

CIVIL SERVICE BOARD MEETING MINUTES

Date: July 12, 2012

OPEN SESSION – 5:30 p.m.

City Hall, One Frank H. Ogawa Plaza, Hearing Room 2

BOARD MEMBERS PRESENT: 6 - Chairperson, Wendall Mitchell

Vice-Chairperson, Winnie Anderson (arrived at 5:39 p.m.)

Board Member Judith Bodenhausen Board Member Dee Dee Brantley Board Member Alex Drexel

Board Member David A. Jones (newly appointed but not yet

a voting member)

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Andrea R. Gourdine, DHRM Director, Secretary to the Board

Tracy Chriss, City Attorney

Kip Walsh, Recruitment & Classification Manager, Staff to the

Board

Jennie Lim, HR Technician, Staff to the Board

The Civil Service Board convened at 5:35 p.m. with Chairperson Wendall Mitchell presiding.

OPEN SESSION AGENDA

ROLL CALL

After roll call, clarification was made with Tracy Chriss, City Attorney, that because new board member David A. Jones had not yet been sworn in, he could participate in the hearings but could not vote.

1) OPEN FORUM: 3 minutes

Speaker(s): None.

2) WELCOME NEW CIVIL SERVICE BOARD MEMBER

• David A. Jones

Chairperson Mitchell, on behalf of the Civil Service Board, welcomed new board member David A. Jones. The board members, City Attorney, Director of Department of Human Resources Management, and staff to the board all introduced themselves.

3) CONSENT CALENDAR

- a) Approval of Employee Requests for Leave of Absence
 - Oakland Police Department (2) OPD-2012-LA02 and OPD-2012-LA03
 - Oakland Fire Department (1) OFD-2012-LA03
 - Library (1) LIB-2012-LA01
- b) Approval of Provisional Appointment
 - Recreation Specialist II, PPT (Special Events) OPR-2012-PA01
 - Recreation Program Director (Fitness) OPR-2012-PA02

Resolution

<u>44568</u>

A motion was made by Member Drexel and seconded by Member Brantley to approve the items on the Consent Calendar. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None

Board Member Abstentions: None Board Member(s) Absent: None

4) OLD BUSINESS:

a) Approval of June 14, 2012 Civil Service Board Meeting Minutes

Resolution

44569

A motion was made by Member Brantley and seconded by Member Drexel to approve the June 14, 2012 Civil Service Board Meeting Minutes as submitted. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None

Board Member Abstentions: None Board Member(s) Absent: None

- b) Determination of Schedule of Outstanding Board Items
 - Civil Service Board Appeals & Hearings Calendar
 - o For Allen McFarland's Appeal of Probationary Release, the hearing is scheduled for October 4th.
 - o For Roxanne Sewell's Appeal of Medical Separation, hearing dates have been scheduled for November 8th and 9th.

Jennie Lim, HR Technician and Staff to the Board, reported that there were no new items for scheduling this month but some items have been updated.

Resolution

<u>44570</u>

A motion was made by Member Bodenhausen and seconded by Member Drexel to approve the Civil Service Board Appeals & Hearings Calendar as submitted. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None

Board Member Abstentions: None Board Member(s) Absent: None

c) Informational Report on the Status of Temporary Assignments for Temporary Contract Service Employees (TCSEs) and Exempt Limited Duration Employees (ELDEs) Including a Report of the Names, Hire Dates, and Departments of all ELDEs and TCSEs in Accordance with the Memorandum of Understanding Between the City and Local 21

Kip Walsh, Recruitment & Classification Manager, presented the monthly report on the status of Temporary Assignments for Temporary Contract Service Employees (TCSEs) and Exempt Limited Duration Employees (ELDEs).

Resolution

44571

A motion was made by Member Brantley and seconded by Member Anderson to accept the Informational Report on the Status of Temporary Assignments for Temporary Contract Service Employees (TCSEs) and Exempt Limited Duration Employees (ELDEs) as submitted. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None

Board Member Abstentions: None Board Member(s) Absent: None

5) NEW BUSINESS:

a) Election of Civil Service Board Officers (Pursuant to Civil Service Rule 2.05)

Resolution

44572

Vice-Chairperson Anderson nominated Chairperson Mitchell for another oneyear term as the Civil Service Board Chairperson. A motion was made by Member Anderson and seconded by Member Bodenhausen to accept the nomination of Chairperson Wendall Mitchell for another one-year term as the Chairperson. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None

Board Member Abstentions: None Board Member(s) Absent: None

Chairperson Mitchell nominated Vice-Chairperson Anderson for another one-year term as the Civil Service Board Vice-Chairperson. A motion was made by Chairperson Mitchell and seconded by Member Drexel to accept the nomination of Vice-Chairperson Winnie Anderson for another one-year term as the Vice-Chairperson. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None Board Member Abstentions: None Board Member(s) Absent: None

b) Quarterly Report of Outstanding Classification Studies

Resolution

44573

A motion was made by Member Drexel and seconded by Member Bodenhausen to accept the Quarterly Report of Outstanding Classification Studies. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None

Board Member Abstentions: None Board Member(s) Absent: None

c) Response by LaGrone to the Administrative Subpoena Served on May 18, 2012 in the *Kheven LaGrone v. City of Oakland* Case

Ms. Deborah Bialosky, representative for the City Attorney, requested that this item be discussed only if needed as part of the follow up and discussion of Item 5e in the context of the determination of back pay and mitigation issues. Mr. David Lerman, representative for Mr. LaGrone made no comment and the Board agreed to Ms. Bialosky's request.

Member Bodenhausen raised a concern about language in Mr. Lerman's written submission for this item and requested that the record reflect that there was a quorum at the May 10, 2012 Civil Service Board meeting – there were five members present when only four were needed to constitute a quorum. Secondly, a majority of the board members present voted to issue the subpoena and therefore the motion carried.

d) Consideration of Request by Kheven LaGrone that the Civil Service Board Issue an Administrative Subpoena to the Port of Oakland to assist with the determination of backpay and benefits (*Kheven LaGrone v. City of Oakland, et al.*, Alameda County Superior Court, Case No. RG09477713)

Mr. David Lerman, representative for Mr. LaGrone, stated that he had requested to keep this item on the agenda in the event that the Board might feel that there was insufficient information

in the briefs to make a determination on back pay and benefits for Mr. LaGrone. Chairperson Mitchell agreed that this item should be put on hold until after Item 5e and would only come back to this item if necessary. Mr. Dan Connolly, representative for the Port of Oakland, informed the Board that the Port had provided Mr. Lerman with copies of contracts and other documents as requested. Since the Board was able to make a determination of back pay and benefits owed to Mr. LaGrone with the information provided, there was no need to come back to this item.

e) Review and Determination of Back Pay and Benefits owed to Plaintiff/Petitioner, LaGrone in Accordance with Writ of Mandate Issued on January 24, 2011 (*Kheven LaGrone v. City of Oakland, et al.*, Alameda County Superior Court, Case No. RG09477713)

Chairperson Mitchell began the proceedings by stating eight issues that he would like to see addressed in the presentations by the three parties (City, Port, and LaGrone):

- 1. Should Mr. LaGrone have been reinstated?
- 2. Had the Port entered into outside contracts for work that Mr. LaGrone could have performed?
- 3. How should the amount of back pay owed to Mr. LaGrone be measured?
- 4. Should there be a consideration of interest on the award amount?
- 5. What should the apportionment of the award be between the City and the Port?
- 6. Did Mr. LaGrone have a duty to mitigate damages?
- 7. Should the damages be adjusted for lack of mitigation?
- 8. Should Mr. LaGrone be reinstated to a position at the Port?

Presentations were made by Ms. Deborah Bialosky for the City, Mr. David Lerman for Mr. LaGrone, and Mr. Dan Connolly for the Port.

Resolution

<u>44574</u>

A motion was made by Member Anderson and seconded by Member Brantley that any calculation of back pay owed to Mr. LaGrone be calculated at the City salary step that would have been closest to the salary amount of Mr. LaGrone's position at the Port at the time of the reduction in force action. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Member Mitchell, Member Anderson, Member

Bodenhausen, Member Brantley, Member Drexel

Board Member Noes: None Board Member Abstentions: None Board Members Absent: None

44575

A motion was made by Member Bodenhausen and seconded by Member Brantley that Mr. LaGrone be made whole with respect to any out-of-pocket expenses for benefits he would have received had he been a City employee; and that Mr. LaGrone be made whole with PERS so his status is what it would have been had he remained employed, taking into account payments he would have made. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Member Mitchell, Member Anderson, Member

Bodenhausen, Member Brantley, Member Drexel

Board Member Noes: None

Board Member Abstentions: None Board Members Absent: None

A motion was made by Member Brantley and seconded by Member Anderson that Mr. LaGrone's back pay amount be reduced by 20% for failure to provide evidence of fully seeking employment and therefore failing to mitigate damages; and that the PERS calculation awarded by the previous motion be based on the adjusted salary amount. The motion carried by the following vote:

Votes: Board Member Ayes: 3 - Mitchell, Anderson, Brantley

Board Member Noes: 2- Bodenhausen, Drexel

Board Member Abstentions: None Board Member(s) Absent: None

A motion was made by Member Drexel and seconded by Member Bodenhausen that the cost of making Mr. LaGrone whole be apportioned 50/50 between the City and the Port. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None Board Member Abstentions: None Board Member(s) Absent: None

A motion was made by Chairperson Mitchell and seconded by Member Brantley that to the extent funds are needed to fund the employee paid portion of restoring Mr. LaGrone's PERS standing, that portion will be deducted from Mr. LaGrone's payment and paid to PERS. The motion carried by the following vote:

Votes: Board Member Ayes: 5 - Mitchell, Anderson, Bodenhausen, Brantley,

Drexel

Board Member Noes: None Board Member Abstentions: None Board Member(s) Absent: None

The next meeting of the Civil Service Board will be held on Thursday, August 9, 2012. Member Bodenhausen requested that the matter of whether the Port has the authority to contract out (Proposition 35 and City Charter) be discussed in the September meeting.

ADJOURNMENT

There being no further business, and upon the motion made by Member Brantley, seconded by Member Anderson, the Civil Service Board adjourned the meeting at 10:06 p.m.