpful.

Ms. Smith clarified there was one change to Section 20-59, Decision of Hearing Officer, which needed to be highlighted. The language refers to the Notice of Appeal Rights in accordance with Rule 21 to the Career Service Board or the District Court. Ms. Smith noted the correct language is without reference to the District Court as there is no opportunity to do this until after the appeal to the Career Service Board is complete.

Ms. DuWaldt stated she had one last question, which was regarding the reference at the beginning of the presentation that similar changes would be proposed at the next meeting regarding Rule 19. Ms. Klinge stated these changes only apply to Rule 20, to which Ms. DuWaldt responded her understanding was the changes flow into what will be proposed for Rule 19. Ms. DuWaldt asked whether it made sense to consider the changes to Rule 19 and 20 together in case the Board did not approve the proposed changes to Rule 19 in the next meeting.

Ms. Smith stated that if the Board did not approve the changes to Rule 19, it would be necessary to come back to the Board to modify Rule 20 to reflect whatever what was not approved for Rule 19. Ms. Smith noted there were many pre-hearing items in Rule 19 that would have to be reflected as well in Rule 20.

Mr. Peck noted the decision was made to schedule the Rule changes separately because it was thought to try and deal with all the changes in one meeting would be too much of a burden on the Board. Ms. Klinge commented it was a fair question, to which Mr. Peck agreed, and noted it would be necessary to come back to the Board if changes to Rule 19 are not approved.

Ms. Smith noted another change to Section 20-59, in which the Hearing Officer is required to issue a written decision within forty-two days, which is incorrect as Rule 19 states the timeframe is forty-nine days. The request was originally forty-two days to keep all cases within a seven-day calendar to avoid due dates falling on a weekend, however, a request was made to change it to forty-nine days.

Mr. Peck restated Ms. Smith's request regarding Section 20-59 as being two changes: (1) to the language regarding the District Court reference is removed, and, (2) the time to issue a decision is adjusted to forty-nine days, to which Ms. Smith confirmed.

Ms. Klinge noted it was time to move to the Public Hearing part as there were speakers signed up. First on the list is Danny Foster of Foster, Graham, Milstein & Calisher, to which a representative in the audience responded Mr. Foster sends his apologies as he was unable to make it this morning, however, the representative indicated she could inquire as to whether he is able to attend on November 2nd if the Board was willing to table further discussion.

Ms. Klinge responded the representative needed to step forward and clarify what is being asked. The representative repeated that Mr. Foster would attend on November 2nd if the Board decided to table any part of their discussion on the proposed new Rule. Ms. Klinge replied a decision would be made today on the Rule and thanked the representative for her comment.

Ms. Klinge noted the next speaker signed up was Mike Jackson. Mr. Jackson introduced himself as a Deputy Sheriff for the City of Denver, and President of the Denver Sheriffs Fraternal Order of Police, Lodge 27.

Mr. Jackson stated he wanted to talk about how this proposed change would affect public safety in Denver. Mr. Jackson noted the department has been going through a formal process over the past four years, and changes had been made to the Deputy Sheriff's disciplinary matrix in addition to introducing a new use of force policy. Mr. Jackson noted the new policy was very confusing and many people have a hard time understanding it.

Mr. Jackson said the reason this change could affect public safety is the Deputies are having a hard time understanding when they should react to situations. Mr. Jackson noted the increase in violence in the facilities where they work has gone up a lot, even though the Board may have heard otherwise, and it is always a concern as the Deputies are dealing with a lot more assaults on staff and among inmates. Ms. Klinge clarified that Mr. Jackson was stating inmate violence had gone up, to which Mr. Jackson replied yes.

Mr. Jackson stated the Deputies were very concerned about their disciplinary process as they are very confused about when they should react, or not to react, and are often uncomfortable when they do. Mr. Jackson said the Deputies are worried about being disciplined and then having to appeal that decision, noting they had always felt comfortable with the system under the Career Service Rules. Mr. Jackson stated he felt the proposed change would be another compounding factor in the problem of how the Deputies are managing their facilities and assignments. Mr. Jackson feels the language is confusing and would cause even more problems.

Mr. Jackson also stated he feels the language discriminates against the Deputy Sheriffs and their class title in the Career Service. He noted the Deputy Sheriffs have been part of the Career Service forever and have always been governed under the Rules of the Career Service. He feels the language carves the Deputy Sheriffs out and states the Career Service employees have certain rights, while the Deputy Sheriffs would now have less rights, which is fundamentally not fair to them. Mr. Jackson stated the Deputy Sheriffs have worked very hard to improve their service to the community and to now be discriminated against because of their class title is just fundamentally wrong.

Ms. Klinge asked Mr. Jackson how he felt about the fact that the Deputy Sheriffs have a much more extensive investigative process than other Career Service employees have access to under the Rules. Mr. Jackson responded the Deputy Sheriffs have the same rights as all Career Service employees and he did not think they were doing anything different, while acknowledging they have an additional investigative unit, which other employees in the Career Service do not have.

Mr. Jackson also noted the rationale being offered for the change was to align to practices for the Civil Service covered employees, while noting the Deputy Sheriffs are Career Service, not Civil Service. He stated the City could move the Deputy Sheriffs into the Civil Service to fully

align with the other employees, but has chosen not to do this. He does not understand why the change in language is being proposed under the Career Service Rules when the Deputies could simply be moved to the Civil Service.

Mr. Peck commented the City cannot make that kind of change without amending the City Charter, to which Mr. Jackson replied they have amended the City Charter before, it is not difficult to do so, and they could do it if they chose to do so. Mr. Jackson noted the City is not doing that, and instead, he feels the City is discriminating against the Deputy Sheriffs because of their class title and that isn't right.

Ms. DuWaldt asked Mr. Jackson to put aside for a moment the argument about the City could move the Deputy Sheriffs to the Civil Service, a point which she agreed has some merit, and asked what are the reasons Mr. Jackson feels the Sheriff's Department should be treated differently than the other uniformed services. Mr. Jackson replied the Deputy Sheriffs are Career Service, not Civil Service.

Ms. DuWaldt asked if there was any difference in what the Deputy Sheriffs do that would justify being treated differently. Mr. Jackson stated he was not saying they should be treated differently. He clarified he was stating they should be following the same Rules under the Career Service and, if the City feels those Rules are not appropriate for the Deputy Sheriffs, then they should move them to the Civil Service.

Ms. Winchester asked Mr. Jackson why he thought the City had not chosen to move the Deputy Sheriffs to the Civil Service and whether there was a reason why that had not happened. Mr. Jackson replied he did not know why that had not happened, however, in the 1990s, the Deputy Sheriffs had proposed they be moved to the Civil Service and were told that it was not an appropriate fit for them. Ms. Winchester asked if there were any extra benefits to being in the Civil Service versus the Career Service, which Mr. Jackson replied he did not know as he had been in the Career Service in his years with the City.

Ms. Winchester noted there was someone present from the Civil Service Commission and asked them to step forward. Ms. Klinge thanked Mr. Jackson, noting she appreciated his comments. Earl Peterson introduced himself as the Executive Director of the Civil Service Commission.

Mr. Peterson stated it was important to understand the history of going from de novo to an administrative review process. The first step was to develop a discipline matrix to eliminate the difference in discipline from administrator to administrator, which was established for the Police and Fire Departments, and now was established for the Sheriff's Department and worked on for over four years. The second step was reestablishing the role of the Internal Service Bureau and making sure timeliness was restored to the disciplinary process. The third step was changing the fact that under a de novo standard, the Executive Director was basically responsible for a small brief and the burden of proof was on the Director, as it was easy to question the various justifications for discipline

Mr. Peterson noted the old process has been changed to encompass a full-blown investigation with substantial pages of documents available for the officers to review, so when they go before the Hearing Officer, the burden of proof is on the officer to prove how the Executive Director erred in enforcing discipline. Mr. Peterson stated it is possible for additional evidence to be introduced or to find issues in the Internal Affairs Bureau investigation, however, the classified officers still have their property rights to their jobs and the process is rigorous in questioning why discipline was warranted. He also made clear the changes made to Rule 12 were extensively reviewed by the Board of Commissioners, the District Court, and the Supreme Court and upheld since 2013, so these changes were not made overnight.

Mr. Peterson noted the changes in the process were designed to prevent officers from avoiding being disciplined because they contested successfully based on technicalities. He reiterated the process was an administrative hearing, not a court of law or a jury trial.

Ms. Klinge thanked Mr. Peterson for his comments and asked whether there was anyone else present in the audience who would like to come up and make a comment on this Rule or these changes.

Ms. Klinge asked whether the Board had any comments and Mr. Peck stated he believes the proposed Rule is a sensible change and he supports it. Mr. Peck noted the police and fire departments should have the same burden of proof as plaintiffs do in a conventional setting. Mr. Peck stated he did not see the changes as discriminatory, but as rationalizing how the Department of Safety functions, and there should be internal harmony as to the procedures that apply to their members whether they are Police, Fire, or Sheriff.

Ms. Klinge thanked Mr. Peck for his comments. Ms. Klinge thanked everyone present for their comments, noting this hearing had taken up a lot of time and a great deal of effort, and had required much reflection on this matter.

The Career Service Board unanimously approved Public Hearing Notice No. 554, with the two corrections to the language in Section 20-59 as noted by Ms. Smith.

V. Director's Briefing: *None*

VI. Pending Cases:

1. Krishna Colquitt v. Department of Human Services, Appeal No. 34-15A
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
2. Ryan Bosveld v. Department of Safety, Denver Sheriff Department, Appeal No. 53-16A
The Career Service Board reversed the Hearing Officer's decision and remanded the case back to the Hearing Office for reconsideration of the penalty.
3. Jose Santistevan, Jr. v. Denver Parks and Recreation, Appeal No. 75-16A
The Career Service Board reversed the Hearing Officer's decision and re-imposed the penalty, written order to follow.
4. Silver Gutierrez & Denver Sheriff Department, Appeal No. 65-11A
The Career Service Board denied the Respondent's Motion to Dismiss and reaffirmed the Hearing Officer's decision, written order to follow.
5. Michelle Lee Tenorio & Ramon Delgado, Office of Economic Development, Appeal No. 34-16A and 36-16A
The Career Service Board affirmed the Hearing Officer's decision in Appeal No 34-16A, written order to follow.

The Career Service Board vacated the Hearing Officer's decision in Appeal 36-16A, remanding the case back to the Hearing Office, written order to follow.

VII. Executive Session:

The Board went into executive session at 10:14am.

The Board re-convened the meeting at 10:20am.

VIII. Adjournment: *Adjournment was at 10:21am.*