

**MINUTES OF REGULAR MEETING
CIVIL SERVICE BOARD
CITY OF SACRAMENTO
December 19, 2006**

The meeting of the City of Sacramento Civil Service Board was called to order by Chairman Fine in the Hearing Room of Historic City Hall, 915 I Street, Second Floor, Sacramento, CA at 1:30 p.m.

MEMBERS PRESENT: Suzuki
Pryor
Robillard
Fine

MEMBERS ABSENT: Thompson

MINUTES OF CIVIL SERVICE BOARD MEETING OF NOVEMBER 21, 2006

Chairman Fine asked if there were any comments or discussions on the minutes of the November 21, 2006 meeting. Board Member Pryor moved the minutes be accepted. The motion was seconded by Board Member Suzuki. The motion to approve went as follows:

Motion: Pryor
Second: Suzuki

The motion carried with the following roll call vote:

Ayes: Suzuki
Pryor
Robillard
Fine

Noes: None

Absent: Thompson

REPORTS OF SECRETARY TO THE BOARD

Secretary, Gerree Giffin advised that Item # 7 on the agenda should be pulled because it is a grievance and therefore it is not appropriately before the Board.

ELIGIBLE LISTS ESTABLISHED

This is an information-only item.

CITIZENS ADDRESSING THE CIVIL SERVICE BOARD ON MATTERS NOT ON THE AGENDA

None

APPEAL OF FIRE CAPTAIN EXAMINATION

a) In the Matter of the Appeal of Jason Meyer, Firefighter/Paramedic

Mr. Paul Gale, Attorney to the Board, advised that the appeal is per Rule 10 of the Civil Service Rules. He indicated that the Board had three options concerning the appeal. Mr. Gale reported the options as follows: 1) The Board could conduct a full evidentiary hearing per Rule 4.11(c)(7). 2) The Board could request the City Council refer the matter to a hearing officer or 3) The Board could waive the procedures set forth in Rule 4.11(c)(7) and hear the matter and make a decision using less formal procedures.

Mr. Fine asked the parties if they had a preference concerning how the Board would proceed. Ms. Carol Jenista, City of Sacramento Personnel Analyst, indicated that she was prepared to go forth with a hearing. Mr. Meyer, City of Sacramento Firefighter/Paramedic, indicated he was also prepared to have the Board hear his appeal.

Board Member Pryor moved to waive the procedures set forth in 4.11(c)(7) and conduct a hearing that comports with fairness and due process. The motion was seconded by Board Member Suzuki. The motion to approve went as follows:

Motion: Pryor
Second: Suzuki

The motion carried with the following roll call vote:

Ayes: Suzuki
Pryor
Robillard
Fine

Noes: None

Absent: Thompson

Ms. Giffin indicated that she believed that before the Board considered the merits of the appeal, they must first determine

whether the Human Resources Director abused her discretion per Rule 1.4 of the Civil Service Rules. Mr. Gale advised that Rule 1.4 does not dictate that the Board make a determination that the Human Resources Director had abused her discretion, due to Rule 1.5 which clarified that exam appeals should be heard, because there is a specific process provided in the Rules for this type of appeal.

Board Member Fine moved to adopt the City packet provided to the Board to support the City position and enter it into evidence as Exhibit A. The motion was seconded by Board Member Pryor. The motion to approve went as follows:

Motion: Fine
Second: Pryor

The motion carried with the following roll call vote:

Ayes: Suzuki
Pryor
Robillard
Fine

Noes: None

Absent: Thompson

Ms. Jenista was sworn in, identified herself for the record, and explained why Mr. Meyer's application was rejected. She explained that Mr. Meyer's application was rejected for insufficient "qualifying experience." She further explained that the job announcement states that the applicant must have five years of City of Sacramento experience to be considered for the position of Captain. She indicated that Mr. Meyer was three months short of the five-year requirement and pointed to page 2 of the announcement which states the required experience as, "Five Years of experience as a Firefighter with the City of Sacramento as of January 31, 2007." Prompted by questioning from the Board, Ms. Jenista explained the justification for the five-year requirement. She gave a brief history of how the minimum qualifications for the Fire Captain position were set. She explained that the experience level was previously set at three years experience. However, in the 2001/2002 labor negotiations the minimum qualifications was a bargaining issue. The City wished to raise the minimum qualifications to six years of City of Sacramento experience as a Firefighter. However, after discussion with the Union, the City and the Union agreed to raise the minimum qualifications to five years. She further explained that it was clearly the intent of the City and the Union to increase the minimum qualifications for the

position. She then turned the Board's attention to the item marked Letter E in Exhibit A. Letter E is a letter from Mr. Jim Luttrell, President of the Sacramento Area Fire Fighters, Local 522 confirming that an agreement had been reached regarding the minimum qualifications for the Fire Captain position. Additionally, she advised the Board that Assistant Fire Chief Leo Baustian was present to explain the City's reasoning for wanting to increase the minimum qualifications.

Chief Baustian was sworn in and identified himself for the record. He indicated that he had been an Assistant Chief for seven years and that he was present at the bargaining table when the issue of minimum qualifications for Fire Captain was discussed among the parties. Chief Baustian stated the City's concern was that the department had "become quite young" and lacked years of experience and tenure with the City mainly as a result of beginning the firefighter/paramedic program in 1994. Prior to the program, a firefighter received more experience in a shorter length of time because they acted in the position of a firefighter consistently. With the combination program, only half of the firefighter's time is spent acting as a firefighter, while the other half is spent in the position of paramedic. The City determined that the Fire Captains needed the additional experience as a firefighter responding to on-scene emergencies, spending more time in the station, learning the lay-out of the City, etc. Furthermore, while experience from other agencies was valued, the City believed Fire Captains required experience in Sacramento to learn the City specific operating procedures and policies, learn to deal with our high-rises, single occupancy hotel rooms, rivers, and freeways. Ms. Jenista added that the Fire Captain is a manager (while not technically a management position), and therefore must know these issues to direct the crew.

Board Member Fine inquired about how applicants who had experience from other agencies were handled with regard to the application process. Chief Baustian responded that the City still required five years of City of Sacramento experience to apply for the position of Fire Captain because of the lay-out of the City. With regard to Mr. Meyer, he was hired as a "lateral transfer" due to the need of additional paramedics. Lateral transfer employees did have special considerations granted to them. While Mr. Meyer's previous time in other agencies did not count towards his seniority with the City, he did not have to start with the City as a Fire Recruit. Additionally, the lateral transfers were allowed to participate in an abbreviated academy.

Mr. Meyer was sworn in and identified himself for the record. He gave a brief history of his employment experience stating that he was hired as a lateral transfer with the City of Sacramento in May of 2002. He

has previous experience with the City of Lodi, Tuolumne County, and Columbia College Fire Department. He stated he averaged 1000 hours of overtime each year he has been with the City of Sacramento. He is usually assigned to the ladder truck or an Engineer. He argued that others have been allowed to take the Fire Captain exam without having the requisite experience. Board Member Fine commented that the Board has difficulty responding to such allegations without having the facts of the other instances. Additionally, assuming the process had been violated before; the remedy would be to address those instances, as opposed to continuing the violation. Mr. Meyer pointed to the job specification as rationale to support his position that his application should not be disqualified. He pointed to the Fire Captain's job specification which states, "A typical way to obtain knowledge and abilities (to qualify) would be five years of experience as a City of Sacramento Firefighter." He stated that he was 3 months "shy" of the five years experience as of January 31, 2007, however, his other experience is more than sufficient to deem him qualified. He then reiterated his requested remedy for his test to be scored.

Board Member Pryor commended Mr. Meyer for his bravery, and complimented him for standing up for what he believed. Mr. Meyer indicated that he attempted to address the issue with Local 522 and the City prior to his request for an appeal before the Board to no avail.

Board Member Suzuki expressed concern about Mr. Meyer having been allowed to take the exam even though he did not meet the 5 years of required experience. Ms. Jenista responded that Mr. Meyer was allowed to take the exam and participate in the interview process pending his appeal to the Board. If the Board decided to deny Mr. Meyer's appeal his exam results will remain under seal. Additionally, she cited the difficulty of recreating the same examination conditions should the Board decide to grant Mr. Meyer's requested remedy. Ms. Jenista emphasized the need for Personnel to be able to fairly make determinations of whether applicants will be rejected or accepted. She argued that "some line must be drawn in the sand," and urged the Board to consider the difficulty of Personnel's job if their decision allows Mr. Meyer's application to be considered.

After inquiring whether either the City and/or Mr. Meyer's had final comments, the Board openly discussed and considered Mr. Meyer's appeal.

Board Member Pryor commented that he is sensitive to the position of Personnel and he recognized "a line in the sand must be drawn." He thinks there are three relevant concerns to consider: 1) The special circumstances of Mr. Meyer's hiring; 2) the City has recognized the value of Mr. Meyer's experience; and 3) Mr. Meyer's

spent less time in the academy, and at least 10 weeks more "on the street" than some of his other counterparts similarly situated.

Board Member Fine commented that he was not sure Mr. Pryor was correct in his understanding that Mr. Meyer spent at least 10 weeks more 'on the street' than others.

Board Member Pryor indicated that he was interested in granting the appeal and made a motion to grant Mr. Meyer's appeal and to direct Personnel to score Mr. Meyer's examination. There was no second to Mr. Pryor's motion. Board discussion continued.

Board Member Fine stated that the appeal before them raises the question of how job-related the five years of City experience is to the position of Fire Captain. He stated that Assistant Chief Baustian presented a good argument for the City position that the 5 year requirement is job related. He also commented that the City position is "quite generous" as an employee does not have to actually have 5 years of City experience prior to taking the exam. Mr. Fine indicated that he would be in favor of denying the appeal.

Board Member Suzuki moved to deny the appeal. The motion was seconded by Board Member Fine. The motion to approve went as follows:

Motion: Suzuki
Second: Fine

The motion carried with the following roll call vote:

Ayes: Suzuki
Robillard
Fine

Noes: Pryor

Absent: Thompson

The Board recessed at 3:40pm.

The Board resumed session at 3:50pm.

b) In the Matter of the Appeal of Martin Cordeiro, Firefighter

Board Member Fine inquired if the parties had a preference for the procedure used in this hearing. The City and the attorney

representing Mr. Cordeiro, Ms. Cathleen Mastagni, agreed that the procedure used in the previous hearing was acceptable.

Board Member Suzuki moved to waive the formal rules of 4.11(c) and conduct a hearing that comports with fairness and due process. The motion was seconded by Board Member Pryor. The motion to approve went as follows:

Motion: Suzuki
Second: Pryor

The motion carried with the following roll call vote:

Ayes: Suzuki
Robillard
Fine
Pryor

Noes: None

Absent: Thompson

Ms. Jenista explained the reason for the rejection of Mr. Cordeiro's application. She stated that Mr. Cordeiro's application omitted his City experience. Ms. Jenista informed the Board of the on-line application procedure, pointing out the instances in which an applicant is warned about omitting information. For example, she turned the Board's attention to page 3 of 5 labeled Attachment E of the materials the City submitted to the Board prior to the meeting. The language states, "Omitted information cannot be considered or assumed." She indicated that there is a "specific progression" that must be followed before moving on to the next question that provides safeguards and reminders along the way of the applicant's completion of the process. She noted that the first question on the application is "Are you currently employed with the City of Sacramento?" Mr. Cordeiro marked "Yes," for that question.

Board Member Fine questioned, "Does the City verify that the applicant is actually employed with the City when they mark 'yes' for that question?"

Ms. Jenista's response indicated that the procedure varies. She pointed out that Mr. Cordeiro did not fail to list his relevant employment information when he had previously submitted an application for Fire Recruit.

Ms. Mastagni argued that Mr. Cordeiro made a reasonable assumption that Personnel would know that he was currently employed with the City because only City employees could apply for the position. Further, Mr. Cordeiro's responses to the supplemental questions made reference to his experience with the City as a firefighter. Additionally, Ms. Mastagni argued that the directions were ambiguous and should say something like, "Please list your work experience with the City."

Mr. Cordeiro was sworn in and identified himself for the record. He explained that he interpreted the initial question to be inquiring about past work experiences because other questions further in the application refer to the applicant's current work experience. He indicated that after he was informed of the error, he did not have the opportunity to correct it. He further argued that based on his application, he did demonstrate that he is qualified for the position.

Assistant Chief Baustian stated that Fire Chief Cherry and other senior members of the department support Mr. Cordeiro's request to have his application accepted. His position is that Mr. Cordeiro did comply in the supplemental portion of the application. He argued it seemed punitive to exclude Mr. Cordeiro's application because he did not indicate he was a City employee on one part of the application.

Board Member Fine asked if the parties had any closing remarks. Ms. Mastagni stated that Mr. Cordeiro substantially complied and the information contained in his application was sufficient to determine that Mr. Cordeiro was qualified. Furthermore, it does not serve the City's purpose of getting the right person for the job to reject this application.

Ms. Jenista asked the Board to consider Personnel's position. Due to the volume of applications they receive, they must rely on the applicant assuming responsibility for the content of their applications.

The Board openly discussed and considered Mr. Cordeiro's appeal. Board Member Fine stated that it was reasonable for Mr. Cordeiro to assume that Personnel knew he worked for the City – as it was a promotional only exam. Second, he believed the City could make the application more clear in telling the applicant to list their current experience first. Finally, Mr. Fine noted that Mr. Cordeiro complied in all other areas.

Board Member Pryor stated that while he agreed that we must make applicants' take responsibility for their applications, that there is a learning curve with new technology. He indicated that he would be in favor of granting the appeal.

Board Member Pryor moved to grant Mr. Cordeiro's appeal and grant his request to score his examination. The motion was seconded by Board Member Suzuki. The motion to approve went as follows:

Motion: Pryor
Second: Sukuki

The motion carried with the following roll call vote:

Ayes: Suzuki
Robillard
Fine
Pryor

Noes: None

Absent: Thompson

There being no further business, the meeting adjourned at 4:55 pm.

JEFFREY FINE
Chairman

GERRIEE GIFFIN
Secretary