

**CITY OF SPOKANE**  
**CIVIL SERVICE COMMISSION MEETING**  
**MINUTES**  
**September 20, 2016**

Craig Hult, Chair, called the regular meeting to order at 9:30 a.m. Present were Craig Hult, Kathy Sewell and Mark Lindsey. Phyllis Gabel had an excused absence.

The agenda was amended as follows:

1. Remove Agenda Item V. Claim of Benjamin Krauss has been removed as Mr. Krauss has withdrawn his claim.
2. Agenda Item III. Classification Resolution. Addition of SPN 071 –Program Manager (CHHS)

**Agenda Item I.**

**Approval of Minutes:**

Mr. Craig Hult introduced the minutes from the regular meeting of August 16, 2016. Hearing no changes or corrections, the minutes stand as written.

**Agenda Item II.**

**Staff Activities:**

The Chief Examiner, Ms. Gita George-Hatcher reported the following statistics for the months of April:

**August:**

Announcements issued:	7	Classifications revised:	2
Examinations:	114	Classifications new/deleted:	4/2
Requisitions received:	27	Requisitions certified:	27
Class Surveys completed:	3	Class Surveys in progress:	3
Requisitions pending:	5	Requisitions canceled:	1
Average days from department initiation of request to receipt in Civil Service:	2.6		
Average days from requisition receipt to certification:	.1		
Percentage certified within 24 hours:	100%		
Average days from department initiation to completion of hire	1.0		

The Chief Examiner, Ms. George-Hatcher presented Staff Activities corrections from the August Commission meeting. She also clarified that when the number under Average Days from Department Initiation to Completion of Hire" shows completion within one day or less, the reason is because the overall numbers get skewed when there are Public Safety requisitions

being turned in with the selection information already filled out due to names being provided ahead of time for background check purposes.

Additionally, the Chief Examiner updated the Commission regarding continuation of the Rule Review process and reported that the Committee had reviewed Rules I through X. She informed the Commissioners about the job analysis training requested by the Analysts and that was provided in August by Biddle Consulting Group, Inc. The lecture part of the training has been completed and staff is now working with Biddle to complete a full job analysis of SPN 915 Police Sergeant. Ms. George-Hatcher reported that there had been good participation from incumbents, and supervisors in this process. Other news included a new lease contract for a copy machine that is saving the office thousands of dollars with thanks going to Crystal Rodgers and Kelsey Pearson for getting this completed. Ms. George-Hatcher also reported that she scheduled a meeting of the Civil Service initiated Diversity Recruitment Committee consisting of labor, management and community groups and will keep the Commission updated on the progress of this effort. The Chief Examiner informed the Commission that Public Safety Testing, Inc. has scheduled an open house on October 9, 2016 at 11:30 a.m. at the Fire Training Center focusing on the CPAT (physical agility test for entry level Firefighters) process and that Commissioners would be welcome to attend. Flyers on this event were provided to the Commission to attend.

The Chief Examiner reported that an issue pertaining to the conversion of the classified position vacancy of Parks and Recreation Division Manager - SPN 077, to an exempt position, titled Director – Parks Operations Manager had come to her attention. It was not anticipated to be on the Commission's agenda until next month. The Chief Examiner reported that she was notified only the previous day that the department was in a rush to recruit for this position.

The Parks Division was created by Council ordinance in 2013 and several departments were created within it allowing for two exempts per department. At the time of the passage of the ordinance, SPN 077 was filled by a classified employee, and no action was taken while it was occupied. The position has now become vacant due to retirement of the incumbent. She stated that the majority of the essential functions of the new position of Director – Parks Operations are the same as the classified position, but there have been a few additions to the job description that could change the level and nature of work to be performed.

The Chief Examiner explained that per the City Charter, all positions that have been classified are required to be filled through the classified process. As this action should therefore involve Commission action to de-classify the classified position, and because there is currently no established procedure of protocol that addresses this type of situation, she requested guidance from the Commission.

Mr. Hult provided the Commission's guidance that that due to the urgency of conducting a recruitment for this position, and in order to not hamper the business of the City from continuing, it would be permissible for the Chief Examiner to work with the parties to resolve the matter at hand with a report to the Commission; however, if the frequency of these types of situations increased, formal Commission action would be required in each case.

### **Agenda Item III.**

#### **Classification Resolution:**

The following classifications were adopted and deleted by the Commission:

#### **Adoptions:**

SPN 099            Customer Service Assistant (new)  
SPN 183            Fleet Warranty and Program Specialist (new)  
SPN 685            Golf Manager (title change and significant revisions to the specifications; SPN remains unchanged))  
SPN 071            Program Manager (CHHS)

#### **Deletions:**

SPN 219            Real Estate Agent  
SPN 220            Senior Real Estate Agent

A motion was made by Kathy Sewell and seconded by Mark Lindsey to approve the classifications to be adopted and deleted as presented by staff. The motion passed unanimously.

### **Agenda Item IV.**

#### **Voiding of List/s**

##### **Meter Reader SPN 441**

The Chief Examiner reported that this list is over a year old, was established 02/24/2015 and has only two names on it. She reported that labor and management have concurred to eliminate promotional requirements for this classification and void this list. A motion to void the list was put forth by Kathy Sewell and seconded by Mark Lindsey. The motion passed unanimously.

##### **WTE Power Plant Operator SPN 572 List**

The Chief Examiner reported that this list is over a year old, was established 07/10/2015 and there are thirteen names on the list. She reported that at the time of the transition of private sector employees into the City of Spokane, a simple training and Experience evaluation was conducted to facilitate the process. At this time, labor and management have concurred on the need to void the existing list and establish a new list by conducting a knowledge based examination.



A motion to void was put forth by Ms. Sewell, seconded by Mr. Lindsey. The motion passed unanimously.

**Fire Communications Specialist SPN 285**

The Chief Examiner reported that this list was established on 02/25/2016, is less than a year old and has fifty-three names on it. A request was received from Fire Chief Bobby Williams to void this list; however, there has been no concurrence from labor.

Fire Chief Bobby Williams addressed the Commission and stated that the Fire Department is requesting that the list be voided due to the need to add a driver license requirement to the minimum qualifications to the classification specification which currently does not have that requirement. Ms. George-Hatcher stated that the job specifications for the position of Fire Communications Specialist have never required a driver license; however staff is working with the department to add this requirement. She reported that editorial changes to add the driving function to the essential functions list and the related addition of a driver license requirement have been submitted to the department for review and response.

Fire Chief Williams stated that the department has always screened for driver licenses and that they were unaware that the specification did not contain the driver license requirement.

Randy Marler, Vice President of Local 29 addressed the Commission and stated that their position is that the existing list and process should be utilized for the current hiring in fairness to the applicants who submitted their applications and tested for the position.

Civil Service will continue to work with the department to add the driver license requirement while the department continues to utilize the existing list for the current hiring.

A motion to deny voiding of this list was put forth by Ms. Sewell, seconded by Mr. Lindsey. The motion was denied unanimously.

**Agenda Item V.**

**Claim of Benjamin Krauss**

Mr. Krauss has withdrawn his claim.

**Agenda Item VI.**

**Rule Deviation Memorandum of Understanding**

Ms. George-Hatcher provided the background on this Memorandum of Understanding, reiterated the information provided to the Commission on the agenda item cover sheet and confirmed that Commission members had received Mr. Mike Piccolo's legal guidance as well as

staff position papers. These same documents were also provided to the Fire Chief. She stated that the MOU, with the effective date of August 8, 2016 was received by Civil Service on September 7. This MOU alters Rule IV, Section 4 and Rule VI Section 16 which provide for the removal of names from the eligible register after five passovers or for cause as stated in the rules. The signed MOU calls for removal after one passover at the request of the department. The MOU only applies to classes of Open-Entry Firefighter (recruit and lateral) and Fire Communication Specialist...

The Chief Examiner also reported that this language had been voted upon at the June 8<sup>th</sup> meeting of the Rule Review Committee which unanimously approved the language to be brought before the Commission for adoption. Ms. George-Hatcher stated that although staff voiced concerns about this recommendation, she expressed to the Rule Review Committee that she would as required, bring all of the Rule Review Committee's recommendations to the Commission and provide staff recommendations which the Commission is not required to accept.

Fire Chief Williams addressed the Commission and explained that while they are pleased with the PST testing process and the wider recruitment net that is being cast as a result, the requirement to interview candidates five times before passing them over is creating a problem with hiring the best fit for the department. Chief Williams also stated that the caliber of candidates they are seeing now are much different than in the past and they are having to go through a number of names before making a hire. Additionally he reported that the department had just received a grant to hire 50 new Firefighters which will require the Fire Department to move quickly in filling those positions.

Ms. George-Hatcher clarified that those interviewed within the past six months are not required to be re-interviewed. She said that the five passover rule is unduly burdensome especially with respect to single department specific classifications but removals at the department's request and discretion for any reason after one passover had the potential of giving rise to discrimination complaints but noted that she has been willing to discuss alternatives and mentioned the various alternatives she had suggested in the past prior to the adoption of the Interim Rule Review Committee's recommendations. The new rule provides the Fire Department with ten names for the first Firefighter vacancy and four names for every additional vacancy.

Mr. Piccolo summarized his legal opinion. His opinion involved a review of issues associated with RCW 41.56 – the States' collective bargaining statute and RCW 41.08 – the State's civil service statute for firefighters. With respect RCW 41.56 which was the basis of the 1999 ruling in Spokane v. Civil Service Commission, he noted that there was nothing in that ruling extended the holding to permissive or non-mandatory subjects of bargaining, however, the Court's ruling



did not specifically prohibit such a holding. He also explained that because this MOU has been negotiated, once a permissive subject has been agreed to between labor and management, that it then becomes subject to collective bargaining and enforcement action through PERC may be an option if either party fails to perform as agreed by the MOU.

With respect to RCW 41.08, the review involved whether the MOU substantially accomplished the purpose of the chapter. Mr. Piccolo stated he did not find any provision in Chapter 41.08 RCW that provided for removal of names from an eligibility list. There were a couple of references to non-applicable WAC regulations not directly related to RCW 41.08 that allowed for removals "for good and sufficient reason." Mr. Piccolo referenced the 2004 Seattle Police Officers v. City of Seattle case in which the court ruled that a rule of five for promotions opportunities for police officers substantially accomplished the purpose of state law regarding civil service for police officers. He said that cities that have provided for civil service must accomplish only the purpose and not the specific methodology prescribed in the state statute.

Mr. Piccolo clarified that in determining whether the local rule substantially accomplishes the purpose of RCW 41.08, his opinion was that the Court would look at the following factors to determine whether there was substantial compliance:

1. The local rule was similar to rules adopted by other jurisdictions;
2. There was supporting material/reasoning that the local rule that substantially accomplished the purpose of Chapter 41.08, including merit based appointments; and
3. The local rule is a well-established and well-recognized method of carrying out and accomplishing the purposes of civil service.

The Chief Examiner said that she has reviewed a number of Civil Service Rules for cities in Washington including our comparable agencies and that from her research, this proposed rule in the MOU is not similar to the rules in the other jurisdictions or those in the Model Civic Service Rules provided on the Municipal Research and Services Corporation (MRSC) website. She also stated that no supporting materials were provided for the rule that provides evidence of substantially accomplishing the purpose of RCW 41.08, and lastly, the proposed rule is not a well-established or well-recognized method of carrying out and accomplishing the purpose of Civil Service in Spokane.

There was considerable discussion of the matter. Ms. George-Hatcher cautioned that the consequences of implementing this MOU would have long term devastating impacts pertaining to the protection of the very employees whom the union has sworn to protect. This would throw open all rules to be bargained, causing Civil Service protections for employees to change based on collective bargaining agreements that are dependent on the bargaining climate and

the persons and personalities involved. She also expressed concern that leaving the removal of names to the discretion of the department could result in inconsistent, arbitrary or capricious decisions that have the potential to throw the City open to claims of inequitable treatment or discrimination. Ms. George-Hatcher requested communication with the department and to be able to take this matter to the Rule Review Committee

Mr. Piccolo stated that he was concerned with the last part of the proposed rule that provides for removal from the list after one pass over at the department's request. He recommended that the issue be addressed by the rule review committee to further review this rule in light of the concerns expressed to the Commission.

Ms. George-Hatcher said that there are only two more rule chapters left for the Committee to review as part of the whole Rule Review process.

Chief Williams addressed the Commission and requested consideration of the specific rule as soon as possible because there could be no guarantees as to when the entire rule review process will be completed due to the urgent need to hire 50 new Firefighters or risk losing the SAFER grant. Mr. Piccolo stated that although the rules are adopted as a whole as part of Rule Review that there has been a situation in the recent past where a specific rule was brought to the Commission for adoption.

Mr. Lindsey stressed the need for rules to be followed in order to protect both the employees and the department; that Civil Service has been adopted by the community and the established rules should be followed. He also stated that there is an established process for rulemaking and if there are concerns about the utility of certain existing rules, they can be reviewed. He cautioned that frequent exceptions can be problematic and stressed that it is important to have the best possible procedures to protect the departments, employees and citizens. He advised that the Rule Review Committee should have the opportunity to review the concerns raised regarding the rule change MOU.

Mr. Hult said that if there are good and valid reasons to look at a rule separately in a specific instance, then the Commission would be open to it because the business of the City should not be hampered. He stated that if this rule is on the agenda for the next meeting, it will be addressed. Ms. George-Hatcher said that this rule will be discussed at the next Rule Review Committee meeting scheduled for the following week.

The Commission directed the Chief Examiner to work this issue out in rule review and when completed, place it on the Commission's agenda for consideration.

**Agenda Item VII.**  
**Other Business**

The Commission went into Executive Session at 10:40 a.m. and returned at 10:55 a.m.

There being no additional business to come before the Commission, the meeting was adjourned at 10:55 a.m.

A handwritten signature in blue ink, appearing to read 'Gita S. George-Hatcher', with a long horizontal flourish extending to the right.

Gita S. George-Hatcher  
Chief Examiner