

Career Service Board Meeting #2378

Minutes

Thursday, February 20, 2020, 9:00am

Webb Municipal Building

201 W. Colfax Ave, First Floor, Career Service Hearings Office

Karen DuWaldt (Co-Chair)

Neil Peck (Co-Chair)

David Hayes

LaNee Reynolds

Patricia Barela Rivera

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

1. Approval of the Agenda for the February 20, 2020 Board Meeting.

The Board unanimously approved the agenda for the February 20, 2020 meeting.

2. Approval of the Minutes for the February 13, 2020 Board Meeting.

The Board unanimously approved the minutes for the February 13, 2020 meeting.

II. Board Comments: *None.*

III. Public Comments: *None*

IV. Public Hearing:

1. Classification Notice No. 1636 – Public Defender Series

Greg Thress, Sr. Classification & Compensation Analyst, presented Classification Notice No.1636 to amend the Classification & Pay Plan by creating a new classification of Senior Deputy Public Defender, and changing the titles and pay grades of the associated Public Defenders series.

Classification & Compensation worked with the Office of the Municipal Public Defender (“MPD”) on an internal pay review of Public Defenders in comparison to the City Attorney’s Office (“CAO”) and the District Attorney’s Office (“DAO”) litigation attorneys. This review indicated the Public Defenders’ pay significantly lags attorneys working in the CAO and DAO.

While the Public Defenders pay grades were based on market data, Class & Comp believes the essential job duties of litigating and representing clients are almost identical to the litigating and prosecuting duties of attorneys in the CAO and DAO.

NEW CLASSIFICATION

<u>Proposed Classification Title</u>	<u>Proposed Pay Grade & Range</u>
Senior Deputy Public Defender	L-820 (\$121,575 - \$158,048 - \$194,520)

JOB TITLE CHANGES

<u>Current Classification Title</u>	<u>Proposed Classification Title</u>
Deputy Public Defender I	Staff Deputy Public Defender
Deputy Public Defender II	Associate Deputy Public Defender

PAY GRADE AND RANGE CHANGES

<u>Classification Title</u>	<u>Proposed Pay Grade & Range</u>
Staff Deputy Public Defender	L-813 (\$76,208 - \$99,071 - \$121,933)
Associate Deputy Public Defender	L-815 (\$87,087 - \$113,213 - \$139,339)
Deputy Public Defender Supervisor	L-822 (\$138,932 - \$180,612 - \$222,291)
Chief Municipal Public Defender	L-824 (\$158,766 - \$206,396 - \$254,026)

In general, Public Defenders are paid significantly less than their CAO/DAO counterparts in most municipalities, even though their job duties are essentially the same. Class & Comp's recommendation to adjust the Public Defenders to the equivalent pay grades as CAO and DAO attorneys is based on Career Service Rule 7 and Charter requirements for "like pay for like work" as a core principal of the city's merit system.

All five Staff Deputy Public Defender attorneys would receive pay adjustments to the new range minimum with a cost impact of \$43,284. Two of five Associate Deputy Public Defenders attorneys would receive pay adjustments to the new range minimum with a cost impact of \$10,387. The cost to bring the Chief Public Defender to the new range minimum is \$37,191. The total budget impact to new range minimums would be \$90,862.

Board Co-Chair Neil Peck asked if this change was being proposed to ensure the pay of the public defenders was consistent with the requirements of CS Rule 7 and "like pay for like work", to which Mr. Thress answered in the affirmative.

Board Member LaNee Reynolds asked when the city changed its pay policy to "like pay" under the Rule and whether this was always a requirement under the Charter, to which Bob Wolf, City Attorney to the Board, answered in the affirmative.

Mr. Peck asked if the public defenders are entitled to retroactive pay since the city was not in compliance with the charter requirement for "like pay" for a number of years. Board Co-Chair Karen DuWaldt commented this was a good question.

Mr. Thress noted the city has been paying the public defenders based on market data provided by the pay survey process required under ordinance, but there may be a question as to whether the "like pay" requirement under the Charter was met.

Karen Niparko, Executive Director of the Office of Human Resources ("OHR"), asked Mr. Thress where in the range the public defenders' average pay lies, noting the pay survey establishes the appropriate data for the range, and the amount to bring the employees up to the minimum was substantial. Mr. Thress stated they are paid in the lower end of the range and introduced Alice Norman, Chief Municipal Public Defender, to the Board.

Ms. DuWaldt asked Ms. Norman what her thoughts were on the issue of back pay, to which Ms. Norman replied receiving it would be wonderful.

Ms. Norman noted the agency has been existence for five years and she was hired shortly after its creation. She stated the offered salaries to public defenders were extremely low and this was an ongoing problem for recruitment and retention. Ms. Norman noted The American Bar Association recommendation is public defenders should have pay parity with prosecutors.

Ms. Norman noted that while the retroactive pay would be welcomed, the agency's budget was very limited and may not allow for it. The pay study done by Class & Comp used job descriptions from both the private sector and internal comparators, which made clear the public defenders were doing the same job and were underpaid versus their attorney peers working in the city and the market.

Ms. Norman stated most municipalities across the country are moving towards pay parity for their public defenders and public attorney counterparts in recognition of the fact they are performing the exact same duties.

Mr. Peck stated the city has been in violation of ordinance and charter in not paying the public defenders properly for "like work" over the last five years. Mr. Peck stated he is supportive of the proposal to adjust the public defenders' pay, but feels the retroactive pay issue also needs to be considered.

Ms. DuWaldt stated she agreed with Mr. Peck and suggested the Board consider approving the Notice, while asking the City Attorney's Office to review whether retroactive pay is owed, to which Mr. Peck agreed. Ms. Norman commented this would go a long way towards rewarding very talented and dedicated staff.

Ms. Niparko asked if turnover was high, to which Ms. Norman replied in the affirmative. Board Member Patricia Barela Rivera asked how many people are impacted, which Ms. Norman stated was eleven in-all, which is less staff than what they should have, but is supplemented by contractors due to a limited amount of space.

Ms. Norman noted their office will be moving next year to new space, which will enable additional hiring, and the higher pay range will make it much easier to recruit new attorneys, which attract both external and internal candidates.

The Career Service Board unanimously approved Classification Notice No. 1636, with the Board directing Bob Wolf to review the retroactive pay question with the CAO.

2. Classification Notice No. 1638 – Election Judges

Gregg Thress, Sr. Classification & Compensation Analyst, presented Classification Notice No. 1638 to amend the Classification and Pay Plan to change the job code and title of Election Judges (EJ-1464) and Election Judges Stipend (EJ-2424) to Election Judge (RG-3245) and Election Judge Stipend (RG-3246). The pay grade will also be changed from J-000 to Z-115, with the previous classifications and pay range abolished.

Classification & Compensation worked with the Clerk & Recorder's Election Division ("C&R") to create a pay range that reflects actual hourly pay rates that are compensating citizen election judges. Election judges perform a wide range of tasks, including using computer databases, checking in voters, verifying information, and processing ballots, and are currently compensated between \$13.00 and \$24.00 per hour. In comparison, IT specialized personnel are compensated above \$24 per hour based on current market rates.

The job code will be revised placing this classification from Maintenance and Operations Occupational Group (J) to the Community Rate Occupational Group (Z). In addition, the job titles have been modified to reflect the function of the assigned tasks.

Election judges are not employees of the City & County of Denver, pursuant to Articles 70 to 80 of Title 8, of the Colorado Revised Statutes. Their compensation falls under Colorado Revised Statutes, § 1-6-115, Compensation of Judges.

JOB CODE/JOB TITLE REVISIONS

Current Job Code

EJ1464 - Election Judges

EJ2424 - Election Judges Stipend

Revised Job Code

RG3245 - Election Judge

RG3246 - Election Judge Stipend

PAY GRADE AND RANGE CREATIONS

<u>Classification Title</u>	<u>Proposed Pay Grade & Range</u>
Election Judge	Z-115 (\$13.00 - \$31.50 - \$50.00)
Election Judge Stipend	Z-115 (\$13.00 - \$31.50 - \$50.00)

JOB CODE/TITLE and PAY GRADE ABOLISHMENTS

<u>Job Code/Title</u>	<u>Pay Grade & Range</u>
EJ1464 - Election Judges	J-000 (\$1,000 - \$100,500 - \$200,000)
EJ2424 - Election Judges Stipend	J-000 (\$1,000 - \$100,500 - \$200,000)

Board Co-Chair Karen DuWaldt asked why the Notice is coming before the Board for approval if the Election Judges are not city employees. Ms. DuWaldt also asked if this is the reason they are not subject to the city's \$15 per hour minimum wage requirement, to which Mr. Thress replied in the affirmative, noting the State statute requires election judges to be paid a minimum of \$5 per day.

Mr. Thress stated the Notice was brought before the Board since the pay ranges are part of the city's Classification and Pay Plan. Ms. DuWaldt asked if the Notice was just for their information only, or does it require the Board's approval, to which Mr. Thress replied it requires approval.

Karen Niparko, Executive Director of OHR, asked Cindy Bishop, Deputy Director, Talent Acquisition, to explain the recruiting and hiring cycle of the election judges.

Ms. Bishop noted the process had changed to allow the Clerk & Recorder's office to do all of the recruiting and hiring of election judges, which typically peaks in October before the November elections. Ms. Bishop noted there is portal set-up to receive and process the resumes, which is a different process than the one followed for job openings as these positions are not part of the career service. Mr. Thress noted there are currently 692 judges in Workday.

Board Co-Chair Neil Peck stated he is uncertain if the Board has the authority to approve the Notice as the election judges are not city employees covered by the career service rules.

Board Member LaNee Reynolds asked if part of the confusion is the fact OHR is being asked to provide compensation data for a non-employee position, to which Mr. Thress agreed, noting the judges are loaded into Workday and paid through the system, even though they are not city employees. The changes are also designed to change their pay rate to hourly, rather than salaried.

Ms. Niparko asked Bob Wolf, City Attorney to the Board, if he had any guidance on this matter for the Board. Mr. Wolf stated he did not think the Notice requires the Board's approval as they are not city employees.

Suzanne Iversen, HR Director for Compliance & Employee Relations, noted the election judges are not considered employees under the Charter and HR Records regularly has to confirm to the State these individuals are not eligible for unemployment benefits when they attempt to file a claim.

Ms. Iversen stated she did not think any change in their classification or pay requires the Board's approval. The individuals are paid through Workday as this is efficient, but they are not city employees.

Ms. DuWaldt expressed concern about setting a precedent in which the Board's approval of a Notice would create an implied state, in which the individuals could make a future argument they are career service employees. Ms. DuWaldt stated she felt the Class & Comp Director could update their pay rates or job codes as needed.

Mr. Peck agreed and stated the Board does not have the authority to expand its jurisdiction beyond what the Charter provides.

The Career Service Board approved the withdrawal of Classification Notice No. 1633 from consideration, with the job code, title, and pay revisions to be executed under the authority of the Executive Director of OHR.

V. Director's Briefing:

1. Introduction - Interim Sheriff Frances Gomez

Karen Niparko, Executive Director of OHR, introduced Frances Gomez, Interim Sheriff, to the Board and asked her to give a brief update on her background and some of the initiatives the Denver Sheriff's Department is working on.

Sheriff Gomez gave the Board a summary of her background and experience, as well as an update on the phase III of working with UC-Berkeley on the Mayor's Race & Social Justice Initiative. The focus will be on reducing turnover and burnout among the Deputies, which has been a critical issue over the last few years. Sheriff Gomez also noted they are partnering with SafetyHR to expand their recruitment outreach and improve staffing levels.

The Board thanked Sheriff Gomez for her presentation and expressed their full support of the initiatives.

VI. Pending Cases:

1. Wayne Jochem vs. Denver Sheriff's Department, Appeal No. 25-15 (On Remand)
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
2. Steven Crews vs. Denver Sheriff's Department, Appeal No. 79-18
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
3. Abbey Ellis vs. Denver Sheriff's Department, Appeal No. 10-19
The Career Service Board affirmed the rule violations set forth in the Hearing Officer's decision while remanding the matter for review of the penalty determination, consistent with the written order to follow.
4. David Niemeyer vs. Office of Economic Development, Appeal No. 037-19
The Career Service Board granted the Agency's Motion to Dismiss the Appeal, written order to follow.
5. Meleaha Glapion-Pressley vs. Denver Human Services, Consolidated Appeal Nos. 73-18, 76-18 & 80-18
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
6. Carlos Hernandez and Bret Garegnani vs. Denver Sheriff's Department, Consolidated Appeal Nos. 25-17 & 26-17 (On Remand)
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

VII. Executive Session:

The Board entered executive session at 9:45am. Karen Niparko discussed several OHR issues, and the Board discussed an HR matter.

Bruce Plotkin, Career Service Hearings Officer, discussed staffing in the Hearings Office and presented a proposed job description for a full-time, unlimited, Paralegal II to assist with the administrative and case management responsibilities. The Board approved the posting of the position.

In addition, the following appeals were adjudicated:

1. Doug Gomez vs. Denver Sheriff's Department, Appeal No. 42-19
The Career Service Board granted the Agency's Motion to Dismiss the interlocutory appeal and directed the Hearing Officer to recommence the hearing, written order to follow.
2. Thomas Trujillo vs. Denver Sheriff's Department, Appeal No. 26-19
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

VIII. Adjournment: *Adjournment was at 10:33am.*