MINUTES OF THE
CIVIL SERVICE COMMISSION MEETING

WEDNESDAY, AUGUST 5, 2015

Members Present: Clayton Morris, Chairman
Susan Figler

Members Absent: Tim Fenwick, Vice Chairman

Also Present: Debra Bennington, Secretary, Civil Service Commission
Mark Stone, Fire Chief
Jeff Film, Chief of Police
Anne Stirm, Police Lieutenant
Amber Zibritosky, Law Director
Anthony Avalos

I. CALL TO ORDER

Mr. Morris called the regular Civil Service Commission meeting of August 5, 2015 to order at 8:33 a.m.

II. APPROVAL OF MINUTES

Motion:
Ms. Figler moved and Mr. Morris seconded to approve the minutes of June 26, 2015 as submitted.

Yes Votes: Figler, Morris

No Votes: None. The motion carried.

III. OLD BUSINESS:

None.

IV. NEW BUSINESS

A. POLICE OFFICER CANDIDATE APPEAL – REMOVAL OF NAME

Lt. Stirm distributed a letter and supporting documents to the Commission (a copy of which is attached to the original of the minutes) outlining the removal of Anthony Avalos from the Certified Eligible List. Mr. Avalos was removed during the background stage of the application process. On July 17, 2015, Mr. Avalos filed an appeal with the Commission.

Anthony Avalos was in attendance to present his appeal.
Mr. Avalos stated he was appealing the removal of his name from the Police Officer’s Eligibility List. He received notification he was removed due to Disqualification of Eligibles. He inquired as to the reason and was informed it was due to a use of force incident that went undocumented that he disclosed to the Akron Police Department during their background investigation. He stated he withdrew his name from Akron’s Eligibility List with the understanding there would be no formal documentation written for it.

Ms. Figler asked Mr. Avalos if it was disclosed in the Akron process during the polygraph question; Mr. Avalos replied yes. Ms. Figler asked if when it came up, Akron afforded him the opportunity to remove himself from the list; Mr. Avalos stated that was correct.

Mr. Morris questioned if Stow asked about any incidents. Mr. Avalos responded no, they asked about prior departments or other places he applied for, which he indicated he applied for Akron and his status was that he withdrew his name from their list.

Ms. Figler questioned if Stow asked about any prior circumstances. Mr. Avalos replied no, he did not see anything on the application or questionnaire regarding anything of that nature.

Mr. Morris asked how far Mr. Avalos got in Stow’s process, was he polygraphed. Lt. Stirm responded he was in the background portion. He completed the background questionnaire and the background investigation was assigned to Detective Gaffney. During her investigation, she found this information and contacted Akron. She talked to a sergeant who submitted the letter that was distributed to the Commission. The use of force incident that went undocumented and the integrity issue that came along when he was talked to about the incident unofficially and did not reveal to his supervisor that he had, in addition to pushing an inmate, which he did reveal, that he had punched him in the face, is reason for removal. Even though it was a glancing blow, it went unreported. Mr. Avalos was correct as far as the question about violation of policy. There is a question about that, but he received no formal counselling regarding this incident. There is nothing in his personnel file. He answered the question correctly on the background, because it only asks if you have received verbal or written reprimand or a suspension. Ms. Figler asked if because it was undocumented it did not qualify as a verbal or written reprimand or suspension; Lt. Stirm stated that was correct.

The Commission reviewed Rule VI, 1(f), Disqualification of Eligibles.

Mr. Morris asked Ms. Zibritosky to assist them with this process since they have not had an appeal like this before where it was not an appeal to a test. He asked if they were making a determination here or writing a response. Ms. Zibritosky stated the Commission could make a determination right now on the record. It would be based on that standard [Rule VI, 1(f)], because it is a removal from the list and not just a not selection. Police and Fire have the discretion to choose not to hire someone on the list, but to remove them from the list entirely is deception. Ms. Zibritosky stated it could be done today or the Commission could consider it and come up with something written and then introduce it at the next meeting. It did not have to be decided today. Ms. Figler stated she thought the Commission should discuss it and call a special meeting for later in the month; Mr. Morris agreed and stated they would prepare a written response.
A special meeting was scheduled for August 19, 2015 at 8:30 a.m. at which time the Commission will issue their decision.

Mr. Avalos thanked the Commission for their time and left the meeting.

B. REMOVAL STANDARDS FOR POLICE OFFICER & FIREFIGHTER CANDIDATES

Ms. Zibritosky stated this was included on the agenda as a question of topic. She introduced herself to the Commission and stated she was assuming the Human Resources responsibilities as Mike Miller was no longer with the City. She is also the City’s attorney as Law Director and could give legal advice to the Commission on or off the record.

Ms. Zibritosky stated Rule VI,1(f) allows us to remove someone from the list. That is the process and the standard. Adding something that says these types of things is the standards by which will get you a removal will allow us to do that, but she does not know if it is this exact list. Right now that rule is the only thing that allows us to remove someone from the list aside from them not showing up for something. That is different from not picking someone, which could be for a lot of different reasons. If we adopt something like this into the rules, it would allow us to remove people from the list permanently and it would need to go to City Council pursuant to the Charter.

Ms. Zibritosky stated before she asked the Commission to adopt this, she would like to really look at it. She thinks it might be too detailed and may not even be allowed to be that detailed legally. Lt. Stirm stated it was from the Columbus Police Department and Ohio State Patrol. It was a blend. Ms. Zibritosky stated she does not know what detail they are allowed to go into for the rules. If the Police Department uses this list for not hiring a person, they can do that every day a thousand times over. She thinks that is pretty much what it has been used for. Ms. Figler stated that is exactly what Ms. Zibritosky is talking about here, being even on the list. Once they are on the list, if the Police Department wants to use this it is internal. This is saying you do not even get on the list. Ms. Zibritosky stated that is correct and, if you think about it, it is the same thing as removing from the list. Mr. Morris stated we do not know any of this until they are on the list. Ms. Figler stated then it would be a removal standard.

Mr. Morris stated to get on our certified list a candidate takes the written test and, possibly, the physical agility. Candidates are ranked in order and certified based upon those initial standards. All of the information from the list of removal standards comes later.
Chief Film stated candidates are given this document ahead of time to let them know that if any of these are applicable they do not need to apply. Ms. Zibritosky stated that is the idea, because we are not going to hire them. Chief Film stated part of the problem is that if we did not remove them and would not hire them, then we may be left with three people to choose from because seven of them were not removed. We have tried in the past and most people will sign off if we tell them why because of some standard. Ms. Zibritosky stated they can withdraw.

Ms. Zibritosky stated she understood the issue of why the Police Department wants to remove candidates to get more candidates on the list, but that becomes an issue with Civil Service.

Mr. Morris stated Jonathan Downes, author of “Ohio Civil Service & Collective Bargaining Laws & Rules Annotated” and who negotiated all the collective bargaining agreements with the State of Ohio for all of their state agencies and the City of Columbus, is under the belief that before we certify a list all of the individuals on that list should be fully vetted with all of this information. That certified list includes the written test, personality assessment, full background, etc., so there is a full list of ten individuals to pick and hire from. Ms. Zibritosky stated she could see his point from a legal perspective. Ms. Figler stated we had a discussion on the practical, financial, and procedural process of this last year. Ms. Zibritosky stated we need to find a happy medium and that is something she is going to work on and research. Ms. Zibritosky stated some things are easy and clear such as dishonesty. Others are more detailed and are going to be a little bit harder, and we might not be able to remove them from the list based on that. It does not mean we have to hire them that is a different scenario.

Ms. Figler stated she thought some of the concern last year was because of what the process anticipates in a perfect world versus now you have this list and somebody that comes up that you really do not want, and if they are not itemized in these 75 things, now we opened another can of worms. That is why we thought “other comparable reasons” allowed the opportunity to look at each situation for what it was rather than having something like this that is added into the Civil Service Rules.

Ms. Zibritosky stated from a legal perspective it would be a good idea to re-examine adding something. She is not saying it has to be this document, and she would advocate that it not be. When you go too detailed in anything, you open the door for loopholes and that is not what we want. This is a process. She thinks the Issue of making sure these kinds of processes are a little bit better and clearer for everyone can be done. The list does not need to include every single crime. It is for issues of honesty and falsification on the job, etc. Ms. Figler stated we could use the headers without the subheadings and say that these are the areas that ...

Ms. Zibritosky stated Civil Service’s job is to determine merit and fitness. If somebody has major issues with dishonesty and wants to be a police officer, then that is a major issue for fitness on the job. Civil Service’s job is to do a list and/or removal from the list, which is what that issue would be – whether or not this person is fit for the job. We can add more to the removal standards to make it clearer across the board of what we consider to be something that makes someone unfit. She thinks that is what the attempt was on this document, and although it was a good thought she thinks we can do a better job.
Lt. Stirm stated Columbus and the Ohio State Patrol have a screening committee that reviewed the list. Some might be disqualifiers right off the bat, but she thought the majority of them were discretionary.

Ms. Zibritosky stated that was the issue. The list could be used internally. The Police Department looks at a person as a whole. Ms. Figler stated the Commission does not.

Ms. Zibritosky stated if someone has a conviction for a crime of dishonesty, which is a legal issue, they are out and cannot be a police officer. Mr. Morris stated also domestics because they are not able to carry a weapon. Ms. Zibritosky stated these type of things would be good to put in the removal because it makes someone unfit and then they are just off the list. The other stuff would be good to keep in terms of discretion on who to pick from the list but it does not allow them to get more names. Lt. Stirm stated they need something to be able to get more names. Ms. Zibritosky stated this list was a good attempt at that, but it is too detailed and unforgiving because once you put it on there you cannot undo it.

Mr. Morris stated we have a ten (10) or ten percent (10%) rule where we could give a list with ten percent (10%) as opposed to a list of ten (10).

Ms. Zibritosky stated that was another option, trying to give them a bigger certified list to the extent that we are able to that would solve some of those issues too. Mr. Morris stated it is either ten (10) or ten percent (10%), that is code.

Mr. Morris stated there was a provision in 124.34, removal for exempt positions which are not subject to Loudermill. Ms. Zibritosky asked if this was a removal once you are hired or a removal from the list. Mr. Morris stated it is a removal once you are hired but includes all of the things at a very higher level that are not specific. He thought there may be something in that we could work from. Ms. Zibritosky agreed, as a standard of the language. Mr. Morris stated it is a paragraph that uses high level words (i.e., absenteeism, insubordination, etc.), which are things that you may discover in a background check.

Ms. Zibritosky stated this is about taking someone off the list that does not fit to be an officer. Mr. Morris stated individuals that are making the determination that someone is not fit to be an officer should have a PhD after their name so it is coming out of the personality assessment. The not fit thing was a tough one for him.

Ms. Zibritosky stated she is just using the language of what the Commission is allowed to do when they remove somebody or not certify them, merit and fitness. Merit is the test. Certain things on the background would be part of their character not being fit. Something that is concrete. Either you are not certifying them to go on or you are removing them. Either way they are not on the list. It has to have a tie to either of those two expressions.

Mr. Morris asked what our next step was; Ms. Zibritosky replied she would come up with some different standards to redo the rule. She thinks these are some common problems we have had for a long time and that this list was one attempt at it, but it did not get at the real problems. She would like to try another attempt and bring it before the Commission at their November meeting.
V. ADJOURNMENT

The meeting adjourned at 9:07 a.m.

Clayton Morris          Debra Bennington
Chairman, Civil Service Commission   Secretary, Civil Service Commission

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