

COUNTY OF VENTURA

civil service commission

BOARD OF REVIEW AND APPEALS



Commissioners
Don Becker
Alyse M. Lazar
Haywood Merricks III
Patricia S. Parham
James Vandenberg

MINUTES
REGULAR BUSINESS MEETING
THURSDAY, January 26, 2017
9:30 a.m.
County of Ventura Government Center
Hall of Administration
LOWER PLAZA ASSEMBLY ROOM

- I. CALL TO ORDER** – Chair Lazar called the meeting to order at 9:35 a.m.
- II. ROLL CALL** - Commissioners present: Chair Lazar, Vice-Chair Vandenberg, Commissioners Merricks, Becker and Parham. Staff present: Cheryl Shaw, Commission Assistant.
- III. PLEDGE OF ALLEGIANCE**

The Commission proceeded into Closed Session at 9:36 a.m.
- IV. CLOSED SESSION** – Peace Officer Discipline or Dismissal – Two Matters

At the conclusion of Closed Session at 9:50 a.m., the Commission reconvened with no announcements. At that time, the Commission was joined by Mike Curnow, Industrial Relations, Craig Leedham, Manager of Industrial Relations, and its Law Advisors, Assistant County Counsel Roberto Orellana and attorney Grant Burton.
- V. MINUTES FOR APPROVAL** – The minutes of the Regular Business Meeting of November 17, 2016, were approved on motion by Commissioner Becker, seconded by Vice-Chair Vandenberg. The minutes of the Special Meeting of December 1, 2016, were approved on motion by Commissioner Parham, seconded by Commissioner Becker. The minutes of the Special Meeting of January 4, 2017, were approved on motion by Commissioner Parham, seconded by Commissioner Merricks.

VI. PUBLIC COMMENTS – None.

VII. OLD BUSINESS –

- A. Kimberly Michael (District Attorney's Office), Case #16-321-13-02, regarding Senior Investigator promotional process, pursuant to Ventura County Personnel Rules and Regulations section 525.

Mark Pachowicz, Esq., appeared on behalf of Ms. Michael. Matthew Smith, Assistant County Counsel, appeared on behalf of the District Attorney's Office.

Mr. Pachowicz stated that the County was not disputing his client's right to appeal the oral examination portion of the subject promotional process but contends that the Commission lacks jurisdiction to entertain an appeal from what the County terms the "practical examination" portion of his client's appeal. Mr. Pachowicz also objected to the Commission's consideration of additional evidence presented in the reply brief filed by the County.

Mr. Pachowicz argued that, in order to meet the definition of a practical examination, candidates must complete a hypothetical task that simulates essential job duties. By way of example, if the practical exam were for a floor sweeper, then the raters would observe candidates sweeping a floor. In Ms. Michael's exam, however, the County created what it calls a practical exam but what really was not, as the candidates were placed in a room, given information to read, and then asked questions by the raters. The method used thereby created an oral examination process rather than a practical one. He stated that the law requires the parties to adhere to the definitions contained in the Personnel Rules and Regulations and, to the extent that the parties disagree on those facts, then the Commission should hold a hearing to determine if the portion of the examination process being contested was in fact oral or practical.

In response to a question from Commissioner Becker regarding the prejudice that would result if the Commission reviewed the County's additional evidence, Mr. Pachowicz stated that the Ms. Michael has not been able to respond to the declarations contained in the County's reply and she therefore requested an opportunity to cross-examine those witnesses who submitted declarations to support the County's position.

Vice-Chair Vandenberg stated that he did not see the distinction that the petitioner was trying to make with regard to the process utilized for this particular examination. He understood that the purpose of an assessment center is to evaluate a candidate's supervision, leadership and management skills, which the second part of the examination apparently did. Mr. Pachowicz responded that an assessment center was not utilized. Rather, the District Attorney's Office created a test that did not meet the definition of a practical examination as contained in Personnel Rule and Regulation section 508D.

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Mr. Smith then responded on behalf of the District Attorney's office. He argued that the Commission should not hold an additional evidentiary hearing because the parties had fully briefed the issue and the Commission should first make a determination as to whether it has jurisdiction over each portion of the examination. He argued that the County has the discretion to test certain job skills and, in this case, the County had simulated a scenario in which candidates were required to assess information, and then use that information into a presentation format. He concluded that this qualifies as a practical examination, as defined in the Personnel Rules and Regulations.

Chair Lazar addressed the issue of the pending objections. She also stated that the declaration of Cloyce Conway, attached to the County's reply brief, outlined the job functions for the position being tested and the question is therefore whether or not the portion of the examination in question directly related to those job duties.

Mr. Smith stated that, in an oral examination candidates are each asked the same series of questions by a panel and rated on the substance of answers given. In this practical examination, by contrast, candidates were asked to review certain information and then prepare a presentation to a rating panel. This amounted to a job specific task, not an oral examination. The candidates were rated not on the substance of what was said, but on the method each used in the presentation, how well time was utilized, and the effectiveness of the final presentation each made.

Commissioner Parham stated that it still was unclear as to what constituted the actual examination, despite evidence submitted by the County, and she also questioned whether this same process had been used in prior promotional openings of this type. Mr. Smith responded that he believed that this exam was modeled after a prior examination and that the inclusion of POBRA (Peace Officer Bill of Rights) materials was suggested by someone in the District Attorney's Office.

Commissioner Becker stated that, without knowing the specifics of the scenarios that were presented to each of the candidates, it was difficult to determine if this was a practical examination or not. If the examination involved candidates reviewing POBRA and then making a presentation, it does not seem that the test involved a candidate's knowledge of POBRA, but only what the candidates learned reviewing the materials.

Mr. Smith responded that Mr. Conway's declaration outlined the parameters that the raters used. In response to Vice-Chair Vandenberg's question regarding establishment of an eligibility list from this test process, Mr. Smith stated that a list was created and Ms. Michael's name is on the list. He also stated that no promotions had been made, to date, based on this particular posting.

Grant Burton, the Commission's law advisor, addressed the District Attorney's objections to petitioner's brief and supporting evidence and advised the Commission to sustain all of these objections with the possible exception of objection number 7.

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Chair Lazar thanked the parties for their arguments and then moved to sustain all of the objections submitted by the District Attorney, pursuant to Evidence Code section 350, and moved to sustain Ms. Michael's objection to the declaration of Mr. Conway, filed by the District Attorney. The motion was seconded by Vice-Chair Vandenberg and passed unanimously.

After further Commission discussion, Commissioner Becker moved that the portion of the examination termed a "practical exam" by the District Attorney's counsel was, in fact, an oral examination and that the Commission had jurisdiction to hear the matter. Commissioner Parham seconded the motion, which passed by a vote of 3-2 with Vice-Chair Vandenberg and Commissioner Merricks voting against approval. Chair Lazar then set the matter for a hearing before the entire Commission commencing on April 25, 2017, at 9:00 a.m.

(Chair Lazar called for a break at 10:55. The Commission reconvened at 11:05 a.m.)

- B. Criminal Justice Attorneys' Association of Ventura County request for investigation relating to procedure utilized to fill vacancy for Attorney III position within District Attorneys' Office, Case #14-281-03-02.**

Christina Vanarelli, appeared on behalf of the Criminal Justice Attorneys' Association of Ventura County (CJAAVC). Matthew Smith, Assistant County Counsel, appeared on behalf of the County.

Ms. Vanarelli stated that a judgment had been entered in the civil court proceeding and requested that the Commission lift its stay and proceed with the investigation. She stated that, during the course of the civil case proceedings, CJAAVC had obtained quite a bit of evidence that it would like to present to the Commission. She argued that an investigation was still needed to expose favoritism in the hiring process and that evidence her client can present will show that there is no fair and open hiring process.

Commissioner Becker inquired about the remedy that CJAAVC was seeking, stating that the extent of the Commission's jurisdiction in such matters is limited to making recommendations to the Board of Supervisors regarding the Personnel Rules and Regulations. Vice-Chair Vandenberg then stated that, when the investigation was first presented to the Commission, it appeared that CJAAVC's goal was to have the individual hired by the District Attorney's office in the lateral transfer process dismissed, which was not something the Commission has the authority to do. He also stated that the Commission had previously asked the Board of Supervisors to postpone its decision to amend the transfer provisions in the Civil Service Ordinance so that the Commission could investigate and report its findings, but that the Board had chosen to move forward with that amendment without Commission input.

Ms. Vanarelli confirmed that the Board's action to amend the ordinance did not assist her client's position but, at this point, CJAAVC was not focusing on any one individual hire

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but asking the Commission to conduct an investigation on this aspect of the civil service system in general.

Mr. Smith responded by stating that this investigation began as a “witch hunt” against the individual hired by the District Attorney using a transfer procedure and that, during the lawsuit, CJAAVC had asked the court to deem that individual’s employment invalid, something the court refused to consider in the employee’s absence. Mr. Smith argued that there is no underlying problem that needs to be fixed, as the lateral transfer process has been allowed under the civil service rules and procedures for over 60 years and there has never been a prior complaint regarding its use. There is, therefore, no underlying problem for the Commission to investigate. Mr. Smith also argued that, now that the Board of Supervisors has approved the amended language in the ordinance, there is no need for the Commission to conduct an investigation. Mr. Smith also stated that the County would oppose any attempt by CJAAVC to introduce evidence with respect to the hiring of specific individuals.

Commissioner Becker stated that the Commission had already made its position clear that it would not get involved with the issues surrounding any individual transfers but only the general issue of lateral transfers from outside the County service.

Chair Lazar stated that, at issue currently, was whether to lift the Commission’s stay of this matter, as the Commission had already determined it had jurisdiction to conduct an investigation and that it would conduct one regarding this aspect of the County’s civil service system. However, she also agreed that the Commission had no interest in reviewing boxes of documents or taking evidence regarding any individual employees.

Vice-Chair Vandenberg asked the Commission to reconsider undertaking any investigation at this time since the Board of Supervisors made clear its position when it voted to amend the language of the ordinance to continue a lateral transfer process. Commissioner Merricks agreed, stating that as the Board has already acted and any input by the Commission would be pointless.

Chair Lazar stated that, while she agreed that the Commission should not look into the transfer rule that the Board of Supervisors recently adopted, the Commission could conduct an investigation to determine if the Personnel Rules and Regulations regarding transfers, as they currently stand, make sense and if they are being applied fairly. Commissioner Becker agreed that the Commission should not try to reinterpret what the language of the ordinance meant before the Board acted but should only look at the meaning of the language, as amended.

Mr. Orellana stated that the Commission had to first decide whether to lift the stay, but also could reconsider whether to any conduct and the scope of that investigation. He also stated the stay could be lifted by motion and the continued investigation could be conducted by the entire Commission, a panel of two or more commissioners, a single commissioner, or staff, who would then report back to the Commission. In order to make

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any recommendations to the Board, however, the entire Commission should be asked to vote on any resulting report. He also stated that he agreed with Mr. Smith that, under the terms of the Civil Service Ordinance, the Commission's subpoena power cannot be used in investigations but only in disciplinary proceedings and certain related hearings, such as voluntary terminations and resignations.

Mr. Smith reiterated that the issue was not whether the Commission had the authority to conduct an investigation but the fact that the parties were here due to one lateral transfer of a single individual and that there has been no showing of any systematic abuse by the County of the lateral transfer process.

Vice-Chair Vandenberg made a motion to have the Commission reconsider its decision to conduct any investigation. There being no second, the motion failed.

Commissioner Becker then moved to lift the stay and proceed with the investigation as limited by the Commissioners' comments at this meeting. The motion was seconded by Commissioner Merricks and passed by a vote of 3-1, with Vice-Chair Vandenberg voting no and Commissioner Parham abstaining.

Commissioner Becker stated that he did not feel the Commission was prepared to conduct the investigation without more clarity as to its scope. Staff was directed to continue the matter to the Commission's business meeting on February 23, 2017, so the Commission could further discuss and clarify the scope of the investigation.

VIII. REQUEST FOR HEARING – None.

IX. REQUEST FOR INVESTIGATION – None.

X. NEW BUSINESS – Review of Ventura County's Adopted Personnel Rules and Regulations (PR&R) Pursuant to Subdivision (b) of Section 1345 of the Ventura County Ordinance Code for the Purpose of Making Suggested Revisions to the PR&R to the Board of Supervisors for the County of Ventura.

Commissioner Becker stated that no action needed to be taken immediately and had asked the item be agendaized to discuss certain minor changes that should be made. Mr. Dembowski, Assistant Human Relations Director, stated that substantive changes often require collective bargaining but minor changes may be made by County staff. Chair Lazar suggested that each Commissioner review the Personnel Rules and Regulations and forward any suggested changes to Ms. Shaw, who was directed to continue this matter for further discussion during the Commission's February business meeting.

Commissioner Parham excused herself from the meeting at 11:50 a.m.

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XI. INFORMATIONAL – None.

XII. COMMISSION/STAFF COMMENTS - Presentation of report to the Board of Supervisors of the Commission's activities for second fiscal quarter.

Upon motion by Commissioner Becker, seconded by Vice-Chair Vandenberg, the Commission voted unanimously to direct Chair Lazar to sign the report letter and for staff to forward it to the Board of Supervisors for review during its next public meeting.

Ms. Shaw reminded the Commission that the Form 700 Statements of Economic Interest must be filed by April 1, 2017, and that each of them should have received information from the Clerk of the Board with respect to electronic filing of these forms.

XIII. ADJOURNMENT – The meeting was adjourned at 12:00 p.m.