

CIVIL SERVICE COMMISSION REGULAR MEETING MINUTES
January 14, 2014
4:00 PM

PRESENT:

Lee M. Higgins, Chair
Kenneth Hodar, Co-Chair
Marilyn Sessions, Member
Alicia Schrenk, Civil Service Coordinator

Elizabeth Zorc, Human Resources Manager, City of Kent
James Soyars, Business Services Director, Kent City Schools
Michelle Lee, Police Chief, City of Kent
Eugene Roberts, Service Director, City of Kent
Edith Damron, OAPSE President, KCSD
Jennifer Ennemoser, OPBA Representative, Kent Police Department

The regular meeting of Civil Service Commission was called to order at 4 PM on Tuesday, January 14, 2014 by Lee M. Higgins, Chair of the Commission. Higgins established a voice roll call of those in attendance. The Commission reviewed the December 10, 2013 regular meeting minutes. Commissioner Higgins motion to approve the regular Civil Service meeting minutes of December 10, 2013. Seconded by Commissioner Kenneth Hodar, approval carried by a voice vote of 3-0.

The election of Commission Officers is as follows: Commissioner Higgins to serve as Chair, Commissioner Hodar to serve as Co-Chair, and Commissioner Sessions to serve as Member for the entire year. The 2013 Civil Service Commission Activity Report was accepted for the record and approval carried by a voice vote of 3-0.

The Commission acknowledged the following personnel changes for the Kent City School District. On December 2, 2013, Custodial I Worker of Longcoy Elementary Jean Reid internally transferred to Roosevelt High School as Custodial I Worker. Effective on December 9, 2013, Warehouseman Stephen Karas internally transferred to Custodial I Worker at Roosevelt High School and Custodial I Worker Richard Routt internally transferred from Roosevelt High School to Longcoy Elementary.

Regarding the approval request of job description of Warehouse/Maintenance Worker, Commissioner Higgins asked Mr. Soyars: "Would you typically expect an employee to pick up, up to 100 pounds?"

Mr. Soyars responded to Higgins:

“We have a number of heavier objects that need, and I wouldn’t say up to a 100 pounds, we need the person to be physically fit because not only is it in a given instance that they will be picking up bags of salt or boxes or reams of paper or whatever other items that need to be moved, they need to be able to do that because this person does a lot of moving things around so we had come up with or looking at from what I can tell, OSHA didn’t set any limit on how much a person can lift or carry from a letter back in 2004 but we wanted to make sure that whoever that’s in this position will be able to handle that and handle heavier weight on a regular basis. I’m not saying ‘hey here’s a 100 pound box you need to pick it up and move it’, but when we did have an internal applicant, which was Mr. Karas, who was in the warehouse position, when he applied for the warehouseman position, that position we did have him come up to our fitness center and gave him about 80 pounds and had him pick it up and walk about 10-12 feet and set it down. We just wanted to make sure the person could lift that much if they needed to.”

Edith Damron, OAPSE President, interrupted: “Can I say something...”

Commissioner Higgins replied, “Yes, go ahead please.”

Ms. Damron responded, “We object to the weight limit in that job description.”

Commission Higgins stated, “Ok, well, Ms. Damron has sent a note to the Commission which is an objection to a test for a warehouse position, is that correct?”

Ms. Damron replied, “At the time the note was sent, we did not that he know [implying Mr. Soyars] was bringing the job description here.”

Mr. Soyars interrupted, “Well, I only had the job description with me because I was asking for an eligibility list that’s why the job description was approved by the board previously....we need an eligibility list because we don’t have any internal candidates.”

Commissioner Sessions stated, “As late as July 2014 OSHA still has no limit on their weight.”

Mr. Soyars interrupted, “On everything we can tell, there’s no...they don’t say a person can only lift this amount, we aren’t expecting someone to lift 100 pounds, but we need someone physically fit to do this position.”

Ms. Damron responded, “On their website they only recommend 50 pounds.”

Mr. Soyars stated, “Um, yeah they have a recommendation but they don’t have a limit saying...its not a requirement.”

Ms. Damron interrupted, “In no other job description at Kent City Schools is there a weight limit on it, and the warehouseperson is bringing those supplies and things to the

head custodians, which I am one of them, and I'm lifting them and why isn't there one in my job description? That's discrimination if one in his and not one in mine."

Mr. Soyars interrupted:

"We are not trying to discriminate, the reason why we uh, I think it was back in 2003 that we revised all of our job descriptions and this is before I got into this position and I believe Ben Cowgill at the time provided the Commission all of those job descriptions, the reason that there was an update was because well we never brought the warehouseman position to the Commission before because it was actually created back in 1983 Larry King was put into the position and then he retired here at the end of 2012 and after looking at a lot of the jobs that he was no longer doing or things through technology and all of the other things we have cut the position from a 40 hour position to a 20 hour position and there's a lot of things, I didn't make copies but I'm glad to leave this copy of things that are on the original 2003 job description that we no longer need this person to do, but we felt that we needed to put on there something so we can make sure whoever gets in this position could be physically fit and do the position and so we are not trying to discriminate we just had a change because we changed a lot of things out to make sure we get the right person for the position."

Ms. Damron commented, "Yes, as you well know, we have a grievance going on over this job and we are still in discussion with Joe over it, so I don't even no why you are bringing this here now?!"

Mr. Soyars responded irately, "I only brought the job description because last month I said that we needed an eligibility list and this is the position we need the eligibility list for so and I guess I need a little information or understanding as well as to I gave you the job description and then you put it on as *Job Description Approval Request*."

Civil Service Coordinator Alicia Schrenk responded to Soyars' comment, "Yes, the reason why I had to put it on there is for the Commission to approve the changes before they can even establish an eligible list because last time it was updated was in 2003 and it has never come to the Civil Service Commission and is required to come to Civil Service to be approved and that's why it is on there."

Mr. Soyars asked, "Is that required in the City Charter, because I couldn't find it in the Ohio Revised Code?"

Alicia Schrenk replied, "That's the way the Civil Service Commission has always done it."

Commission Higgins stated, "Its part of the State Civil Service Rules."

Mr. Soyars questioned, "In the Ohio Revised Code?"

Alicia Schrenk responded, “Yes in the State and in the Civil Service Commission, that’s how it has always been done here. Prior too me this is how I was explained how this process goes.”

Mr. Soyars questioned again, “I’m just trying to understand, you bring your job description for approval for the Commission?”

Alicia Schrenk replied:

“How are you going to update the position if it’s not updated, you can’t have an eligibility list until it’s totally updated and until the Commission approves it. Like when Liz has internal biddings she brings the job descriptions before internal bidding for AFSCME...this is how it has normally been done as far as I know and what I was taught, and unless there’s been a change?”

Commissioner Higgins answered:

“Not that I know of. And you have an action against the school administration at the moment, that’s outside of our purview here of what we are looking at is having the job description in front of us so that we can start the process of an eligibility exam and that’s the only thing we can do at this point, we can’t address the lifting issue, I just brought it up because I wanted to know if there was a limitation on it, but according to OSHA there isn’t and that’s why I asked. I think the board has done their homework of looking at it and that there is nothing on your job description per say and that you would need to discuss that with the board I think.”

Ms. Damron responded, “Well we just want to go on record stating that we object to the weight limitation in that job description.”

Commissioner Higgins replied, “Oh, ok, then is that part of your grievance with the school administration?”

Ms. Damron replied, “Yes.”

Commissioner Higgins stated, “Have you specified what it should be?”

Ms. Damron responded, “We think there should be nothing, there is nothing in any other job description and not even in maintenance. And the job title is Warehouse/Maintenance.”

Mr. Soyars interrupted, “Ms. Damron are you saying that, I guess one option is that you want us to continue to run with this position with a Sub until we can work through the grievance process instead of coming to the Commission and try to fill this position permanently?”

Ms. Damron responded, “I’m saying take the weight limit off that job description and we won’t have a problem.”

Mr. Soyars replied, "Ok, well, our board has approved this in February of this last year, the job description..."

Ms. Damron replied, "And we objected to it then too."

Mr. Soyars stated, "Absolutely, so, ok, all right, trying to find in the short term to make this work do we need to move forward and get an eligibility list or we just keep running with the sub we keep using until we can get the grievance..."

Commission Higgins interrupted, "I don't think there's any problem with us moving forward in trying to put together an eligible list. And you guys can work out your issues and I don't think that will substantially change anything that we are looking to do."

Mr. Soyars asked, "Then I guess my question would be as far as putting a test together and trying to evaluate I have a number of things that we are looking for in a position so I'm not sure with this being a position we have not taking before, I'm not sure how we work through that to evaluate and get us a good list I guess."

Mr. Soyars then stated, "They need to have a driver's license and able to be insured by our insurance company, we have run into a problem in the past because of driving history our insurance company wouldn't touch him, so we couldn't hire him."

Commissioner Sessions mentioned, "So a valid Driver's License."

Commissioner Higgins stated to Ms. Schrenk that should be in the posting of the position. Mr. Soyars asked the Commission if they were going to evaluate the applicants' background checks. Commissioner Higgins asked Ms. Schrenk to obtain all copies of applicants' Driver's Licenses. Higgins stated to Soyars, "If posting is written tight enough that should eliminate the problem, but not 100%, so those will still need to be verified and we will be happy that you did that."

The Commission discussed the testing process of Warehouse/Maintenance Worker. It will be a written exam established by Civil Service Commission. Civil Service Coordinator Schrenk stated to Commissioners that there are some exams in-house that they can look at and decide what parts to use for the actual examination. Commissioner Higgins said to Ms. Damron that he hopes they work out their issues and thanked her for coming to the meeting and also said she was welcomed to stay for the rest of the meeting.

The Commission acknowledged the following personnel changes for the Kent Fire Department. On January 12, 2014, Fire Chief David A. Manthey retired. Fire Captain John D. Tosko was promoted to Fire Chief effective January 13, 2014. Fire Lieutenant Richard O. Lynn was promoted to Fire Captain effective January 13, 2014. Firefighter/Paramedic Jeffrey A. Coffee promoted to Fire Lieutenant effective January 13, 2014. Jacob T. Robinson was hired as a full-time Firefighter/Paramedic effective January 13, 2014.

The Commission also noted for the record the following personnel changes in the Kent Police Department. On January 26, 2014, Dispatch Coordinator Rosemarie Mosher

retired. Part-time Clerk/Dispatcher Kelli Myers promoted to Full-time Clerk/Dispatcher effective January 27, 2014.

Police Chief Michelle Lee requested to establish a new Clerk/Dispatcher and Detention Officer Eligible Lists. The Commission approved her request to establish a new Clerk/Dispatcher and Detention Office Eligible Lists by a voice vote of 3-0.

Police Chief Lee presented an informational discussion to the Commission on Police Department Fitness Tests. Chief Lee explained,

“Well, its problematic as you know, my initial feelings, I should preempt this by saying that we are still getting information from other departments and we are getting information from state resources, so the investigation is ongoing, but in everything that I’ve read especially the comments from Mr. Wilkens and the comments from doctor, the doctor with the Cooper Institute, they only reference to it is physical abilities or they tie it back to job description. My basis has always been that our fitness tests are a test of a person’s fitness level it has nothing to do with that they’re a police officer or that they’re a firefighter or whatever we do for our job; it’s not an agility test. So its basically measuring fitness which can be in my opinion sex and age based, but the information I’m getting from those two sources are referencing, referencing in a different way. Now Tim Cole, I’m sorry, Mike Lewis, who is another fitness instructor, has talked to a couple of other people that are involved with the Cooper Institute that have just the opposite opinion of the Doctor. They say you don’t need to validate your test, this is exactly what I described as a fitness test, we are measuring your fitness levels, it has nothing to do whether you climb, or jump, or carry 100 pounds during your work performance.”

Commissioner Higgins stated, “But if you use it as a selection tool...”

Chief Lee responded, “We use it as a selection for a fit individual...”

Commissioner Higgins replied, “Didn’t they, the Cooper Institute representative say he was surprised anybody was using this as a fitness test as such, and according to what Wilkens wrote it looked like if we could determine whether there’s some municipality or department that’s all ready validated a test that we could use the same test?”

Police Chief Lee stated, “Correct.”

Commissioner Higgins questioned, “Do we know of anybody that has a validated test at this point?”

Police Chief Lee replied, “Like I said the investigation is ongoing, most departments around here, we’ve always prided ourselves that we have annual fitness tests, most departments little or few in the state do as we do, so obviously use some fitness test for hire, but not an annual test.”

Commissioner Higgins stated, “I think, I’m pretty sure I’ve seen referenced to other departments having called people out for having gone beyond the parameters.”

Chief Lee stated, "Well, I'll give you an example, the State Patrol has annual tests just like us. They are the biggest law enforcement agency in the State. They're getting away with it, I don't understand the difference they hold their guys to a certain weight requirement and that's a little bit more than what we do."

Commissioner Higgins chimed in stating, "Well plus they have height requirements."

Chief Lee responded:

"Well they use to they don't anymore. Height requirements went away. There's the largest law enforcement in the state doing it and it's a little more actually rigorous than we are. So there are two camps of thought, and we are trying to figure it out and the problem is that we have is Mr. Wilkens being our attorney that represents the City of Kent has said that we should discontinue them so that's his opinion, and which is why we are suspending the fitness tests right now."

Commissioner Higgins question Chief Lee, "What prompted this in the first place?"

Chief Lee replied, "Tim Cole, who is one of our fitness instructors, he had heard information from...the Cooper Institute based on that there were these...a thought that it was violating a Civil Rights Act of 1991 I believe it is. And well I said look into it, give me some research and he researched it and this is what he has come back with."

Commissioner Hodar asked Chief Lee, "We aren't actually being sued right now?"

Chief Lee stated, "No."

Commissioner Higgins stated, "I think there had been a number of cases that would have fallen out way before that so, under the original title, seven I think it was of the Civil Rights Act, that I can recall back in the 70's to try and adjust or accommodate what the interpretation was at that point, and I can't remember what the Act of 1991 does exactly, but its good to look into it and I also think that as an individual, speaking as an individual I always had peace of mind that Police Officers who were representing the City were in pretty decent shape and were dependable to excerpt that was necessary to go after somebody..."

Chief Lee responded, "I just thought the Commission should be aware of where we are at."

Commissioner Higgins replied, "I appreciate that, that will give us a chance to kind of keep our ear to the ground on anything that you can come up with that benefits the whole discussion."

Chief Lee replied, "I was originally told that these fitness tests can be offered and they are offered like for an academy purpose because they are not an employer. However, if at our entry-level when we give tests if we fail someone technically we are also in violation because we are the employer and we would be discriminating against someone by not hiring them, correct?"

Commissioner Higgins replied, “That’s the way it would appear to be in the very strict reading of what Mr. Wilkens stated.”

Chief Lee stated, “It’s problematic, we have to find out what Tallmadge does, what Stow does, everyone has a fitness test, I just don’t know how they are getting away around the 1991’s Act, we are being told that...”

Higgins interrupted, “Well it’s not a problem until somebody sues you.”

Chief Lee replied:

“Exactly. My problem is that I would want to continue to do the fitness tests and have it challenged in court because I still stand behind that we are testing someone’s fitness levels we are not testing their ability as a police officer or where Jim Wilkens represents the City of Kent that has a little bit of bigger salary than mine so I will go by his recommendation and suspend the fitness tests until we figure something else out.”

Commissioner Higgins asked, “So they officially have been suspended at this point?”

Chief Lee stated, “Yes, I just suspended them so we are not doing anything with them right now.”

Higgins responded, “It’s a difficult issue.”

Chief Lee went on to mention to the Commission that there are different options to having the Fitness tests by not having base minimums, making it a volunteer process, or have a company come in to validate how City of Kent does their testing. The Commission asked Chief Lee to keep them updated on the process of the KPD Fitness tests.

Chief Lee then discussed the next item on the Agenda of adding a School Resource Officer. She stated that this position would be working at the Kent City School District nine months out of the year, and the School District would also help fund this position. This is just the beginning of discussing this position.

The next item on the Agenda was the review of the updated job description of Water Reclamation Facility Manager. The Commission approved the job description of Water Reclamation Facility Manager by a voice vote of 3-0. The Commission approved Service Director Gene Roberts’ request to establish an Eligible List for Water Reclamation Facility Manager by a voice vote of 3-0.

The Commission acknowledged for the record the memo from Human Resources Manager Liz Zorc and Law Director James Silver regarding *Ohio Revised Code 124.30: Filling Classified Positions in Civil Service without Competition* for the position of Water Reclamation Facility Manager.

The Commission acknowledged the temporary appointment of Mr. Robert Brown as Water Reclamation Facility Manager effective February 1, 2014. Commissioner Higgins mentioned to Service Director Roberts that this appointment can only be established for 120 days.

At 4:58 PM, Commissioner Higgins moved to adjourn the meeting into Executive Session to discuss Civil Service Commission Rules & Regulations and process of Civil Service Exams, seconded by Commissioner Sessions. At 5:19 PM, Commissioner Hodar moved to adjourn the Executive Session back into regular meeting, seconded by Commissioner Sessions and Higgins. The regular meeting adjourned at 5:20 PM.

Minutes approved: 02/11/2014

Lee M. Higgins
Chair

Kenneth J. Hodar
Co-Chair

Marilyn Sessions
Member