

MINUTES OF THE SPECIAL CIVIL SERVICE BOARD MEETING
WEDNESDAY - - JUNE 6, 2012 - - 5:00 P.M.

1. **CALL TO ORDER:** 5:03 p.m.

2. **ROLL CALL:**

Present: President Avonnet Peeler, Vice President Peter Horikoshi, Members Dean Batchelor, Linda McHugh, Marguerite Malloy, Executive Secretary Holly Brock-Cohn and Randy Riddle (outside counsel for the Board).

Staff: City Attorney Janet Kern and Senior Management Analysts Jill Kovacs and Chris Low.

Appellants: Dave Gossman, Union representative for Operating Engineers Local 3 for Alameda City Employee Association (ACEA)
Trini Blumkin, former Alameda Recreation & Park Department (ARPD) Recreation Coordinator
Marcia Tsang, former ARPD Recreation Coordinator
Andy Wong, former ARPD Recreation Coordinator

3. **AGENDA ITEM:**

A. A Special Meeting has been called for the Civil Service Board Members to Discuss and Consider the Request of Two Applicants to 1) Investigate the Selection Process and 2) Vacate the Results of the Recently Completed Recreation Services Specialist Recruitment.

City Attorney Kern introduced Randy Riddle, outside counsel for the Board, who has been hired to give advice to the Civil Service Board. President Peeler asked Mr. Riddle how to proceed with the meeting.

Mr. Riddle stated that he will make a recommendation on how to proceed and if all parties agree the Board can then proceed. Member representatives from each side can weigh in. He proposed that the Appellant side have ten minutes, the City have ten minutes and then three minutes for each of the Appellants. Then three minutes for the City and Appellant representatives to each give additional statements.

Dave Gossman, Union representative for Operating Engineers Local 3, agreed to the procedure.

Board Member Malloy asked if a question and answer period by the Board would be held after people speak. Mr. Riddle stated yes. Members of the public will have an opportunity to comment as well. It should be determined by the Board how long each public speaker

will be allowed to speak. The Board agreed on three minutes for each speaker.

Mr. Riddle stated that the City recently instituted the Sunshine Ordinance. One of the provisions provides that for any item on the agenda, at the same time that the agenda is provided, all documents given to the Board should also be made available to the public. The ordinance is still in the process of being implemented and staff is still coming up to speed on the issue. In this case, given the appellant process that is involved, that has not happened. If anyone has an objection regarding documents given to the Board in less than the seven days required they should raise their hand now, in which case it would be Mr. Riddle's recommendation to the Board to continue this matter to such a time as seven days have passed to review the documents. If there is not an objection, Mr. Riddle would view this issue as the Board can proceed to hear the appeal.

Mr. Gossman stated that the Union has documentation for the Board to review. The Union had previously contacted the Human Resources Department and requested information and also listed some concerns that they have regarding the testing. As of today, the Union has not received any written response from the City. There are eight questions, requests for information from the City. Mr. Gossman has received three answers; test scores, how long the list would stay open, and the rankings of the list. There is some information, he still has not received from the City regarding the request from over three weeks ago.

Mr. Riddle stated that if Mr. Gossman would like to explain that information to the Board and if the Board believes that he should have that information and that they (Board) would like to have that information, then the Board can make that decision.

Mr. Riddle stated that there are documents that are already in existence and have either been provided to the Board or will be provided tonight and whether or not folks have an objection to that happening tonight rather than 7 days ago. If you do, then he recommends that the Board continue the matter to ensure full compliance with the Sunshine Ordinance if anyone here objects to that happening. The City is also providing information this evening as well as the appellants which may contain some of the information that Mr. Gossman is asking for.

City Attorney Kern stated that what we have to discuss tonight and additional information the City is willing to present to the Board, the Union Representative, and the public as well. We can go forward on that basis and the City has no objection. The appeal that has been filed was not included in the packet that was to be made available publicly seven days in advance, did not happen. The City is comfortable with moving forward, having the Board hear it, and providing additional information that has been put together and subsequently, sharing the information with everyone. If the Board feels that they need more time to look at it or want us to provide additional information then of course the Board can order us to do that. The point here is whether we move forward just for the Sunshine Ordinance and whether we were comfortable that there was adequate noticing of this meeting so that we can move forward.

Mr. Riddle stated that for clarification the agenda was sufficient and was posted in time.

The question is that the documentation was not provided with the agenda and whether folks have any objection to the documents being provided tonight. If there are objections, Mr. Riddle would recommend that the Board continue the meeting at least one week.

President Peeler stated that her concern is that the Board have time to review what has been received at this time, not having had it beforehand. Mr. Riddle stated that if the Board feels they need more time, the Board could take testimony this evening, review the documents, and if the Board needs additional time they could continue the hearing to another time and complete the hearing at a future meeting, but yet still proceed tonight to the extent the Board wants to. Nothing here would preclude the Board from determining at their discretion if they want additional time to look at documents. The Board may want additional information before it is said and done as well. It is up to the Board's discretion.

Mr. Gossman stated that the Union has no objection to moving forward.

Vice President Horikoshi moved that the meeting/hearing continue; Member Batchelor seconded the motion which passed by a 5-0 vote.

President Peeler invited the appellants to speak.

Mr. Gossman stated that he would provide an opening statement and then he has three appellants that would like to give a three minute speech and then we could proceed from there. Mr. Riddle agreed they would have a full 10 minutes between all of them to begin.

Mr. Gossman provided a six-page document/report (with attachments) to the Civil Service Board.

Mr. Gossman stated that he was at the meeting today to represent three appellants who were former employees of the City of Alameda and that they have been program park coordinators for 10 to 11 years working for the City. In March 2012, they were informed that the City was planning to eliminate their positions. At that time there were four positions occupied. They were advised that the Alameda Recreation and Park Department (ARPD) would be eliminating the Park Program Coordinator to create a new classification of Recreational Program Specialist and that one of the four would be laid off because there would be four positions cut down to three.

Mr. Gossman also stated that the resolution was taken to City Council and it was stated that this was going to save \$400,000 for the City by going to this new classification. In essence, that is a false smoke screen because these employees were already being paid out of the Athletic Trust Fund and not paid out of the General Fund. The fact that they were changing to a new position had nothing to do with the \$400,000. But, when we went to a union meeting, a meet and confer, the reason for the new classification was to save \$400,000.

Mr. Gossman continued that prior to the testing, two managers who worked for the City, approached the employees and stated that they were not going to get the new jobs and

that employees had already been preselected who were going to get the positions. In essence, we had employees who did not have any fairness or equity in going through the testing processing. After the oral interviews a manager who sat on the board, came up to the employee and stated, "You know what, I was just a pawn. I had no input into the selection process. It was out of my hands."

Mr. Gossman concluded that this has been documented in the information provided to the Board.

Mr. Riddle asked if Mr. Gossman was referring to the letter and there was also something called an appeal. Mr. Gossman stated that first of all this is an appeal. They have an appeal. Mr. Riddle asked if this was the initial letter. Mr. Gossman stated yes.

Mr. Gossman stated that right after the examination the employees were told that one of the examining people had no part of it. Within two days, they were called into the office and told they were laid off. The employees asked for their test scores. They were told they did not have test scores and that they just did not pass. So they walked out the door after a combined 30 years of experience. The employees are very upset and angry because of the testing process. They all realize that everyone has to take the test and they were looking for fairness. In this testing process and whole examination, it did not happen in this case.

The appellants are requesting that the test be vacated, that a new testing process be completed and that it be completed from outside Human Resources personnel, from another agency so that the test can be done fairly and correctly.

They were expecting that one person would be laid off and there were three people laid off. One of the new persons hired was an individual who was a custodian in the Library. In being objective, how could a custodian who works in the Library have more experience or training? In fact, he had no training in the parks recreation programs to be selected.

The second issue is that this individual owns a lawn business in the City of Alameda. The red flag is; how can an employee who works full-time for the City of Alameda and at the same time have a full-time lawn business while he's supposed to be working for the City of Alameda. Mr. Gossman feels that is a conflict of interest which is another red herring in this case. They are requesting than an outside investigation be conducted regarding what has happened.

Mr. Gossman stated that the bottom line is they are looking for a new test, employees to be put back whole from where they were, and that the facts and truth come out of what happened in this testing process.

Trini Blumkin, former ARPD Recreation Program Coordinator, stated that they all have 30 years combined experience. They understood that there was going to be a reorganization and understood that someone was going to be laid off. They were asking for a fair process.

They found out that there were some people that had some insight already and understood who was going to get the job and who was not going to get the job. They had their union representative call Mr. Russo, City Manager, and they asked him to get someone who would be unbiased and an outside person to read over the applications and supplemental questions. Mr. Russo agreed and made the announcement to Lisa Goldman, Assistant City Manager, and the Human Resources Department to make sure that they got an outside person, with no bias, to look over the applications because they knew something was going on.

Ms. Blumkin stated that come to find out, you can ask Chris Low, the person who looked over the applications was a former City employee who worked with them as a group, worked in the same department, and is friends with the previous ARPD Director, Dale Lillard. Her name was Anne Kassebaum; she was the one out of millions of people that they could have chosen to be non-biased. It was someone who knew us and was the one grading the applications and supplemental questions when we had asked and they were directed by John Russo, City Manager, to get someone who was non-biased. And, this person had previously worked for us and was friends with the previous Director. That was the ultimate of the ultimate to being unfair. We were just asking for fairness, we knew this was coming, we knew someone was going to lose their job. But, for three of us who had all that experience to lose their jobs when we were told there would be one was just crushing.

Ms. Blumkin asked the Board to go to an outside organization and perform an outside investigation, to show what the Human Resources Department, and whoever else was involved, how unfair the process was.

Andy Wong, former ARPD Recreation Program Coordinator, thanked the Board for hearing their case. He received his degree from Fresno State and worked in the field for 10 years full-time, 12 years total. He worked special events and built the teen program from the ground up. In March 2012, when the job elimination was brought up he understood it. Being the lowest employee in seniority he sort of anticipated being the first to be let go. But, he was supposed to have the opportunity for a fair shot and equal opportunity. If you look at his City supplemental questions, he felt that he was 90 percent qualified for the job. Mr. Wong also has a Class B license which it says on the supplemental is highly preferable along with experience in special events and serving at risk youth. He has done a lot of new programming for the City and ARPD, is a community player, worked with schools and became a very, very good across the board professional.

On April 19, 2012, he was called into the office and handed a lay-off letter and the Director said he was not chosen. Mr. Wong asked about his score. It was not given to him, but the Director told him that he was ranked fourth.

Mr. Wong stated that his wife was devastated knowing that he worked really hard for the Department. It was a disruption to the family. It was not fair to him to go through an interview, put his skills down on paper, come in for an interview and the result is someone who is not even from the recreation background gets hired. The Board would have to look at some of the other sub-categories on what the person qualifies for. He feels that he was

wrongly laid-off on the basis of not having an equal opportunity through the process.

Mr. Wong thanked the Board for their time and hopes they will make the right decision.

Ms. Marcia Tsang, former ARPD Recreation Program Coordinator in charge of Fee Classes and Facilities Rentals, agreed with what Ms. Blumkin and Mr. Wong had stated. She highly recommends that the Board review how they selected current program coordinators and she believes it was not a fair process after hearing from the supervisor and managers that they used to work with and what they had been told in the office and how the process was done.

President Peeler invited Chris Low, Senior Management Analyst, to provide his information.

Mr. Low stated that he was providing information on the recent work force change implemented in ARPD, the subsequent recruitment and selection process, and personnel appointments to Recreation Services Specialists.

Part of what has already been presented by Mr. Gossman, Ms. Blumkin, Mr. Wong, and Ms. Tsang is that yes, on March 2, 2012 the Human Resource Director [informed](#) Linda Justus, ACEA President, advising her of the City's intent to recommend and implement a reorganization of ARPD which included eliminating four Recreation Program Coordinator positions, creating a new classification of Recreation Services Specialist and finally recruiting and appointing three individuals to that new classification. Implementation of the work force change and filling of the Recreation Services Specialist positions would be the first steps of reorganizing ARPD toward a model of maximum cost recovery with no effect on front-line services.

The parties met and conferred, in good faith, regarding the impacts of the reorganization on April 17, 2012.

The initial information to ACEA was on March 2, 2012. On April 3, 2012, the City Council approved a work force change in ARPD by amending the ACEA salary schedule to include the salary range for Recreation Services Specialist. A number of folks who are in attendance today also attended that Council meeting.

As a result of Council's action, on April 4, 2012 a promotional recruitment was posted. The Human Resources Department received six applications. Application materials were scrutinized to make sure that the folks who applied did meet the minimum qualifications for the Recreation Services Specialist and all were invited to participate in the selection process, which they did.

The recruitment closed on April 11, 2012 and on April 12, 2012 the applicants supplemental questionnaire responses were redacted of any personal identifying information and sent to two external subject matter experts to be evaluated objectively. One of those individuals was named previously and she is with the East Bay Regional Park District. The second person who was not identified works for the Hayward Area Recreation District.

The supplemental questionnaire responses were sent out on April 12, 2012 and were returned on Monday, April 16, 2012 and Tuesday, April 17, 2012. On April 17, 2012 all six applicants were interviewed by Assistant City Manager Lisa Goldman, Recreation Supervisor Patrick Russi, and at that time the City of Pinole's Park and Recreation Director Amy Wooldridge, who is currently the City of Alameda's ARPD Director. The scores from the supplemental questionnaire and structural interviews were reviewed and combined and as a result the eligible list was established and certified. On the afternoon of April 17, the City and ACEA met and discussed in good faith the impacts of this work force change and on that afternoon signed the agreement regarding the budget reduction and the elimination of four Recreation Coordinator positions.

On April 18, 2012, Mr. Low contacted Mr. Gossman to discuss a potential staffing situation that we (the City) were going to be having that coming weekend with regards to Earth Day. We (the City) agreed to allow incumbent recreation coordinator employees to work leading up to Earth Day on Friday as well as Earth Day events on April 21. This is an important point because lay-off letters to some of the Recreation Program Coordinators were going to be handed out the next day on Thursday, April 19. Mr. Low contacted Mr. Gossman on April 18 knowing that the request that he was making on behalf of the City for some employees to continue working on the following Friday and Saturday, perhaps the day before they were going to get their lay-off notices, was a very sensitive issue. So on that April 19, 2012, as was talked about, the City did deliver three lay-off letters to three of the Recreation Program Coordinator employees and also extended three job offer letters to become Recreation Services Specialists to the three other applicants.

Mr. Low stated that he provided additional information to Mr. Gossman and the Board to quickly review so the Board has a sense of how things progressed. Looking at the first memo from Mr. Low to the Board, via the HR Director, on page one toward the bottom it indicates that on April 23, 2012 a letter addressed to Human Resource (HR) Director and Civil Service Board Members was received requesting to appeal the Recreation Services Specialist examination pursuant to Civil Service Rules Article VI, Section VIII, entitled Appeal of Rejection. Exhibit II in the packet is the letter that was received by the HR Director Holly Brock-Cohn. On April 26, 2012 HR Director met with Ms. Blumkin, Ms. Tsang, Mr. Gossman, and Ms. Justus. Senior Management Analyst Kovacs observed the meeting. That is when Mr. Gossman presented the document Exhibit III, Civil Service Appeal. Responses made to questions raised by Mr. Gossman are attached as Exhibit IV.

Mr. Low stated that, in terms of time, we can talk about those questions, read Mr. Gossman's requests and provide an answer if it is the Board's desire.

Vice President Horikoshi stated that it was agreed that each side would have ten minutes and asked if the Board should adhere to the time line. President Peeler stated that the Board will have to review it. Vice President Horikoshi agreed that it needed to be reviewed. He was asking as to how the Board should proceed.

President Peeler asked if there were any objections to hearing the information, or giving Mr. Low more time.

Don Peterson, Alameda resident and former member of Local 595 IBEW, stated that he thinks this process is the same as what went on with the hiring process. They (the City) make a set of rules and they do not stick to it. They (the City) have people set up to be put in places and when it gets discombobulated they (the City) do not know what to do. Mr. Peterson thinks you (the Board) need to make a set of rules and live by them. When you set up rules for hiring someone you need to use those rules not disregard them.

President Peeler stated that the Board needs to review the information now or later. Vice President Horikoshi stated that the Board can still review the documentation without having Mr. Low tell the Board about it.

Mr. Riddle stated that each side will have three minutes again. The appellants will have three minutes and the City three minutes.

Mr. Gossman stated that the Appellants are looking for justice. You cannot have a manager going up to people and saying they have already selected them and then 30 or 40 days later give a test and these people have no chance whatsoever. You have all these different dots out there and when you put it all together and it was a scheme designed to eliminate these positions so he could hand-pick the employees he wanted to work for the department. What is important is that Mr. Dale Lillard had made public statements to his staff prior to the testing of who was going to be selected for the new Recreation Specialist classification. That is the information that is the facts, that is the evidence and we have managers who will testify to that. Now the answer from the City is this, "This statement is unfounded."

Mr. Gossman stated how can the City make that statement when they did no investigation. Then the City says, "regardless of what Mr. Lillard is alleged to have stated to staff prior to testing, the testing process was designed by the Human Resources Department with Mr. Lillard's input, but he had no influence on the evaluation or score." Mr. Gossman stated all he (Mr. Lillard) has to do is go to the people who are doing the test and say here are the people he wants, give them the scores, that is who I want, and that is what happened.

Mr. Gossman stated that they are looking for justice and equality. We have a great city here. Civil Service is based on merit and not on nepotism and this is what you preach and is in your Civil Service rules and that is what they are asking for, fairness and equity. They (the appellants) want a level table.

Mr. Low stated to the Board that it is important to realize that all six applicants for this promotional opportunity are City employees. Or in this case, were City employees. The design of the examination process promoted merit in civil service principles and practices. They (the City) did remove the personal bias and prejudice that is alleged, as the supplemental questionnaires were evaluated externally from those two other park and recreation districts. The personal identity of the applicant authors was removed. To say

that Mr. Lillard could call these people and say he wants them to rate certain people down so they are not given a promotional opportunity, when the evaluators do not even know who the authors are, it is hard to say.

Mr. Low responded the interviews were also conducted by subject matter experts who with the exception of one, Mr. Patrick Russi, did not have any intimate knowledge of the applicants. The interview panelists again were Assistant City Manager Lisa Goldman, Recreation Supervisor Patrick Russi, and Amy Wooldridge. At this point, the City does not believe that there is a basis for an appeal of the Recreation Services Specialist recruitment results or subsequent appointments. All three appellants before the Board applied for the promotion, participated in the selection process, and all three achieved a rank on the eligible list.

The City Manager, who is the appointing authority, approved the appointments of the top three ranking candidates who are considered to be the best qualified based on their relative performance through the selection process which was how people responded to the supplemental questions and how they responded to the questions in the structured oral interview process. All of the applicants answered the same supplemental questions and all of the applicants answered the same structured oral interview questions. The City recommends that the Civil Service Board uphold the recruitment and selection process as well as the subsequent appointments.

Mr. Peterson asked what percentage was based on written and what percentage on the oral exam. Mr. Low stated that scores were based on 40% supplemental questionnaire and 60% on oral.

Mr. Riddle stated that it is up to the Board to determine if they want questions from the public to be answered. Mr. Peterson stated that the Board said the public could ask questions.

President Peeler stated the Board did say they would allow questions.

Don Peterson, Alameda resident and former president of Local 595 IBEW, stated that in the old days, 20-30 years ago, we used the same process and the reason they used 40% on the written and 60% on the oral, was to eliminate minorities and applicants they did not want. They kept the oral as a way of eliminating people that they did not want. The City can say that their testing is fair but he knows from previous experience as the president of a local that this was used in the past and it sounds like we do not do that anymore because it was not fair. The City is using an antiquated system that is not fair so their (the City's) results to him are moot.

Ms. Blumkin stated that even though the two outside people went through the supplemental questions, if they were informed by Mr. Lillard who applied for the job even though their names were not on those applications or supplemental questions, if you were not qualified you would not be able to answer half of the questions because it asked for specific duties that you did in a job that we (appellants) were doing. Because it was a promotional job, it was promotional so it was things that we were doing as a program coordinator already. So

the people that were reading the applications could figure out who they were by not being able to answer the questions. There were certain people who did not have aquatic experience or senior experience and you would have to leave it blank because they could not answer it.

Ms. Blumkin stated that for Mr. Low to state that was unbiased because there were no names, Dale Lillard informed those people whose those papers were and they could figure it out themselves. Ms. Blumkin is almost 100% certain that if you gave her the other person's name from Hayward, they (appellants) would also know who that person is because the recreation community is very close and all work together. This was an unfair process, totally unfair by Human Resources and the outgoing ARPD Director Dale Lillard. He is no longer working here, but if he was brought into this room today you (the Board) would be totally shocked.

Ed Tsang, Alameda resident, retired from Alameda County Superior Court and father of appellant Marcia Tsang, asked what is the racial makeup of the new Recreation Services Specialists and what the racial makeup of Recreation Program Coordinators are. Ms. Blumkin stated the ones that were hired are all white. The ones laid off were two Asians and a Hispanic.

Sandi Bertero, Alameda resident and former employee (retired) with the City of Alameda- currently part-time, stated that she loves working for the City and working in ARPD. She really feels that this was an unfair process. She worked with the union for many years and worked to get the union in the City. Most of the time when they have to do budget cuts, they usually do layoffs and most of the time it has been by seniority. This was not by seniority. They decided to reorganize the Department which is fine, but she wanted the Board to know that in the past it had always been by seniority. Because it was a promotional thing, her personal opinion is that anybody that qualified in the specific area. She does feel that there is possibly one person that may not have been qualified to even be considered for the job. Lastly, in all of her 40 work years, and she has interviewed for many departments and many jobs, she has never in her life interviewed over the phone. If you wanted a job you had to be at the interview and that was not the case in this promotional job.

Mr. Wong stated that going back to April 19, 2012, on that afternoon he had to go back to work for an event, a Teen Job Search Work Shop showing teens how to interview for a job, etc. He actually had to sit there and act like everything was okay. His heart was in the job itself and the recreation field and his commitment was to Patrick and the ideal of "Parks Make Life Better" not what one person has done or did not do. Because it was a community event, if he did not show up it would not have been professional to let down his teen staff, the kids, and some of his colleagues of the department and neighboring departments. When he was at the event a lot of people were shocked that he was not one of the few selected.

Mr. Wong is asking the Board to please look at the results and questions. His job search experience from now and up to the layoff had been that he has put in two applications. He

sent an application to the City of Novato and he was qualified, but he received a letter that stated he did not qualify for the job because it was a senior services position. Again there were a lot of questions that were recreational based. It is a senior service position and he did not qualify for the job because they found others who met that qualification. He went through the process at another neighboring city and went through the same process of answering questions. Their process requires two years of recreation experience and he has 10 years. Based on their supplemental questions he feels he exceeded their expectations.

He feels that it is wrong that they (appellants) are in this position. They say it was not based on merit. Again, they say it is based on percentage but if you look at the questions and you grade it, he does not know how the other person even moved on to the second interview. He asked the Board to please look at all the information and consider what is true and what is not.

President Peeler asked for questions from the Board. Members McHugh and Batchelor stated they needed to read the material.

President Peeler asked if the Board would like to decide on a timeline and whether to meet again to make a decision.

Member Malloy asked if deliberations would be in closed session or open session. President Peeler stated probably closed session due to personnel issues. Mr. Riddle stated that the Board is not making decisions about individuals at this point. What the Board needs to decide is did the appellants demonstrate that the test was unfair or that the merit provisions of the Civil Service Rules have not been complied with. If the Board decides that is the circumstance, and there is a motion with three votes that reaches that conclusion based on the evidence, then the next question would be what relief or remedy the Board would grant. The initial question is, does the Board believe the appellants have shown that the examination/selection process was unfair and violated the merit principles of the civil service system.

Mr. Peterson asked how the Board could make a decision that it was fair if they have not read the materials. Mr. Riddle stated that he is not suggesting that the Board make the decision tonight. The Board will make the decision whenever they would like to make it. Mr. Riddle is saying that is the decision that the Board needs to fairly decide.

President Peeler asked if the Board wanted to come up with a timeline to decide to review all of the materials, and/or make requests for additional information, and have a decision by a certain date.

Mr. Riddle stated that the issue that he did not respond to was whether to have a closed or open session meeting. The Board is deciding on whether the particular exam was fair or unfair. That does not fall within the closed session of the Brown Act. Normally it is a personnel action that the Board is taking with respect to a particular individual for a closed session. In this particular situation, the Board is deciding on whether the test was fair or

unfair and may be deciding that the test should be redone.

Member Malloy stated that the Board may decide that the test was not fair with respect to one, two or three specific individuals and may seek information about those individuals that may help the Board in making a decision, correct? Mr. Riddle stated that if some of the information is in written form it may well be confidential. He will look at holding a closed session as the Board moves forward. The Board can schedule a date for when to hold a meeting and he can provide advice on whether to do the meeting in an open or closed session. Normally it is an appointment of an individual, discipline of an individual, or evaluation of a current employee; those are the types of situations that the Board can lawfully go into a closed session.

Mr. Riddle stated that the Board will not be making the decision of whether one employee versus another will get hired. Ultimately that decision is up to the administration. What the Board will do is determine whether the test was fair and/or whether the test will be redone. That is what the issue is before the Board. If that happens everyone will presumably take the test again and there will be new results and selections from that test. This Board will not be determining which individuals get hired. That is not part of the authority of the Board in his legal opinion.

Member McHugh stated that she needs to digest the materials and will then have questions. She feels that there will be people in the room that she would like to question. She asked if a week would be sufficient. President Peeler stated she is not available in a week. Mr. Riddle is also unavailable.

Member Horikoshi asked the Board if it is unreasonable to try to read through the material now. He knows that there is a lot of material. Member Malloy stated that she feels it is reasonable, but it depends on what time commitment others may have. It is reasonable to do it and reconvene and ask questions. President Peeler stated she is willing to do that.

Mr. Riddle asked the Board if they would like to take a 20-30 minute recess and reconvene.

Mr. Peterson asked the Board if they really thought that a 20-30 minute recess is a fair time for a fair perusal all of the information. President Peeler stated the Board needs to read the information.

Mr. Peterson stated that it could be two weeks; it does not need to be tomorrow. He does not want to have a rush to judgment. The Board needs to look at all the facts. Needs to look at who set it up. Why was Dale Lillard setting this up?

President Peeler stated that the Board will take a 20 minute recess and then will reconvene. The Board may have questions and will reconvene at 6:20 p.m.

Meeting was reconvened at 6:25 p.m.

President Peeler asked the Board if they have any questions.

Member Batchelor asked Mr. Low if these positions were going to do revenue enhancing through programming and what drove the job descriptions. Mr. Low stated that yes there are some similarities between the Recreation Program Coordinator and the Recreation Services Specialist. The primary difference between the two levels is that the Recreation Service Specialist is going to be a much more responsible position for creating and evaluating programs so that the programs created are much more cost recovering than they are today. As indicated in the staff report, ARPD/City is trying to move ARPD towards a model of maximum cost recovery of which the goal is initially 60% cost recovery. There are many other recreation and park departments that get a much higher cost recovery, closer to 90%. In these lean times when the economy and the State are taking away a lot of our monies we must be much more creative with regard to delivering those recreation programs that are valued by the citizens on a cost recovery basis.

Member Batchelor asked if there was talk at any time to look at the four candidates and make it promotional within their department. Mr. Low stated unfortunately Human Resources is not able to do that. Other Departments have expressed the same desire to limit the applicant pool to employees within their departments, but the way Human Resources has received feedback and instruction from the Board, in terms of implementing the civil service system here, is that whether it be on a promotional or open competitive basis you want to be as inclusive on a promotional basis to those who have worked here in a regular position for at least six months to be able to promote. This way you get a variety of diversity and you are providing people with the equal opportunity to move up through the organization, whether it is in that particular department or across departments.

Member Malloy stated that it was intimated that interviews were done by phone and asked Mr. Low if interviews were done by phone. Mr. Low stated yes. There was one candidate who was physically unable to come to City Hall to interview. This is not the first time that Human Resources have made reasonable accommodations to allow candidates to interview, at least initially, over the telephone.

Member Malloy asked if it was due to a medical condition. Mr. Low stated yes.

Member Malloy asked if it was an ongoing condition such that when the person is performing the job if they were selected that they would need that type of accommodation in the future. Mr. Low stated that it was his understanding that it was a temporary disability that Human Resources were accommodating. Malloy asked if it was verified that the condition existed. Mr. Low stated yes.

Member Malloy asked to be given a bit of understanding of why Assistant City Manager Goldman was part of the interview process. Is it customary within the City that someone who might be familiar with the potential candidates would be an interviewer? She understands that often panels involve subject matter experts and others but she would like a better understanding of how Ms. Goldman became involved in the process. Mr. Low stated that Ms. Goldman has a strong operational background in city government. She is currently the Assistant City Manager and is on the City Management track, but her prior

experience also included operational experience layered onto her own expertise on cost recovery models, Human Resources felt that she could be a very objective panel member.

Member Malloy asked if others on the interview panel were also involved in developing the supplemental questions. Mr. Low stated no.

Member Malloy stated that she assumes that there was not, what she would call, a full blown independent investigation yet. She asked for an explanation of how Human Resources gathered the information to answer the questions. Mr. Low stated that having been involved from the inception/design of the recruitment he was able to provide the City's logic and reasoning to address the appellants questions.

Member Malloy asked if Mr. Wong is appealing or not appealing. The letter submitted only had two names, yet he spoke tonight, are there three individuals or two individuals? Mr. Low stated that he also has that question. Mr. Wong, as far as Mr. Low knows, was not included in the initial letter sent by Ms. Blumkin and Ms. Tsang. Nor did he attend the April 26, 2012 meeting between Human Resources staff, two other appellants, and union representative. For him (Mr. Wong) to now be included in the appeal, that is a question that Mr. Low also has. Mr. Riddle stated that in the event that the Board choses to vacate the exam, whether he is a party or not, presumably he (Mr. Wong) would be able to retake the exam like everyone else. Mr. Gossman stated that when the process started it was Ms. Blumkin and Ms. Tsang. Once they put their heads together they felt something was wrong and wanted to talk to other applicants regarding their input and feelings was when Mr. Wong was contacted. It took a month for him to get involved once they made their appeal. This process needs to be fair to all those that applied for this test and that is their (Union's) position.

Member Malloy asked if she should believe that it is not Human Resource's perception that the applicants are claiming that race is a factor in the ultimate decisions. Should she perceive that Human Resources has not looked at this appeal from this perspective. Mr. Low stated that is right.

Member Malloy asked why the recruitment was only a week. Mr. Low stated that since the beginning of March the union was put on notice that this work force change was being recommended. The actual item went to Council on April 2, 2012. We knew that we had at least four viable candidates working in ARPD, plus one former ARPD worker who had been laid off and had application rights. Given that there were five potential candidates and the staff report that went to Council on April 2, 2012 had indicated that we needed to start making this organizational change and have folks in place as Recreation Services Specialists in the following six weeks the process was fast tracked.

Member Malloy asked how the subject matter experts were identified who reviewed the applications when they were redacted. Is that the standard way that it is done, that the applications are redacted and given to someone to rank and review the supplemental questions. Mr. Low stated that in this case, yes. Human Resources redacted the identity of the applicant authors because he knows from his experience that the recreation

community is small. Similarly the Human Resources field is small. We know people all over. With regard to redacting that personal information, we tried to continue to design a process that would be fair and equitable. Regarding the search for evaluators, we went to a number of different recreation and park districts searching for a high enough level individual in those districts who would adequately be qualified to evaluate the responses. Given the tight time frame the two individuals were available. HR Director Brock-Cohn stated that anytime that she has done a recruitment that is sent out the names are always redacted and that is a very common practice especially for public safety positions.

Ms. Blumkin stated that it was kind of ironic how both of them were former City of Alameda employees and have worked with us (appellants). It is kind of ironic that our little small community could find two people that have worked for us.

Vice President Horikoshi asked, in terms of the other two candidates who were not working in that department, he is presuming that Human Resources reviewed their applications and made sure they met the minimum qualifications before forwarding them to be reviewed from the outside reviewers. Mr. Low stated yes.

Vice President Horikoshi stated that it looks like the outside reviewers, after reviewing the applications, believed that they met at least the minimum qualifications and were competitive in the process, is that correct. Mr. Low stated yes.

Vice President Horikoshi is also assuming that the interviewers that interviewed the applicants based on the answers the applicants gave, also believed that they at least met the minimum qualifications. He is asking these questions because there seems to be some question about how other city employees, who seemingly may not have that kind of relevant experience, how they could have prevailed in the process.

Member Malloy asked if the questions asked of all the applicants were the same. Mr. Low stated yes.

Member McHugh asked Mr. Gossman about the issue of the notification that there would be one layoff and there were three and asked if that is part of the issue or not? Mr. Gossman stated that when we met we were under the perception that there would be one layoff. The people that were the four players were going to be taking the test. This was the same perception given to the four coordinators at their meeting on March 1, 2012 with Mr. Dale Lillard. That was the perception that started this whole ball rolling. As time went on it expanded in letting more people who were allowed to take the test, etc.

Member McHugh stated but it is not part of the remedy that the appellants are seeking. Mr. Gossman stated there are a lot of directions to go. You could vacate the test and take a new test. Do we really need the specialist position; do we need three of them? There are different directions to go. We had four very experienced employees with over 30 years' experience. They already work with contractors, citizens, organizations with building experience. All they were going to do was train to increase cost recovery from 60% to 90%. All they needed to do was call or get a plan together. Instead they said you are out

the door and are using this ruse. These people who were rehired they do not know what the models are and have not been doing those models. They (Recreation Services Specialists) are running around saying what do we do now, what programs do we use?

Member Malloy asked if the weighted average concept of using 60% interviews and 40% supplemental questions is standard. Or, was it decided by the department what ratio to use and how did we (the City) get there? Mr. Low stated that the practice is that Human Resources tries to go to the essential job duties, knowledge, skills, abilities and tries to use those as the anchors within a supplemental questionnaire and the relative weighing of someone to prepare written responses to the questions, also using the same essential job duties, knowledge, skills, abilities to give the weighing to the interviews. Human Resources felt that they would put the weighing at 60% interviews and 40% supplemental questions.

Member Malloy stated that it ranges from 50-50 to 60-40 as the range. Mr. Low stated yes. Member Malloy stated HR chose the 60-40. Mr. Low stated yes.

Mr. Peterson asked if they (public) were going to be able to ask a question. President Peeler stated not at this time..... Mr. Peterson stated two of the people that were hired did not meet the basic qualifications. One of them did not have a degree in recreation and one did not have any degree. So they should not have even been allowed to take the test. This whole thing is a charade. If you hire two people who were not qualified to take the test how can you base anything..... President Peeler stated the Board will look into all of that. Mr. Peterson stated as long as the Board knows the facts because they (HR/City) are not giving them (Board) all the information.

Mr. Riddle stated that he wanted to clarify what issues are on appeal before the Board and what issues are not before the Board. There has already been a determination made by the Council, before it came to this Board, to create this new classification and the reasons why that was done. That is water under the bridge at this point. It was a decision that was already made. There was a decision to layoff some employees and that issue is also not before this Board. The issue before this Board is whether the exam that was given to make appointments to the new classification was fair or not fair or violated the Civil Service Rules.

A member of the public asked if the Board will ask for the applicants' actual positions and what they filled out on their applications to see if they were qualified. President Peeler stated that is something the Board will determine after they look at all of the information.

City Attorney Kern stated that if it would assist the Board the City Attorney's Office would be willing to, at the Board's direction, hire an independent person to investigate factual issues, interview people involved, and how the testing went and come back to the Board with that report, if it would be helpful. While the Board looks at documents and asks questions, if the Board would like to direct that the City Attorney's office do the investigation Ms. Kern would be happy to do that.

Mr. Peterson asked if she was directing the Board to only look at the test and not people

who were qualified to take the test. Or, would all of that be involved. City Attorney Kern stated that what Mr. Riddle was trying to explain is that the City Council as the legislative body decided to do this reclassification and restructuring. Then there is a testing process and what is being appealed is whether this testing process was set up fairly and administered fairly.

Mr. Peterson stated that it could not be fair if two people did not qualify to take the test. City Attorney Kern stated that is part of the administration but the idea is not for this Board to go through and look at all of the applications and decide who they would have chosen.

Mr. Peterson stated that he is not saying that, he is saying that two of them should not have been allowed to take the test because they did not have the qualifications. City Attorney Kern stated she hears what Mr. Peterson is saying so they can look at..... Mr. Peterson stated that is a fact.....

City Attorney Kern stated apparently there was a Human Resources review, there was a supplemental question review, and the oral review and through all of those they apparently determined that the people met the minimum qualifications. Mr. Peterson stated apparently someone did not do their job. Apparently does not cut it.

City Attorney Kern stated she does not have the applications in front of her. President Peeler stated sir, (Mr. Peterson), the Board is not arguing whether he is right or wrong. If the Board decides to investigate all of that would be included and asked Mr. Peterson to let the Board continue.

Mr. Tsang asked who would do the investigation. City Attorney Kern stated the City Attorney's Office would hire a third party, someone from the outside. Mr. Tsang asked if they (City Attorney) would be paying them. Ms. Kern stated yes.

Ms. Blumkin stated that they heard the first time was going to be a fair process. You were going to go outside and that did not happen, so how can we trust that they will not do it again.

City Attorney Kern stated that it is up to the Board. She is the City Attorney with the City Attorney's Office and we..... Ms. Blumkin stated she is trying to save their jobs.

City Attorney Kern stated she was not trying to save anybody's job. The City Attorney's Office would be willing, because they have attorney client privilege, be willing to hire someone outside who would, independently of any direction from her office, go and talk to the people and come back and report to the Board on how the process went forward. It is not up to the public group to decide, it is up to the Civil Service Board to decide.

Mr. Peterson stated that they need to tell the Board what they think. City Attorney Kern stated they can tell the Board what they think but let's let one person speak at a time.

City Attorney Kern stated that if the Board would find this useful she is willing to do it. The

Board does not have the authority to direct anybody at the City and does not have any funds. If the Board does not feel that they will get a fair analysis then do not take her up on her offer and she will save her funds for something else.

Mr. Peterson stated that he thinks at City Attorney Kern's direction, is she going to direct them to look at things that may make their (the City's) case weaker. That is his point. City Attorney Kern stated that she would ask the Board to direct what they want done. But Mr. Peterson needs to understand that their (the Board's) lawyer is going to help keep them contained into what is in their purview and it is not going to be who gets the job and who does not get the job. It is going to be if the process was fair and if the process is found to not have been fair, then what they (Board) have the authority to do is vacate the whole thing and start all over again.

Mr. Peterson asked a hypothetical, if the Board finds that two of the people do not have the qualifications to be considered for the job, would that be enough to say it was not fair. Mr. Riddle stated that hypotheticals are really not what the Board should be doing at this point. The Board ought to be making a decision about whether they have the information they need and what process is needed to go forward.

President Peeler stated the Board feels they need more time and discussed when they would like to next meet. Mr. Riddle stated that the Board needs to meet again to determine the steps needed to be going forward after they read all the material.

HR Director Brock-Cohn stated that the next regularly scheduled Civil Service Board meeting is Wednesday, July 11, 2012.

Mr. Riddle stated that if the Board would like to take up the City Attorney's offer of an investigation that could be taken up at this time also.

Member McHugh stated that the Board needs to take time to look at material and that the City Attorney's offer to do an investigation is very appealing to her. Again, once the material has been looked at there may be more specific questions.

Mr. Riddle stated that if the Board decides they want an investigator and have questions to be addressed, the Board could send those questions to Mr. Riddle and he would forward them to the investigator.

Member Malloy stated that in her experience an investigation can take a while to set up and she is not sure that a week would be a reasonable limit to put upon the Board to send questions. However time is of the essence, we are talking about individuals lives who are unemployed and living in limbo.

Mr. Riddle stated that if the next meeting is on July 11 that is about a month to have the investigation and get the questions out.

President Peeler stated we should have a deadline to get the questions together.

President Peeler asked if the Board will have any say on whom the City Attorney hires or approval of who the City Attorney hires. City Attorney Kern stated the Board could give her recommendations; it may take longer, or try and solicit from others. Ms. Kern wants to make sure that it is an independent person.

Member Malloy stated that the Board could make a recommendation that the independent investigator be from the list of the California Association of Work Place Investigators. That could be part of the motion. City Attorney Kern asked Member Malloy to provide her with the contact.

Member Malloy made a motion that the Civil Service Board instruct/request that the City Attorney's Office engage an attorney from the list of members of the California Association of Work Place Investigators and conduct an investigation into the examination process, providing a response as soon as possible allowing the Board to provide questions to that body on or before June 18, 2012. Member McHugh seconded the motion which passed by a 5-0 votes.

4. ADJOURNMENT: 7:02 p.m.

A handwritten signature in cursive script, reading "Holly Brock-Cohn", written in dark ink.

Holly Brock-Cohn
Human Resources Director &
Executive Secretary to the Civil Service Board

The agenda for this meeting was posted in accordance with the Brown Act.