CIVIL SERVICE COMMISSION MINUTES

June 28, 2000

A special meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, l600 Pacific Highway, San Diego, California.

Present were:

Sigrid Pate
Mary Gwen Brummitt
Gordon Austin
Barry Newman

Comprising a quorum of the Commission

Absent was:

Roy Dixon

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
June 28, 2000

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 310, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

Discussion Items	Continued	Referred	Withdrawn
10,11,12,13,14			

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Austin. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this location to hear the announcement of the Closed Session Agenda

A. Commissioner Pate: **Maurice Lawrence**, former Stock Clerk, appealing an Order of Suspension and an Order of Termination from the Health and Human Services Agency.

B. Commissioner Brummitt: Richard Castle, Esq., on behalf of **Sylvia Peralta**, former Deputy Clerk III, appealing an Order of Removal from the San Diego County Superior Court.

SPECIAL AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the special meeting of June 28, 2000.

Approved.

CONFIRMATION OF ASSIGNMENTS AND REASSIGNMENTS

Disciplines

2. Commissioner Dixon: Daniel Morales, S.E.I.U. Local 2028, on behalf of **Xose Escamilla**, former Construction & Services Worker I, appealing an Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

3. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Joque Jones**, former Intermediate Account Clerk, appealing an Order of Immediate Suspension and Charges and an Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

Citizens Law Enforcement Review Board (CLERB)

4. Commissioner Newman: Everett Bobbitt, Esq., on behalf of **Victor Caloca**, Deputy Sheriff, appealing CLERB's findings.

Confirmed.

5. Commissioner Pate: Everett Bobbitt, Esq., on behalf of **Ronald Cuevas**, Deputy Sheriff, appealing CLERB's findings.

Confirmed.

6. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Rick Simica**, Deputy Sheriff, appealing CLERB's findings.

Confirmed.

7. Commissioner Dixon: Everett Bobbitt, Esq., on behalf of **Pearl Janulewicz**, Deputy Sheriff, appealing CLERB's findings.

Confirmed.

8. Commissioner Brummitt: **William Smith**, Deputy Sheriff, appealing CLERB's findings.

Confirmed.

Reassignments

9. Commissioner Austin as hearing officer on the appeal of **Linda Hearn** from an Order of Termination and Charges from the Sheriff's Department. Commissioner Pate previously assigned.

Confirmed.

DISCIPLINES

10. Commissioner Pate: **Maurice Lawrence**, former Stock Clerk, appealing an Order of Suspension and an Order of Termination from the Health and Human Services Agency.

FINDINGS & RECOMMENDATIONS:

On February 1, 2000, Employee was suspended and charged with Cause I – Acts incompatible with and inimical to the public service (removal of a brake from a rolling ladder, causing another employee to fall and injure

himself); Cause II – Discourteous treatment of a fellow employee; Cause III – Conduct unbecoming a County employee; and Cause IV – Failure of good behavior.

On May 8, 2000, Employee was removed and charged with Cause I – Negligence (failure to safely operate an electric cart whereby another employee was struck and suffered injury; Cause II – Acts incompatible with or inimical to the public service; Cause III – Incompetency; Cause IV – Inefficiency; Cause V – Conduct unbecoming a County employee; and Cause VI – Failure of good behavior.

Employee has been a Stock Clerk at the Polinsky Children's Center for approximately 6 ½ years. On December 6, 1999, Employee, working with another Stock Clerk, was utilizing a rolling ladder to reach items on a high shelf. After setting each item down, the brake would be released by one of the Stock Clerks, and with the other Stock Clerk on board, the ladder would be moved into position to retrieve the next item. At one point, Employee moved the ladder without warning the other Stock Clerk who was holding onto a box, resulting in the Stock Clerk falling approximately two steps down the ladder, injuring his right knee and left ankle. The injured Stock Clerk asked Employee if he had intended to make him fall; at which time the Stock Clerk alleged that Employee laughed. Later that same day, Employee and the same Stock Clerk attempted to lift a heavy aluminum barrel into a van at which time Employee's side of the barrel released from his hands and struck the Stock Clerk in the same injured right knee. Again, there was allegation that Employee laughed at the injured Stock Clerk.

Employee denied laughing during both incidents. At the Commission hearing, the injured worker testified that he believed Employee's conduct may have been intentional and retaliatory. Earlier that day he and Employee had been in two minor disagreements; also, previously, the co-worker had been interviewed in an investigation of a complaint against Employee. The Agency, however, failed to establish that Employee was aware of the nature of his co-worker's communications in the interview.

On March 28, 2000, Employee struck a female co-worker with an electric cart, causing significant injury. Employee completed an accident report and was instructed to call the San Diego Police, however the Agency did not pursue an investigation by the Police or the Sheriff. At the interview by his supervisors, Employee stated that he looked behind him before he backed out of the parking space, but that he could not remember if he looked both ways or just one way. There were no rear view mirrors on the cart. Employee was placed on administrative leave on March 30, 2000.

At the Commission hearing, the Agency presented testimony that at various meetings with his supervisors, Employee became agitated, but he explained that such agitation was due to frustration, not anger toward his fellow co-workers. Both injured individuals testified that they were afraid of Employee after incurring injury, however, neither one could testify that Employee had made any overt or implied threats.

The hearing officer determined that Employee's negligence caused significant damages, including human suffering, loss of productivity, and expenses to the taxpayer. However, the Agency failed to prove the intent necessary to constitute a violation of the County's Violence and

Threats in the Workplace Policy. There was no evidence that Employee intended to harm his co-workers, and there was no evidence of an overt or implied threat. Further, the Agency did not treat these incidents as criminal acts in that it did not cause a police report to be filed, but entrusted Employee to report the incidents to the Police, as set forth in the Human Resources Policy and Procedures Manual. The hearing officer took into consideration Employee's six years of standard to above-standard performance as well as Employee's good character and volunteer efforts away from the job.

The Agency proved all of the Charges and Causes I-IV of the Order of Suspension dated February 1, 2000, with the following exceptions: Agency failed to prove that Employee laughed when his co-worker was injured and asked if Employee had acted intentionally (Cause I (A) & (B)); and the Agency failed to prove that Employee violated the Board of Supervisors Policy A-121, "Violence and Threats in the Workplace: Zero Tolerance."

The Agency proved all of the Charges and Causes I-VI set forth in the Order of Removal and Charges dated May 8, 2000 with the following exceptions: The Agency failed to prove that Employee violated the Board of Supervisors Policy A-121, "Violence and Threats in the Workplace: Zero Tolerance."

It was therefore recommended that the Order of Suspension dated February 1, 2000 and the Order of Removal dated May 8, 2000, together, be modified to a thirty (30) calendar day suspension without pay; that Employee be awarded back pay, benefits, and interest from the date he was served with the Order of Removal and Charges to the date of the Decision and for any additional days served under the Order of Suspension and Charges (dated February 1, 2000), less the thirty (30) calendar days pursuant to the recommended suspension; that Employee be admonished that any further transgressions similar to those presented in the Orders of Suspension and Removal will result in significant discipline including termination; that the Civil Service Commission recommend to the Appointing Authority that she reassign Employee to a different work location and that she direct him to attend safety training; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission, and that the Commission approve and file this report.

Motion by Pate to accept Findings and Recommendations; seconded by Austin. Carried.

STIPULATED AGREEMENT

11. Commissioner Brummitt: Richard Castle, Esq., on behalf of **Sylvia Peralta**, former Deputy Clerk III, appealing an Order of Removal from the San Diego County Superior Court.

FINDINGS & RECOMMENDATIONS:

The matter of the appeal of Appellant regarding her removal as a Deputy Clerk III in the San Diego County Superior Court was presented

to the CSC on June 20, 21 and 22, 2000. The Commission appointed Mary Gwen Brummitt as hearing officer. Prior to the conclusion of the hearing, representatives of the two parties involved entered into a Settlement, Release and Waiver Agreement. The hearing officer reviewed the Agreement and determined that the public would be best served if the Commission accepted the Agreement. Therefore, it is recommended that all elements of the Settlement, Release and Waiver Agreement become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Brummitt to accept Findings and Recommendations; seconded by Austin. Carried.

DISCRIMINATION

12. Thomas Gayton, Esq., on behalf of **Joann DeBartolo**, requesting a Rule VI Discrimination Investigation into her non-selection for the classification of Correctional Deputy Probation Officer I by the Probation Department. (See also No. 13 below.)

RECOMMENDATION: Deny request for a Rule VI Discrimination Investigation, without prejudice.

Staff recommended denial of this request for a Rule VI discrimination investigation, without prejudice, because the discrimination complaint was unspecified. Mr. Gayton, on behalf of Appellant, concurred with staff recommendation.

Staff recommendation approved.

SELECTION PROCESS

Complaints

13. Thomas Gayton, Esq., on behalf of **Joann DeBartolo**, appealing her non-selection by the Probation Department for the classification of Correctional Deputy Probation Officer I in the Probation Department. (See also No. 12 above.)

RECOMMENDATION: Grant Request.

Mr. Gayton, representing Appellant, refuted the Department’s reasons for non-selection for the classification of DPO I, insisting that granting a hearing would guarantee fairness and maintain the integrity of the system.

The Department, represented by Osee Rule, stated that applicants are carefully screened, especially potential peace officers, and that Appellant clearly did not meet the job dimensions.

Larry Cook, Executive Officer, explained that staff recommended granting Appellant a Rule X hearing because the CSC had previously (within the last 6 months) granted a similar hearing, and in so recommending, maintained consistency. After brief discussion, the Commission voted.

Motion by Austin to accept staff recommendation; seconded by Newman. Carried. Brummitt No. Commissioner Pate assigned.

14. Frank Clowney, III, Esq. on behalf of **Eeva Ezquerro**, Senior Account Clerk, Air Pollution Control District, appealing the selection process for the classification of Junior Accountant in the Air Pollution Control District. (Continued from the previous CSC meeting.)

RECOMMENDATION: Deny Request.

Frank Clowney, III, Esq. addressed the Commission on behalf of Appellant, affirming that the APCD did violate the selection process Rules. Mr. Clowney stated the reason given by the Department of "expediency" does not take the place of a fair and unbiased process. Further, Mr.Clowney stated that Ms. Ezquerro was not only harmed in not being granted the promotion, but her faith in the system has been diminished. Believing the District is admirable in admitting its error, Appellant's wrong has not been righted. He suggested that an impartial third party be appointed to interview the current person in the position and Ms. Ezquerro, thereby fulfilling the due process.

The District, represented by Linda Fox, explained that Employee had several years to show her ability to fulfill the position of Junior Accountant, and was not selected. Ms. Fox stated that Ms. Ezquerro was not the right person for the position, and she offered that perhaps Appellant would be better suited for another Junior Accountant position.

Larry Cook, Executive Officer, explained that there was no good remedy at this time, thereby staff recommended denial of this appeal. He believed it would be counter-productive to go back and re-interview for the position. He stated that the County Charter establishes that the appointing authority is charged with the responsibility and duty of selecting employees, and therefore appointing a third party to re-interview candidates is not remedial to this situation. Mr. Cook stated that he believes the District did not intentionally make a mistake, but did wrongfully announce the appointment before receiving a certified employment list, which they acknowledge. In lieu of a hearing, he suggested a letter be sent from the Commission to the District addressing the Commission's concerns and offering recommendations for future selections.

Motion by Brummitt to accept staff recommendation; seconded by Austin. Carried.

Findings

15. **Anthony O'Boyle,** appeal of removal of his name by the Department of Human Resources from the employment list for Deputy Sheriff.

16. **Debra Oney**, appeal of removal of her name by the Department of Human Resources from the employment list for Correctional Deputy Probation Officer I

RECOMMENDATION: Ratify item Nos. 15 and 16. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 15 and 16 ratified.

INVESTIGATIONS

Complaints

17. **Damon Colclough,** Protective Services Worker II, requesting an investigation into the personnel practices of the Health and Human Services Agency.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

OTHER MATTERS

Extension of Temporary Appointments

18. Agriculture, Weights & Measures

A. 1 Produce Inspector (Paula DeWall)

B. 1 Agricultural/Standard Inspector (Nestor Silva)

RECOMMENDATION: Ratify Item No. 18.

Item No. 18 ratified.

19. Public Input.

ADJOURNMENT: 3:45 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JULY 19, 2000.