

COUNTY OF VENTURA  
**civil service commission**

**BOARD OF REVIEW AND APPEALS**



**Commissioners**  
Don Becker  
Alyse M. Lazar  
Haywood Merricks III  
Joyce A. Taylor  
James Vandenberg

**MINUTES**  
**REGULAR BUSINESS MEETING**  
**THURSDAY, JULY 23, 2015**  
**9:30 a.m.**  
**County of Ventura Government Center**  
**Hall of Administration**  
**LOWER PLAZA ASSEMBLY ROOM**

- I. CALL TO ORDER** – Chair Merricks called the meeting to order at 9:30 a.m.
- II. ROLL CALL** - Commissioners present: Chair Merricks, Vice-Chair Becker, Commissioners Vandenberg, Lazar and Taylor. Staff present: Cheryl Shaw, Commission Assistant, Roberto Orellana, Law Advisor to the Commission, and Mike Curnow (IR).
- III. PLEDGE OF ALLEGIANCE**
- IV. MINUTES FOR APPROVAL** – The minutes of the Regular Business Meeting of May 28, 2015, were approved on motion by Commissioner Taylor, seconded by Commissioner Vandenberg.
- V. PUBLIC COMMENTS** – None.
- VI. OLD BUSINESS** – None.
- VII. REQUEST FOR HEARING** – Michael Jenkins, #15-328-10-04, pertaining to Simulator Examination for Fire Captain.

Michael Schwartz appeared as counsel for Mr. Jenkins. Dee Amami, of County Human Resources, appeared on behalf of the Ventura County Fire Protection District. Mr. Schwartz stated that he had been recently retained by Mr. Jenkins to appeal his Fire Captain examination as Mr. Jenkins felt his exam was inappropriately scored. Should the Commission grant the appeal request, Mr. Schwartz stated that he would need additional time to obtain relevant information from County Human Resources regarding the scoring of his client's examination as well review the video tapes of the other candidates who took the simulation exam. Mr. Schwartz expressed that Mr. Jenkins feels he did not pass the exam based upon certain decisions he made during the simulation, and if he were able

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to view the videotapes of the other candidates and compare them to Mr. Jenkins exam, it could prove dispositive as to his client's appeal request.

Ms. Amami stated that County Human Resources had spent a considerable amount of time reviewing both Mr. Jenkins' exam and the other candidates' examinations to determine what a passing versus non passing simulation would look like. She also represented that due to the technical nature of the simulation exam she consulted with subject matter experts. In reviewing the exams, she observed there were differences between Mr. Jenkins performance and the performance of other test takers.

In response to Chair Merricks question, Ms. Amami stated that the initial examination panel consisted of two panel members from outside of Fire District (or County) service and one County employee. The internal review was done by Chiefs and Assistant Chiefs within the Fire Department and also by herself and the Assistant Director of Human Resources for the County. Mr. Jenkins also had the opportunity to discuss his examination with Human Resources accompanied by his union representative.

Commissioner Vandenberg expressed concern about how the Commission was expected to make any determination in the matter due to the technical issues involved and questioned if undertaking the appeal would be a waste of Commission resources due to the lack of technical expertise. He also stated that the appeal request did not appear to allege that Mr. Jenkins was particularly targeted or discriminated against in the exam process.

Commissioner Lazar inquired about the specific basis for the appeal and questioned if Mr. Jenkins was focusing on subsection (c) of Section 1205 of the Professional Firefighter's Memorandum of Agreement, which specifies fraud, favoritism or other non-merit factors as a basis for an examination appeal. Mr. Schwartz stated that his client had been previously disciplined and terminated by the Department and had brought a disciplinary appeal matter before the Commission. Following that hearing, Mr. Jenkins was reinstated and now feels that the scoring on the simulation exam is an indication that the Department does not want him to return to the position of Fire Captain.

Mr. Schwartz further stated that Commissioner Vandenberg's comments were valid but that he believes that by viewing the simulation tapes Commissioners should be able to recognize if there was disparate treatment of his client in scoring the exam. He further stated, as an example, some of the decisions made by Mr. Jenkins during the exam emulate decisions made by fire captains his client has worked under in the field. Mr. Swartz argued that if that is true, then it would have been unfair for Mr. Jenkins to have been judged to have failed an exam after making the same caliber of decisions as other fire captains. Although this review would involve understanding some technical matters, Mr. Schwartz stated that a

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comparison of facts could still be undertaken and it would be up to the advocates to educate the Commission as to any technical issues involved. However, since neither he nor his client have been able to view the videotapes and are relying solely on representations from Human Resources that Mr. Jenkins did not pass, he and his client need to obtain that information. Nonetheless, Mr. Schwartz stated he was not interested in wasting the Commission's time and promised that if the videotapes, once reviewed, do not show a disparate treatment of his client, that would result in his client's withdrawal of the appeal.

Vice-Chair Becker expressed confusion about the exact issue being appealed. He referenced the petition dated May 25<sup>th</sup>, which states that the appeal is from the results of the exam that was inappropriately scored. Personnel Rules and Regulations section 524 indicates that the basis for an examination appeal is appropriateness or correctness of item or items in written examinations, fraud, favoritism or other non-merit factors involved in the oral examination interview. He inquired of Mr. Schwartz what specifically was being asserted by Mr. Jenkins in relation to section 524.

Mr. Schwartz responded that the original petition was written by his client and not by counsel but this could be an instance of fraud or reverse favoritism in the scoring as his understanding is that his client's performance was within standards acceptable under the Fire District's policies and procedures. In response to Vice-Chair Becker's inquiry as to how he intended to establish fraud or favoritism, Mr. Schwartz stated that it would be the petitioner's burden to produce evidence for the Commission, and if his client's performance was the same as others who passed the exam, then he thought that would constitute a prima facie case of fraud, favoritism or some other irregularity that violates the principles of basic fairness required by the Personnel Rules and Regulations. He again asserted that, if Mr. Jenkins made decisions during the exam that are based on the District's standard practices and procedures, then there would have been no permissible reason for him to have been found to have failed the exam.

Ms. Amami stated that during the review process Human Resources did overturn the results of another candidate. She stated that the examination simulations are designed to simulate an actual fire and record a candidate's responses, the individual exams were video recorded, and the video recordings had been reviewed by her and the District. Mr. Schwartz stated he was aware of one candidate who also had his test re-reviewed. However, he and his client had not seen the video recordings; he argued that it would be helpful for himself and Mr. Jenkins to be able to sit down with Human Resources and review the video tapes.

Commissioner Lazar indicated that if the Commission were to proceed on this matter, it would be incumbent on the parties to provide experts to explain any technical issues presented. She also expressed that this should not be a long process as the parties can decide which portions of the videotapes to show the

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Commission. However, the question before the Commission was whether it should postpone any decision based upon Mr. Schwartz's desire to meet with Human Resources to review the videotapes before proceeding.

Commissioner Vandenberg commented about his past experience with test taking and reiterated that there are simply some people who do well in an examination setting and others who do not. He stated that it did not appear there were any allegations that Mr. Jenkins was treated in a disparate manner. He reiterated that the Commission would be wasting its time in dealing with questions of a person's inclusion or non-inclusion on an eligibility list.

Vice-Chair Becker stated that he was interested in Mr. Schwartz's suggestion to have him and his client meet with Human Resources and asked Ms. Amami to respond. She indicated that a meeting could be held to review the examination videos and articulate to Mr. Jenkins his exam's deficiencies. Mr. Schwartz stated he was concerned about waiving his client's appeal rights and was agreeable to a meeting as long as the matter could be set for a future agenda. Mr. Orellana advised the Commission that they could continue the matter and have it agendized in the future and make it incumbent on the parties to notify the Commission of the status of the matter so that it did not remain on the Commission's calendar indefinitely. After agreeing on the process requested by the petitioner, the Commission directed Staff to follow up with the parties with respect to placing the matter back on the Commission's agenda at the appropriate time.

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Ms. Shaw introduced Shawn Atin, the County's new Director of Human Resources. Mr. Atin briefly addressed the Commission and stated that he was pleased to see the Commission and Human Resources taking common sense approaches to matters before it, such as that applied in the prior request for hearing. Chair Merricks welcomed Mr. Atin to County service.

**VIII. REQUEST FOR INVESTIGATION – None.**

**IX. NEW BUSINESS –**

- A. Section 103 Review of Proposed Amended Memorandum of Agreement (MOA) and Letter to the Board of Supervisors of the County of Ventura Re: Adoption of an Amendment to the 2014-2017 Memorandum of Agreement between the County of Ventura and the California Nurses Association (CNA).

Mr. Curnow represented that of the 22 circulating operating room nurses, the County has recently lost six nurses to local competitors. The position of operating room nurse is a highly competitive position and there is currently a national

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shortage of such nurses. He further represented that, as a result of the loss of nursing staff, the County had to recently close two of six operating rooms at the Ventura County Medical Center. Fortunately, the closures only affected elective surgeries and not emergency procedures.

To assist with recruitment and retention efforts, Industrial Relations met with representatives from CNA and came to an agreement for a market based premium pay adjustment of up to \$25 per hour. Market based premium payments have been made in other scenarios including in the most recent SEIU Local 721 MOA. Mr. Curnow represented that the amendment to the CNA MOA would have no adverse impact on the Personnel Rules and Regulations.

Upon motion by Vice-Chair Becker, seconded by Commissioner Vandenberg, the Commission unanimously voted to direct the Chair to sign a letter to the Board of Supervisors stating that the Commission finds that the proposed MOA amendment will have no adverse impact on the County's Personnel Rules and Regulations. Staff was instructed submit the letter to the Clerk of the Board of Supervisors for placement on its next meeting agenda.

- B. Election of Chair and Vice-Chair of the Commission pursuant to Article III, Section 1 of the Commission's Bylaws.

Chair Merricks opened the nominations. Commissioner Becker was unanimously elected as Chair of the Commission following nomination by Commissioner Vandenberg, seconded by Commissioner Merricks. Commissioner Lazar was unanimously elected as Vice-Chair of the Commission following nomination by Commissioner Becker, seconded by Commissioner Taylor.

**X. INFORMATIONAL – None.**

**XI. COMMISSION/STAFF COMMENTS**

- A. Status update of scanning project of Commission's archives.

Ms. Shaw stated that the scanning project was nearly completed and that, to date, approximately 980 documents had been scanned.

- B. Presentation of report to the Board of Supervisors of the Commission's activity for fourth fiscal quarter and year end summary.

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

**XII. CLOSED SESSION**

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: Civil Service Commission Assistant

The Commission proceeded into Closed Session at 10:20 a.m.

**XIII. ADJOURNMENT** - The meeting was adjourned following the Closed Session at 11:00 a.m.