

**NORTH RIDGEVILLE CIVIL SERVICE COMMISSION
MINUTES OF
REGULAR MEETING MARCH 18, 2014**

To Order: The meeting was called to order at 6:30 P.M.

Roll Call: Present were Members Russ Friedrich, Dan Zezena and Chairman Jim Yost.
Also present were Law Director Andrew Crites, Assistant Clerk of Council Tara Peet and Recording Secretary Donna Tjotjos.

Minutes:

Chairman Yost noted the minutes of the last meeting held February 18, 2014. He asked if anyone had any questions or corrections on the minutes. He noted a correction on page four, paragraph four. He explained he didn't say agility because the discussion was regarding the Chief's promotional exams and promotional exams don't include agility. Only entrance exams provide agility exams.

It was moved by Friedrich and seconded by Zezena to approve the minutes of February 18, 2014 as corrected.

MOTION CARRIED

Chairman Yost asked if there were any reports.

Reports:

Recording Secretary reported that there were 77 applications that were filed to take the Fire Fighter Entrance Exam. Out of 77 applicants, 72 showed up for the exam on March 10, 2014. The protest period to challenge the exam questions ended yesterday with 10 protests received. The responses have been received and submitted at the Commission member's seats this evening for review on and consideration under New Business.

She added that in the Commission's packets, she provided information on testing agencies and the costs associated in providing examinations as requested by the Commission.

Unfinished Business:

Consideration in changing the rule of providing top three in the promotional process with response received from the Law Department.

Member Zezena asked what the Law Department has found as it pertains to what the Commission has asked.

Law Director Crites stated that the Assistant Law Director/Prosecutor Toni Morgan researched the issue and came out and devised an opinion which was distributed to the members. He asked the members to allow him to summarize that for them. What it appears is the discussion was that one of our Chief's; more specifically one of the Chief's would like to see the rule of three; rather than straight appointment made to the top candidate who scored the highest. The Fire Chief would like to have, which is not uncommon in other municipalities, to test and select the appointed officer from the

top three candidates. That is done in the City of Cleveland for the Chief of Police, however, that process is indicated in the City of Cleveland's Charter. North Ridgeville's Charter does not provide such process. Our Charter is ambiguous in that it doesn't give specific authority to do the rule of three as a point of procedure. However, the Charter does state that we go by the general laws of the State and the State Constitution. Toni Morgan's conclusion in which he agrees to is that if Civil Service Commission or one of the Department Heads or the Mayor want to change the scheme by which appointments are made to, in this case being more specific, Officer positions within the Fire Department, it can be done through ballot language placed with the Charter Review Committee and specific language being that appointments shall be made by a test and appointing authority be given the top three. It would then be ratified by the public and that would be put in place with no questions asked. The next question would be whether or not this could be done by legislation; meaning just by an act of Council to change the ordinance or essentially adding new language in the ordinance under Fire and Police to state that the appointment of Officers could go by a rule of three. He believes that the Ohio Constitution allows us as a Chartered municipality to do so. So, the answer is yes. However, it could be challenged and you could end up with a home rule battle that he believes Civil Service would be likely to prevail, but that is probably a discussion for a different day. He believes that the most important discussion the Commission wants to hear from him is if the Commission wants to or any Department Head or Mayor wants to change the procedure by which appointments are made, they would have to have sponsored legislation go through Council and be passed.

Chairman Yost asked if legislation could go to Council by way of the Commission's recommendation to Council.

Member Zezena addressed the Law Director and explained the discussion of the rule of three. He proceeded to explain that the Commission had made reference to adding the rule of three with specific percentages given to the scores of the top three. He explained if a candidate scored 95 percent, someone scored a 90 percent, and the other scored 70 percent; then the one who scored the 70 percent would be out.

Law Director Crites stated he didn't hear about that, but that too would fall under the City's home rule authority to build that into the rule by way of legislation.

Member Zezena stated that when candidates miss one or two questions on an exam, it doesn't mean that one is better than the other for that promotion, but if there is a huge gap, then it is obvious who would be chosen.

Law Director Crites stated that could be part of Civil Service Commission's recommendation. What would probably require more research is how the legislation gets sponsored. He asked if Civil Service Commission would notify a Council member or Mayor asking them to sponsor the legislation or could they independently sponsor legislation. He stated he was trying to think out loud how that could happen.

Chairman Yost explained that if it is part of our City Charter, Civil Service can only make a recommendation. Civil Service Commission will vote on what their recommendation will be and present them to City Council. Council is the only body that can change our city ordinances.

Law Director Crites asked how that recommendation would get on Council's agenda unless Civil Service Commission writes a letter. He then addressed Assistant Clerk of Council Tara Peet and asked how that recommendation would get on Council's agenda.

Assistant Clerk of Council Peet explained the Council bylaws state that either Department Head, a member of Council or Committee introduces legislation. However, it will be referred to a Committee if it is introduced by a Department Head. It doesn't talk about the different Commissions.

Law Director Crites read from the bylaws where it states legislation may be introduced by any member of Council or the Mayor. Then it states that legislation from any other department or person shall be referred to Committee for study.

Chairman Yost explained that Council appointed a Committee to study the Civil Service recommendation on eliminating the referral to ORC on the age limit.

Law Director Crites stated he drafted that legislation and it was submitted by the Fire Chief.

Member Zezena asked if the Fire Chief or Police Chief would submit this request.

Law Director Crites responded yes or they can submit it to the Mayor. He stated he wasn't sure even if the Civil Service couldn't submit it as he hasn't seen it even done before in his ten and a half years. He addressed the recording Secretary and asked if she has ever seen that done before.

Recording Secretary stated that she has seen the Administration and Council submit ordinance referrals to be reviewed by Civil Service for their recommendation to Council. She stated she hasn't seen Civil Service submit a recommendation to change ordinances to Council.

Chairman Yost stated that Civil Service has only been known to make recommendation.

Member Zezena asked if Civil Service could follow the same process as they did to recommend the age limit.

Law Director Crites stated yes, he would recommend that. He felt that it would be appropriate for Civil Service to follow protocol and make the recommendation that they would like to see that Rule change and recommend that legislation be introduced to Council. He stated the best way to have that done is to have the Department Head who wants it to sponsor it. He asked if the Police Chief has indicated whether or not he wanted that change.

Chairman Yost stated that he didn't believe anything was presented to him and he didn't believe that anything was ever presented by him.

Member Zezena asked if he was the one to make the decision in hiring.

Law Director Crites stated just within his department.

Chairman Yost stated that we really don't know his position on this change.

Law Director Crites stated what the Commission has devised here is a concept that is very common and he knows for a fact that it is something that one of our Department Head's, specifically within the Fire Department wants. He asked that Civil Service go with it, sponsor it and get it submitted. He stated he will draft it and it will go before Council and they will refer it to Committee. He further explained that it be appropriate that Civil Service make a motion for that recommendation be forwarded and direct the Clerk to notify the Fire Chief that the Commission recommends he make that move and it will be supported by the Commission.

Recording Secretary asked for clarity on what was being recommended by the Commission.

It was moved by Yost and seconded by to recommend a rule of three be adopted for appointment of an officer

Recording Secretary stated that a percentage was also noted and asked if that was also part of the recommendation.

Member Friedrich stated that maybe the Commission should just get the rule of three in place and then they can add to it.

Law Director Crites agreed and stated Civil Service isn't in the job of forging legislation, but they do make recommendations to the appointments of Civil Service. The best way for that to be handled is through direct contact with the sponsoring Department Head.

Member Zezena asked if it would be beneficial if the Commission request the attendance of the Fire Chief at their next meeting.

Member Friedrich stated that both Chiefs should be in attendance.

Law Director Crites indicated that they would both be in attendance at the Committee meeting in which it will be reviewed.

Member Zezena stated he would like to bring them in to discuss the rule of three as well as the percentage and get both their feedbacks. We would need to make recommendation that this legislation be sponsored by one.

Law Director Crites explained once the Civil Service Commission makes that recommendation, it will start moving forward. Assuming that the Fire Chief sponsors that legislation, it will move forward to Council and Civil Service really won't have anything to do anymore except for political support, meaning call your Mayor and call your Councilman and say that you want this. So, there would be no need to have the Chief's attend Civil Service because there would be nothing before Civil Service then. This issue will be a new law, a new ordinance that says the rule of three will go in place and Council will either thumb up or thumb down and that issue will be before Council and then Council Committee where both Chief's will be there. Civil Service Commission will be welcome to show up and give their two cents. He sees no reason to bring the Chiefs in after that because once you make that recommendation, it goes out to the law makers.

Recording Secretary asked if the rule of three has to be legislation or could Civil Service change their Rules and Regulations as has done in the past.

Law Director Crites explained yes. As indicated in the Assistant Law Director's opinion, because of the mandate that Civil Service follows the Constitution and the Laws of the State and because our individual laws don't trump those laws of the state by deliberate act of Council, Civil Service is without independent authority to make that rule. That rule has to be made by electorate rule of the Charter or by city legislation. Civil Service applies laws and Council makes them. They are kind of quasi judicial in that way.

Chairman Yost added that Civil Service works for those two departments, but their priority is to protect the city.

Law Director Crites asked the Commission to be prepared for lively debate when it goes to Committee. There will be opponents. There always is because this is an issue that is either a love it or hate it things.

Chairmen Yost mentioned that in speaking of the rule of three applicants, he asked what three applicants will there be if you only have one or two applying for that promotion; such as Captains or Assistant Chiefs. He explained that there are only two Assistant Chiefs to take the promotional exam for Chief. He asked if that would require Civil Service to open that exam for Chief to the Captains since there needs to be more than two.

Member Zezena stated that the rule of three would apply only if there are three or four candidates.

Chairman Yost stated how would there be the rule of three. There are only two Assistant Chiefs.

Law Director Crites stated that there seems to be a breakdown of what he believes the Fire Chief is talking about and what is being discussed here. He believes that the Chief is looking for the appointment of Officers. He isn't looking for the rule of three for the appointment of Chief. The change in appointment of the Chief might be more for the electorate in the Charter. He continued to

explain that the legislation that will move forward will allow the Chief's to have the authority to use the rule of three when appointing Captains and Lieutenants. It would not apply to the Chief's position.

Chairman Yost thanked for the clarification.

Law Director Crites explained that the rule of three for the Chief's position could be assumed and he is not speaking for Council or Administration, but could be misconstrued as a political appointment. However, if you have 30 Firefighters and you need someone to step up to be the boss of 10 and they test, that politics across the board isn't as prevalent there as it is more of a managerial decision as the Chief would know who is a good candidate and who is not a good candidate. Sometimes the good egg will test lousy and sometimes the bad egg will test out of the water, but the Chief knows that this guy is not going to be a good leader.

Member Zezena stated that is why they discussed adding the five percent rule because at least there was some reasoning behind the decision. He explained that he will definitely be at the Committee meeting when this issue is discussed to explain why they are asking for the percentage.

Law Director Crites asked if there was a motion yet.

It was moved by Zezena and seconded by Friedrich to recommend to the Fire Chief to submit his request for legislation for the rule of three.

MOTION CARRIED

New Business:

Certified and Eligibility List Update – No Report

Review and consider protests received on the Firefighter's written exam questions.

Member Zezena noted a huge packet that was received.

Law Director Crites read the rules and regulations related to the protest period on the exam questions and asked if the protests received were timely filed.

Recording Secretary responded yes.

Law Director Crites asked how many were received.

Member Zezena stated a lot, but the Commission did receive Clancy's response to the protests as well.

Chairman Yost stated there are seven protests and Clancy did respond to agree with one of the protests and recommended that one of the questions be removed from the exam.

Law Director Crites asked if that would require Commission action to approve.

Chairman Yost stated yes.

Member Zezena stated that the Commission usually approves Clancy's findings.

Member Friedrich stated that there is another protest period after the grades are received.

Law Director Crites stated that the Commission only has to consider the protests and the specific nature of the protests, which has been done by Clancy.

Chairman Yost explained that Clancy has provided their feedback on the protests. They granted the protest on one of the questions and are therefore deleting the question from the test. No one will be graded on that particular question. The rest of the protests were denied by Clancy and there is explanation.

Law Director Crites suggested that the Commission make a motion to adopt the submission and action recommended by Clancy and Associates.

It was moved by Zezena to accept the recommendation made by Clancy.

Member Friedrich stated he didn't question the answers; he did have a problem with the fact that the Commission didn't see a full disclosure of the question as they did last time.

Recording Secretary stated she brought the questions to the meeting as she was told she was not allowed to make copies of the exam. However, the original exams with the questions are present.

Member Zezena stated that each question could be reviewed separately.

Recording Secretary stated that the Commission had taken each question separately.

Member Friedrich stated that the questions were given to them ahead of time and they were able to have real discussions about the responses.

Member Zezena stated that there are six questions to review.

Member Friedrich stated the last time the question was handed to the Members. They were read and they discussed them.

Law Director Crites stated that there is a motion on the floor.

Chairman Yost stated that they are in discussion at this time.

Law Director Crites stated that the motion was made to adopt Clancy's recommendation. It has been seconded and now being discussed. It appears now; that the choice is either to adopt Clancy's suggestion or as Dan had suggested to go through each question. There could be an intervening motion, but there still is a motion on the floor to adopt Clancy's recommendation.

Member Zezena asked if he could withdraw his motion. He withdrew his motion and moved onto the first question. He stated number four, everyone agrees to remove. He read the exam question number 49 and answers to that question. He stated that from his background as paramedic, the answer to that question is letter C.

Law Director Crites read what the protestor states his reasoning is behind the answer to that question.

Member Zezena explained the reason and validity of the answer to that question.

Law Director Crites asked if all the members were in approval of the denial of number 49.

Response was yes.

Member Zezena read the exam question number 52. He explained the reasoning behind the answer and why letter B is correct.

Law Director Crites asked if all the members were in approval of the denial of number 52.

Response was yes.

Member Zezena read the exam question number 55. He explained the reasoning behind the answer and why letter A is correct and he agrees with Clancy.

Law Director Crites stated number 55 is with the denial.

Member Zezena read the exam question number 57. After discussion, he stated that letter A is the best response and he agrees with Clancy.

Law Director Crites asked if everyone was on board with the denial of 57.

Response was yes.

Member Zezena read the exam question number 58.

Law Director Crites read the protest. He then read the response from Clancy stating letter D is the correct answer. He asked if the Commission was in agreement.

Response was yes.

Member Zezena read question number 185.

Law Director Crites read the protest and thereafter read the recommendation from Clancy.

Member Zezena stated it is simple math and he agrees with Clancy.

Law Director Crites stated that at this time, action on the original motion may be made.

It was moved by Zezena and seconded by Friedrich to adopt the recommendations made by Clancy.

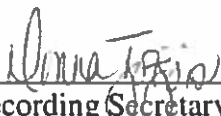
MOTION CARRIED

Member Yost adjourned the meeting.

Meeting adjourned at 7:22 P.M.



Chairman



Recording Secretary

April 15, 2014

Date Approved