

Career Service Board Meeting #2381

Minutes

Thursday, April 16, 2020, 9:00am

Conference Call

Karen DuWaldt (Co-Chair)
Neil Peck (Co-Chair)
Patricia Barela Rivera
David Hayes
LaNee Reynolds

- I. Opening:** *Meeting was called to order at 9:00am. Neil Peck, Board Co-Chair, asked for a roll call of those present for the record.*

All members of the Career Service Board were present, in addition to Bob Wolf, City Attorney to the Board, and Karen Niparko, Executive Director, Office of Human Resources ("OHR").

- 1. Approval of the Agenda for the April 16, 2020 Board Meeting.**
Board Member Patricia Barela Rivera made a motion, seconded by Board Co-Chair Karen DuWaldt, to approve the agenda for the April 16, 2020 meeting, which was approved unanimously by the Board.
- 2. Approval of the Minutes for the March 26 and March 19, 2020 Board Meeting.**
Board Co-Chair Karen DuWaldt made a motion, seconded by Board Member David Hayes, to approve the minutes for the March 26th and March 19th meetings, which was approved unanimously by the Board. Board Member LaNee Reynolds requested a change on page 3 of the March 19th minutes.

- II. Board Comments:** *Neil Peck, Board Co-Chair, noted the Board's deep appreciation for the leadership and work of the entire OHR staff during the COVID pandemic crisis. Ms. Niparko thanked Mr. Peck for his comments, stating she is very appreciative of the hard work and dedication of everyone in OHR in stepping up to the challenge.*

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

IV. Public Hearing:

- 1. Public Hearing Notice No. 617 – Prevailing Wage: Quality Control & Assurance Tech**

Conor Wildt, Sr. Classification & Compensation Analyst, presented Public Hearing Notice No. 617 to adopt a change in the pay and/or fringe benefits of the wage classification series of, "Quality Control and Assurance Technician" in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Based on this review, the following pay and fringe benefits revision was proposed, based on the service contract method:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Quality Control & Assurance Tech	\$23.85	\$7.23	\$31.08	\$25.81	\$7.52	\$33.33

Board Member Patricia Barela Rivera made a motion, seconded by Board Co-Chair Karen DuWaldt, to approve Public Hearing Notice No. 617, which was unanimously approved by the Board.

2. Public Hearing Notice No. 618 – Prevailing Wage: DIA Oil & Gas Positions

Conor Wildt, Sr. Classification & Compensation Analyst, presented Public Hearing Notice No. 618 to adopt a change in the pay and/or fringe benefits of the wage classification series of “Derrick Hand/Roustabout, Electrician, Mechanic, Pipefitter, Rig/Drill Operator and Truck Driver” in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

Based on this review, the following pay and fringe benefits revision was proposed, based on the service contract method:

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
Derrick Hand/Roustabout	\$14.04	\$6.10	\$20.14	\$14.49	\$10.06	\$35.07
Electrician	\$28.41	\$7.76	\$32.25	\$26.44	\$7.59	\$34.03
Heavy Equipment Mechanic	\$24.26	\$7.28	\$31.54	\$25.44	\$7.48	\$32.92
Pipefitter	\$25.62	\$7.44	\$33.06	\$26.70	\$7.62	\$34.32
Rig/Drill Operator	\$22.29	\$7.05	\$29.34	\$23.02	\$7.20	\$30.22
Truck Driver	\$22.95	\$7.13	\$30.08	\$23.62	\$7.27	\$30.89

Bob Wolf, City Attorney to the Board, asked whether Classification & Compensation had inquired whether the wage and benefit increases required under prevailing wage ordinance could be suspended in light of the city’s growing budget issues.

Nicole de Gioia-Keane, Director of Classification & Compensation, clarified the prevailing wage increases apply to external contractors, not employees, and are mandated by ordinance. Mr. Wolf asked if there was any current discussion about changing ordinance in light of budget challenges.

Board Member LaNee Reynolds asked if the contractors can choose to delay the increases, to which Ms. de Gioia-Keane replied in the negative, noting they take effect immediately after approval and the notices are required to be brought before the Board annually. Karen Niparko, Executive Director of OHR, suggested Mr. Wolf have a follow-up conversation with City Attorney Kristin Bronson to further explore the question.

Board Co-Chair Neil Peck asked if the language in future prevailing wage notices could be changed to more clearly highlight its applicability to contractors, not employees. Ms. de Gioia-Keane agreed this would be done.

Mr. Wildt clarified these increases only apply to future contracts, which Mr. Peck noted is also not easily referenced in the notice, and Ms. de Gioia-Keane replied this would be reviewed.

Board Co-Chair Karen DuWaldt made a motion, seconded by Board Member Patricia Barela Rivera, to approve Public Hearing Notice No. 618, which was unanimously approved by the Board.

3. Classification Notice No. 1633 – Environmental Public Health Investigators

Ashley Kelliher, Sr. Assistant City Attorney, noted Class & Comp and the City Attorney’s Office-Employment Section (“CAO”) reviewed the exempt status, under the Fair Labor Standards Act (“FLSA”), for the Environmental Public Health Investigator II (and the Environmental Public Health Investigator III classifications) and determined it was necessary to change their status to non-exempt. This review included job shadowing with seven (7) different investigator classifications.

Ms. Kelliher noted this investigator classification includes inspecting restaurants, day-care centers, marijuana dispensaries, production facilities, and emission enforcement. The CAO also researched the exemption status of similar positions in other municipalities and reviewed all possible exceptions for the classification allowed under FLSA.

The classification series primary responsibility is to conduct investigations using a very proscribed and uniform checklist based on the particular business being reviewed. The positions do require a college degree, but do not require a degree in public health or another specific category. Based on this assessment, the conclusion is the Environmental Public Health Investigator II and III classifications are non-exempt.

Lori Schumann, Sr. Classification & Compensation Analyst, presented Classification Notice No. 1633 to amend the Classification and Pay Plan by changing the Environmental Public Health Investigator (“EPHI”) classifications pay grade and range as well as changing the FLSA status of the EPHI II & III. The Animal Control Investigator series will also be abolished.

CLASSIFICATION PAY GRADE CHANGES

<u>Job Code</u>	<u>Class Title</u>	<u>Proposed Pay Grade & Range</u>
CE2264	EPH Investigator I	E-623 (\$26.95-\$39.35)
CE2265	EPH Investigator II	E-626 (\$30.80-\$44.97)
CE2266	EPH Investigator III	E-628 (\$33.67-\$49.16)

CLASSIFICATION ABOLISHMENTS

<u>Job Code</u>	<u>Class Title</u>	<u>Pay Grade & Range</u>
CN2803	Animal Control Investigator I	N-615 (\$19.32-\$28.21)
CN1809	Animal Control Investigator II	N-617 (\$21.12-\$30.84)
CN1808	Animal Control Investigator Supv	N-622 (\$26.38-\$38.51)

The Department of Labor’s FLSA governs position classifications as exempt or non-exempt from minimum wage and overtime, and this law applies to all positions at the City and County of Denver. Positions that are exempt from overtime must meet very specific criteria, such as paying a minimum salary amount, paying on a salary basis, and passing a specific job duties test.

Class & Comp and the CAO agreed the Environmental Public Health Investigator II (“EPHI II”) and the Environmental Public Health Investigator III (“EPHI III”) classifications should be non-exempt, effective June 7, 2020, to coincide with the beginning of a pay period.

In addition, due to organizational changes within Denver Animal Protection (“DAP”), it is proposed to abolish the Animal Control Investigator classifications.

The proposed pay grade and salary ranges were set by positioning the EPHI II classification at the same relative worth it held in the exempt salary range structure. The Environmental Public Health Investigator I (“EPHI I”) will also move to a higher pay grade to better align with the EPHI II and EPHI III classifications, as well as to keep the relative worth in alignment with the Environmental Public Health Analyst I at E-623.

48 employees are impacted by these changes. Three (3) employees will receive a pay increase to bring them to the minimum of their new salary range, with an annual budget impact is \$5,439.

Board Co-Chair Karen DuWaldt asked if a review was done to ensure the employees who are being reclassified are not eligible for back-pay for overtime worked in the last two years. Ms. Schumann replied this issue was reviewed and it was determined the employees did not regularly work overtime.

Ms. DuWaldt asked how it was determined the employees were not eligible for overtime if hours were not tracked. Ms. Schumann stated the employees were required by agency leadership to track their hours in Kronos, even though they were exempt, so there was a complete time record to review.

Ms. DuWaldt asked if employees who worked hours in excess of 40 hours per week during the time period reviewed would receive back pay for the overtime, to which Ms. Schumann replied in the negative, asking Ms. Kelliher to further elaborate as to the reason.

Ms. Kelliher stated the CAO had reviewed the time records of the employees over three years and determined there were very few instances of hours worked in excess of 40 hours per week. As such, the decision was made the employees would not be paid for the overtime identified during this time.

Ms. Schumann noted the employees are currently working extensive hours due to COVID-19, for which they are paid at straight time with approval from the Executive Director of OHR under CS Rule 9-93.

Ms. DuWaldt asked why the employees are being paid straight time when the FLSA requires employees to be paid at one and one-half their hourly rate. Jack Davies, HR Director, noted the employees are currently exempt and are receiving overtime pay under an allowable exception in the career service rules. Once the change is effective on June 7th, they will begin receiving overtime pay as non-exempt employees.

Ms. DuWaldt asked for clarification as to whether exempt employees being paid under CS Rule 9-93 are paid at straight time or time and a half, to which Ms. Schumann replied they are paid straight time.

Board Co-Chair Neil Peck asked if there is a conflict between the FLSA and the provisions of the rule. Ms. DuWaldt stated there is not, provided the employees are correctly classified as exempt, however, if they were misclassified, they are entitled to be paid overtime.

Ms. DuWaldt stated she is uncomfortable with the city's position the employees are not eligible to be paid time and a half for their current overtime, as well as receiving back pay for any overtime worked over the past two years. Karen Niparko, Executive Director of OHR, asked Ms. Kelliher to comment further on this point.

Ms. Kelliher stated if the city receives any claims from the employees for back pay, they will be investigated, however, a decision was made to reclassify them going forward as non-exempt and pay them overtime as required under FLSA at that time.

Board Member LaNee Reynolds stated her agreement with Ms. DuWaldt's point and asked if there was any analysis done as to the cost of back pay, versus the reputational damage to the city if a claim was brought forward. Ms. Reynolds asked what the right thing to do is in this situation. Ms. DuWaldt also noted the city has an obligation to comply with the law regardless of whether a claim is made.

Ms. Kelliher clarified she was not implying the city would dispute any claim made for back pay, stating the city would follow the law and the directives of the Board. Ms. Niparko suggested Class & Comp review the overtime data again and consult with the CAO on appropriate recommendations on back pay.

Ms. DuWaldt stated this was acceptable with regard to the back pay issue, however, the employees should be currently receiving time and a half in light of their hard work during this difficult time. Ms. Niparko agreed.

Nicole de Gioia-Keane, Director of Classification & Compensation, clarified she reviewed recent email communications with Payroll and confirmed the employees are currently receiving one and one half time for hours worked in excess of 40 per week, as well as differential pay, when applicable under the rules. Ms. DuWaldt thanked Ms. de Gioia-Keane for confirming this.

Ms. de Gioia-Keane stated the back pay question can be addressed appropriately by Class & Comp and the CAO, however, this should not preclude the Board making a decision today on whether to approve the changes proposed in the Notice.

Ms. Niparko asked the Board whether they are comfortable with this. Mr. Peck stated he has no issue with the proposed reclassification, however, he wants to make it clear the city must comply with the law.

Mr. Peck noted the position of waiting to see if anyone makes a claim is unacceptable. Ms. Niparko agreed and suggested the back pay issue be further investigated, while approving today's Notice.

Mr. Peck stated he recalled a similar issue being raised at a prior meeting and the Board was informed the city would not issue back pay. Ms. Niparko noted this involved pay adjustments for the Public Defenders, and whether the city was obligated under the Charter provisions for like pay to adjust their compensation retroactively. The determination was the change in pay was due to changes in the market for their classification.

Bob Wolf, City Attorney to the Board, noted the Public Defenders' pay adjustment question was not applicable to FLSA, and the question of back pay under the Charter requirements of like pay was too vague to make a determination.

Mr. Peck suggested the Board move forward with considering approval of the Notice, with back pay being further investigated. Ms. Reynolds stated she agreed this would be appropriate.

Greg Thomas, Director, Department of Public Health & Environment, stated he would like to provide some additional information for the Board. The issue of the appropriate classification first came up over a year ago with regard to the animal protection officers, which subsequently expanded to include all the inspector classifications shared by other agencies. Mr. Thomas commended the hard work of Class & Comp and the CAO in addressing all the agencies' concerns with the complex scope of these changes.

Mr. Thomas stated the change to non-exempt status is very timely in light of the increased hours being worked during the COVID-19 crisis, however, in the past, the majority of inspectors and/or investigators rarely worked in excess of 40 hours per week. Public Health and Animal Control staff do occasionally work evening and weekend hours in the course of their duties, which will be subject to differential pay as appropriate under the rules.

Mr. Thomas noted all of the agency leaders are in favor of the proposed changes. Most of the staff was also supportive, even though a few senior staff individuals with many years of service are paid above the new maximum pay rate. The Board thanked Mr. Thomas for his comments.

Board Co-Chair Karen DuWaldt made a motion, which was seconded by Board Member Patricia Barela Rivera, to approve Classification Notice No. 1633, which was unanimously approved by the Board.

4. Classification Notice No. 1646 – 2020 Pay Survey

Nicole de Gioia-Keane, Director of Classification & Compensation, and Blair Malloy, Senior Classification & Compensation Analyst, presented Classification Notice No. 1646 to amend the Classification & Pay Plan by adjusting the pay ranges and grades, as recommended by the 2020 Pay Survey Market Analysis, for certain occupational groups and/or classifications.

The Pay Survey is conducted annually per the City Charter and the Career Service Rules, to ensure the classification and pay ranges remains competitive to the market. The survey reviews the city's pay ranges versus the current market by occupational groups and by individual classifications.

Class & Comp will present the recommendation and the Board will accept, modify, or reject it. Ms. de Gioia-Keane noted the COVID-19 crisis has presented an unprecedented challenge to the city's budget, which the Budget & Management Office will discuss shortly.

Ms. Malloy noted Classification & Compensation uses local and national data surveys of both public and private sector employers. The market median pay rate data is compared to the city's range midpoints and adjusted to the local market, aged to January 1, 2020, and averaged into a market composite rate per classification.

In addition, all occupational groups are reviewed to ensure pay ranges are competitive with generally prevailing rates, with range minimums and maximums adjusted within an entire occupational group as the market data indicates. There is no impact to employee pay except for those individuals whose pay falls below a new range minimum, which are effective on July 1st.

Individual pay grades are reviewed to ensure classifications' pay range midpoints are competitive to market median rates, with adjustments made to individual classifications whose pay ranges have fallen behind market by 10% or more. Denver Revised Municipal Code mandates a 4.55% pay increase for each pay grade adjustment to an individual classification, which are effective on January 1, 2021.

Ms. Malloy reviewed the recommendations and costs as a result of the 2020 survey. Total occupational group adjustments are \$146,130, effective July 1st, with a full-year cost of \$292,259, reflecting the movement of employees to minimum pay within the grade range. Total pay grade adjustments are \$678,503, effective January 1st, reflecting the movement of 16 individual classifications into higher pay grades.

Ms. de Gioia-Keane noted the pay survey results from 2010-2012 were fairly modest, in comparison to pay adjustments made in recent years when the job market has been increasingly tight and unemployment at record lows. This trend was also present in the higher annual merit percentages awarded each year for salary increases. Turnover also increased as the economy improved, although the city's turnover rate is significantly lower than private sector employers.

Ms. de Gioia-Keane concluded by stating the normal socialization process requires the pay survey recommendation be brought before the City Council next month for final approval.

Stephanie Adams, Budget & Management Director, thanked the Board for the opportunity to comment on the pay survey recommendation and provide context on the current budget situation in light of COVID-19. Ms. Adams noted agencies would have to find additional savings in order to provide the recommended adjustments in the pay survey proposal.

The city's budget is under unprecedented pressure from emergency spending due to the crisis and dramatic revenue loss from the decline in sales and use taxes, which comprise 50% of the general fund. In addition to the impact to the general fund, the enterprise and special funds are also experiencing similar revenue pressure.

The general fund is currently projected to have a \$180 million, or 12%, revenue loss, which will continue to grow and impact 2021 Budget. In order to mitigate the gap, all agencies are currently mandated to reduce their budgets by 7.5% for 2020. BMO will evaluate these reduction proposals with an eye to identifying impacts on public delivery and critical services.

Ms. Adams concluded by stating employment conditions have dramatically changed as a result of unprecedented layoffs. As a result, BMO is requesting the Board consider delaying approval of the proposed pay survey recommendations.

Board Co-Chair Neil Peck asked if the Board has the option to not accept the recommendations, given the annual pay survey is required under ordinance. Ms. de Gioia-Keane replied the Board may accept, reject, or modify the proposal under the rules, and asked Ms. Adams to clarify whether she is asking for a delay or a rejection of the proposal.

Ms. Adams stated she discussed the proposal with the Mayor's appointees and their concern was whether the proposed adjustments could eventually be implemented once economic conditions improve, which the city has always done. Ms. de Gioia-Keane noted the pay survey is run at the end of each year and is dependent on current market conditions, which have experienced an unexpected and sudden change due to the crisis.

Mr. Peck asked whether the survey data would be irrelevant if the Board delays implementation of the recommendations. Ms. de Gioia-Keane stated the impact would be the city's pay ranges would be higher than the market, which is immediately affected by higher unemployment conditions.

Board Member LaNee Reynolds asked what the impact is to the DERP pension plan when pay adjustments are not implemented. Ms. Adams stated this is not a factor in the annual pay survey process, to which Ms. de Gioia-Keane concurred.

Karen Niparko, Executive Director of OHR, stated pay increases result in higher contributions to DERP by the city and employees. Ms. Adams stated the required DERP contribution is calculated annually based on number of factors, including stock market performance, the number of employees contributing versus retiring, and the discount rate.

Mr. Peck asked the Board for comments on whether the recommendation should be delayed or rejected. Board Member Patricia Barela Rivera replied the Board should reject the proposal in light of current challenges.

Bob Wolf, City Attorney to the Board, clarified the Mayor and the City Council are required under Charter to accept, modify, or reject the Board's recommendation on the annual pay survey. Mr. Peck noted CS Rule 7-73 also requires the Board to accept, modify, or reject the recommendation, which Ms. de Gioia-Keane confirmed. Mr. Wolf noted he was referring to the Charter requirement.

Board Member David Hayes stated that given the current market uncertainty and possible future recommendations as a result of the pay consultant's study, the Board should reject the proposal.

Mr. Peck suggested the Board formally vote on the Notice. Board Member David Hayes made a motion, which was seconded by Board Co-Chair Neil Peck, to not approve Classification Notice 1646, thereby rejecting the proposed pay adjustments as a result of 2020 Pay Survey, which was unanimously approved by the Board.

V. Executive Session:

The Board went into executive session at 10:26am and discussed several OHR issues with Karen Niparko. In addition, the following appeal was adjudicated:

1. Sonya Leyba vs. Denver Sheriff's Department, Appeal No. 04-20
The Career Service Board denied the Appellant's motion for interlocutory appeal and directed the Hearing Officer to recommence the hearing, pursuant to the written order issued.

VI. Adjournment: *Adjournment was at 11:03am.*