



CIVIL SERVICE COMMISSION MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
Tuesday, June 18, 2019
11:00 AM

MINUTES

CALL TO ORDER

Acting Chair Sharon Bonner called the Civil Service Commission Meeting to order at 11:00 AM.

ROLL CALL

Commission Members Present: Sharon Bonner and Guy Kennedy.
Chair Dan Archibeque absent.

Administrative and Civil Service Staff Members Present: Robert Jagger, Counsel for the Commission; Marisa Pacheco, HR Director; Margaret Mangram, Civil Service Senior Office Assistant.

Other interested parties: Pueblo City Chief of Staff Laura Solano; Appellant Sarah Copeland; City Assistant Attorney Lisa Macchietto, Police Dispatch Manager Laura Wittrup, Police Dispatch Supervisor Kim Jeffries.

Note: Civil Service Administrator Manuel Alcala absent.

AMENDMENTS TO THE AGENDA

None

READING AND APPROVAL OF MINUTES:

Motion made by Ms. Bonner to dispense with the reading and approve the minutes for the May 14, 2019 regular meeting as distributed; Mr. Kennedy moved, seconded by Ms. Bonner.

Roll Call -- Ayes: Bonner and Kennedy. Motion carried unanimously.

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CONSENT AGENDA

The following items are considered routine by the Civil Service Commission and will be passed and approved by one motion. There will be no separate discussion of these items unless a Commissioner so requests; in which event, the item shall be removed and considered as a regular item.

1. Receive and file the following status reports on current recruitments:
 - a. **Accounting Technician II** (recruitment is due to an employee promotion) – The external recruitment began on May 23, 2019 and ended on June 12, 2019. We received 51 applications and 37 were approved. The written exam is scheduled for June 26, 2019.
 - b. **Accounting Technician IV** (recruitment is due to an employee promotion) – The external recruitment began on April 23, 2019 and ended on May 13, 2019. We received 35 applications and 22 were approved for the exam. The written exam was administered on May 29, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - c. **Fire Captain** (Recruitment is to fill anticipated vacancies) – The internal recruitment began on June 13, 2019 and ends on June 26, 2019. We received 1 application as of the date this agenda was prepared. The exam is scheduled for July 12, 2019.
 - d. **HR Analyst** (recruitment is due to an employee promotion) – The external recruitment began on April 14, 2019 and ended on May 4, 2019. We received 19 applications and 6 were approved for the exam. The written exam was administered on May 20, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - e. **Park Caretaker II – Irrigation Specialist** (Vacancy created by an employee promotion) – The internal recruitment began on May 15, 2019 and ended on May 28, 2019. We received 3 approved applications. The Commission authorized a T&E Exam. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - f. **Solid Waste Utility Worker III** (Position created by Staffing Ordinance 9387) – The internal recruitment began on April 11, 2019 and ended on April 24, 2019. We received 7 applications, and all were approved for the exam. The exam was administered on May 10, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - g. **Street Inspector** (Position created by Staffing Ordinance 9387) – The internal recruitment began on May 26, 2019 and ended on May 8, 2019. We received 12 applications, and all were approved for the exam. The exam is scheduled for June 27, 2019.
 - h. **WWTP Superintendent** (recruitment is due to an employee retirement) – The external recruitment began on April 21, 2019 and ended on May 11, 2019. We received 3 applications and 2 were approved for the exam. The Commission authorized a T&E. The eligibility list was presented to the Civil Service Commission for certification during this meeting.

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CONSENT AGENDA (CONTINUED)

2. Ratified the Commission's letters to Bruce Schick and Lorenzo Trujillo, regarding the removal of their names from the Airport Operations/Maintenance Worker eligibility list.
3. Ratified the Commission's letter to Susan McNew regarding her objection to the rejection of her application for the Accounting Technician IV exam.
4. Ratified the Commission's letter to Nicolas Gowin regarding his objection to the removal of his name from the Police Patrol Officer eligibility list.
5. Ratified the Commission's letter to Jimmie Quintana, President of the IBPO Union, regarding the postponement of the Police Sergeant exam until after January 2020.
6. Ratified the Commission's decision to conduct Training & Experience Exams on the Park Caretaker II - Irrigation Specialist and WWTP Superintendent positions.

Commission Action: *Motion made by Ms. Bonner to accept all Consent agenda items; Mr. Kennedy moved, seconded by Ms. Bonner.*

Roll Call -- Ayes: Kennedy and Bonner. Motion carried unanimously.

REGULAR AGENDA

1. Appeal of Sarah Copeland regarding her removal as a probationary employee (Emergency Services Dispatcher).

Counsel Jagger stated that the position falls under the Pueblo Association of Government Employees (PAGE) contract and the burden of proof will be upon appellant Copeland to show the removal violated accepted and substantial public policies or abused the constitutionally impermissible purposes as embodied by legislative declarations, professional codes of ethics, or other resources.

Jagger swore in appellate Sarah Copeland; she did not have any witnesses to call. Copeland testified that on Memorial Day she came into work that day and didn't think she would be terminated that day. Copeland further stated she made a comment and ended up having to go through an alcohol test, which proved she wasn't under the influence; and to be 'let go' - she didn't think that constitutes a cause. Copeland believed when she was 'tapped on the shoulder by Laura (Wittrup, PD Dispatch Manager)', that maybe they would all go into Laura's office to have a professional meeting about the matter. Copeland stated her evidence is proof of the alcohol test conducted (she passed); Copeland added that she did not receive termination or any other papers. That concluded Copeland's testimony.

City's rebuttal: Assistant City Attorney Lisa Macchietto appeared on behalf of the City. Macchietto requested that a motion be made in judgement in favor of the City, as Copeland has failed to sustain her burden of proof that her removal from probationary employment violated established constitutional or statutory law. Macchietto stated that local ordinance and collective bargaining agreement allows for a probationary employee to be removed at any time during their first six months of employment, with or without stated cause. The employee does have a right to

REGULAR AGENDA (CONTINUED)

appeal and the decision of the Department Head must be sustained unless the Commission finds that decision constitutes an abuse of discretion. In prior cases before the Commission, an abuse of discretion was evaluated by the arbitrary breach's standard, meaning that a Department Head had to act contrary to or in violation of statutory or constitutional law for his/her conduct to be arbitrary or capricious. Macchietto stated that the testimony establishes that Copeland came to work on Memorial Day, was suspected of being under the influence of alcohol, was tested and shortly thereafter she was removed. Such evidence fails to establish Copeland's removal was in violation of statutory or constitutional law; and therefore, Copeland has failed to meet her burden. Macchietto concluded the City's rebuttal.

Counsel Jagger stated to Copeland that it sounds as if her complaint is that the dismissal was stated as 'without cause', but she believes there 'was cause', and that Copeland wants to know what that is; Copeland responded 'yes'. Jagger stated that the City has the right under the PAGE contract and Ordinance to remove a probationary employee with or without cause. The City has removed without cause, and that's the way it has been stated. Jagger informed Copeland that her termination papers will not reflect that it is a removal with cause, and the City is correct in that she did not prove her removal was for some impermissible reason.

The Commission had no questions; Counsel Jagger read the proposed decision on the matter that came before Civil Service Commission on June 18, 2019.

Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to reject Copeland's appeal for a hearing.*

Roll Call -- Ayes: Bonner and Kennedy; motion carried unanimously.

2. Submission of the eligible list for Accounting Technician IV.

Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Accounting Technician IV.*

Roll Call -- Ayes: Bonner and Kennedy. Motion carried unanimously.

3. Submission of the eligible list for HR Analyst.

Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of HR Analyst.*

Roll Call -- Ayes: Bonner and Kennedy. Motion carried unanimously.

4. Submission of the eligible list for Park Caretaker II – Irrigation Specialist.

Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Park Caretaker II – Irrigation Specialist.*

Roll Call -- Ayes: Bonner and Kennedy. Motion carried unanimously.

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REGULAR AGENDA (CONTINUED)

5. Submission of the eligible list for Solid Waste Utility Worker III.
Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Solid Waste Utility Worker III.*
Roll Call -- Ayes: Bonner and Kennedy. Motion carried unanimously.

6. Submission of the eligible list for Wastewater Treatment Plant Superintendent.
Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Wastewater Treatment Plant Superintendent.*
Roll Call -- Ayes: Bonner and Kennedy. Motion carried unanimously.

ADMINISTRATIVE ITEMS

1. The next regular meeting of the Civil Service Commission was scheduled for July 9, 2019, at 11:00 A.M. The meeting will be held in the City Council Chambers, #1 City Hall Place.

INFORMATIONAL ITEMS

1. Prior to the start of the meeting, Ms. Laura Solano, the newly-appointed Chief of Staff for the City of Pueblo, introduced herself to the Commissioners and presented them with her business card. At this juncture of the meeting, Ms. Laura didn't have any additional info to add or share.
2. Employee Status Report for May 2019
3. Handouts

ADJOURNED: 11:20 AM


Chairperson

BEFORE THE CIVIL SERVICE COMMISSION

OF THE CITY OF PUEBLO

IN THE MATTER OF

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DECISION

SARAH COPELAND

THIS MATTER came before the Civil Service Commission on June 18, 2019, concerning the appeal of Sarah Copeland (“Appellant”) with respect to Appellant’s removal as a probationary employee in the position of Emergency Services Dispatcher.

JURISDICTION AND SCOPE OF REVIEW

The established precedent in the State of Colorado is that “a probationary government employee may be summarily dismissed without a hearing and without any stated grounds for such dismissal. However, this principle may be modified by contrary legislation, agency rule, or contractual provision.” Hunter v. City & County of Denver, 657 P.2d 456 (Colo.App.1982)

By ordinance enacted in 1973, the City has provided for limited review of such removals. Section 6-10-1, P.M.C. provides:

- (a) The Department head may terminate an employee prior to completion of his or her probationary period without filing formal charges if, in the opinion of the department head, the probationary employee is not qualified, able or willing to fulfill the requirements of a position; provided, however, that if the employee so terminated has civil service status in another class, he or she shall automatically revert to the former position in which he or she has such status.
- (b) A probationary employee shall have the right to appeal from a removal. The decision and action of the department head shall in such case be sustained unless the Commission shall find that the department head abused his or her discretion in terminating said probationary employee.

The provision of §6-10-1(a), P.M.C., relating to basis for removal, has been amended by the Section 4.1 of the current labor agreement with the Pueblo Association of Government Employees, which by Charter is enacted as an ordinance and binding on the Commission. Said section reads:

A newly hired probationary employee may be disciplined or discharged at any time during the full initial probationary period with or without reason. Such a probationary employee shall have no right to appeal his or her discipline or discharge under this Agreement; however, such employee shall have the right to appeal such action pursuant to Section 6-10-1 of the Code of Ordinances. (Emphasis added.)

As such, the Administration has the discretion to remove a newly hired probationary employee with or without reason, i.e. such an employee is truly an at-will employee. Although such a decision is appealable to the Commission, the Commission is obligated to sustain the decision unless the Commission finds that the Administration abused its discretion. §6-10-1(b), P.M.C.

To prove an abuse of such discretion in this context, Appellant must show that the removal was for constitutionally impermissible purposes or otherwise violates accepted and substantial public policies as embodied by legislative declarations, professional codes of ethics, or other sources. *Wisehart v. Meganck*, 66 P.3d 124, 127 (Colo.App. 2002). Few sources of accepted and substantial public policy have been recognized in Colorado as creating an exception to the at-will termination of a probationary employee. *See* §§ 19:9 and 19.20, 1B Colo. Prac., *Methods Of Practice* (6th ed.). As the Colorado Supreme Court has noted, "Not all potential sources of public policy are of sufficient gravity to outweigh the precepts of at-will employment." *Crawford Rehab. Servs., Inc. v. Weissman*, 938 P.2d 540, 553 (Colo. 1997).

In the present matter, Appellant has failed to establish a recognized public policy exception to her at will employment that the City allegedly violated or that her removal was in fact made in violation of such a policy.

IT IS THEREFORE THE DECISION OF THE CIVIL SERVICE COMMISSION OF THE CITY OF PUEBLO, COLORADO, that the appeal of Sara Copeland is hereby rejected.

The above Findings and Order were done in open session of the Civil Service Commission of the City of Pueblo, Colorado, on the 18th day of June, 2019, by vote of 2 to 0.

THE CIVIL SERVICE COMMISSION
OF THE CITY OF PUEBLO, COLORADO

BY



Sharon Bonner
Acting Chairman