

Career Service Board Meeting #2346
Minutes
Thursday, October 18, 2018, 9:00am
Webb Municipal Building
201 W. Colfax Ave, Fourth Floor, Room 4.G.2

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

I. Opening: *Meeting was called to order at 9:04am*

- 1. Approval of the Agenda for the October 18, 2018 Board Meeting.**
The Board unanimously approved the agenda for the October 18, 2018 meeting.
- 2. Approval of the Minutes for the September 20, 2018 Board Meeting.**
The Board unanimously approved the minutes for the September 20, 2018 meeting.

II. Board Comments: *None.*

III. Public Comments: *None.*

IV. Public Hearing:

- 1. Classification Notice No. 1576 – 911 Systems Administrator II Abolishment**

Greg Thress, Classification & Compensation Analyst, presented Classification Notice No.1576 to amend the Classification & Pay Plan to abolish the classification, 911 Systems Administrator II.

Mr. Thress noted the classification is to be abolished as it is vacant and other classes were created to replace the classification and/or are no longer needed by the department or agency. Mr. Thress stated the departments or agencies that used the classification have been notified and approve the abolishment.

Karen DuWaldt, Board Co-Chair, asked if they were any public comments regarding the Notice. Leroy Bunn, 911 Systems Administrator I, stated he would like to speak, and introduced his co-worker, Mark Newland, also a 911 Systems Administrator I, both of whom support the 911 Communications Center as employees of Technology Services.

Mr. Bunn stated he would like to give a summary of the background regarding the 911 Systems Administrator II classification. Mr. Bunn noted he and Mr. Newland were involved in litigation with the City regarding their exempt status and classification, after which they were reclassified to a non-exempt position, 911 Systems Administrator I, to reflect their duties in supporting the related systems in the 911 Communications Center.

Mr. Bunn stated he and Mr. Newland filed a lawsuit to challenge their exempt status because their duties and responsibilities were the same as their non-exempt colleagues. Mr. Bunn noted a jury agreed and ordered the City to reclassify their positions as non-exempt, which the City appealed and then dropped in favor of settlement.

Mr. Bunn noted the agency has difficulty recruiting for the 911 Systems Administrator role due to a mismatch between the skills desired and the compensation of the position. Mr. Bunn expressed his opinion there is ongoing retaliation for filing a lawsuit, resulting in the agency refusing to review their current responsibilities. Ms. DuWaldt asked Mr. Bunn to clarify what his objection was to the abolishment of the classification as she was having difficulty following the point he was trying to make.

Ms. DuWaldt asked Mr. Bunn if he was currently in the classification of 911 Systems Administrator II. Mr. Bunn responded he and Mr. Newland were in that classification until they filed their lawsuit against the City, at which point they were demoted to their current classification of 911 Systems Administrator I, even though they were doing the work of a senior systems administrator for the last six and a half years. Mr. Bunn stated this was a retaliatory action against he and Mr. Newland.

Board Member Tracy Winchester asked Mr. Bunn how their pay was impacted by the settlement, to which Mr. Bunn replied they took huge pay cuts when they were demoted. Ms. DuWaldt asked how their total compensation was affected, since they were now eligible to receive overtime. Mr. Bunn stated they took an \$11,500 cut in their base pay, although they received back pay for the calculated overtime, but their pay was reduced.

Ms. DuWaldt apologized if her question was not clear, noting she was asking how their compensation compared today, not in the past, since they receive overtime with the reclassification. Mr. Bunn replied their base pay is now in the fourth quartile of their current pay grade versus the second quartile under the pay grade of their prior classification, resulting in smaller pay increases, but acknowledged he and Mr. Newland do receive overtime pay.

Board Member Patricia Barela Rivera asked how many people were impacted by this change, which Mr. Bunn replied there are five employees in the 911 Systems Administrator I classification.

Mr. Bunn stated he believes the higher pay rate of the Administrator II position is more appropriate to the responsibilities they currently perform. The only issue was whether the position should be exempt from overtime, which Mr. Bunn stated was determined from the outcome of their litigation. Mr. Bunn said he is asking for their responsibilities to be reviewed since they are doing the same tasks as similar, higher paid positions downtown.

Ms. Winchester asked what Mr. Bunn meant by "positions downtown", clarifying what agency they are work for. Mr. Bunn stated they work for Technology Services, but support the 911 Communications Center, adding additional details as to why he and Mr. Newland pursued subsequent legal action against the City.

Ms. DuWaldt noted the Board had a large agenda to cover today and stated she would like to summarize what she thought Mr. Bunn was asking for. Ms. DuWaldt noted Mr. Bunn was not asking to be placed in the exempt position, 911 Systems Administrator II, which is proposed for abolishment, but requesting the Office of Human Resources ("OHR") consider creating a new, non-exempt position at a higher rate of pay reflecting the current work being performed. Mr. Bunn agreed and stated additional review of their job duties was needed.

Ms. DuWaldt noted the action before the Board was whether to eliminate the exempt position, 911 Systems Administrator II, which is no longer applicable to any current employee. Ms. DuWaldt stated the question of whether the duties currently being performed by Mr. Bunn and Mr. Newland warrant another non-exempt position being created is an issue for another day. Ms. DuWaldt asked Mr. Bunn if he agreed with her statement.

Mr. Bunn replied he did not disagree, however, he was not certain if there was any current discussion regarding creating a new, non-exempt position at a higher pay level as it seems there are inconsistencies that need to be reviewed.

Ms. DuWaldt agreed Mr. Bunn was making a valid point, however, the Board does not have the ability to change a current classification, which Mr. Bunn could pursue by asking OHR to

create a new position. Karen Niparko, Executive Director of OHR, reiterated that Mr. Bunn's comments regarding his current role are unrelated to the Notice before the Board, which Ms. DuWaldt acknowledged was correct.

Ms. DuWaldt asked Mr. Bunn if he objected to the abolishment of the 911 Systems Administrator II exempt classification, to which Mr. Bunn replied he did not, however, he did want to make the point his current classification needed review. Ms. DuWaldt noted the Board appreciated Mr. Bunn's comments and time today.

Ms. Barela Rivera asked Ms. Niparko to explain what the next steps are for addressing Mr. Bunn and Mr. Newland's concerns regarding their current classification, noting there is "an elephant in the room". Ms. Niparko responded the first step was for the employee to speak to their supervisor or manager. If the manager agreed a review of their current responsibilities is warranted, the next step was to request Classification & Compensation perform a job audit of the position.

Ms. Barela Rivera commented it was important for employees to be aware of what the process is, and asked Mr. Bunn if the information provided by Ms. Niparko was helpful. Mr. Bunn stated it was, but noted they had already gone through the job audit process, which resulted in being reclassified as exempt to save the City money and subsequent legal action.

Ms. DuWaldt asked whether there were any other additional comments regarding the Notice. Mr. Newland asked what the next step is for a job audit if their supervisor does not request it. Ms. Niparko responded Mr. Newland should speak with his HR representative.

Karla Pierce, Assistant Director of the Employment & Labor Section of the City Attorney's Office ("CAO"), indicated she would like to make sure the Board understands what Mr. Bunn is asking for, and to clarify "the elephant in the room", which Ms. Pierce commented does not exist.

Ms. Pierce stated the CAO and OHR had worked together on the original audit request, which determined, based significantly on the representations made by Mr. Bunn and Mr. Newland, the duties they were performing were at a higher level, requiring more judgement and discretion, than their two colleagues who were classified as non-exempt. As a result, Mr. Bunn and Mr. Newland were placed in the 911 Systems Administrator II exempt classification, and received a huge salary increase.

Ms. Pierce stated Mr. Bunn and Mr. Newland then filed a lawsuit contesting their exempt status, in which they testified under oath their duties and responsibilities were no different than their non-exempt colleagues. The jury agreed and ordered the City to reclassify them. The City appealed the ruling, then subsequently reached a settlement with Mr. Bunn and Mr. Newland on the matter.

In compliance with the settlement, the City reclassified Mr. Bunn and Mr. Newland as non-exempt employees, reversing the original job audit determination, and placing them in the lower classification of 911 Systems Administrator I, with a subsequent reduction in base salary. Ms. Pierce stated the employees wanted to keep their higher exempt salary on an hourly basis, which is not the way it works, as they now receive overtime and on-call pay.

Ms. Pierce stated Mr. Bunn and Mr. Newland are now claiming their current job duties are the same as other Technology Services Administrators, which is an entirely different question than whether they were correctly classified as Administrator II.

Technology Services has confirmed their duties are the same as their co-workers in the Administrator I position, and there is no intention of re-auditing their jobs as they are doing the responsibilities they testified to. Ms. Pierce concluded by stating they are appropriately classified. The Board thanked Ms. Pierce for her comments.

Mr. Bunn asked to respond to Ms. Pierce's comments, which Ms. DuWaldt replied Mr. Bunn was limited to one minute. Mr. Bunn stated there were four Administrators at the 911 Communication Center and the most experienced among them was classified as non-

exempt. Mr. Bunn noted the City's position in the litigation was their colleagues were not performing the same level of duties, which Mr. Bunn asserted was incorrect as they were, in fact, doing the exact same responsibilities, and the sole reason he and Mr. Newland were classified as exempt was to save the City money.

Mr. Bunn cited the testimony in court and the subsequent written decision, restating several allegations, to which Ms. DuWaldt responded by stating Mr. Bunn had made his point clear and the Board understood, however, this matter had been covered and thanked him for his comments.

The Career Service Board unanimously approved Classification Notice No. 1576.

2. Public Hearing Notice No. 584 – Proposed Revision to Career Service Rule 9

Lauren Locklear, HR Compliance Officer, presented Public Hearing Notice No. 584 regarding a proposed revision to Career Service Rule 9 – Pay Administration.

The proposed revision to Section 9-69 provides employees enrolled in the 911 Communications Training Officer program will receive a \$250 monthly stipend, instead of an hourly rate for their training hours, which applies to 911 emergency communication technicians, dispatch support specialists, and police dispatchers who are certified under the program.

The Career Service Board unanimously approved Public Hearing Notice No. 584.

3. Public Hearing Notice No. 585 – Proposed Revisions to Career Service Rules 10 & 11

Lauren Locklear, HR Compliance Officer, presented Public Hearing Notice No. 585 regarding proposed revisions to Career Service Rule 10 – Paid Leave, and Career Service Rule 11 – Unpaid Leave.

The proposed revision to Section 10-61B changes the requirement that an employee must be on an authorized, paid leave the day immediately before and the day after to receive pay for the holiday. This revision also pays an employee on authorized unpaid leave for the holiday. The intent of the change is to ease the administrative burden on the Payroll Department in adjusting paid holiday status.

Board Co-Chair Karen DuWaldt asked for an example of unauthorized leave. Ms. Locklear responded that if an employee asked for time-off and was denied for coverage reasons, but subsequently calls out at the last moment, this is treated as unauthorized leave if a violation of the agency's policy. Ms. Locklear noted authorized unpaid leave is permitted, for example, if an employee exhausts their PTO bank.

Bob Wolf, City Attorney to the Board, asked what happens if an employee is on disciplinary leave during a holiday, noting current practice is they do not receive holiday pay. Ms. Locklear noted HR Business Partners are encouraged to ensure employees are placed on disciplinary leave before or after a paid holiday, however, Payroll can remove the paid status in the system. The day will count towards the total amount of disciplinary leave.

Ms. Locklear noted the proposed revision to Section 11-31E clarifies that employees who are called to military service prior to starting their employment or during their probationary period will be required to complete their probation upon their return to work. This revision complies with the requirements of the Uniformed Services Employment & Reemployment Rights Act ("USERRA").

Board Member Tracy Winchester asked how the change differs from what is currently in the Rule. Ms. Locklear replied the Rule provided employees had the right to complete probation and reach career status if on unpaid military leave for 30 days or longer when returning to work, which was not in exact compliance with the USERRA.

Ms. DuWaldt asked what was done before, which Ms. Locklear responded there was a caveat in the language stating any conflict between the Rule and USERRA would be settled in favor of the Act, so the City was following the law, however, it was very confusing for employees to follow.

The Career Service Board unanimously approved Public Hearing Notice No. 585.

4. Public Hearing Notice No. 586 – Proposed Revision to Career Service Rule 16

Lauren Locklear, HR Compliance Officer, presented Public Hearing Notice No. 586 regarding a proposed revision to Career Service Rule 16 – Code of Conduct & Discipline.

The proposed revision to Section 16-44B changes the current language in which employees who receive an involuntary temporary reduction in pay (“TRIP”) cannot have their pay reduced below the range minimum. Ms. Locklear noted this provision does not apply to employees in classifications that do not have a range minimum, such as the Deputy Sheriffs.

Board Co-Chair Karen DuWaldt asked how the floor is determined if the provision does not apply to certain classifications, which Ms. Locklear noted is governed by the collective bargaining agreement with the Deputy Sheriffs and expressed in terms of percentages.

The Career Service Board unanimously approved Public Hearing Notice No. 586.

5. Public Hearing Notice No. 587 – Proposed Revision to Career Service Rule 13

Lauren Locklear, HR Compliance Officer, and Nicole de Gioia-Keane, Director of Classification & Compensation, presented Public Hearing Notice No. 587 regarding a proposed revision to Career Service Rule 13 – Pay for Performance, to reflect the amount allocated by the City Council for merit increases, and to adjust performance review deadlines.

OHR is seeking provisional approval of Rule 13, which is subject to final approval by the City Council of the proposed merit increase allocation. Section 13-32B is revised to provide the 2019 average percentage for merit increases and lump-sum merit payments will be 3.3% for all eligible employees.

The 2019 merit table is also revised to allow employees with a “Successful” rating to receive a lump sum payment if they are at the maximum pay rate of their grade.

<u>2018 Performance Rating</u>	<u>2019 Merit Increase Percent</u>	<u>2019 Lump Sum Merit Payment Percent</u>
<u>5: Exceptional</u>		
<u>4: Exceeds Expectations</u>	<u>2.20% - 5.00%</u>	<u>1.30% - 3.50%</u>
<u>3: Successful</u>		
<u>2: Below Expectations</u>		
<u>1: Unacceptable</u>	<u>0%</u>	<u>0%</u>

Appendix 13.A is revised with new due dates to reflect the 2018 Performance Review Schedule.

Board Member Tracy Winchester asked if the revised merit table addresses prior pay issues in which employees may have received a very small or no merit increase, depending on where their current pay fell within the pay grade.

Ms. de Gioia-Keane replied the prior limitations were changed last year with the implementation of merit increase range percentages, which eliminated awarding a percentage increase based on an employee's pay within the grade quartiles.

Ms. de Gioia-Keane noted the revised program had been very successful in rewarding performance, with agency heads indicating the merit program was much improved. Ms. de Gioia-Keane indicated the total amount of 2018 merit increases had also come in under-budget.

The Career Service Board unanimously approved Public Hearing Notice No. 587.

V. Director's Briefing:

1. Compensation Internal Methodology Change, Part 2 – Nicole de Gioia-Keane

Nicole de Gioia-Keane, Director of Classification & Compensation, presented an update to her presentation from the meeting of September 20th, noting she had added an additional slide for review.

Ms. de Gioia-Keane reiterated the major compensation consulting firms are revising their survey methodology to use actual pay data, rather than pay ranges, when providing market pricing to clients. Since Classification & Compensation is required to perform an Annual Pay Survey each year by ordinance, OHR's methodology will now use the 50th percentile of actual pay data.

Ms. de Gioia-Keane noted Board Co-Chair Neil Peck had requested illustrative examples of how the change in methodology impacted pay data when analyzing city positions, which is provided in the additional slide for a sample of classifications.

Ms. de Gioia-Keane reviewed the difference between using the current market survey midpoint and the 50th percentile of the market pay data, noting the difference in each of the examples was very minor and would not negatively impact employees.

The Board thanked Ms. de Gioia-Keane for the additional information.

2. Fred Davis, Inclusion & Diversity Officer – Karen Niparko

Karen Niparko, Executive Director of OHR, introduced Fred Davis, who joined the City on October 8th, as the new Inclusion & Diversity Officer. Mr. Davis gave a summary of his professional background and noted his desire to have an impact on workforce culture.

Ms. Niparko also introduced Charmaine Faustino, who is working with OHR as a Fellow of the American Council of Young Political Leaders ("ACYPL") and is from the Philippines. Ms. Faustino will be with the City until early November.

The Board welcomed Mr. Davis and Ms. Faustino.

VI. Pending Cases:

1. James Johnson vs. Denver Sheriff's Department, Appeal No. A024-17A

The Career Service Board reversed the Hearing Officer's decision and remanded the case back to the Hearing Office for reconsideration of the discipline, written order to follow.

2. Carlos Hernandez & Bret Garegnani vs. Denver Sheriff's Department, Consolidated Nos. A025-17A and A026-17A

The Career Service Board reversed the Hearing Officer's decision and remanded the case back to the Hearing Office for reconsideration of the discipline, written order to follow.

3. Virgil Ferguson vs. Denver Sheriff's Department, Appeal No. A064-17

The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

4. Matthew Hammernik & Daniel Trujillo vs. Denver Sheriff's Department, Consolidated Nos. A041-17 & A042-17
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

VII. Executive Session:

The Board went into executive session at 9:44am. Karen Niparko updated the Board on several OHR issues.

The following cases were adjudicated:

1. Motion to Dismiss-Failure to Prosecute, Erin Mischo-Quintana vs. OHR, Appeal No. A048-18
The Career Service Board denied the Agency's Motion to Dismiss for Failure to Prosecute as moot, issuing a written order dismissing the appeal with prejudice.
2. Motion to Stay Appeal, Michelle Lee Tenorio vs. Office of Economic Development, Appeal No. 34-16B
The Career Service Board granted the Agency's Unopposed Motion to Stay the Appeal.
3. Leonard Fazio vs. Denver Sheriff's Department, Appeal No. A014-18
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
4. Pasquale Tamburino vs. Department of Safety, Appeal No. A040-17A
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

The Board re-convened the meeting at 11:03am.

VIII. Adjournment: *Adjournment was at 11:04am.*