

Minutes of a Meeting of
City of Bay Village Civil Service Commission

Held September 25, 2014

2:30 p.m.

Members Present: James Potter, Dr. Dennis Lekan

Absent: Marty Krebs due to illness

Also Present: Police Chief Spaetzel
Law Director Ebert
Fire Chief Lyons

Audience: Nancy Trainer

Chairman Potter called the thirteenth meeting of the Civil Service Commission in the year 2014 to order at 2:30 p.m.

Motion by Potter, second by Lekan to approve the minutes of the Civil Service Commission meeting held September 9, 2014, with the following comments by Dr. Lekan.

The first sentence of the first paragraph on Page 2 which reads: “Dr. Lekan noted the importance of having adequate funds in the Civil Service budget to prevent any delays in preparing for examinations” should be changed to read: “Due to inadequate budget and funds, we could not place the advertisement for the police entry level test on the date that we had chosen to advertise. We need to have adequate budgets and funds in order to prevent delays in the future.”

Mr. Potter reiterated his comments from September 9, noting that the test in 2015 for police officer entry level was an unusual circumstance. The test would normally have been conducted in 2015, but since the 2013 list was exhausted, it became necessary to conduct the test in 2014. Budgeted funds for testing were depleted, and the Council was in summer adjournment. It was necessary to wait for Council to reconvene to appropriate the funds for the advertisement.

Dr. Lekan further noted that the last sentence in last paragraph on Page 2 reading: “Mr. Ebert noted that the labor contracts do take precedence” we should add “in areas where there is overlap in the contract and the Civil Service rules.”

Motion by Lekan, second by Potter to amend the minutes of September 9 in accordance with the additions and corrections presented by Dr. Lekan.

Roll Call Vote: Yeas – Potter, Lekan. Nays – None. Motion passed- 2-0.

Roll Call Vote on the approval of the original motion to approve the minutes of September 25, 2014, as amended.

Yeas – Potter, Lekan. Nays – None. Motion passed- 2-0.

Preparations for Entry-Level Police Officer Examination

The entry level Police Officer test will be conducted on Tuesday, October 7, 2014, at 6 p.m. at the Bay Middle School. Seventy applications have been received, with one day left for filing. Chief Spaetzel expressed confidence that an adequate number of applications will be received.

Review of Civil Service Rules and Regulations

Law Director Ebert submitted the following memorandums and reviewed both with the Commission:

September 25, 2014

To: Civil Service Commission

From: Gary A. Ebert

Re: Bay Village Civil Service Commission Rules and Regulations regarding
Rule XIII-Transfers, Lay-Offs, Leaves of Absence and Resignation

Questions Presented:

1. Does the Ohio Revised Code require a police officer to be employed for a certain period of time before being eligible to sit for promotional examinations?
2. Does the labor contract supersede the civil service rules relating to layoffs, leaves of absence and resignation?

Answer:

R.C. 124.44 states that promotions shall be by successive ranks insofar as practicable and that no person in a police department shall be promoted to a position of higher rank unless they have served at least twelve (12) months in the next lower rank. Nonetheless, R.C. 124.44 further states that a municipal civil service commission may require a period of service longer than twelve (12) months for promotion to the rank immediately above the rank of patrol officer. The Ohio Revised Code does not permit a civil service commission to require service for more than twelve (12) months for any other positions.

Accordingly, the Bay Village Civil Service Rule requiring that an “applicant for promotion in safety services must be a safety service employee for a minimum of three years from the date of hire prior to appointment to a new position” may only be applicable to those individuals seeking promotion to the rank directly above patrol officer. Notwithstanding this rule, the Civil Service Commission may limit eligibility to permanent employees who have satisfactorily completed their probationary period and have received a satisfactory rating for the year preceding the examination.

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Furthermore, R.C. 124.45 also states that when a vacancy occurs in the promoted rank immediately above the rank of firefighter, no person shall be eligible to take the examination unless they have served forty-eight (48) months, not including the person's probationary period, in the rank of firefighter. However, this requirement does not apply when there are less than two persons in the rank of firefighter who have served forty-eight (48) months, not including their probationary period, and are willing to take the examination. When there is vacancy in a promoted rank other than the promoted rank immediately above firefighter, to be eligible an individual must have served at least twelve (12) months. Based on the Ohio Revised Code, the above-cited civil service rule would only be applicable to individuals sitting for examination to be promoted to the position directly above firefighter.

With regard to Rule XIII related to Transfers, Lay-Offs and Leaves of Absence. Where the civil service rule appears to be out of line with the collective bargaining agreements ("CBA") of any union of the City, the CBA provisions supersede local law on issues that are covered by the CBA. As such, the civil services should adopt the following language: "No provision of this Section shall supersede or overrule the provisions of any collective bargaining agreement entered into by the City of Bay Village. The language of the collective bargaining agreement shall be controlling."

Discussion followed. Mr. Potter stated a probationary period has always been included as service time. Chief Spaetzel agreed that the probationary period should be included as service time.

The rule regarding Lay-Offs, Transfers, and Leaves of Absence is in conflict and should be changed.

Motion by Lekan, second by Potter to adopt the comments and suggestions of the Law Director regarding Rule XIII, incorporating the following language in the Rules and Regulations of the Civil Service Commission: "No provision of this Section shall supersede or overrule the provisions of any collective bargaining agreement entered into by the City of Bay Village. The language of the collective bargaining agreement shall be controlling."

Roll Call Vote: Yeas – Potter, Lekan. Nays – None. Motion passed- 2-0.

Fire Chief Lyons noted that in the Fire Department promotional rules it states that the application for promotion in Safety Services must be a Safety Service employee for a minimum of three years from date of hire prior to promotion to new position. The Ohio Revised Code dictates three years for police, but four years for fire. Mr. Ebert stated that as a Charter City we can be more or less restrictive than the Ohio Revised Code in this regard.

September 25, 2014

To: Civil Service Commission

From: Gary A. Ebert

Re: Bay Village Civil Service Commission Rules and Regulations regarding
Rule XII Section 4

Pursuant to R.C. 124.11(A)(2) unskilled labor positions may be excluded from the classified service if the commission or its director finds inclusion impracticable. To effect an exemption under R.C.

124.11(A)(12), the commission or the director must order the exemption and expressly state the reasons underlying the finding of impracticability on the record. Accordingly, R.C. 124.11(A)(12) seeks to prevent exclusion based on administrative fiat or convenience.

If the commission fails to give adequate reasons for the exclusion, it will not be in compliance with R.C. 124.11(A)(12) and the positions will remain within the classified service. In *Board of Educ., North Olmsted City School Dist. v. North Olmsted Civil Service Com'n.*, 13 Ohio App.3d 201, the North Olmsted Civil Service Commission determined that the following positions were in the non-classified Civil service because it was impracticable to include such unskilled labor positions in the competitive classified service: (1) noon aides, (2) cafeteria helpers, (3) summer help or common labor, (4) unskilled student help, (5) emergency or short term aides or assistants and (6) unskilled labor-maintenance division. The Commissions' reason for including such positions in the non-classified service was that each position required no particular skill or talent for which an adequate and meaningful examination could be provided since the positions only require the person to be in reasonably good health and able to exercise good judgment. The court stated that while there may be sound reasons for excluding any or all of the positions exempted by North Olmsted none had been articulated and entered into the record as required by R.C. 124.11(A)(12).

A review of the case law establishes that in order for the Bay Village Civil Service Commission to properly exempt a position from the classified service it must establish a rule exempting that position and state the specific reason why each position is exempted. Accordingly, the Commission may want to consider adopting the following language:

The unskilled service may involve permanent full-time employees, temporary, seasonal or part-time employees, or intermittent employees hired pursuant to non-competitive examinations. When classified unskilled position is to be filled, such position shall be advertised as provided in Rule 4.4 and applications made to the appropriate department. The commission shall determine which classifications are in the unskilled service and maintain a current allocation list of the unskilled service.

Motion by Potter, second by Lekan, to adopt the italicized portion of the Law Director's memorandum regarding unskilled service as proposed by the Law Director, and incorporate that language in the City of Bay Village Rules and Regulations.

Roll Call Vote: Yeas – Potter, Lekan. Nays – None. Motion carried 2-0.

Rule XII, Section 5 Application

Motion by Potter, second by Lekan, to revise the last sentence of Section 5 to add the following words "until all appropriate certifications are provided."

Roll Call Vote: Yeas – Potter, Lekan. Nays – None. Motion carried 2-0.

Section 6. Content of Examination

No changes recommended.

Section 7 Seniority Credit

Dr. Lekan has proposed no credit for the first three years, and then a full point for years 4, 5, 6, 7, 8, 9, with the thought that credit should be given after experience is acquired.

Chief Lyons stated that he is comfortable with the seniority credit the way it currently is for the Fire Division.

Chief Spaetzel would like research to show the rationale for the amendment to the Police Division seniority credit in March of 1992, and March 31, 1998, as indicated in the rules.

Chief Spaetzel noted that with the current rules, everyone in the Police Department receives the same amount of seniority credit after 5 years of service. He suggested that possibly there should be given additional credit after five years.

Section 8 Efficiency Credit

Chief Spaetzel recommended using the average of the last three performance evaluation scores to determine the Efficiency Credit. The word "Efficiency" shall be changed to "Performance."

Fire Chief Lyons will submit suggested language for the Fire Division.

Law Director Ebert will also submit suggested language for the entire section.

Section 9. Review of Examination Papers

No changes recommended other than removing "3/92."

Section 10. Breaking of Tie Scores

No changes recommended.

Rule XIII Transfers, Lay-Offs, Leaves of Absence, and Resignations

Section 1. Transfers and Section 2. Lay-Offs

Law Director Ebert will submit complete new drafts of these sections.

Section 3. Leaves of Absence

a. General

No changes recommended.

b. Military Duty

This section will be sent to the Law Director for review and comparison to the labor contracts.

Section 4. Resignations and Withdrawals of Same

After considerable discussion, it was determined that this section will be sent to the Law Director for review and comparison to the labor contracts.

Rule XIV Discharges, Suspensions and Demotions

The Civil Service Commission will begin reviewing this section at the next meeting of the Commission on Thursday, October 30 at 2:30 p.m. in the Conference Room of Bay Village City Hall.

There being no further business to discuss the meeting adjourned at 3:30 p.m.

James R. Potter, Chairman

Joan T. Kemper, Secretary