

**NORTH RIDGEVILLE CIVIL SERVICE COMMISSION
MINUTES OF
REGULAR MEETING MARCH 15, 2016**

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

Roll Call: Present were Members Dan Zezena, Russ Friedrich and Chairman James Yost.
Also present were Law Director Andrew Crites, Assistant Law Director Toni Morgan, Fire Chief John Reese, Fire Lieutenant Stephen Cook, Firefighter Corey Stearns, Assistant Clerk of Council Tara Peet and Recording Secretary Donna Tjotjos.

Minutes:

Chairman Yost

Moved by Yost and seconded by Friedrich to approve the minutes of the regular meeting dated February 16, 2016.

MOTION CARRIED

Moved by Yost and seconded by Zezena to approve the minutes of the special meeting held February 19, 2016.

MOTION CARRIED

Chairman Yost moved the meeting on to the lobby session.

Law Director Crites addressed the Chairman and asked if he didn't want to address the Election of Officers in the order on the agenda under roll call.

Election of Officers:

Chairman Yost opened the floor for nominations for Chairman.

Member Zezena nominated Jim Yost to remain as Chairman and Friedrich seconded the nomination. No other nominations were given.

MOTION CARRIED

Chairman Yost opened the floor for nominations for Vice Chairman.

Member Zezena nominated Russ Friedrich to remain as Co-Chairman and Yost seconded the nomination. No other nominations were given.

MOTION CARRIED

Chairman Yost opened the floor for nominations for Secretary.

Member Friedrich nominated Dan Zezena to remain as Secretary and Yost seconded the nomination. No other nominations were given.

MOTION CARRIED

Chairman Yost moved the meeting on to the lobby session.

Recording Secretary Tjotjos addressed the Chairman and noted under Rule 1, Section 6 of the Civil Service Rules and Regulations it defines the order of business and because lobby session isn't part of the order of business, the Commission will either need to make a motion to amend the agenda to include the lobby session or move to suspend the rules to allow the lobby session.

Law Director Crites addressed the Chairman and explained that the purpose of a lobby session is understood to allow anyone here, any member of the public or any member of our Civil Service protected bodies of employees to be heard. He believes it would be more appropriate to allow those present to be heard tonight while discussing the subject at hand. The Civil Service Commission has, under reports, an operative topic being a Firefighter's appeal of the most recent promotional exam and he suggested that while that subject is on the floor, that the Chair recognize or at least consider at your discretion to allow any other members of the fire department that are present to be heard while it is on the floor. It will accomplish the same task without having to amend the agenda.

Chairman Yost stated that he is not in favor of a lobby session as such. The Commission has let people speak on an individual topic as it comes up instead of going down the list of items and then have a lobby session, because sometimes there is some additional information provided by the person that wants to speak and it helps the Commission members as well.

Law Director Crites clarified that if the Commission is not in favor of amending the Rules to add the lobby session than it would simply fail due to a lack of a motion. If the Commission does want to take that path, he suggested that the Commission consider amending the agenda via motion this evening to add the topic of open discussion of the past promotional exam because obviously, that is what the topic of the lobby session would be. He added that he knows Firefighter Stearns wants to be heard on that issue and so, if the Commission was so inclined, he suggested that they move forward with a motion to amend the agenda this evening to add simply that topic of the last promotional exam.

LOBBY SESSION: Subject matter died due to a lack of a motion.

Recording Secretary addressed the Chairman and asked if that topic would be under new business.

Law Director Crites stated yes. That would be appropriate.

Moved by Zezena and seconded by Friedrich to add the topic of 2015 Promotional Exam to the agenda under new business.

MOTION CARRIED

Law Director Crites stated under new business is now the topic of 2015 promotional exam.

Chairman Yost continued the meeting with the reports.

Reports:

Chairman Yost noted receipt of an Oath of Office from Fire Chief Reese swearing in Fire Lieutenant Dan Rogers dated February 19, 2016 with effective date February 21, 2016.

Chairman Yost noted receipt of Assistant Law Director's memorandum responding to Firefighter Kevin Pocos regarding his letter of appeal dated December 18, 2015.

Chairman Yost noted the December 18, 2015 Kevin Pocos letter of appeal and stated that Commission action is required.

Law Director Crites addressed the Chairman and stated in regard to the appeal from Firefighter Pocos, it is his belief that action is required as it would serve the city best to consider that appeal before the Commission. He believes that the Commission understands the essence of the appeal which in Firefighter Pocos' instance is toward the grading of the recent promotional exam; specifically, the Commission's action to exclude two questions. His legal opinion to the Commission is that this appeal being directed toward the decision of the Commission to follow the recommendation of the testing agency and exclude those two questions and allow for two answers to one question.

Assistant Law Director Morgan addressed the Commission and reminded them that one of the questions was decided to have two correct answers and two questions were eliminated. That is what changed the grades for everyone concerned.

Member Zezena clarified that the two questions that were eliminated were wrong and the one question had two possible correct answers and those two possible correct answers were allowed.

Assistant Law Director Morgan stated that Firefighter Pocos' concern was he felt that he had the correct answers for those questions and by the Commission eliminating those

questions, they were saying that there were no correct answers to those questions and so that is what generated that appeal.

Chairman Yost stated that if those questions are eliminated from the exam, then they can't be discussed. They are done. Everyone still has the same playing field. He stated he was tired of discussing this.

Law Director Crites stated he would add on behalf of the legal department, that it is well within the discretion of the Civil Service Commission to deny this appeal based not only on the Rules but the general state of the law; case law and statute and he put forth to the Commission the question whether or not to allow or deny the appeal and if the Commission chooses to deny it, then they will need to make a motion to do so.

Chairman Yost stated on behalf of the Civil Service Commission he is embarrassed at how the testing procedure took place but because of Kevin Pocos' appeal, it drew the Commission's attention to the entire testing process. Hopefully, this will be straightened out and not have this happen again. The Commission members are layman at this and the Commission is learning as they go; even in this late time in his life, there are still things to consider that we can't all know.

Member Zezena stated that the Commission is not expected to know every single answer to the questions on the firefighter's exam.

Chairman Yost stated even if the members knew the Ohio Revised Code from cover to cover, you still wouldn't know everything that comes up.

Member Zezena stated that it is still the Commission's job to police those ranks to decide if a question is or what the Commission believes the questions are to be wrong in all answers. It would be an embarrassment if the Commission didn't do that.

Chairman Yost stated that the Commission makes decisions based on information that is given to them by the people that are paid and have the credentials to give the Commission those decisions. The Commission does the best that they can. He asked if there was any other discussion needed on that item.

Law Director Crites suggested that a motion should be made to either accept or deny the appeal and that would close the topic.

Moved by Friedrich and seconded by Yost to deny Firefighter Pocos' appeal.

Yes, 2 No, 0 Abstain, 1 (Zezena)

Motion was approved by a vote of two yes, zero no and one abstention.

Chairman Yost announced that this would be the time, even though the subject is said and done, if any of the firefighters that are present would want to make comments.

Law Director Crites stated that the Commission did add that topic under new business if you want to wait until you get to that, but since the discussion is on the floor now, it is within the Chair's right to open it for discussion now.

Chairman Yost stated he would like to put this in the file drawer. He asked if the Commission had to amend the agenda to bring the topic to the floor now.

Law Director Crites stated he didn't believe so. The Chair is asking to bring up the topic which is under new business, now for the sake of efficiency of the meeting.

Chairman Yost stated he would take exception to the Commission's procedure right now because he wanted the firefighters to be able to have their say while it is all fresh in everyone's mind before we go onto anything else.

2015 Promotional Exam: *At the direction of the Chairman and with no objection, the subject matter was removed from new business and considered at this time.*

Law Director Crites addressed the Chair and asked if he could assist the Commission by giving a brief summary of what he believes the issue is before them relative to the grading process and then perhaps ask anyone who is present here to allow them to speak on it. He is proposing tonight, which is not on the agenda, but under the topic that is on the floor; it is appropriate to do so, that the Commission consider an amendment to the Rules at the next meeting. It is more of an addition than it is an amendment. In his opinion, the Commission won't be changing the Rules, but will be adding language to further clarify the process; specifically and as a note, the amendment has not yet been prepared. The law department will work on the language and will submit it in advance so that it can be voted on at the next meeting if the Commission finds it appropriate. The Commission is not in an emergency to act on it, but he would like to see it done. The amendment would likely appear in Rule V, Subsection 4 c. as it addresses credit for seniority in promotional examinations. The essence of the proposed Rule change would be to explain the clear process by which the seniority points are added to the combination score of the written test and the assessment. He believes that both the Ohio Revised Code and past practice of this municipality as well as widely accepted practice across the state, is when a municipality uses both written and assessment scores is to first total the written score and weight it with the 60 percent percentage which is within the Collective Bargaining Agreement, then total the assessment and weight it with the 40 percent percentage to render a total examination score, then add to it the seniority credit which as our Rules reference are dictated by the language of the Ohio Revised Code. He believes that is the process that is proper both in the best reading of our

Rules and our past practice and he believes that is a process that is, although awkwardly outlined by the Ohio Revised Code section 124.45. Where a complaint had been raised in our most recent examination process, was that we actually used the method in which the seniority points were broken down and extrapolated into the written scores and the assessment scores to come up with a total and unfortunately, that came up with a different result. This amendment and the result in which the method he believes that was followed in the past and need to follow is much clearer. That amendment will be before the Commission at the next meeting. When and if that amendment is considered and passed by the Civil Service Commission, it will be his recommendation on behalf of the City's law department that we then apply that method to the 2015 test retroactively. The examination scores are what they are but the method in which the seniority is added will change the end results of the scores. Fortunately, it will not change the result as it relates to the number one candidate as the Commission has certified. It will however, switch the number two and number three candidate results. Be that as it may, it is what it is and he believes that it is his recommendation in the form of legal advice, that we are duty bound to apply that retroactively, because he believes that it is proper formulation and it is also the formulation that has been used in the past. The Commission needs no action on that tonight. This is only a proposal and your Rules, as you may be aware, dictate that no Rule be amended at the same meeting that a change or an amendment is proposed so, today is the meeting that the amendment is proposed and you will be able to act on it at the next meeting or after if it requires more study. That being said, it may be an appropriate time to take comments from those members of our city employment.

Chairman Yost stated that he has been here before with the topic of seniority. Seniority should stand on its own and is not part of the test. It is not an exam. It is what one has worked for in the time they have worked within the department. That should be added at the end. The testing exams and assessments are separate things and are judged on the capabilities and the seniority is added to it at the end. That is his opinion. He opened the floor to comments.

Firefighter Korey Stearns stated that the special meeting occurred when it was discovered that the seniority points weren't added. Then there was an explanation as to how they were added in and once he saw the current list, he knew right away that it wasn't the way it was done before. He stated that he understands that there could be different ways to do it as different cities do it differently. The concern he had was that there wasn't a written rule that explains how to do it. So, why would there be a change to the way it was done in the past. That was his concern.

Chairman Yost stated he believes that they just lost track of that standard method at the time. There were other confusions that came into play.

Law Director Crites addressed Firefighter Stearns and stated that they had met independently and it had occurred to them, but it was corroborated by Stearns that it is his position that the 2012 promotional exams employed the method that we are talking about reinstating.

Chairman Yost stated that is what he is thinking as well.

Firefighter Stearns provided a copy of the 2012 promotional list which shows the scores of each candidate as well as the inclusion of the seniority points.

Chairman Yost stated that is the way he wants to make sure it stays and if it has to be a Rule.

Recording Secretary addressed the Chairman and referred to the 2012 promotional list and asked if they could take one of the candidates' written percentage and the assessment percentage and add the seniority points. She stated in 2012 the scores were calculated by adding the written percentage plus assessment percentage plus the seniority points. She asked if Law Director Crites was saying that was correct.

Law Director Crites stated yes and with apologies as he just responded to an email from Tara about this as well. He was the one at the last meeting and when we first met on this, he stated that this was crazy. You can't add percentages and points together. It's like ketchup and water, it just doesn't work. The fact of the matter is, that is what is done state wide which he has subsequently learned and that is what the Ohio Revised Code in 124.45 says. They basically take percentages plus percentages to come to an accumulative total and they then take the seniority points and ask you to add them as percentage points.

Member Zezena stated that is huge if you consider the breakdown of it.

Assistant Clerk of Council Peet addressed Law Director Crites and asked if we weren't contemplating using the City of Mentor's standard.

Law Director Crites stated that is what Mentor does.

Recording Secretary Tjotjos asked if they added the percentage plus a percentage and come up with a total and then add the points.

Assistant Clerk of Council Peet stated that they don't add percentage to points.

Law Director Crites stated that they have 30 days to draft the Rule and he welcomes everyone's input. He will need it and that point percentage thing is kind of a slippery

weasel that we are still trying to get cornered. We will work on that but it doesn't have to be done tonight. He doesn't dismiss the point.

Member Zezena said he would have to see it on a board somewhere with the mathematical equation.

Assistant Law Director Morgan addressed the Chairman and stated if the Commission would like she could lay out Mentor's system. It is a little different, but it is more like Law Director Crites is suggesting we do and it is just a simpler form and she didn't disagree with that at all, but that is not what we did in 2012. It looks similar, but it would be a vastly different outcome and they will lay that out for the Commission.

Law Director Crites stated that both could be laid out with what was done in 2012 and what will be proposed. Fortunately, Korey and he crunched both ways and the results came to be almost within hundredths of a point and very similar. But the point is, both methods will be shown to the Commission and then the Commission could hang their hats on one that will be clear and makes sense and easy to calculate and makes these guys know what they are in for when they take the exam.

Firefighter Stearns noted that the way it was done this time actually reduced the significance of the seniority points. It brought the difference of the guy who has ten years and the guy who has twenty years a lot closer.

Chairman Yost stated that isn't right.

Firefighter Stearns stated that either the way that Andy was proposing or the way that it was done here in North Ridgeville in 2012 keeps them weighted as a percentage.

Recording Secretary addressed the Commission and restated that she calculated by adding percentage plus percentage plus the points.

Law Director Crites stated that they will work on it and have it before the Commission.

Chairman Yost asked if there was anyone else that wanted to discuss this topic.

Law Director Crites addressed the Chairman and stated that he could move the meeting onto the correspondence. He asked Recording Secretary Tjotjos if she normally reads the correspondence into the record.

Recording Secretary Tjotjos stated that she could, but the Commission just notes receipt of the correspondence during the meeting.

Law Director Crites stated she didn't have to read the correspondence but just what was noted.

Recording Secretary Tjotjos noted that correspondence was received from Daniel T. Clancy announcing the sale of their police and fire promotional testing portion of their business to Kevin and Vanessa Nietert along with contact information. Also received was the Calendar of Events in reference to Fire Entrance Examinations for 2016.

Law Director Crites asked if it was customary that the calendar be adopted or is it for informational purposes.

Chairman Yost stated at this point, it is for informational purposes.

Secretary Tjotjos explained that the Commission adopts the calendar when they approve the fees of the examination, along with the approval of the agency that is being used and that is when they approve the calendar of events. Every month thereafter, the Commission is provided an updated calendar.

Assistant Clerk of Council Peet asked if it was subject to change.

Recording Secretary Tjotjos stated yes and that is why they are given an updated calendar every month. She addressed the Commission and provided an update on the filing of the applications for the Fire Entrance Examination stating that only three applications have been filed. The Commission began taking in the applications Monday, March 14 and the deadline is Monday, March 28.

Assistant Law Director Morgan asked how many applications typically get filed on the average.

Recording Secretary Tjotjos stated on the average 60.

Unfinished Business:

No unfinished business

New Business:


Adjournment:

Moved by Zezena and seconded by Friedrich to adjourn the meeting.
MOTION CARRIED

The meeting was adjourned at 6:58 P.M.



Chairman



Recording Secretary



Date Approved