

MINUTES OF THE SPECIAL CIVIL SERVICE BOARD MEETING
WEDNESDAY - - AUGUST 28, 2012 - - 5:00 P.M.

Draft

1. CALL TO ORDER: 5:00 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, Assistant City Attorney II Stephanie Sierra, Senior Management Analysts Jill Kovacs and Chris Low, and HR Administrative Technician Sharlene Jackson.

Appellants: Dave Gossman, Business Union Representative for Operating Engineers Local 3 for Alameda City Employee Association (ACEA)

Trini Blumkin, former Alameda Recreation & Park Department (ARPD) Recreation Program Coordinator

Marcia Tsang, former ARPD Recreation Program Coordinator
Andy Wong, former ARPD Recreation Program Coordinator

Investigator: Karen Kramer, Esq., Kramer-Weise Business Management Consultants

3. AGENDA ITEM:

A. A Special Meeting has been called for the Civil Service Board Members to Discuss, Consider, and Act on the Following:

1. Results of the Personnel Investigation – City of Alameda Recreation Services Specialist Recruitment dated August 13, 2012 conducted by Karen Kramer, Esq.

President Peeler stated that Ms. Karen Kramer, Esq. will be given ten- minutes to present her findings of the investigation and then Board members will have an opportunity to ask questions. Then the Appellant's will have ten-minutes to speak and the public will be able to make comments. Comments from the public will be allowed three minutes per speaker.

President Peeler invited Ms. Kramer to present her report to the Board. Ms. Kramer stated that she had been asked to conduct the fact-finding investigation for the Recreation Services Specialist Recruitment and she had concluded her investigation on August 13, 2012. The scope of the investigation was two-fold: 1) Involved the allegations of possible

racial discrimination by the three minority Appellants; and 2) Involved the fairness of the recruitment process. As stated in the report, there is no evidence suggesting that racial discrimination played a role in the recruitment or selection process. Ms. Kramer stated that the Appellants do agree on this finding.

Ms. Kramer also stated that as far as the fairness of the recruitment process is concerned, whether Dale Lillard, then ARPD Director, had a predisposed plan to have his candidates selected, or that he in any way influenced the outcome of the recruitment there was no evidence indicating that the selection process was conducted in a biased or unfair manner. The facts that were presented to Ms. Kramer did not corroborate with any of the allegations.

Ms. Kramer found that there were three parts to the recruitment process. The first part was a written application in which all of the minimum qualifications were met by all of the applicants and to which the Appellants did not object.

There were two issues that were raised; 1) one applicant not having a degree and; 2) another applicant not having enough number of years of experience required. Both allegations were also not corroborated and unsubstantiated.

The second part of the recruitment process involved the supplemental questions. During the interviews, Appellants did acknowledge that there were no objections to the supplemental questions. These questions were prepared by Chris Low, HR Management Analyst. The questions were reviewed by Mr. Lillard, but no changes were made to the questions prepared by Mr. Low. Completed supplemental questions were reviewed by subject matter experts who were recommended by Mr. Lillard. Neither of the subject matter experts communicated with Mr. Lillard regarding the questions. There was no indication that he in any way had impacted the evaluation of the responses to the questions. There was no evidence that the subject matter experts were in any way impacted in their evaluation of the responses and there was no evidence the subject matter experts were biased to the applicants.

The third part of the process involved an oral interview panel. For the most part, none of the Appellants objected to the members of the interview panel. Two of the Appellants were concerned about the involvement of Ms. Lisa Goldman, City of Alameda Assistant City Manager, since she is or was Mr. Lillard's immediate supervisor. The panel members were chosen by the City Manager and there is no evidence that shows any bias against any of the applicants. The questions that were asked of the applicants during the oral interview were created by Mr. Low and Ms. Goldman. Mr. Lillard was not involved in the creation of those questions. There is no evidence that the questions were leaked prior to the interviews.

There was a concern raised by the Appellants that one of the applicants was interviewed by telephone, and a legitimate explanation for that has been provided.

There was concern about corroboration about the rating process which was found to be

without merit.

Another issue raised was the weighing of the interview and supplemental questions. The ranking would not have changed whether or not it was 40-60 or 50-50. The top three applicants were selected based upon the scoring conducted by Chris Low. None of the applicants objected. Also, there was no indication that Chris Low was biased in the selection of candidates.

There were several comments attributed to Dale Lillard, where one of the Appellants believes that there was bias in the recruitment process, that the selection of applicants was a "done deal," these comments were not corroborated. Recreation Supervisor Patrick Russi denied making comments attributed to him about being a pawn in the process.

Based on her investigation Ms. Kramer concluded that the recruitment was a fair process, Mr. Lillard's involvement was very limited, and did not impact the final outcome of the recruitment.

President Peeler thanked Ms. Kramer and asked Board Members for any questions.

Member Malloy stated that Ms. Kramer had mentioned on a number of occasions that information was not corroborated. Ms. Kramer believed the person that comments had been made. Ms. Kramer further explained that she did not feel that anyone was intentionally deceitful. She thinks that it was more of a perception issue.

President Peeler invited the Appellants an opportunity to address the report presented.

Dave Gossman, Business Union Representative for Operating Engineers Local 3 for Alameda City Employee Association (ACEA), stated that he is representing not only the Appellants but all union members applying to the City of Alameda. He did find that the investigation was thorough and complete and stated that there were facts brought up in the report that the Appellants were not aware of and that there were also facts which show that the examination should be overturned. Mr. Gossman provided the Board with a report containing comments regarding the results of the investigation and acknowledged the findings that there was no issue of discrimination of race, creed, or marriage.

Mr. Gossman stated that their first issue was a preselection issue prior to the investigation and examination even taking place. He further stated that not only did the applicants know that Mr. Lillard had a predisposed plan; but that Chris Low also knew that there were rumors of a predisposition and who the applicants were. Mr. Gossman stated that upon confronting John Russo, City Manager, Mr. Russo stated that he already knew what was happening and that he would take care of it.

The second issue was the selection of the test evaluators. Whether there was any communication between Mr. Lillard and the test evaluators, Mr. Gossman expressed that Mr. Lillard knew who the test evaluators were due to a previous employment.

Mr. Gossman stated that Mr. Lillard had called Ms. Kassebaum and asked her to review written responses to the supplemental questions. Mr. Lillard also told Ms. Kassebaum that the City would likely keep 3-5 employees. Ms. Kassebaum assumed Ms. Bailey was one of the candidates since she was previously informed by Mr. Russi that Ms. Bailey's position would likely be eliminated. Mr. Gossman stated that there was indeed communication between Mr. Lillard and Ms. Kassebaum as indicated in page 12 of the investigative report.

Mr. Gossman stated that the third issue was that there was no notice to applicants on how the grading process would be conducted. The candidates did not know that the supplemental examination was to be weighed and how much the oral examination would be weighed or that it was unknown. Mr. Gossman continued to compare the bulletins published by the Human Resources Department pointing out the weighing of the examination for the Senior Civil Engineer is clear and that the interview weighed as 100% versus the bulletin for the Recreation Services Specialist. Typically, jurisdictions utilize supplemental questions to reduce the size of the applicants. Supplemental questions, typically, are not used to score the application.

Mr. Gossman stated that another issue was why there were two panels interviewing for a promotional position. Also, the supplement questionnaire clearly and in bold black print dictated the examiner was to score the answer in the following scoring method: 0 - to indicate no experience, 1-4 to indicate minimal experience, 5-7 to indicate moderate experience, or 8-10 for extensive/quality experience. Ms. Blumkin clearly answered the questions and received no credit, pointing to Addendum #3 in the report he had provided. This is clear evidence that shows one of the raters failed to follow the scoring matrix resulting in an inaccurate score for Ms. Blumkin.

Mr. Gossman stated that in Addendum #6, identifying discrepancies in the Oral Interview matrix, there were seven questions to be answered during the oral interview and only six categories to score the applicants. The specific scoring matrix did not have categories that matched the questions. The matrix does not match and was not accurate; it is quite obvious that the scoring matrix was used from another examination. In addition, the raters did not even comment on any of the questions; the questions were very complicated, and only 25 minutes was given for candidates to answer the questions.

The real issue of this reclassification is a budget issue; the City is going to change the budget by removing positions; and the individuals (applicants) are already being paid from the Athletic Trust Fund. The City is trying to get rid of certain employees, even senior employees. Mr. Gossman stated that the Appellants are just looking for fairness and equality. The recruitment process was flawed, inaccurate, and he wants to have this rectified.

President Peeler invited Mr. Andy Wong to speak before the Board.

Mr. Wong, former ARPD Recreation Program Coordinator, called attention to the report he provided to the Board. He stated that an actual number should be used to determine the outcome of an average score and not a check mark. The checkmark was used to indicate

a range of 40-50 to determine the outcome of an average and the rater did not follow a true and exact scoring variable but used a check mark which could mean any number in between 40-50. He also stated that a rater can never use a check mark and have an outcome of a percentage.

Mr. Wong pointed out that the calculations of the grand total on the scores were incorrect. He referred to his calculations in the documentation provided to the Board. He pointed out that the score he received from the raters was 53. But, when he tallied up the score his score was actually 59. Mr. Wong pointed out that he was ranked fourth due to an error in math. After recalculating the rankings he would be ranked third and Mr. McDaniels would be ranked fourth.

Mr. Wong stated that the City should take the time to review, follow up, and validate each application for honesty and truth in their professional experiences. The examination was a promotional exam for a specific profession, and not just any City employee with one-year full-time experience qualifies. He concluded that the City of Alameda was rushed in to making a decision and that accuracy, consistency, and validation with reference checking must be used which the City did not use.

Ms. Blumkin, former ARPD Recreation Program Coordinator, thanked the City for conducting the investigation because it brought forward a lot of critical mistakes the City made by rushing supplemental readers and interviewers which has possibly cost someone a job. Ms. Blumkin also pointed out that it was the exact same rater who incorrectly scored each supplemental question and did not follow the instructions on scoring. That person did not go back and review the answers to the questions or even add up the scores correctly. Also, when results of interviews come back to Human Resources, the Management Analyst should not have just accepted the calculation the raters had done. The Analyst should have checked the calculations and went through the applications to ensure that the numbers are right, especially since 2 people were so close to the qualifying score that it made a difference. A gentleman was out of a job for three to four months due to scores not being added correctly. The whole process was rushed and was done in a hurry.

Ms. Blumkin stated that if there were guidelines, notice of how candidates are graded, and what items were to be graded, they would have been fine with the decision.

Ms. Blumkin thanked the Board again for taking the time to conduct an investigation and indicated that the minimum requirements in the recruitment bulletin distributed should have been specific and not stated a "combination of a college degree with working experience." She felt this created confusion. She recommended having guidelines and information specific to conducting interviews be provided to candidates in the future.

Mr. Don Peterson, concerned Alameda resident and former member of Local 595 IBEW, stated that the whole recruitment looked to him like an inside job and thought the investigation was flawed. The investigator took the word of the people that had more power. Mr. Peterson claimed that Mr. Lillard is a disgrace and should not be working for the City because he only hires people that he likes. Mr. Peterson expressed his concerns

about the minimum requirements stated in the bulletin for the Recreation Services Specialist recruitment and explained that it should clearly state what the minimum requirements are and whether it is only with a 4-year college degree from a university, or no degree with years of experience. The bulletin should clearly state what the requirements are and be specific. Mr. Peterson also stated that Dale Lillard has fired people in the past and only hired people as he chooses.

President Peeler asked the Board if they would accept or deny the investigator's finding. Vice President Horikoshi and Members McHugh and Batchelor voted to accept the investigator's findings.

Member Malloy stated she'd like to further discuss some finite specific areas with the investigator about some issues raised in the report.

Member Malloy asked Ms. Kramer if at any point in the investigation had she checked the scores and if at any time she realized that Ms. Kassebaum had not provided the score to one of the applicants in the areas that clearly address responses within the supplemental questionnaire. Ms. Kramer replied that she did not check the scores and took the responses provided as being accurate.

Member Malloy asked Ms. Kramer whether or not she thought the selection process was fair in light of a scorer excluding scores in entire categories. Ms. Kramer replied that the process was fair due to that there was no intent and likely just an oversight and/or mathematical error. Member Malloy stated that the investigation clearly speaks for itself.

President Peeler asked the Board for a motion. Member McHugh made a motion to accept the report prepared by Karen Kramer, Esq. Motion was seconded by Vice President Horikoshi. Motion passed by 5-0 vote.

2. The Request of Claimants to Vacate the Results of the Recreation Services Specialist Recruitment.

President Peeler addressed the other issue at hand, whether or not the scoring would put someone else into position to get the job over the current position. She addressed the Board on their opinion how to entertain that request.

Member Malloy stated she wanted to ask Mr. Riddle, outside counsel for the Board, as to what the Board's role is and how they should continue and whether or not to order another examination process solely based on the results of the current investigation. Or, should they bring up a review of new items that came to light. Ms. Malloy asked if the Board needs to determine and make a decision as to whether or not the scores are accurate.

Mr. Riddle stated that the City staff should provide their statements on the matter.

President Peeler asked members of the City staff if they had received copies of the documentation provided by the Appellants today. City staff stated they had not. Ms. Peeler

asked City staff to review the documentation. A 30-minutes recess was given to them for review.

President Peeler called the meeting back to order at 6:30 p.m.

City Attorney Kern addressed President Peeler and the Board and stated that the City concurred that there was a mathematical error in the scoring as stated. Ms. Kern thanked everyone for their time and hoped that there would have been a settlement.

HR Director Brock-Cohn reminded the Board that the names on the list are selected by the Interview Panel and Department Head can select whomever she/he wanted on the list. The question still would remain as to whether she/he would have taken the top three or skipped around on the list and taken different candidates because of the new order. There is still the question of whether the Department Head would have selected the exact same people since there may have been a different order on the list.

President Peeler asked if the selection was by the top three or rule of the list. HR Director Brock-Cohn stated that it is the rule of the list. The person making the selection can select whomever they want off of the list.

Mr. Riddler asked for the difference between candidates three and four on the list. Management Analyst Low stated that the difference would be that Mr. Wong would have 72.6 points and Mr. McDaniel's would have 72.2 points. This results in Mr. Wong increasing by 1.2 points, or .40 more than Mr. McDaniel on the published list.

Mr. Gossman stated the issue now is that the scoring was inaccurate. His recommendation is to have a new test for fairness and equality.

Ms. Kramer stated that the important point from her perspective was that with the scoring of the supplemental questions there appeared to be some comment about applicants not being evaluated properly because they did have certain experience that was reflected on their applications. Ms. Kramer went back and reviewed the rating sheets prepared by the raters (Ms. Kassebaum and Ms. Ely) and they actually indicated that they wanted to give the applicants a zero. These zeroes were not ignored and oversights on their part. In fact, Ms. Ely wrote that in giving five different categories a zero rating, "provided very few details due to way in which questions were answered, unable to determine specifics of experience, no real length of time or other key information provided to score." Ms. Ely intentionally gave these applicants zero where it is indicated on the pieces of paper as opposed to making a mistake and not rating them a particular category.

Ms. Kramer also stated that just to clarify, the candidates or Mr. Gossman stating that mistakes were made in the scoring of the supplemental questions, while he might disagree with the numbers given, those were the numbers given. There is no evidence/indication that either Ms. Kassebaum or Ms. Ely had any sort of bias against any of the applicants or this rumor of a predisposed plan by Mr. Lillard in any way impacted their subject matter evaluation of the supplemental questions.

Mr. Peterson asked the Board if he could speak. He stated that he has a problem with someone getting a zero for experience that has 15-18 years of experience. How can that be rated a zero. He does not care if someone does not like them or not, the experience counts for what it is. A person who has been running the adult program for 18 years and she got a zero is not right. Ms. Kramer stated that what the raters relied upon was the actual response to the supplemental questions, by giving a zero it was their perception that the response to the supplemental questions did not evidence any experience.

Vice President Horikoshi asked Mr. Riddle what the options were for the Board. Mr. Riddle stated that there are three different Appellants. The Board has three different appeals; 1) at one point all three wanted the process to be redone; 2) to have an investigation which has now happened; and, 3) to have the testing done over again and Mr. Wong is now, based on the arithmetic, the third highest person.

Mr. Riddle stated that the Board can; 1) deny the appeal based on the investigation and the findings; 2) based on the arithmetical mistake; grant Mr. Wong's appeal in which case he would be considered the third ranked person. Again it is rule of the list, so there is no guarantee that he would have been picked; and, 3) grant the appeal for all three Appellants and direct that a new examination be given.

President Peeler asked how the rule of the list is usually applied. Management Analyst Low stated that once an eligible list has been established the number of names certified to the hiring authority is based upon the civil service rules. The appointing authority has the ability to choose any of the names regardless of how they scored on the eligible list. There have been incidents where higher scoring candidates have been passed over for promotion and were not selected for a variety of legitimate reasons. For instance, they did well in the selection process and the appointing authority knows that they tested very well but there are deficiencies that do not make them necessarily the best candidate for the job. For example, in a number of our departments, Mr. Low can recall that certain employees/candidates scored very well throughout the testing/selection process but were passed over for the promotion.

Mr. Gossman stated that in this investigation on the day of the exam they were determining whether to use a 50-50 or 60-40 weighing and they did the calculations to see who the highest three were. It was not about their discussing who they wanted to select, they had predetermined who they were going to take to the top three highest scores.

President Peeler asked the Board for a motion.

Board Member Malloy stated that her challenge is that we have heard from the City that we selected the top three. She thinks there should be three separate motions. City Attorney Kern stated that it is accurate that the top three were selected. The point that the City has made is that it is not preordained in any and all recruitments. The appointing authority can select from all eligible candidates. Member Malloy stated that she feels that there should be separate motions because Mr. Wong's case is clearly different than the other two cases.

Mr. Riddle stated that maybe someone should make a motion to grant Mr. Wong's appeal and then grant the other two candidates appeal. His understanding is that if there is not a motion to grant any of the three appeals, the effect of that is to deny the appeal.

President Peeler asked based on the City saying that the top three were chosen and Mr. Wong is now in the top three can the Board move that he be appointed to the position. City Attorney Kern stated that what is before the Board is whether or not the processes were fair, not who should get the job. The Board is deciding if the process was fair. It is not the Board's decision on who should get the job.

Member McHugh moved that the Board grant the request of the Appellants, not for all of the reasons given, but as to what was brought out in Ms. Kramer's investigation; there was a need to rush, mistakes were made, lack of deciding what the rating criteria would be in advance, and announcing the job posting. All are things that normally do not happen. For those reasons the test should be redone. Batchelor seconded. Motion passed 4-1.

President Peeler stated that the test will be redone.

4. ADJOURNMENT: 6:50 p.m.

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