

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

Held April 22, 2015

2:00 p.m.

Members Present: James Potter, Marty Krebs, Dr. Dennis Lekan,  
Also Present: Jazmyn Stover, representing Law Director Ebert  
Audience: Police Chief Spaetzel, Fire Chief Lyons

Chairman Potter called the fourth meeting of the Civil Service Commission in the year 2015 to order at 2:00 p.m.

Mr. Potter called for approval of the minutes of the meeting of the Civil Service Commission held April 8, 2015. Mr. Potter noted that he had mentioned at the April 8 meeting that due to changes in the rules and regulations, the pages need to be renumbered when the final draft is created. Mr. Potter also reminded Police Chief Spaetzel that the Civil Service Commission will further discuss education credit lasting longer than one year.

**Motion** by Potter, second by Lekan, to approve the minutes of April 8, 2015 as prepared and distributed.

Roll Call Vote:

**Yeas – Potter, Krebs, Lekan**

**Nays - None.**

**Motion carried. 3-0.**

**Review of Rules and Regulations of Civil Service Commission**

Mr. Potter advised that the memorandum of Law Director Ebert dated April 8, 2015 regarding Sexual orientation, Genetic information and Vision testing standards is to be reviewed further this evening with representation from Mr. Ebert’s legal office. Jazmyn Stover, attorney from the office of Seeley, Savidge, Ebert and Gourash, was present at the meeting to discuss the possible inclusion of the words “sexual orientation.” Mr. Ebert’s memo reads:

“The Civil rights Act of 1996 and the Civil Rights Act of 1991 prohibit discrimination on the basis of race, color, sex, religion and national origin as well as reprisal for protected activity. There is no specific protection based on sexual orientation. Moreover, in *Burns v Ohio State Univ. Coll. Of Veterinary Med.*, Ohio Ct. App., No. 13AP-633 (March 25, 2014), the Court of Appeals rules

that the term sex as used in Ohio's antidiscrimination statute does not include sexual orientation and legislative measures proposing to amend RC Chapter 4112 and Title VII to add the term sexual orientation have been, as of yet, unsuccessful. See Ohio Rev. Code 4112.01(A)."

Ms. Stover stated that Mr. Ebert asked her to give the Civil Service Commission some background on where sexual orientation is currently. "Sex" right now is broad. It doesn't encompass pregnancy as well and Ohio Revised Code 4112.02 is anything that would be against public policy. Currently, in Ohio, there is no case law expanding the definition of "sex" as sexual orientation. There are employers and municipalities that have included sexual orientation as a protected class as things are evolving, but there is no legal requirement that you have to include sexual orientation. Right now, it is based on the employer.

Mr. Potter stated that since the City of Bay Village is home rule they could do that if they wish.

Ms. Stover stated that the other issue Mr. Ebert asked Ms. Stover to discuss is genetic information. Mr. Potter stated that there is nothing mentioned in the rules and regulations about genetic information.

Ms. Stover stated that the classes that are required include race, color, religion, gender, sex, national origin, age, disability, or handicap, genetic information due to GINA (Genetic Information Nondiscrimination Act of 2008), marital status, amnesty, or status as a covered veteran. Mr. Potter stated that these are in the draft originally proposed by Mr. Ebert.

Mr. Potter opened the matter for discussion.

Ms. Krebs stated that Mr. Potter had asked her to formalize her comments in writing. Ms. Krebs stated that there is nothing she could add that would be enlightening to anyone; we all have our opinions. Ms. Krebs stated that she hates discrimination of any kind. She does not believe that she can judge another person. Another person's lifestyle choices, or by birth, is irrelevant. To judge another person and to deny them the benefits and protection of the laws of our country is to judge. That's discrimination, and it's wrong. The Supreme Court is going to be decide a couple of issues. They are going to hear arguments next week on all of these issues. To judge another person is discrimination, and it is wrong.

Mr. Potter stated that Ms. Krebs comments previously anticipated that there might be a mandate coming to us from the state or another entity. Ms. Krebs stated that she thinks it is the way the country is going but she would put that aside and say it is wrong to discriminate. It is wrong to judge another person.

Dr. Lekan stated he would agree with Mrs. Krebs. Not having that language is allowing for discrimination because of sexual orientation. If someone has a gender change, and comes in for a job and is otherwise qualified, there is no reason to use that as a basis for discrimination. One of the reasons we wanted the Fire and Police Chief here today is because of the uniqueness of the Police and Fire Departments. We still live in a society and there are still issues. Eventually sex will cover transgender. It will be a matter of sex, not transgender particularly. By not including

it doesn't mean we will discriminate because of sexual orientation. We have to follow the law and not lead the law. As a policy, we would not discriminate against anyone because they were transgender.

Mr. Potter stated that he did have occasion to speak to both chiefs about this matter. His concern is how it would affect efficiency. Mr. Potter stated that he is concerned with the efficiency of the safety and services departments, and whether or not having such a person as part of their staff would affect morale and affect efficiency. Should that person be advanced to a position of authority, i.e., Sergeant, Lieutenant, Captain, or Chief, would that affect us and would it affect the morale of our 23 policemen and 28 firemen. Would that be a consideration when reviewing the ten top candidates from the eligibility list? If we specifically put it in there, you would not have a choice as to whether that person would fit in to the mold of our typical firefighter and police officer.

Mr. Potter noted that he does not want the Police Chief or Fire Chief to have a stigma of saying they would be against or for, if we don't adopt this. Because, this will go on forever, and two years from now someone might say that the chief stated he was not in favor of this and I was turned down, and we would have a lawsuit. Are we putting up another flag that would be challenged?

Dr. Lekan suggested that rather than put anyone on a spot we adopt the language as it is and as it evolves and we are required to include it, then we include it. In the meantime we all say here that we wouldn't discriminate against someone if they could otherwise do the job.

Ms. Krebs stated that this was the argument in Indiana several weeks ago, that they didn't mean to do that. They did mean to do that. The argument that Mr. Potter is giving is the same that the U.S. Military has gone through: Don't ask; don't tell. Every branch of service was requested to give their opinions as to whether it would affect morale and efficiency. Most of them said no. That is irrelevant, and I don't like anonymity. I would like to know what the police chief and fire chief have to say. I would bet that over the years there have been LBGT in the police force and the fire service. Ten percent of the country is gay in some way. To argue that the heads of our departments don't take a stand, it is such an important issue the people have to take a stand.

Ms. Stover asked the antidiscrimination policy in the City of Bay Village Employee Manual. Ms. Stover noted that an employer should only have one antidiscrimination policy that applies to all their employees.

Mr. Potter stated that the Civil Service Commission is charged with the possibility of new people joining the city. What the existing situation is was covered some time ago and Mr. Ebert would have access to that information.

Ms. Stover stated that Civil Service employees, while they are covered by Civil Service and their collective bargaining agreement for anything that is within management rights they also fall under city policy. That's why there is a concern that they definitely should mesh because the Civil

Service employees don't stand alone. Terms and conditions are set by the contracts and they follow city policy.

Mr. Potter stated that he will not require that the chiefs speak but may comment if they wish.

Chief Spaetzel stated that we need to follow whatever the federal and state law requirements are. From a legal management point of view, and from the perspective of managing a department, I don't want to be outside the law. I want to be exactly lined up with what the federal and state laws state. If that changes and our wording says we should follow federal and state law, then ours will automatically change to reflect that change.

Fire Chief Lyons stated that as chiefs we have taken an oath to uphold the Constitution of the United States, the Constitution of the State of Ohio, and the laws and ordinances of the City of Bay Village. Dr. Lekan stated previously that we need to follow the law, not lead the law. This is appropriate. I don't see us in Bay Village as a legislative body in terms of making a law that will affect the entire country. It seems like the Supreme Court is heading in a certain direction. Sometimes terminology can get a little confusing. The fact of the matter is there are two types of discrimination. I am against unjust discrimination. We discriminate all the time. If a candidate has three D.U.I.'s in the last year, they are denied employment. There are things we make judgment about all the time regarding fitness for the job and for public service specifically, which, in this society has a higher level of expectation of behavioral standards. We do have to make decisions and I will stand by those decisions as long as they conform with the laws of the state, the country, and this municipality.

**Motion** by Potter, second by Lekan, to adopt Option "B" for the antidiscrimination language of the City of Bay Village Civil Service Rules and Regulations which is basically in keeping with the laws of the State of Ohio.

Ms. Krebs stated that she agrees with Jazmyn Stover and the chiefs that everything should be uniform and we don't need to legislate. But, Ms. Krebs will vote no according to her personal conscience.

Roll Call Vote:

**Yeas – Potter, Lekan**

**Nays - Krebs**

**Motion carried. 2-1.**

**Continued Review of Rules and Regulations of the Civil Service Commission**

The italicized portion of the draft is what is to be changed in the rules; the bold face type are areas that are open for further discussion.

#### Rule VII, Section 4 (b) (Education Credit)

Dr. Lekan stated that the current rules state that in order to receive two points credit added to the written portion of an entry level police officer application, an OPOTA certification must be no more than one year old. Dr. Lekan believes that one year is a short period of time.

Chief Spaetzel advised that the rationale behind this is that the Ohio Peace Officers Training Council sets the requirements for police officers. When they issue certification it is good for one year. If you go beyond one year, it requires retraining, either by going through the whole course again, depending on the length of time beyond that one year, or courses. Chief Spaetzel stated that in his opinion to give full credit for an Ohio certification, it would have to be a valid certification. It is only valid if it is less than one year old. This is established by the Ohio Peace Officers Training Council.

Dr. Lekan stated that it is a timing issue. He suggested taking it out entirely. Chief Spaetzel stated that having it in place encourages those who are OPOTA certified. By hiring someone who is OPOTA certified three and a half months' worth of time and about \$5,000 is saved. It is advantageous for both parties if that person is chosen. However, the department does not choose based on the certification. The best person is always taken, whether they have OPOTA certification or not. What it does is allow extra points for a valuable training certificate which the candidate has received through three or four months of training.

Dr. Lekan noted that while not in agreement, he understands the position stated.

All commissioners agreed to leave the rule as it stands.

#### Rule IX – Certification

There are two typographical errors to be corrected, removing the dashes in the first paragraph.

#### Rule X- Appointments

Section 2. Minimum Age – Add the word “as” after the words “original appointment.”

#### Rule XI – Promotions

There had been previous discussion about the amount of time in the previous classification (rank) to be eligible to take a promotional examination, and if the probationary period of time was included in that amount of time. There was also discussion about potential conflict with recently changed state code.

It was determined that the promotional candidates probationary time will be included in the period of time in the previous classification (rank) to qualify as a candidate for a promotional examination.

Rule XII – Promotions Fire and Police Division

Section 2. Progression – Chief Spaetzel stated that they have reorganized their Police Department from the previous 4 Lieutenants and 3 Sergeants to 2 Lieutenants and 4 Sergeants. Within the next five years, Chief Spaetzel and 2 Lieutenants will all be retiring at about the same time, which will leave 4 Sergeants to assume all of the positions above. In the department everyone is trained to do the next level. If a Chief position should become available, not only the 2 Lieutenants but the 4 Sergeants should be eligible as well. The examination is competitive. Lieutenants have an advantage due to the job they are doing, but it doesn't necessarily make them the best candidate. Chief Spaetzel recommended that the position of Chief be opened to both Lieutenants and Sergeants.

Ms. Krebs recommended adding language that would permit a waiver of the existing rule upon approval of the Civil Service Commission. Mr. Potter agreed. Dr. Lekan suggested having language in the rules that the promotional testing would be available to the next lower rank upon approval of the Commission. Chief Lyons cautioned against waiving a rule at the time of a promotional examination which could be interpreted as unfair and advantageous. Jazmyn Stover will submit a request to the Law Director for language to be approved at the next meeting of the Civil Service Commission. In conjunction with this, Mr. Ebert will also look at Rule XI, Section 2 as written to conform with Rule XII, Section 2. It was noted that Rule XI is in reference to non-police and fire employees. Rule XII, Section 2 is exclusively for police and fire, but both rules address progression.

Section 6. Content of Examination- Chief Spaetzel asked about adding the word “abilities “to reflect the assessment tested category.

After considerable discussion, and a comment by Mr. Potter that abilities are subjective depending upon the person conducting the examination, it was agreed to add the word “abilities” after the phrase “possess the knowledge, and skills to perform.” It was **MOVED** by Krebs, second by Lekan, to add the word “abilities” as described.

**Yeas – Potter, Krebs, Lekan**  
**Nays - None.**

**Motion carried. 3-0.**

Section 7. Seniority Credit FOR THE POLICE DIVISION ONLY

Chief Spaetzel asked to change the seniority credit for police promotional examinations to zero points for years 0-3, and 1% for each year 4-8, up to a maximum of 5%.

Discussion followed. Dr. Lekan stated that favoring those who have been around longer would be a good idea.

**Motion** by Lekan, second by Krebs to change the language as requested by Police Chief Spaetzel, to zero points for years 0-3, and 1% for each year 4-8, up to a maximum of 5%.

**Yeas – Potter, Krebs, Lekan**

**Nays - None.**

**Motion carried. 3-0.**

Definition of terms relating to promotional examination

Chief Spaetzel suggested that terms relating to the “promotional exam” be defined specifically. There is confusion of the difference between “written” and “oral” tests. The usual procedure is a written multiple choice test for the sergeant applicants. A passing score on this written test moves them to the assessment center process, in which there are elements of writing and oral communications. The lieutenant and chief tests are all assessment center. The City of Westlake had major issues on its chief’s test over the interpretation of “written” test and whether that includes assessment center written testing.

The Commission deliberated the suggestion of Chief Spaetzel. It was **moved** by Potter, second by Krebs, to change the language to “Total score of the promotional examinations for both police and fire departments (combined score of the qualifying written test and the score of the assessment center segments) shall be multiplied by the Seniority Credit....etc.”

**Yeas – Potter, Krebs, Lekan**

**Nays - None.**

**Motion carried. 3-0.**

Section 8. PERFORMANCE EVALUATION CREDIT

**Motion** by Lekan, second by Krebs, that the efficiency credit shall be changed from the last three performance evaluation scores to the last three years performance evaluation scores for both the Police and Fire Divisions.

**Yeas – Potter, Krebs, Lekan**

**Nays - None.**

**Motion carried. 3-0.**

Dr. Lekan pointed out that the word “application” should be changed to “examination” in the final sentence of Section 8. **Motion** by Krebs, second by Lekan, to change the word as indicated.

**Yeas – Potter, Krebs, Lekan**

**Nays - None.**

**Motion carried. 3-0.**

Section 9. REVIEW OF EXAM PAPERS

**Motion** by Potter, second by Krebs, that the sentence reading “Results of oral segments of promotional exams cannot be protested” shall be changed to read “Results of assessment centers of promotional exams cannot be protested.”

**Yeas – Potter, Krebs, Lekan**

**Nays - None.**

**Motion carried. 3-0.**

Section 10. BREAKING OF TIE SCORES

Chief Spaetzel recommended that this section be changed from breaking tie scores by seniority to breaking tie scores by the average of performance evaluations. Discussion followed.

Mrs. Krebs stated that the Ohio Revised Code would lean more toward seniority as a tie breaker. Jazmyn Stover will check to see if there is a requirement in the Ohio Revised Code regarding tie-breakers.

RULE XIII – TRANSFERS, LAY-OFFS, LEAVES OF ABSENCE AND RESIGNATIONS

Mrs. Krebs stated that the reading in the beginning of the rule states: “No provision of this Section shall supersede or override 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.” The same reference is made in Section 2 (c) and Section 4 (d). Mrs. Krebs requested that this is unnecessary.

**Motion** by **Krebs**, second by Lekan to delete “No provision of this Section shall supersede or override 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” in the beginning of Rule XII and in Section 2 (c) and Section 4 (d) of Rule XII.

**Yeas – Potter, Krebs, Lekan**  
**Nays - None.**

**Motion carried. 3-0.**

Section 2. LAY-OFFS.

**Motion** by Lekan, second by Krebs, to change the wording of the first sentence to “Whenever it becomes necessary for a reduction in force.”

**Yeas – Potter, Krebs, Lekan**  
**Nays - None.**

**Motion carried. 3-0.**

Section 3. LEAVES OF ABSENCE

The word “time” shall be added after “an indefinite period of.”

Section 3 (b) Military Duty

**Motion** by Krebs, second by Lekan that the words under Permanent Disability “he shall be placed in another position” shall be changed to “shall be placed in another existing position.”

**Yeas – Potter, Krebs, Lekan**  
**Nays - None.**

**Motion carried. 3-0.**

Section 4. RESIGNATIONS AND WITHDRAWALS OF SAME

The first sentence reading in part “resigned in good standing” shall be changed to “resigned in good standing and is eligible for rehire.”

The next meeting of the Civil Service Commission will be held on Friday, May 15 at 2:00 p.m., to review a new draft of the Civil Service Rules and Regulations, incorporating the changes made by the commission. All changes will be in bold italics.

Meeting adjourned at 3:43 p.m.

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James R. Potter, Chairman

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Joan Kemper, Secretary