



Career Service Board Meeting #2353

Minutes

Thursday, February 7, 2019, 4:30pm

Webb Municipal Building

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

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

I. Opening: *Meeting was called to order at 4:30pm*

- 1. Approval of the Agenda for the February 7, 2019 Board Meeting.**
The Board unanimously approved the agenda for the February 7, 2019 meeting.
- 2. Approval of the Minutes for the January 17, 2019 Board Meeting.**
The Board unanimously approved the minutes for the January 17, 2019 meeting.

II. Board Comments: *Neil Peck, Co-Chair, welcomed David Hayes to his first board meeting. Mr. Hayes was appointed by the Mayor on January 7, 2019 for a five-year Term expiring on September 16, 2023. Mr. Peck noted Mr. Hayes is a global HR business partner employed by MolsonCoors with many years of experience. The Board welcomed Mr. Hayes.*

III. Public Comments: *None.*

IV. Public Hearing:

- 1. Public Hearing Notice No. 594 – Proposed Revisions to Career Service Rule 9**

Lauren Locklear, HR Compliance Officer, presented Public Hearing Notice No. 592 regarding proposed revisions to Career Service Rule 9–Pay Administration. Ms. Locklear noted these revisions are part of the Office of Human Resources’ (“OHR”) ongoing efforts to streamline processes and increase efficiency. Ms. Locklear reviewed the summary table highlighting the changes to each subsection of Rule 9.

Section 9-39, Pay Adjustment within the Salary Range, is clarified by stating OHR will always attempt to use a comparator employee in the same department or agency as part of a pay equity request as the first step in the process. If a comparator employee does not exist, Classification & Compensation may then look at employees in other departments or agencies to find a comparator.

Section 9-39D is revised to require all pay equity requests be submitted as soon as a qualifying event is identified to make it easier for Classification & Compensation to investigate and review the request. Section 9-39D is deleted as the provision regarding pay disparity based on protected class is addressed in Rule 16’s procedures regarding allegations of discrimination

Board Member David Hayes asked how often these types of revisions are made to the Rules. Ms. Locklear replied OHR periodically reviews all procedures and the related Rules and updates them as needed when they are no longer accurate or changes occur.

Section 9-62, Protective Service Stipend, refers to provisions of state law requiring employees at the Department of Human Services ("DHS") to be available 24 hours a day to receive reports of abuse and neglect, conduct initial assessments, and investigate any reports appropriate to child and adult protective services. DHS provides a protective service stipend to exempt employees working these shifts. Non-exempt employees receive standby, call-back, and regular pay as warranted by the specific circumstances.

Ms. Locklear noted the proposed revisions will clarify the different types of roles employees play when working these shifts and the corresponding stipend amounts. At times, the Child Welfare ("CW") and Adult Protective Services ("APS") roles differ, hence, the need for different stipend amounts. The current stipend pays case workers a different rate depending on what they are asked to do. The new stipend amounts, which are based on shift assignment, will provide predictability with these payments, making it easier to enter them, and creates a predictable cost expectation for the budget.

Board Member Tracy Winchester asked if Ms. Locklear was going to review the details of each change noted in the summary for various stipends under Section 9-62. Ms. Locklear replied she would be happy to do so.

The first revision relates to the After-hours Administrator, who is responsible for supervising the After-hours staff, including the supervisor, the caseworker, the placement navigator, and the call taker. The After-hours Administrator must in the Administrator II classification and is responsible for supervising any fatal or near-fatal allegations needing immediate response during nights, weekends, and holidays. The stipend amount is \$40 per shift during the week, which increases to \$60 per shift on paid holidays or furlough days.

Ms. Locklear noted most of the changes to Section 9-62 are intended to ensure the policy is clear in the Rule, while details regarding specific hours and shifts are removed as these details relating to practice should be determined by the individual agency.

For the After-hours Supervisor, the specific responsibilities relating to CW and APS are broken out, along with the stipend amounts requested by the agency. Ms. Locklear noted the responsibilities for the After-hours Caseworker are not broken out this way.

Ms. Locklear stated a new position was added, After-hours Placement Navigator, due to the critical role in managing placement of children in DHS custody, or implementation of a safety plan, including documenting placement efforts and ensuring the background checks are completed in a timely fashion.

The final change to Section 9-62 relates to the After-hours Call Taker, which Ms. Locklear noted was already included in the Rule, with revisions relating to breaking out the responsibilities between the roles of CW and APS, along with the associated stipends.

Ms. Winchester asked what the rationale was for the changes in the stipend amounts, noting that some were increased, while others decreased. Ms. Winchester stated she understood the market data is reviewed in making these decisions, but wondered if the review was done on a defined cycle, such as every five years.

Ms. Locklear responded the stipends were first put into place about two years ago, during which time DHS had the opportunity to review how they worked in-practice. The agency observed they did not need to schedule so many different classifications of employees, for example Call Takers, except during higher call volumes, versus having more specialized resources to handle typical situations.

As a result, the agency adjusted some stipend amounts higher, the cost of which is offset by having less employees in other categories scheduled. Ms. Winchester asked if the budget would remain the same, to which Ms. Locklear replied the overall cost is expected to be slightly lower, with less Call Takers scheduled except when call volumes are higher.

Ms. Locklear noted Section 9-63, Bilingual Stipend, is revised to change the eligibility and amount. Currently, an employee is paid a bilingual stipend if the agency determines an employee uses these skills 35% or more of the time on their job, with differing amounts paid based on three levels of proficiency.

Classification & Compensation surveyed local and national governments and determined the majority had a single pay level for bilingual proficiency with an average stipend amount of \$968. Most eligible City employees are currently paid at the Level 3 proficiency level, which is \$100 every two weeks, or \$2,600 annually. The City's cost for the stipend is approximately \$25,500 per pay period.

The revision will change the stipend to be payable at one level at \$50 every two weeks, or approximately \$1,300 annually. This change will only apply to new hires and current employees will continue to receive the amount they qualify for.

Ms. Winchester noted the stipend amount was being cut in-half from the current average, asking if this decision was based on market data. Ms. Locklear stated approximately 54 municipalities responded to the survey, of which 28 offered a bilingual stipend averaging \$968 annually. The highest amount offered was approximately \$2,400 annually.

Ms. Locklear reiterated the bilingual stipend is paid to employees who occasionally use their proficiency in a second language to help a customer in their daily duties. If a position requires a candidate to be bilingual, that requirement is made clear in the job requisition and the salary reflects the additional skill.

Board Co-Chair Neil Peck noted there was one individual who has signed up to speak. Adam Lopez introduced himself as an Equipment Operator Specialist working in Solid Waste at Public Works.

Mr. Lopez noted he had reviewed Section 9-39 and had some paperwork he would like to submit in relation to the Rule. Mr. Lopez stated he has worked for the City for 18 years and has observed the number of applicants applying for his position decline, particularly over the last couple of years.

Mr. Lopez noted he was very happy with his job and he and his co-workers work very hard to go above and beyond to provide excellent service to City residents. Mr. Lopez stated his paperwork showed nearby municipalities, including Westminster and Thornton, were hiring equipment operators at higher salaries.

Board Co-Chair Karen DuWaldt asked Mr. Lopez to clarify whether he had a specific comment regarding the changes to Rule 9, or was asking the Board to review his compensation for his current job.

Mr. Lopez responded that a co-worker had informed him of the rule change, while no one from upper management had communicated about it. Mr. Lopez stated he had started an online petition, not just for Solid Waste, but for all agencies regarding what employees experience with pay issues.

Mr. Peck asked Mr. Lopez if he had any comment regarding the specifics of the changes to Rule 9-39, to which Mr. Lopez responded he believed his pay issue is addressed in the language regarding comparing pay, whether within his agency or across agencies.

Ms. DuWaldt again asked Mr. Lopez if he was commenting on specific language changes proposed in the Notice, or if he was asking the Board to review the pay for his specific job classification.

Mr. Lopez cited the language in the rule regarding “an appointing authority may adjust pay to eliminate a pay disparity using a comparator employee”, as the reason he is bringing the information regarding what other municipalities pay. Mr. Lopez noted he believed the pay for his classification needed to be compared to the information compiled.

Ms. DuWaldt responded she understood what Mr. Lopez was asking for, however, the issue before the Board today was to approve specific changes to the language and other provisions of Rule 9. Ms. DuWaldt noted Alena Duran of OHR Classification & Compensation was present and there was a process for an employee to request a pay equity review, which Ms. Duran could walk Mr. Lopez through.

Alena Duran, Classification & Compensation Analyst, noted she supported Public Works and confirmed she could work with Mr. Lopez and the agency’s HR Business Partner on this issue. Ms. Duran stated there had been some discussion about doing a pay study for his classification.

Mr. Lopez responded he thought it was important to come today and raise the issue as a lot of his fellow co-workers could not join the meeting and were negative about his participation. Mr. Lopez stated he needed to at least try and make his voice heard, as management had not been responsive to his questions about pay or when it was reviewed. Mr. Lopez indicated the reason for his petition is economic conditions in the area had changed with the cost of living rising significantly.

Mr. Peck asked what the petition is seeking to do. Mr. Lopez stated he titled it “World-Class City, World-Class Employees” and addressed it to Mayor Hancock, noting Mr. Eulois Cleckley used similar language, and was keeping it brief and basic in case he had the opportunity to speak to him about it. Ms. DuWaldt commented it sounded like he wanted the pay for his job to be reviewed, which Mr. Lopez confirmed was correct.

Mr. Peck summarized Mr. Lopez’s comments is that other municipalities such as Thornton and Westminster are hiring people for the exact same job at higher salaries, which Mr. Lopez stated was correct, noting the jobs posted by these other cities actually require less qualifications than the City of Denver does.

Ms. Duran responded that Classification & Compensation is required by ordinance to conduct an annual pay survey and Mr. Lopez’s classification was included in the 2018 study, which indicated the pay range is competitive to the market data. Ms. Duran stated she needed to be clear that all the City’s classifications and pay ranges are reviewed annually.

Ms. Duran offered to discuss the matter in more detail with Mr. Lopez outside of the meeting as she noted his issue is not related to the changes proposed to Rule 9 in the Notice. Ms. Winchester stated she agreed Mr. Lopez’s comments are not related, however, she asked Ms. Duran to outline the process that an employee may follow to air their grievances regarding pay.

Ms. Duran replied an employee would typically work with their agency’s HR Business Partner to request a pay equity review, which is performed by an analyst in Classification & Compensation. Ms. DuWaldt asked whether the process can be initiated by an individual employee, to which Ms. Duran replied the approval of the appointing authority, Eulois Cleckley in the example of Public Works, is required.

Ms. Winchester asked if employees are made aware of the outcome of any study, such as through a call or an email. Ms. Duran noted changes to a classification from a pay study would be brought before the Board in a public hearing notice, while the HR Business Partner works closely with agency management to inform employees.

Ms. Duran stated she had done a pay study last summer in Solid Waste for the street maintenance classifications, including shadowing the crews during their shifts. Ms. DuWaldt commented it sounds like the information regarding the process may not be getting out to all employees and asked Ms. Duran on how this could be improved.

Ms. Duran replied she works very closely with the HR Business Partner in communicating with employees regarding these studies, while noting there had been some turnover in the position at Public Works. Ms. Winchester clarified whether a pay study had been initiated for Solid Waste, to which Ms. Duran replied was done in 2017.

Mr. Lopez commented his job keeps him and his co-workers on the road every day and this type of information is under the radar for them. Mr. Lopez noted in the mid-2000s, former Mayor Hickenlooper had mandated a furlough, which he experienced, and employees were told they would be compensated after the economy recovered.

The Police, Fire, and EMS staff were deemed essential employees and did not have to take any furlough. Mr. Lopez pointed out they often work on holidays, and if the trash is not picked up, residents are quick to complain about it, which means they were essential employees as well. Mr. Lopez stated they had heard before "it was being worked on" but was never given any update.

Ms. Locklear suggested a possible resolution would be for Steve Duarte, HR Director for Public Works, to reach out to Mr. Lopez and set-up a time to meet and discuss these issues, including the lack of communication, and work with Ms. Duran as needed. Mr. Lopez indicated that would be helpful, as he heard that another employee at a different agency had filed a grievance to have a job audit done, which he hoped would not be necessary.

The Board thanked Mr. Lopez for his comments and Mr. Lopez gave his paperwork to the Executive Assistant to the OHR Executive Director.

The Career Service Board unanimously approved Public Hearing Notice No. 594.

2. Public Hearing Notice No. 595 – Prevailing Wage: Elevator Mechanic

Alena Duran, Classification & Compensation Analyst, noted today's agenda included Public Hearing Notice No. 595 to adopt a change in the pay and/or fringe benefits of the wage classification series, "Elevator Mechanic" in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Ms. Duran stated Classification & Compensation was requesting the Notice be removed from the meeting agenda as the reason for the Notice was the U.S. Department of Labor's website had not updated due to the federal shutdown, a situation that no longer exists as of February 1st, therefore, there was no need for the Notice.

The Career Service Board unanimously approved the removal Public Hearing Notice No. 595 from consideration or action.

V. Director's Briefing:

1. Career Service Hearing Office – 2018 Year-End Report

Karen Niparko, Executive Director of the Office of Human Resources ("OHR"), noted today's briefing is from the Career Service Hearing Office. Bruce Plotkin, Career Service Hearing Officer, noted today's presentation would be in three parts: (1) appeals' hearings; (2) mediation; (3) administrative activities.

Mr. Plotkin noted most appeals continue to be from the Denver Sheriff's Department and the Board had expressed interest in reviewing the impact of the implementation of Rule 20, which changed the appeals process for the Deputy Sheriffs in October 2017.

Mr. Plotkin stated there had not been a decrease overall in the number of appeals filed in 2018 from the Denver Sheriff's Department in 2018. However, in the first half of the year, 25 cases were closed and 14 decisions issued, versus the second half of the year, in which 9 cases were closed and 3 decisions issued. Mr. Plotkin stated while half of a year is not a trend, it was worth nothing, and the Board would be kept apprised if the trend continues into 2019.

Board Member Tracy Winchester asked for clarification on the math regarding 18 Petitions for Review filed in 2018, with 25 affirmed. Mr. Plotkin responded the 25 affirmed includes Petitions filed in 2017 that carried over.

Mr. Plotkin noted the average hearing time continues to decline year-over-year. In 2018, the average hearing time was 5 hours. As a point of reference, looking at the last five years, the average hearing length was 9 hours in 2014, 8 hours in 2015, 5 hours and 45 minutes in 2016, and 6 hours 30 minutes in 2017.

Mr. Plotkin stated he cannot directly correlate the improved hearing length to pre-hearing procedures as there many variables that determine how long a hearing will last including, but not limited to, whether hearings were consolidated, number of claims and defenses, and the personalities of the attorneys and other participants. However, the overall positive trend demonstrates the Hearing Office's pre-hearing instructions are reducing the overall time and increasing efficiency.

Board Co-Chair Karen DuWaldt asked whether there is an average hearing time at which point there would be concern the litigants are not getting enough time. Mr. Plotkin stated this was a great question and he believed the trend is reaching the bottom limit, as a certain amount of time is necessary to properly complete a hearing.

Mr. Plotkin stated the Hearing Office is continuing to work hard on the decision digest, which is a great tool for the office as well as its customers, including attorneys and pro-se appellants. The digest is a capsule summary of the Hearing Office decisions, going back to 2005, with one or two sentences summarizing the relevant laws or rules of each case and indexed by Rule Numbers, Case Name, and Subject Matter. Most of the current work involves revising and correcting errors as well as updating the Rules references due to changes.

Mr. Plotkin noted outreach was a prominent topic in 2018 based on the survey the Office conducted, which indicated many employees were uninformed or misinformed about what the Hearings Office does and their core functions. An informational summary of the Hearings Office was included in the latest electronic edition of the Denver Employees' Bulletin, which has links to the Office's website and contact information.

Mr. Plotkin stated he has continued to meet with Jess Vigil, Deputy Director of the Department of Safety, and review key statistics and details of the appeals from the Deputy Sheriffs, which the Sheriff's Department indicated has greatly helped them to identify additional training and changes in their internal rules and policies when trends are noted. Mr. Plotkin noted Mr. Vigil is leaving the City and he hoped to continue the dialogue with his successor.

Laura Hammock, Operations Coordinator, noted 2018 was a record year in mediation requests, up 24% over 2017. Ms. Hammock noted the Hearing Office did not have specific data as to why, however, she stated the survey they did last year indicated 729 employees wanted more information on mediation, which could be a driver. In addition, the Hearing Office has been publishing an article in the Denver Employees' Bulletin about mediation.

Ms. Hammock noted 56% of agencies agreed to participate in mediation, which is a significant improvement, and 88% of the requests were resolved, which is slightly lower than 2017. Approximately 50% of all requests received were associated with a pending appeal to the Hearing Office. Ms. Hammock noted the Hearing Office receives most of the requests for mediation and sends them out to Steve Charbonneau, who reports back on the results.

Ms. Niparko asked if the number of mediation requests noted in the report encompass all the requests Steve Charbonneau receives. Ms. Hammock responded all employment-related mediation requests are received through the Hearings Office. Ms. Winchester asked for clarification regarding whether Steve Charbonneau informs the Hearing Office of requests he receives outside the current process.

Career Service Hearing Officer Federico Alvarez responded that Steve Charbonneau has a contract with the City for mediation that allows other agencies to directly request his services without the Hearing Office being involved. Mr. Alvarez noted Ms. Hammock will periodically check with Mr. Charbonneau to confirm her data is correct, at which time Mr. Charbonneau will often include the number of employment-related requests he received from other sources in the City.

Mr. Alvarez stated the Hearing Office always advises employees of the option for mediation when an appeal is filed and provides the necessary information. However, the Hearing Office does not mandate mediation nor do they attempt to influence employees in their decision.

Ms. Winchester noted when Steve Charbonneau presented to the Board last year, she recalled him saying there were opportunities for OHR to increase the use of mediation. Ms. Winchester stated she was interested in knowing what had changed since last year, as Ms. Hammock indicated the number of mediation requests increased by 24% over 2017.

Rory McLuster, Deputy Director of OHR, responded that while it is interesting to see the number of mediation requests had increased, she pointed out the Service Teams also reported an increase in the number of disciplinary actions. Ms. McLuster noted the HR Business Partners do encourage mediation when appropriate, however, their goal is to facilitate effective conversations that eliminate the need for mediation.

From OHR's perspective, seeing a decrease in the number of mediation requests is the goal as that would indicate more effective performance management, increased engagement, reduced conflict, and improved service outcomes were occurring at the agencies.

Ms. Niparko stated OHR also required all HR Business Partners to take a certification course in mediation, not so they can become mediators, but to ensure they are trained in the process and can communicate the benefits when appropriate.

Ms. DuWaldt recalled hearing last year that certain agencies consistently were declining mediation requests, however, she noted Ms. McLuster is stating OHR wants managers and employees to solve their problems informally without having to move towards mediation, rather than encouraging agencies to decline mediation requests. Ms. DuWaldt asked if her statement was correct. Board Co-Chair Neil Peck asked whether OHR is opposed to mediation.

Ms. McLuster replied OHR was not opposed at all to mediation, however, our goal was to have effective processes and conversation so that mediation would not be necessary to solve the problem. Ms. Winchester commented it sounded to her like the OHR Service Teams were trying to ensure the problem is worked out and does not become a full-blown grievance, but if they cannot achieve that, mediation was a possible option.

Ms. McLuster stated this was correct and she thought confusion may have been generated by Mr. Charbonneau's comment last year that OHR was resistant to mediation. Ms. McLuster stated there are situations where OHR advises agencies to decline mediation, particularly if there was a pending settlement or a lawsuit filed, which Mr. Charbonneau may not have been aware of.

Board Member David Hayes asked if surveys were done after mediation to capture data on how the experience was. Mr. Alvarez responded that state laws place a heavy burden on preserving confidentiality, which greatly limits a third party from contacting participants about their experience, however, individuals and agencies were free to voluntarily share their feedback. Mr. Plotkin added it was public policy to ensure participants do not feel pressured to give a certain response, so that full disclosure and discussion can take place.

Ms. DuWaldt stated she is not certain that a satisfaction survey after the mediation is complete violates any laws regarding confidentiality. Ms. Hammock replied Mr. Charbonneau may be doing surveys, however, the Hearing Office is not involved in the process. Ms. Niparko commented Mr. Charbonneau's contract requires him to do surveys.

Mr. Alvarez noted Mr. Charbonneau can outline to the parties at the beginning of the mediation what the rules will be and request they complete a survey, but whether the parties agree to do so or not, is not something the Hearing Office gets involved with nor encourages as that would be inappropriate.

Mr. Peck stated the City should be interested in knowing how the mediation contractor is performing and reviewing participants' survey responses to see if they felt the process was fair and the mediator was neutral. Mr. Peck noted this was key to any type of contract for services provided, and while he agreed the Hearings Office should not be evaluating, someone in the City should be doing so.

Mr. Alvarez replied he would defer to Bob Wolf, City Attorney to the Board, to review Mr. Charbonneau's contract, however, the contract was with Human Rights & Community Partnership ("HRCP") and the head of the agency is responsible for its provisions.

Ms. Niparko noted Mr. Charbonneau's contract requires his company to survey participants for satisfaction and the results shared with the agency. Ms. Niparko stated she is uncertain if Mr. Charbonneau is surveying participants and sharing the results as required.

Ms. Winchester and Mr. Peck both stated Ms. Niparko should follow-up with Derek Okubo, Executive Director of HRCP to ascertain whether the surveys are being done and share the information with the Board.

VI. Pending Cases:

1. 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.
2. Pasquale Tamburino vs. Department of Safety, Appeal No. A040-17A
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
3. Donald DeMello vs. Denver Sheriff's Department, Appeal No. 012-18A
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
4. Darrell Jordan vs. Denver Sheriff's Department, Appeal No. A021-18
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
5. Emina Gerovic vs. General Services-Facility Management, Appeal No. A077-17
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

VII. Executive Session:

The Board went into executive session at 5:24pm. Karen Niparko updated the Board on several OHR issues, after which the meeting was re-convened at 5:59pm.

VIII. Adjournment: *Adjournment was at 6:00pm.*