

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, NOVEMBER 19, 2015
9:30 a.m.
County of Ventura Government Center
Hall of Administration
MULTI-PURPOSE ROOM

- I. **CALL TO ORDER** – Chair Becker called the meeting to order at 9:30 a.m.
- II. **ROLL CALL** - Commissioners present: Chair Becker, Vice-Chair Lazar, Commissioners Merricks, Vandenberg, 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 September 24, 2015, were approved on motion by Commissioner Vandenberg, and seconded by Vice-Chair Lazar.
- V. **PUBLIC COMMENTS** – None.
- VI. **OLD BUSINESS** – Consideration of merit increase for Commission Assistant based upon performance review completed July 23, 2015.

Commissioner Vandenberg stated that the Commission had received additional information from Kelly Akers regarding the computation and effective dates for Ms. Shaw's merit increase. The Commission voted unanimously, upon motion by Commissioner Vandenberg, seconded by Vice-Chair Lazar, to approve a 5% merit increase for Ms. Shaw retroactive to August 2, 2015.

- VII. **REQUEST FOR HEARING** – Joseph Romero, Case #15-303-18-02 (Ventura County Health Care Agency).

Mr. Romero was present as was Jim Dembowski, Deputy Executive Officer of Human Resources. Mr. Romero addressed the Commission stating that he submitted paperwork expressing concerns about the County's testing procedures. He further stated that with

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respect to his former job as an Alcohol and Drug Treatment Specialist II with Ventura County Behavioral Health, he had taken six certification exams which he did not pass but is concerned about the scoring of those exams. He eventually contacted LULAC (League of United Latin American Citizens) to assist him and there was correspondence at that time with then County Human Resources Director, Kelly Shirk.

Mr. Romero expressed his frustration as he has never seen the actual test documents. He is suspicious of the grading process as after the last exam he received his test results within six hours of taking the test. He also stated he has reached out to the Grand Jury in addition to contacting LULAC. His union at the time, SEIU, then dragged out the issue for two years but ultimately would not take the matter to arbitration. He indicated he has contacted a number of state and federal agencies all of which cannot offer any assistance due to the statute of limitations. Mr. Romero also stated he had received a letter from Mr. Dembowski about his test results but still has not seen any other documents or the test itself. Mr. Romero further stated that he has now completed the State required certification following his dismissal but was not reinstated, although he has been told he can keep reapplying for an open position.

Mr. Dembowski addressed the Commission stating that Section 408(E) of the Personnel Rules and Regulations permits Human Resources to refuse to examine or continue to examine an applicant who has been dismissed for good cause from the County service. In this instance Mr. Romero was dismissed for good cause in 2013. Mr. Dembowski explained that Mr. Romero was hired into a classification that required, within five years of hire, for the applicant to obtain state certification. Due to some extraordinary circumstances, that period was extended for an additional two years. After seven years of employment, the agency even permitted Mr. Romero to stay on for an additional month of unpaid leave in order to allow him to obtain the necessary certification. Mr. Dembowski stated that even after all the elapsed time Mr. Romero did not pass the examination and was ultimately dismissed. The dismissal process occurred while Mr. Romero had full union representation from SEIU.

Mr. Dembowski stated that subsequent to his dismissal Mr. Romero did obtain his certification and requested reinstatement. Melanie Roy of Behavioral Health Services told Mr. Romero he would be eligible to re-apply for his prior position. In a letter to Mr. Romero dated May 1, 2015, Mr. Dembowski explained in detail what had occurred with regard to the examination scores. Mr. Romero's prior job classification was as an Alcohol and Drug treatment specialist II and he knew he was required to have state certification to continue his employment with the County.

Commissioner Vandenberg stated that since Mr. Romero was covered by the union contract with SEIU, it was incumbent upon the union to proceed to arbitration if it so chose. Commissioner Vandenberg inquired of Mr. Dembowski whether it was incumbent upon the County to offer Mr. Romero a job in a lower classification. Mr.

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Dembowski stated that the agency was well within its rights to terminate Mr. Romero from his level II position, and that the level I position also requires state certification.

Commissioner Lazar stated that she viewed the request from the perspective of whether the Commission has jurisdiction to provide any relief to Mr. Romero. She stated that as Mr. Romero's dismissal occurred in 2013 the only action which could potentially be within the Commission's jurisdiction related to the last examination taken by him. At that time, Mr. Romero was no longer a County employee and would not have been covered under the terms of the SEIU contract. Vice-Chair Lazar further stated that Mr. Romero had not presented a request for a hearing on the examination itself and in order to be within the Commission's jurisdiction, the issue would have to be with regard to general County procedures relating to examinations. With regard to this particular matter, Vice-Chair Lazar explained to Mr. Romero that the Commission does not have jurisdiction over a termination that occurred in 2013 even if that termination did not have to be arbitrated under the SEIU contract, which arbitration probably was required.

Mr. Romero reiterated that he was very suspicious of the testing process. From 2007 to 2010, his work schedule was also an issue and his supervisors were "writing him up" for various small issues. He stated that the test results make no sense to him and he feels there is a personnel vendetta against him.

Chair Becker stated, and Mr. Romero confirmed, that LULAC had represented Mr. Romero at some point in the process. Chair Becker reiterated that he is unsure that Mr. Romero has appeal rights before the Commission as he appears to be asking the Commission to look into his examinations in particular. Chair Becker explained that if the Commission were to undertake an investigation into the exam process generally, it would not be helpful to Mr. Romero as the Commission could not require the County to employ him.

In response to a question from Commissioner Merricks, Mr. Dembowski stated that many of the test questions are built from professional data banks, with some being developed at the County level, and that all 70 questions related to drug and alcohol treatment.

Vice-Chair Lazar inquired if there could be some opportunity for Mr. Romero to actually see his exams. Mr. Dembowski stated that the exams are confidential but represented that, as to the past two exams taken by Mr. Romero, they both contained the same questions in the same order and Mr. Romero still failed to pass the second test.

Commissioner Vandenberg stated that based upon information submitted by Mr. Romero, it appears the Commission lacks jurisdiction to proceed. Vice-Chair Lazar concurred and stated that it was doubtful that the Commission would have had jurisdiction at the time the alleged events occurred under the terms of the SEIU contract.

The Commission voted unanimously to dismiss the petition as insufficient, upon motion by Commissioner Taylor, seconded by Commissioner Vandenberg. Chair Becker explained to Mr. Romero that the Commission did not have jurisdiction over his matter and that even if he had been an employee the Commission would not have had jurisdiction under terms of the SEIU contract due to its arbitration provisions.

VIII. REQUEST FOR INVESTIGATION – None.

IX. NEW BUSINESS – None.

X. INFORMATIONAL – None.

XI. COMMISSION/STAFF COMMENTS

- A. Presentation of report to the Board of Supervisors of the Commission's activity for first fiscal quarter.

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

- B. Discussion regarding revisions to Commission's formal hearing procedures relating to submission of documents, briefs and exhibits, and requests for continuances.

Ms. Shaw stated that, because Commissioners will be utilizing the new i-Pads to review all documents relevant to appeal hearings, the Commission should make revisions to its formal hearing procedures regarding the number and type of hearing document copies to be submitted by parties. Additionally, in that the section relating to requests for continuances was a bit verbose, the outside law advisor had suggested that such language also be revised. Commissioner Lazar inquired about whether wording should be added to allow for a waiver of the requirements, such as in the event a party was unable to submit documents electronically. Chair Becker commented that he was reluctant to insert waiver language as he did not want the Commission having to make rulings with regard to procedural compliance. Mr. Orellana indicated that the procedures were merely advisory and that there was no penalty for failure to comply. In appropriate circumstances, the Commission Assistant could assist parties who had difficulty in submitting pdf copies of any briefs or exhibits.

Upon motion by Commissioner Taylor, seconded by Commissioner Merricks, the Commission voted unanimously and directed staff to update the Commission's

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webpage and written materials distributed to parties to any hearing with the revised procedures.

XII. ADJOURNMENT – The meeting was adjourned at 10:23 a.m.