

MINUTES  
Cuyahoga County Human Resource Commission  
Wednesday, March 6, 2013  
Lakeside Place Building  
323 W. Lakeside Avenue, Suite 400  
5:00 p.m.

1) CALL TO ORDER

Chairman Wolff called the meeting to order at 5:02 p.m. Commissioner Simmons made a motion to approve the minutes from the February 20, 2013 meeting. Commissioner Palmer seconded the motion. All were in favor; no objections.

2) ATTENDANCE

Chairman Robert Wolff, Commissioner Kathleen Palmer, Commissioner Angela Simmons, HRC Administrator Rebecca Kopcienski, HRC Coordinator Jessica Vezina, Assistant Prosecutor Sara DeCaro, Assistant Law Director Amy Marquit-Renwald, Assistant Law Director Egdilio Morales and Donald Roy.

3) PUBLIC COMMENT – Nothing Submitted

4) UNFINISHED BUSINESS

a) Appeals

- i) Desotell, L. - Report and Recommendation  
Discussion ensued.

CHAIRMAN WOLFF: Okay, unfinished business. Appeals – Desotell. Hey, did you guys have the opportunity (talking to the County lawyers) to review the reply to your submission?

ASSISTANT LAW DIRECTOR MORALES: Yes, yes we did.

CHAIRMAN WOLFF: Okay. Mr. Desotell and his counsel are not here?

ADMINISTRATOR KOPCIENSKI: That's correct.

ASSISTANT LAW DIRECTOR MORALES: They are not here.

CHAIRMAN WOLFF: So, let me ask you a question. If they, does the fact that the County adopts both the statute and the regulations affect the fact that the regulations need to be consistent with the statute? That one exists by virtue of the other? Does that make sense?

ASSISTANT LAW DIRECTOR MORALES: Yes. Ed Morales for the Department of Law. Our response would be that Council adopted the regs as they are written and as they have been historically

complied and to that extent the answer would be no. That they are a set of rules and regulations that exists and Council adopted them as they exist and we think that they should be followed in the way that they are written.

CHAIRMAN WOLFF: Did any of the cases that you cited specifically deal with the issue of somebody being laid off in one step of the classification order rights vis a vis all over step of the classification ladder?

ASSISTANT LAW DIRECTOR MORALES: Yes. In fact, there's the Temple case – the Temple case which was a Temple v. Hamilton County Sheriff. State Personnel Board of Review, case #09-LAY-0067 & 0075. It's referred to on page four of the Memorandum that the Department of Law submitted and you'll see that the case involves an abolishment. It's definitely a case that was initiated as a job abolishment contrary to the assertion of Mr. Desotell's attorney and the Administrative Law Judge specifically said and found that the procedural requirements of the revised code and the administrative code pertaining to an abolishment had been followed that compliance included the provision of materials indicating the calculation of the appellant's retention points, which verified that there weren't any employees in the classification series in which the appellant could have displaced.

CHAIRMAN WOLFF: That comment only makes sense if there were...

ASSISTANT LAW DIRECTOR MORALES: Yeah and in addition there is the case involving classifications that are remarkably similar to the classifications under review in the Desotell matter. It's the Donnelly case, referred to on page six – the bottom of page six. In Donnelly, who was a Facilities Project Manager, when he was laid-off, when his job was abolished, and the board of health is laid-off, specifically noting that the only employee in a lower classification in that series is that of Construction Coordinator, also had more retention points. So the Board determined that the County, in that case it was Hamilton County, had correctly applied the rules regarding displacement

since there was no employee in his own classification or in a lower classification in the same class series that he could displace.

CHAIRMAN WOLFF: So I'm going to tell you my conclusion. Thank you though – this was all helpful and I think you've brought important precedent to us and so I'm going to say what I think and then I'm going to share my confusion about something and then let my fellow Commissioners speak. First of all I think that if any representative of the County wants to provide helpful precedent to help us in our decision making that's a good thing so I think the Motion to Strike was – it's not like it's ultra vires for you to be bringing relevant law to our attention. It's just helpful, so I appreciate that. I also think that the argument that in abolishing somebody's position and several other people in addition to their current duties assume a portion of the former employee's duties. That's a classic situation for a lay off and it's not a legitimate argument to say well one person was doing it and now four persons are doing it. That's the whole point is doing more with fewer people. So here's my confusion. I don't agree with you that by virtue of the fact that the County has adopted both the Ohio Revised Code provision and the Ohio Administrative Code provisions that the normal rules of statutory construction that the only basis for their regulations is the authority in the statute and the regulations cannot be contrary to statute. I don't think that goes out the window. I think that's still the standard. I think the language of 124.32-321(D)(3)(d) is still unambiguous. If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series. That being the case I think you've showed us that that's not the way the State Personnel Board of Review interprets these rules. And I do agree that the Elyria case, dealing with police officers or firefighters is different, so I'm confused.

ASSISTANT LAW DIRECTOR MORALES: Sir, if I may. I don't mean to interrupt anyone, but I would like to also add that in addition to the State Personnel Board of Review, there is no court that has

interpreted the statute in the manner that Desotell's attorney interprets it in regards to the County's civil service employees. The only case he can point to is the police and fire case and it involves a completely different statute and the comparison to 124.321 is dicta and cursory at that. So you will see if you take a close look at the Personnel Board of Review cases that (I believe it was Donnelly) there is repeated reference to 321, but then there is also application of the procedures in 124.324 which specifically states that you have to have more retention points in order to bump.

CHAIRMAN WOLFF: No doubt. The regulations totally support what you're saying.

ASSISTANT LAW DIRECTOR MORALES: Well this is the statute (324) and is why the State Personnel Board of Review in abolishment cases applies 324, which is the displacement procedure for layoffs. This is a layoff resulting from an abolishment. It's clear that 321 says there's a modification of displacement rights in an abolishment situation, but in our opinion the modification is a statutory right to be able to displace into a vacancy, which does not otherwise exist in any provision of the Revised Code. And that's the modification that's intended..

CHAIRMAN WOLFF: I'm sorry could you please repeat that?

ASSISTANT LAW DIRECTOR MORALES: The modification that's intended by 321 is the express provision that individuals can displace into vacancies, which this doesn't exist anywhere else in the Revised Code. It's not in 324 – that's the modification, but 324 does deal with the displacement of other employees and does require that the employee have more retention points. My understanding of this matter is that it's a cardinal rule and that's the way it's going to apply at the State Personnel Board of Review.

CHAIRMAN WOLFF: And that's the language that the employee with the most retention points will replace the employee with the fewer retention points.

ASSISTANT LAW DIRECTOR MORALES: Yes. It's quoted on page five of the Memorandum.  
124.324(B)(1).

COMMISSIONER SIMMONS: On 124, the way I read this is the employee shall displace the employee with the fewest retention points, I don't think that's saying that having the fewest retention points in the classification is the only requirement. I think that it assumes that you are displacing someone that has fewer retention points but it's expressly knowing that the person you displace will have the fewest retention points. I think that when it says displace that assumes that you're going to someone lower.

CHAIRMAN WOLFF: That kinda makes it consistent.

COMMISSIONER SIMMONS: That's how I understood it.

ASSISTANT LAW DIRECTOR MORALES: And again, adopting the Administrative Law Judge's report would be the first instance that we are aware of that any commission like this has ruled along those lines.

COMMISSIONER SIMMONS: So what you're saying is that there is no precedent for us to rule in favor of Desotell?

ASSISTANT LAW DIRECTOR MORALES: Right.

COMMISSIONER SIMMONS: I also think that this is okay...where I'm looking at Desotell's motion and opposition to the Law Department's memo where it says if you are going to displace an employee that has fewer retention points you may only do so in the order established by the rules. It seems as if Desotell is trying to argue the "if" refers to fewer retention points. As if that's an option. And I think that "if" refers to if you're going to displace them.

Commissioner Palmer: I'm stuck on the same section you are in the Administrative Code. I'm okay until I read this and it seems clear that you bump down to the person with the lowest points who is out and gets laid off. Now they don't call it bumping, that's what I do, but it's bumping basically. But it's hard to reconcile that with what has been the practice. That's the section that causes me to pause. That seems relatively clear.

COMMISSIONER SIMMONS: That you have the option to bump someone with more retention points as long as they are in a lower classification.

COMMISSIONER PALMER: No, with fewer. The fewest.

ASSISTANT LAW DIRECTOR MORALES: Again the point that we would make is that this section, 321, specifically references the procedures regarding layoffs. Right, and must be read in accordance with the other section.

CHAIRMAN WOLFF: With the other statutory section.

ASSISTANT LAW DIRECTOR MORALES: With the other statutory section. Exactly right. The rule of construction being to interpret the statutes in a way that it gives meaning to both.

CHAIRMAN WOLFF: Right because I don't think there's a rule to interpret the statutes so it's consistent with the regulations but I agree with you that there is that constructional environment if it's one section of the statute.

COMMISSIONER PALMER: And we have established that this is within the classification series?

CHAIRMAN WOLFF: Right.

ASSISTANT LAW DIRECTOR MORALES: Yeah there's no dispute about that – we've investigated that and that is true.

COMMISSIONER PALMER: And also I've read Sara's opinion and I think she makes valid points of that as well.

CHAIRMAN WOLFF: Do you think it would be helpful if we went into Executive Session?

ADMINISTRATOR KOPCIENSKI: You want to deliberate – not go into Executive Session. You need to close the meeting to deliberate.

At 5:20 p.m. Chairman Wolff made a motion to close the meeting to deliberate; Commissioner Palmer seconded the motion. All were in favor; no objections.

Chairman Wolff made a motion to reopen the meeting at 5:25 p.m.; Commissioner Palmer seconded the motion. All were in favor; no objections.

CHAIRMAN WOLFF: Okay. I think for the reasons that Mr. Morales discussed – although I don't think we buy the argument that the regulations can trump the statute if you want to read section 321 and section 324 consistently and you don't want to go where no administrative body or court has gone before – that I think the Commissioners are of a mind to disaffirm Mr. Gordillo's recommendation although we certainly understand his reasoning – this was a very complicated issue. So I would ask for a motion to disaffirm the Report & Recommendation of the Hearing Officer in regard to Mr. Desotell's job abolishment. And to affirm the appointing authority's decision.

Chairman Wolff made a motion to disaffirm the Report & Recommendation submitted by Hearing Officer Gordillo; Commissioner Palmer seconded the motion. All were in favor; no objections.

b) Proposed Ordinance 2013-0004 – (revised version)

Assistant Law Director Marquit-Renwald explained the revised language that had been added to the ordinance; discussion ensued. Chairman Wolff made a motion to recommend the revised version of proposed ordinance 2013-0004; Commissioner Palmer seconded the motion. All were in favor; no objections.

c) Charter Review Commission – proposed language

The Commission discussed suggested changes to Article IX, Section 9.01 through Section 9.05 of the County Charter to clarify the HRC's responsibility and authority. Discussion ensued. The Chairman directed the Administrator to work with APA DeCaro to prepare draft language for the Commissioners' consideration.

5) NEW BUSINESS

a) Appeals

i) Roy, D. - Report and Recommendation

Commissioner Simmons made a motion to affirm the supplemental Report & Recommendation submitted by Hearing Officer Gordillo; Commissioner Palmer seconded the motion. All were in favor; no objections.

b) HRC Move Update

Administrator Kopcienski shared with the Commissioners details of her meeting with URS regarding the plans for the County's move. Discussion ensued.

6) EXECUTIVE SESSION– HRC PERSONNEL

Chairman Wolff made a motion to go into Executive Session to discuss HRC personnel matters; seconded by Commissioner Palmer, approved by unanimous vote.

7) PUBLIC COMMENT– Nothing Submitted

8) OTHER BUSINESS– Nothing Submitted

9) ADJOURNMENT

Chairman Wolff made a motion to adjourn the meeting at 7:15 p.m. Commissioner Palmer seconded the motion. All were in favor; no objections.

Next Human Resource Commission meeting is scheduled for Wednesday, March 20, 2013 at 5:00 p.m. at Lakeside Place (323 W. Lakeside Avenue, Suite 400)