

Career Service Board Meeting #2388
Minutes
Thursday, September 17, 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 Sherri Catalano, Deanne Durfee, and Shelby Felton, Sr. Asst. City Attorneys, Bob Wolf, Sr. Asst. City Attorney to the Board, and Karen Niparko, Executive Director, Office of Human Resources (“OHR”).

- 1. Approval of the Agenda for the September 17, 2020 Board Meeting.**
Board Member David Hayes made a motion, seconded by Board Member Patricia Barela Rivera, to approve the agenda for the September 17, 2020 meeting, which was approved unanimously by the Board.
- 2. Approval of the Minutes for the August 20, 2020 Board Meeting.**
Board Member Patricia Barela Rivera made a motion, seconded by Board Co-Chair Karen DuWaldt, to approve the minutes for the August 20, 2020 meeting, which was approved unanimously by the Board.

- II. Board Comments:** *Board Co-Chair Karen DuWaldt announced Neil Peck has been re-appointed by the Mayor to the Career Service Board for a new five-year term. Ms. DuWaldt congratulated Mr. Peck and thanked him for his dedicated service. Ms. Niparko noted Mr. Peck would receive a letter from the Mayor confirming his re-appointment.*

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

IV. Public Hearing:

- 1. Public Hearing Notice No. 627 – Prevailing Wage: Conveyance System Maintenance Series**

Conor Wildt, Sr. Classification & Compensation Analyst, presented Public Hearing Notice No. 627 to adopt a change in the pay and/or fringe benefits of the wage classification series of “Entry Support Mechanic, Machinery Maintenance Mechanic, and Controls Systems Technician” in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

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

	Current			Proposed		
	Base Wage	Fringes	Total	Base Wage	Fringes	Total
Entry Support Mechanic	\$24.44	\$7.36	\$31.80	\$22.65	\$7.15	\$29.80
Machinery Maintenance Mechanic	\$27.46	\$7.70	\$35.06	\$27.66	\$7.73	\$35.39
Control Systems Technician	\$30.33	\$8.04	\$38.37	\$34.08	\$8.47	\$42.55

The Employers Council 2020 Colorado Benchmark Compensation Survey was used to determine the base wages for this series.

Board Member David Hayes noted the Entry Support Mechanic classification has a decrease in the wage and fringe benefits and asked how this affects existing contracts. Mr. Wildt asked Deane Durfee of the City Attorney's Office to respond.

Ms. Durfee stated the wage and fringe benefit rates currently in effect would stay the same until the anniversary date of the contract, at which point they are adjusted in accordance with the prevailing wage notice.

Mike Conner, Chief Financial Officer of JSM & Associates, asked to make a public comment regarding the prevailing wage notice. Mr. Conner noted his company is under contract with the City and County of Denver to operate and maintain the airport's baggage handling system with 60 employees. Mr. Conner noted in response to the COVID-19 crisis, the company provided savings to the airport totaling \$1.2 million, resulting in the layoff of 16 employees.

Mr. Conner stated he is requesting the Board defer the wage adjustments proposed in today's prevailing wage notice for one year, which will allow for the market data for local wages and benefits to be updated with the impact of current economic conditions.

Mr. Conner noted the Employers Council 2020 Colorado Benchmark Survey data was updated as of February 2020 and does not reflect the impact of COVID-19 on current economic conditions.

Mr. Conner also commented the proposed wage adjustments would take effect on the anniversary of his company's contract with the city, which is June 2021, and noted the affected positions received average wage increases of 24% as recently as January 2018.

Mr. Conner reiterated these proposed adjustments will place additional cost pressures on the airport at a time of an unprecedented declines in passenger volume, which is not expected to recover by mid-2021.

Mr. Peck asked if the Board had any additional questions or comments. Board Member LaNee Reynolds stated she would like to review the Employers Council data, in particularly comparing to last year, as Mr. Conner's comments merit additional research. Board Member Patricia Barela Rivera concurred with Ms. Reynolds and agreed the data should be reviewed.

Bob Wolf, Sr. Asst. City Attorney to the Board, stated the Board has the authority to defer the Notice and request additional data from OHR. Ms. Reynolds stated she is in favor of deferral at this time. Ms. Barela Rivera asked Ms. Reynolds if she would like to make a motion.

Ms. Reynolds made a motion, seconded by Mr. Peck, to defer consideration of Public Hearing Notice No. 627, at which point Mr. Peck asked for a date in which the Notice could be returned for the Board's review. Alena Duran, Sr. Classification & Compensation Analyst, stated she could review the data and present her findings at the November board meeting.

The Board unanimously approved deferring consideration of Public Hearing Notice No. 627 until the scheduled November 19 meeting.

2. Public Hearing Notice No. 623 – Prevailing Wage: Engineer, Tree Trimmer, & Parking Tech

Conor Wildt, Sr. Classification & Compensation Analyst, presented Public Hearing Notice No. 623 to adopt a change in the pay and/or fringe benefits of the wage classification series of “Building Engineer, Tree Trimmer, and Parking Electronics Technician” in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.

	Current			Proposed		
	Base Wage	Fringes	Total	Base Wage	Fringes	Total
Building Engineer	\$29.55	\$7.89	\$37.44	\$32.50	\$8.29	\$40.79
Tree Trimmer	\$20.55	\$6.91	\$27.46	\$21.30	\$7.00	\$28.30
Parking Electronics Tech	\$24.85	\$7.41	\$32.26	\$26.54	\$7.60	\$34.14

The Employers Council 2020 Colorado Benchmark Compensation Survey was used to determine the base wage for the Building Engineer and Tree Trimmer. The Service Contract Act was used to determine the base wage for the Parking Electronics Technician. The Service Contract Act was used to determine the fringe benefits for these classifications.

Board Co-Chair Neil Peck made a motion, seconded by Board Co-Chair Karen DuWaldt, to approve Public Hearing Notice No. 623, which was unanimously approved by the Board.

3. Public Hearing Notice No. 624 – Proposed Revision to Career Service Rule 9-73

Shelby Felton, Sr. Asst. City Attorney, presented Public Hearing Notice 624, proposing the permanent adoption of the emergency rule revisions made to Career Service Rule 9-73 and approved by the Board on March 26, 2020.

Ms. Felton noted 9-73B is revised to provide employees may be re-deployed in other capacities to support the city in the event of a city-wide emergency, which is paid at their regular rate of pay, rather than two and one-half time their regular rate.

The prior provision for pay were never intended to apply to an extended city-wide emergency and is not financially sustainable. Ms. Felton noted the revision does not preclude the city offering additional hazard pay if possible.

Board Co-Chair Neil Peck commented he agreed with the change as he did not feel it was appropriate for a redeployed employee to receive a double rate of pay. Board Member David Hayes commented the former pay provision is excessive.

Board Member LaNee Reynolds asked if exempt employees are generally redeployed to similar level positions, or did they take on lower level non-exempt responsibilities.

Ms. Felton responded all employees will continue to receive their current rate of pay regardless of the redeployed role and asked Suzanne Iversen, HR Director of Employee Relations, to elaborate further.

Ms. Iversen stated a policy was created for redeployment in which the guidelines state exempt and non-exempt employees should be matched to similar level responsibilities when redeployed to another role and their status was not changed.

Ms. Felton noted additional changes providing that employees who were on leave at the time of a work interruption are required to use that leave, however, the time is re-credited to their bank if recalled to work due to the emergency.

Suzanne Bohner, a Safety Supervisor at Denver International Airport, indicated she would like to make a few comments regarding the proposed rule change. Ms. Bohner stated she was pleased to hear the rule change does not preclude providing hazard pay, however, it seems the changes are only addressing the current emergency.

Ms. Bohner noted there is an additional burden and risk for essential employees coming in versus those employees who are able to work from home. Ms. Bohner stated she would like to see a deeper, more thoughtful review of how to best support essential employees long-term, rather than implementing short-term, emergency rule changes.

Ms. Bohner also suggested reviewing appropriate hazard pay and granting additional time-off would be ideal for employees who are being redeployed in riskier conditions such as working in shelters, clearing out homeless camps, or manning testing sites.

Mr. Peck asked Ms. Bohner what her proposal would be to address these issues. Ms. Bohner stated emergency pay structures should be implemented for both short-term and long-term events, and a more formal policy created with regard to issues such as employee parking and telecommuting during emergencies.

Karen Niparko, Executive Director of OHR, responded the COVID-19 emergency is unprecedented and rapid decisions, including emergency rule changes, had been needed to accommodate the shifting needs of the city. OHR is documenting all the changes and reviewing policies where appropriate, some of which do not necessarily mandate a rule change.

Board Member LaNee Reynolds made a motion to approve Public Hearing Notice No. 624, with the caveat OHR continue to review and consider policy and/or rule changes long-term as appropriate. Board Co-Chair Neil Peck seconded the motion, which was unanimously approved by the Board.

4. Public Hearing Notice No. 624 – Proposed Revision to Career Service Rule 11-27

Shelby Felton, Sr. Asst. City Attorney, presented Public Hearing Notice 624, proposing revisions to Career Service Rule 11-27, in addition to the permanent adoption of prior emergency revisions proposed and approved by the Board on March 26, 2020.

Karen Niparko, Executive Director of OHR, noted current provisions in the Rules for budget-declared furloughs by the Mayor are taken in days. The rule does not address long-term furloughs, which has been requested by two agencies since the COVID-19 emergency began in March.

Ms. Niparko noted the Mayor's desire to avoid layoffs of city employees, however, there are some city agencies which require additional budget relief by implementing a long-term furlough. The proposed revisions to Rule 11-27 are to allow for different implementation options for furloughs.

Ms. Felton noted 11-27A is revised to clarify furlough hours are not counted towards hours worked for the purposes of overtime and all employees are limited to a maximum of 32 hours during a work week in which furlough is taken.

Rule 11-27B is revised to clarify furlough days are based on an eight hour workday, in which in order for the city to realize the necessary savings, any employee who takes furlough hours in a work week, plus paid leave or holidays, may not exceed 40 hours.

Any excess will be added to their required furlough time bank and the hours will have to be made up. The revision allows for flexibility to take furlough in hours.

Board Co-Chair Neil Peck asked for clarification of how a furlough is being defined. Ms. Felton responded a furlough is a day in which the employee cannot be on paid leave and may not do any work, which provides the city with cost savings since it is unpaid.

Board Member LaNee Reynolds asked for clarification as to how the paid versus unpaid hours are calculated in a work week if an employee works more than 32 hours.

Ms. Felton replied the employee must be paid for any hours worked, however, if they exceed the hours allowed, the excess hours are added to the employee's furlough bank, which must be taken by the end-of-the year.

Ms. Reynolds asked what happens if an employee does not take their required furlough hours. Suzanne Iversen, HR Director of Employee Relations, noted Payroll periodically audits time records in Kronos to ensure employees are taking their furlough hours as required. Managers will be notified in advance of December 31st if there are any issues found.

Board Member David Hayes asked if an employee who has not taken the required furlough time is subject to their pay being reduced by the hours required by year-end. Ms. Iversen replied this is one possible outcome, however, she does not expect this to be a widespread issue as Payroll is monitoring Kronos closely.

Ms. Reynolds asked how the city is ensuring compliance with the Fair Labor Standard Act ("FLSA") requirements of paying employees for all hours worked when determining if pay is reduced for the hours owed for required furlough. Ms. Felton stated all employees are paid for their hours worked as required under the law.

Kelly Greunke, Budget & Management Manager, noted they are working closely with Payroll on the savings projections for each agency and, if necessary, any remaining hours not yet taken can be added to employees' furlough banks in 2021, with the requirement the excess be taken by January 2021. Ms. Greunke stated she does not anticipate this will be necessary for most agencies.

Mr. Peck asked why the city would not require all employees to take the furlough time needed to provide the required budget savings. Ms. Greunke replied the majority of employees will take furlough as expected, however, some flexibility is needed as operational needs can make scheduling furlough difficult for some agencies.

Ms. Felton noted Rule 11-27C is revised to provide all scheduled furlough days declared by the Mayor must be taken in eight hour increments, but provides some flexibility for appointing authorities to allow employees to work part of the day and make up the hours at a later time if operationally necessary.

The provision makes a distinction between whether furloughs are citywide as mandated by the Mayor, or implemented by individual agencies upon approval of the Mayor.

Rule 11-27D is revised to add specific classifications, in addition to specific employees, may be exempted by the Mayor from mandatory furloughs in order to maintain essential city services or other business needs.

Rule 11-27F is revised to ensure probationary employees who are placed on extended furlough of 30 consecutive days or more will resume the required probationary period upon returning from extended furlough, which is not considered an extension of the employment probation.

Rule 11-27G is revised to state an employee on extended furlough of 30 days or more must promptly notify their supervisor if they obtain outside employment and either request approval of such employment in accordance with the Denver Code of Ethics, or provide a notice of resignation no later than one day prior to beginning their new employment.

Rule 11-27H.1 is revised to limit the city's obligations to provide benefits to employees on furloughs of three consecutive months or less. As noted earlier by Ms. Niparko, the provisions of the rules were designed to address short-term furloughs taken in mandatory days as declared by the Mayor, not an extended furlough.

Section F currently provides the City continues to pay its share of an employee's health, dental, and life insurance premiums.

In addition, the employee continues to accrue PTO, or sick and vacation time, and receives paid holiday time during the furlough period, which is not defined. The proposed revisions provide the city will continue to maintain these provisions during a furlough of three consecutive months or less.

Board Member David Hayes commented furloughs are usually for a limited period of time only, however, the proposal is three months, which is unusual in his experience.

Board Member LaNee Reynolds asked if three months was chosen to align with the provisions of the Family Medical Leave Act ("FMLA"). Ms. Felton replied the change is not intended to align with the provisions of FMLA.

Ms. Reynolds asked if the city's medical carrier provisions limit coverage to three months, as some plan documents do provide for this.

Heather Britton, Director of Benefits & Wellness, responded there would be an impact to the stop-loss calculation for the self-insured United Healthcare plans if coverage had been provided to furloughed employees indefinitely.

Mr. Hayes asked how three months was decided as the extended furlough period. Ms. Niparko stated it was based on the time period appointing authorities were expected to request from the Mayor to implement an extended furlough. It was determined three months was fair and generous to the affected employees, after which they will be able to continue benefits coverage under COBRA.

Rule 11-27H.2 clarifies how employees will pay the city for their required portion of benefits during an extended furlough of more than one month. Ms. Britton noted the city pays approximately 94% of the premium for all benefits and the revision allows Payroll to deduct the employees' share from their accrued leave balances during the furlough.

Rule 11-17H.3 provides if an employee resigns or is laid-off during the furlough period, the city will deduct the remaining unpaid portion of any premiums from their accrued paid leave balances.

Rule 11-17H.4 states the employee is entitled to apply for benefits through COBRA after three consecutive months of extended furlough.

Suzanne Bohner, Safety Supervisor at Denver International Airport, asked to make some comments regarding the changes, particularly in light of the recent announcement of an extended furlough for Arts & Venues.

Ms. Bohner noted the rule references a budget-required furlough, whereas not all agencies in the city are funded the same way, for example, the airport's management told its employees furloughs were not being considered as it was not financially necessary.

Ms. Bohner suggested the language be updated to allow appointing authorities to determine whether furloughs were needed or not.

Ms. Bohner noted the flexibility to take furlough in various increments was very helpful as employees at the airport were allowed to determine when they could take their required time off and maximize their unemployment benefits. Ms. Bohner stated scheduled mandatory furlough days should be eliminated as this provision limits employees' ability to minimize the financial impact.

Ms. Gruenke noted the Budget & Management Office has been building in flexibility compared to past furloughs, where the city scheduled all days as mandatory. Eliminating any mandatory days would present operational challenges to agencies in scheduling time off.

Ms. Niparko commented the Mayor made clear when announcing furloughs that all agencies would participate, whether funded by the General or an Enterprise Fund, or by grants, with the exception of the Police and Fire Departments.

Ms. Niparko noted the airport was granted unique flexibility due to the 24/7 nature of the operation, which Ms. Gruenke stated was granted to other agencies such as 911, and there are ongoing conversations to address other operational concerns.

Ms. Bohner asked if the city looked at how best to implement furloughs to allow employees to claim unemployment benefits in the most beneficial manner. Ms. Niparko replied furloughed employees are eligible to apply for unemployment benefits, subject to the guidelines and laws of Colorado.

Ms. Niparko stated implementing furloughs are a balancing act between providing some flexibility versus mandatory furlough days, but the city cannot design furloughs based on maximizing employees' eligibility to apply for unemployment benefits, as there are needed savings to achieve.

Ms. Bohner commented removing a furloughed employee's benefits after three months is a harsh decision and creates a substantial financial burden for the affected individuals.

Ms. Bohner asked if employees are eligible to apply for insurance coverage under the Colorado Marketplace, to which Ms. Britton confirmed they are eligible due to a job loss. Ms. Bohner asked why employees cannot pay for the premiums owed during a furlough through a reverse draw on their bank account, rather than deducting the amount through paid leave.

Ms. Britton replied a reverse draw is not legal unless there is a salary overpayment and deducting through paid leave is ideal since furloughed employees continue to accrue time off, but cannot use it, and the deductions continue to be pre-tax.

Ginger White, Executive Director of Arts & Venues, asked for clarification as to when the changes to this rule would be effective, if approved, and what the impact is to Arts & Venues employees who will be furloughed for a period of three months.

Ms. Felton replied the changes would be effective today and noted the three-month furlough for Arts & Venues is scheduled to begin on September 27.

The affected employees will continue to receive their health, dental, and insurance benefits through the end of the year, with the city paying its portion of premiums, with employees' share being deducted from their accrued paid and holiday leave bank. Employees will also continue to accrue paid leave and receive leave credit for holidays.

Ms. Felton noted if the furlough is extended beyond three months, employees will no longer receive their benefits and will then become eligible under COBRA, or consider other options through the Colorado Marketplace Exchange, as stated earlier by Ms. Britton.

Ms. White commented when Arts & Venues sought the Mayor's approval to implement an extended furlough on August 24, these rule changes had not yet been socialized to all agencies.

Ms. White stated she feels an appropriate implementation done in good faith would make the change effective on October 1, reflecting notification to affected employees on September 1, since the current rule provision was still in effect.

Kathryn Barker, HR Director, stated Arts & Venues employees were notified of the possible rule changes and the impact to the proposed furlough. The details were communicated to the affected employees, which noted benefits would be provided by the city for three months if approved by the Board.

Ms. Felton commented the details of proposed change were communicated on September 3 and included in the employee Q&A circulated as well, which was confirmed by Ms. White.

Kelly Graham, Operations Coordinator for the Buell Theater, asked for clarification regarding how employees' share of benefits will be deducted from paid leave while on furlough.

Ms. Felton stated the employee will be asked to execute a deduction agreement, in which the city is authorized to reduce their paid leave bank to cover the premium amounts due.

Ms. Graham stated it would be more favorable to employees to have the option to pay the city themselves for the premiums, which would preserve their paid leave banks for future use when the furlough ends, and asked the Board to consider allowing this change.

Ms. Britton replied the Benefits team is not set-up to take personal checks for employee premiums, which would require substantial manual intervention that is not practical at this time. In addition, the city needs to track everything in Workday and the payments received would no longer be pre-tax deductions.

Mr. Peck commented the Board had devoted a considerable amount of time to this matter and all public comments must now cease as there were other items on the agenda to consider.

Ms. Niparko thanked everyone for their comments today, noting OHR had tried its best to propose changes that were fair and equitable to the affected employees. Mr. Peck thanked everyone for their hard work in addressing these issues.

Mr. Peck made a motion, seconded by Board Co-Chair Karen DuWaldt, to approve Public Hearing Notice No. 624, which was unanimously approved by the Board.

5. Public Hearing Notice 626 - Proposed Revision to Career Service Rule 16-10A

Shelby Felton, Sr. Asst. City Attorney, presented Public Hearing Notice 626, proposing the permanent adoption of the emergency rule revisions made to Career Service Rule 16-10A and approved by the Board on March 26, 2020.

Ms. Felton noted Rule 16-10A is revised to provide Service of Written Notice may be provided by e-mail, in addition to first-class U.S. mail or hand-delivery, and removes the requirement an employee must consent in writing prior to e-mail delivery.

This provision is impractical with many employees continuing to work from home for an extended time and provides cost savings to agencies by reducing mailing costs.

Board Co-Chair Neil Peck asked how the city ensures they have an appropriate e-mail address for employees to receive notices. Ms. Felton responded the city asks employees to provide a personal e-mail address in Workday, in addition to having a city-issued e-mail address.

Board Member David Hayes made a motion, seconded by Board Member LaNee Reynolds, to approve Public Hearing Notice No. 626, which was unanimously approved by the Board.

VI. Executive Session:

The Board went into executive session at 10:52am and discussed several OHR issues with Karen Niparko.

VII. Adjournment: *Adjournment was at 11:19am.*