



**Career Service Board Meeting #2327**  
**Minutes**  
**Thursday, January 4, 2018, 4:30pm**  
**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**  
**Tracy Winchester**

**I. Opening:** *Meeting was called to order at 4:31pm*

- 1. Approval of the Agenda for the January 4, 2018 Board Meeting.**  
*The Board unanimously approved the agenda for the January 4, 2018 meeting.*
- 2. Approval of the Minutes for the December 21, 2017 Board Meeting.**  
*The Board unanimously approved the minutes for the December 21, 2017 meeting.*

**II. Board Comments:** *None.*

**III. Public Comments:** *None.*

**IV. Public Hearing:**

- 1. Public Hearing No. 553: Proposed Revisions to Career Service Rule 19 - Appeals**

*Karen Niparko, Executive Director of the Office of Human Resources (“OHR”), noted the process of reviewing, revising, and modernizing the Career Service Rules began in March 2015 at the Mayor and Career Service Board’s request. Since that time, OHR had worked in partnership with the City Attorney’s Office to review and revise many of the Rules to meet the needs of a modern workforce and support the kind of organizational structure the City desires.*

*Ms. Niparko noted the two proposed Rule changes on the agenda for today’s meeting are the last of the proposed initial major revisions, with future immediate changes expected to be related to various processes as Workday continues to be implemented.*

*Dani Brown, HR Manager from OHR, and Karla Pierce, Assistant Director of the Employment & Labor Section of the City Attorney’s Office (“CAO”), presented Public Hearing Notice No. 553 proposing revisions to numerous sections of Career Service Rule 19-Appeals.*

*Ms. Brown noted OHR and the CAO had worked closely with the Rules Committee, consisting of attorneys and HR staff, with feedback from the HR Service Team managers and the Hearing Office, to revise and propose changes to Rule 19 to ensure the efficient and timely administration and adjudication of appeals to the Career Service Hearing Office.*

*Ms. Brown and Ms. Pierce reviewed the proposed changes to Rule 19 as presented in the summary table.*

Board Co-Chair Neil Peck asked if the changes proposed on Page 6 of the summary with reference to Section 20-50, in which the Colorado Rules of Evidence (“CRE”) applicable to civil cases should not be strictly applied, had already been approved by the Board in Rule 20. Ms. Pierce responded the Board had approved similar language in a previous meeting for Rule 20, however, it is being proposed to simplify the language for Rule 19, which will apply to Rule 20 as well, based on feedback received on the proposed change.

Mr. Peck stated he did not think it was a good idea to give a Hearing Officer discretion as to whether the CRE should apply in a hearing. Mr. Peck noted this gives attorneys the opportunity to introduce hearsay and disregard long-standing standards of evidence in conducting hearings, which is contradictory to ensuring a fair and efficient process.

Bob Wolf, City Attorney to the Board, suggested changing the language to read “need not be strictly applied”, rather than “should not be”, to give the Hearing Officer discretion to apply the rules of evidence. Ms. Pierce stated the current language in Rule 19 stated the “strict Rules of Evidence shall not apply”.

Mr. Peck noted the language of Page 8 of the summary with reference to Section 20-51 states “while the CRE applicable to civil cases should be not strictly applied, common evidentiary principles still apply” is inconsistent when common evidentiary principles, such as no hearsay is admissible, are covered by the CRE. Ms. Pierce responded the CAO would support the CRE being strictly applied, to which Mr. Peck stated he was not suggesting they be strictly applied, however, they should be not excluded altogether.

Board Member Karen DuWaldt suggested revising the language to state “the hearing officer shall apply common evidentiary principles, but is not required to apply CRE” as a way to address Mr. Peck’s concerns. Mr. Peck responded he believes the decision to apply or not apply CRE lies within the discretion of the Hearing Officer. Ms. DuWaldt responded Mr. Wolf’s earlier suggested language would adequately address Mr. Peck’s concern, to which Board Member Tracy Winchester agreed.

Mr. Peck asked Bruce Plotkin, Career Service Hearing Officer, who was present in the meeting, to formally comment on this issue. Mr. Plotkin stated the current language in Rule 19 already states the application is discretionary and he is unclear as to what the goal is in revising it. Mr. Peck asked Mr. Plotkin if he thought it should be discretionary, to which Mr. Plotkin replied in the affirmative, as he may not, for example, apply it strictly in the case of a pro-se employee, versus requiring it when two experienced attorneys are representing each side. Mr. Plotkin concluded by stating he would prefer the language to grant the Hearing Officer with as much discretion as the Board will allow.

Board Co-Chair Patti Klinge thanked Mr. Plotkin for his comments. Mr. Peck stated he agreed with Mr. Plotkin’s position. Ms. Winchester asked Mr. Peck for his recommendation as to how the language should read. Mr. Peck stated it should be written to make it very clear that “whether and how the CRE should apply is within the discretion of the Hearing Officer”. Ms. Klinge asked Ms. DuWaldt if she agreed with this suggestion, to which Ms. DuWaldt replied in the affirmative.

Ms. Brown continued to review the Rule changes as presented in the summary. Ms. Brown noted Section 19 was being revised by adding language clarifying allegations of discrimination, harassment, or retaliation can only be included if part of a direct appeal alleging specific violations of the Rules, for example, if a person’s pay, benefits, or status was changed. Any other factor would not fall under the jurisdiction of the Hearing Officer.

Ms. DuWaldt clarified the Rule is not intended to restrict or preclude an employee’s right to pursue all available avenues in alleging discrimination, to which Ms. Pierce affirmed was not the intent. Ms. Pierce noted the Rules clearly state the grievance process and are consistent in requiring appropriate investigation of all allegations, however, the appeal process was somewhat illusionary in that a Hearing Officer can only affirm, reverse, or modify a decision and cannot mitigate discrimination as they do not have authority over management’s actions.

*Mr. Peck asked if there should be some flexibility in revising Section 19-41(b) to state the presumptive length of a hearing shall be two days for appealing a dismissal, and one day for all other appeals. Ms. Pierce stated there is discretion granted to the Hearing Officer to extend the schedule based on showing good cause.*

*Ms. DuWaldt noted she had two comments regarding Section 19-43; the first with reference to subsection (d) requiring written discovery requests to be served no later than 21 days after the initial Notice of Hearing was issued. Ms. DuWaldt noted the language provides only seven days for a party to file a Motion to Compel after receiving the discovery responses, which does not allow sufficient time for depositions. Ms. Pierce clarified there are no depositions, except to preserve testimony, to which Ms. DuWaldt noted the deadline seemed rather tight.*

*Ms. DuWaldt also commented the charge of 25 cents per page allowed to the party producing discovery if reproducing documents was far higher than what is usual and customary. Ms. Pierce responded most case materials are exchanged electronically and noted the Colorado Open Records Act provides 25 cents is the allowable charge, which the Hearing Officer can waive if there is a financial hardship.*

*Ms. Winchester asked for clarification on the seven-day deadline, asking whether it was working or calendar days. Ms. Pierce stated the deadline was seven calendar days, which was clearly stated in the Rule.*

*Mr. Peck asked if the 15 witnesses limit referred to in the summary regarding Section 19-52 is meant to be in the aggregate, as in total for both parties, or if each party may call 15 witnesses. Ms. Pierce noted the language states each party may call up to 15.*

*Ms. DuWaldt asked whether a Hearing Officer should be given discretion to allow more than 50 exhibits under Section 19-51 if good cause is shown. Ms. Pierce stated the consensus was a limit of 50 was generous and sufficient for an administrative hearing with an average duration of two days.*

*Ms. Klinge noted some of the proposed changes to Rule 19 will also require concurrent changes to be made to Rule 20, which the Board had already approved. Ms. Klinge asked if these additional changes would have to be brought forward in a separate public hearing for Rule 20. Ms. Pierce responded the Notice also referred to Rule 20 and the changes which impacted both Rules, therefore, it is not necessary to have another public hearing.*

*Ms. Brown concluded her presentation of the proposed changes to Rule 19 and asked if the Board wanted to review the revised language in today's hearing. Mr. Peck replied that would be the intent since he suggested had some language changes that were agreed upon by the Board.*

*Mr. Peck noted Bruce Plotkin had signed up to provide comments on the proposed changes. Mr. Plotkin noted he appreciated the time Ms. Pierce had spent addressing the Hearing Office's concerns about the revisions and the changes that were made at their suggestion.*

*Mr. Plotkin stated his general concern about the revisions relates to the level of complexity and volume of requirements will make it more difficult for pro-se employees to navigate the appeal process. Mr. Plotkin commented the changes were understandably made and written by lawyers for other lawyers, while noting his doubts that anyone looked at the changes and asked whether a non-lawyer could understand them and navigate the process, to which he stated he feels they no longer can.*

*Mr. Peck asked Mr. Plotkin to restrict his comments at this time to Rule 19, noting the Board had not yet considered Public Hearing Notice 555 relating to the new proposed Rule 21.*

*Mr. Plotkin noted Section 19-30(c) requires an employee to cite how the action being appealed violates state or federal law, the Rules, the City Charter, ordinances, executive orders or written agency policies, which he stated is appropriate for indirect appeals, such as*

*grievances, but is not necessary for direct appeals. Ms. Klinge asked if the CAO had any objection to taking out the second part of the sentence, to which Ms. Pierce stated she did not.*

*Mr. Plotkin noted Section 19-31(c) requires compliance with the initial appeal filing deadlines to confer jurisdiction over the appeal to the Hearing Office, which he stated could be a problem in some situations. Mr. Peck commented jurisdictional deadlines are standard practice in any hearing. Mr. Plotkin used the example of an employee who alleged their agency misled them on their appeal rights, as well as an employee who was hospitalized.*

*Mr. Plotkin also noted the Rules allow extraordinary circumstances in missing a filing deadline for opening statements and continuances, which is inconsistent with not allowing the same discretion when filing the initial appeal. Ms. Klinge asked Mr. Plotkin for his recommendation on the language, to which Mr. Plotkin suggested adding similar language as noted in Section 19.41 C.2 or 19.41 B.1, to which specific conditions could be attached in which an exception would be allowed.*

*Ms. Klinge asked the CAO for their response to the suggestion, noting she feels it is appropriate to address these issues as they are raised and to decide today whether to make any suggested changes to the language, rather than coming back to discuss at a future meeting.*

*Ms. Pierce responded it is the position of the CAO there has always been a deadline for jurisdictional purposes, both for the Career Service and the Civil Service Commission, and that is standard practice. Ms. Pierce said she did not believe there should be any exceptions allowed, and the example of an employee being misled by their agency was an allegation made by the employee, but she had never seen any evidence proving that happened.*

*Mr. Peck stated he agreed and that certain deadlines are required for jurisdictional reasons. Ms. Niparko commented that if an employee wished to exercise their appeal rights under the Rules, it is their responsibility to read them and understand what the deadlines are, rather than relying on someone to tell them.*

*Mr. Plotkin responded with a question about how an employee would do that from a hospital bed, to which Ms. Niparko and Ms. Pierce responded how often has that happened. Mr. Plotkin stated he can recall two occasions. Ms. Klinge commented that, from an HR prospective, the Rules exist to provide a fair process for employees to appeal certain actions, and she was uncertain whether it made sense to not allow any exceptions.*

*Ms. Klinge asked if exceptions have ever been made in the past, to which Mr. Plotkin stated he has granted exceptions before, which Ms. Klinge commented was an interesting point. Ms. Pierce noted she was unaware exceptions had been made and would have objected. Mr. Peck restated for clarification that Mr. Plotkin had made exceptions for the filing deadline in the Rules in jurisdictional matters and asked by what authority he did so.*

*Mr. Plotkin stated he believed the Rule 19 granted him general powers in the statement “to conduct a fair, efficient, and speedy hearing” in adjudicating appeals before the Career Service Office. Mr. Peck noted that was a general statement describing the intent of the process, and not related to the actual rules governing the hearing. Mr. Plotkin responded he felt the issue was one for the Board to decide.*

*Ms. Pierce stated her problem with “extraordinary circumstances” is that it is difficult to define and to restrict to specific situations. Ms. Winchester asked if the exception could be limited to employees who are pro-se, which Ms. Pierce responded she did not think was desirable, as employees are clearly told in their disciplinary communications what the deadlines are for appeal.*

*Ms. Winchester stated she again wanted to point out the seven-day example, whereas an employee representing themselves may not pay attention to the fact the deadline is seven calendar days, not work days. She asked if anyone knew the percentage of cases being handled pro-se, to which Mr. Plotkin estimated was approximately 40%. Ms. Winchester*

*noted that was a very significant number of cases.*

*Ms. Klinge noted it was interesting that exceptions were currently being granted by Mr. Plotkin anyway, and asked if the language should be left as-is. Mr. Peck stated he supported the Rules granting the Hearing Officer sufficient discretionary authority in certain matters, but he did not think Mr. Plotkin currently has the authority under the Rules to waive jurisdictional deadlines.*

*Ms. DuWaldt stated she was having difficulty seeing how the language could be written to address appropriate exceptions. Ms. DuWaldt suggested putting the actual deadline in any disciplinary letter so the employee know immediately what it is without having to look it up in the Rules. Ms. Pierce noted their HR representative can also make sure this information is communicated and is available to inform the employee of the Rules. Ms. DuWaldt asked if a family member or other representative could file an appeal on behalf of the employee, to which Ms. Pierce stated in the affirmative.*

*Mr. Plotkin noted Section 19-56 states hearings are open to the public, while granting the Hearing Officer the power to close all or part of the hearing if doing so serves the interest of both the parties and the public. Mr. Plotkin stated the interests of the parties and public are always opposed, as the parties always want the proceedings closed for privacy reasons, while the public wants them open to scrutiny. Mr. Plotkin suggested changing the language to "after balancing the interests of the parties and the public" to reflect the test involved.*

*Cheryl Hutchison, Executive Director of Council 76 of the American Federation of State, County, & Municipal Employees ("AFSCME"), introduced herself and asked to make additional comments regarding the changes. Ms. Hutchison stated she is one of the people who works on appeals, on behalf of the membership, and thanked Dani Brown for briefing her on the proposed changes.*

*Ms. Hutchison stated the current system works and she felt comfortable doing appeals and attending the hearings, while also noting that not all employees can hire attorneys. Ms. Hutchinson noted if the appeal relates to certain matters, the union has attorneys they can consult with, which they have done in the past. Ms. Hutchinson also pointed out that while she is confident about navigating the process since she has done it many times, many employees find the entire process to be scary and keeping it as simple as possible is best.*

*Ms. Hutchison commented the Hearing Officers she has dealt with over the years have all been very good and consistent in making their decisions based on the Rules, even if she did not always agree with the outcome, and it was important to keep the process simple as the appeal process is very helpful to city employees.*

*Ms. Hutchison said one of the union's biggest concerns was the proposed change in which employees are no longer able to file under a grievance if there is an allegation of discrimination or harassment, instead taking their complaint directly to the Colorado Civil Rights Division ("CCRD") and the Equal Employment Opportunity Commission ("EEOC").*

*Ms. Hutchison noted the justification for this change is that it will save time since the hearing officers do not have jurisdiction over these matters, unless it is directly related to an adverse employment action, and employees can be told where to go to file a complaint. Ms. Hutchison stated employees often do not know where to go and, while she agreed the Hearing Office may not be the right place to hear the complaint, it was important employees are educated as to what their options are.*

*Ms. Hutchison stated the union believes employees should still retain the right to bring a complaint through a grievance on these issues as they need a place to go. Ms. Hutchinson concluded by stating the union is asking this not be changed. Ms. Klinge and Mr. Peck thanked Ms. Hutchison for her comments.*

*Mr. Peck asked Karla Pierce to respond to the comments made by Mr. Plotkin and Ms. Hutchison. Ms. Pierce responded the CAO is agreeable to changing the language in Section 19-56, as suggested by Mr. Plotkin, to balance the interests of the parties when deciding*

*whether a hearing, or a portion of the hearing, is open to the public.*

*Ms. Pierce noted a Hearing Officer's powers are limited to reverse, affirm, or modify, and filing grievances alleging discrimination does not provide a remedy and is illusory. Ms. Pierce stated the CAO is not proposing this change in order not to have defend the appeals, but to ensure an employee does not lose their opportunity to file their allegation with the CCRD or EEOC on a timely basis, instead of pursuing an illusory appeal right. Ms. Pierce stated this will benefit employees, otherwise the authority of the Hearing Officers would have to change, since they cannot make rulings on discrimination unrelated to an adverse employment action under the direct appeal process.*

*Ms. Pierce agreed the Rules should be kept as simple as possible and noted this is what the Rules Committee had strived for. Ms. Pierce stated she believed there had been improvements made versus the last time this was pursued, however, the process is still an evidentiary hearing which requires legal terms to be used.*

*Ms. Pierce noted employees can go to HR if they have allegations and certain city offices, depending on the type of discrimination, or the CCRD and EEOC, and they are not completely alone in considering and pursuing their options.*

*Ms. DuWaldt again sought clarity the proposed changes to the Rule are not intended to preclude an employee from filing a grievance alleging discrimination, to which Ms. Pierce replied in the affirmative. Ms. Pierce stated any allegations are required to be formally investigated and all agencies are required to take effective remedial action if the allegation is determined to have merit, however, the matter cannot be appealed to the Hearing Office.*

*Ms. Winchester asked Ms. Pierce if what Ms. Hutchison said earlier was incorrect. Ms. Hutchison responded a grievance can currently be filed, however, it is always difficult to move to the next level by appeal, as the Hearing Officer does not have much room to remedy decisions alleging discrimination or harassment. Ms. Hutchison stated that while she partly agrees with the City Attorney's position, filing a grievance does not always result in an agency taking effective remedial action when necessary.*

*Ms. Hutchison stated she has seen several cases where the agency did not conduct a thorough investigation of allegations, despite working with the agency's HR representative, and no action was taken, although sometimes the matter was ultimately resolved with OHR.*

*Ms. Hutchison noted the proposed change will take away what is already a very weak remedy, and provide that all future cases should be directly filed with the CCRD or EEOC, instead of providing an internal avenue for possible resolution. Ms. Hutchison said she believed handling allegations this way will create more work for everyone, instead of creating an effective internal process.*

*Ms. Pierce responded by noting employees still have the right to appeal any adverse employment action alleged to have occurred as a result of discrimination, harassment, or retaliation, however, certain allegations are unable to be addressed and the Hearing Officer has never been able to provide an effective remedy to these appeals.*

*Ms. Klinge stated OHR had greatly improved the investigatory process for all grievances, to which Ms. Niparko asked Rory McLuster, Deputy Director, to provide additional comment. Ms. McLuster noted in the past, grievances were investigated by the agency's HR Business Partner, who may not have been experienced. OHR has two dedicated specialists who are highly experienced and investigate all allegations, which Ms. McLuster stated OHR is required to do and which is always done. Mr. Peck and Ms. Klinge thanked Ms. McLuster for her comments.*

*The Career Service Board unanimously approved Public Hearing Notice No. 553, with changes in the language approved for Sections 19.30(c), 19.57(a), and 20.50.*

2. Public Hearing Notice No. 555 – Proposed New CS Rule 21 – Appeals to the CS Board

*Dani Brown, HR Manager from OHR, and Karla Pierce, Assistant Director of the Employment & Labor Section of the CAO, presented Public Hearing Notice No. 555–Proposed New Career Service Rule 21-Appeals to the CS Board. Ms. Brown noted this was a new Rule covering appeals to the Career Service Board and summarized the specific procedural changes.*

*Ms. Pierce noted the intent in creating Rule 21 was to have one defined process for all appeals to the Board, covering both the Deputy Sheriffs as defined in Rule 20, and the rest of the Career Service employees as defined in Rule 19, rather than having a separate appeal process for each group under their respective Rules.*

*Board Co-Chair Neil Peck noted Bruce Plotkin, Hearing Officer, had some comments to make regarding the new proposed Rule. Mr. Plotkin asked if under Section 21-20 the three conditions must be satisfied together with the fourth, or just one of the conditions must be satisfied, together with the fourth. Ms. Pierce responded she thought it was clearly written stating all conditions must be satisfied, to which Mr. Peck agreed.*

*Mr. Plotkin noted it was unclear to him if under Section 21-23 the Hearing Office would now receive Petitions for Review, as the Career Service Board presently does under a designated person. In addition, he stated the language regarding the Party was also unclear. Ms. Pierce stated the language should include “the Career Service website”, and “opposing” should be added so it is clear which party is being referred to.*

*Mr. Plotkin noted under Section 21-27, Briefs, part C, reads as if all issues must be clearly addressed in the initial brief, while in section C.2, it indicates if no cross-petition is filed, a reply brief should be filed, which is inconsistent. Mr. Plotkin stated he did not have a preference on how this should read, but it should be one or the other, not both.*

*Ms. Pierce reviewed the language and stated the intent was for both parties to address all issues in their opening and answer briefs, however, the rule is written to allow a limited reply brief of five pages if necessary. Ms. Pierce stated the CAO does not have a strong position on the matter, provided the reply brief is limited, which Board Member Karen DuWaldt agreed can be helpful as long the process is not prolonged. The Board agreed to leave the language as written.*

*The Career Service Board unanimously approved Public Hearing Notice No.555, with changes in the language approved for Section 21-23.*

**V. Director’s Briefing:**

1. New HR Compliance Officer

*Chris Longshore, Director of HRIS and Innovation, introduced Lauren Locklear, OHR’s new Compliance Officer, to the Board. Mr. Longshore outlined Ms. Locklear’s background and work experience and the Board welcomed her.*

**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. 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.*
3. Thao Nguyen vs. Denver Sheriff’s Department, Appeal No. 19-17  
*The Career Service Board affirmed the Hearing Officer’s decision, written order to follow.*

4. Suezann Bohner vs. Denver Public Works, Appeal No. 13-17A  
*The Career Service Board affirmed the Hearing Officer's decision, written order to follow.*
5. Jeremy Simons vs. Denver Sheriff's Department, Appeal No. 71-16A  
*The Career Service Board affirmed the Hearing Officer's decision, written order to follow.*
6. Darrin Turner vs. Denver Sheriff's Department, Appeal No. 01-17  
*The Career Service Board affirmed the Hearing Officer's decision, written order to follow.*
7. Bridget Andrews vs. Denver Sheriff's Department, Appeal No. 16-17A  
*The Career Service Board affirmed the Hearing Officer's decision, written order to follow.*

**VII. Executive Session:**

*The Board went into executive session at 6:11pm. A staffing issue was discussed.*

The following case was also discussed:

1. Daniel Trujillo vs. Denver Sheriff's Department, Appeal No. 18-17A  
*The Career Service Board granted the Petitioner-Agency's Unopposed Motion to Dismiss its Appeal in its entirety with prejudice.*

*The Board re-convened the meeting at 6:50pm.*

**VIII. Adjournment:** *Adjournment was at 6:51pm.*