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DATE 1/12/10 BY CSC / [signature]

**PIERCE COUNTY CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING
Tuesday, October 13, 2009**

AGENDA ITEM I: Call to Order

The regular meeting of the Pierce County Civil Service Commission (PCCSC) for Sheriff's Employees was called to order at 5:02 p.m. on Tuesday, October 13, 2009. The meeting was held in Conference Room D, Hess Building, 902 Tacoma Avenue South, Tacoma, Washington.

COMMISSIONERS PRESENT: Commissioner Richard Sokolowski, Chair; Commissioner Gail Merritt-Smith; Commissioner Michael Branchini

STAFF PRESENT: Sandy Pietz, Chief Examiner; Phil Prettyman, Deputy Prosecuting Attorney

AGENDA ITEM II: Approval of Minutes

It was moved by Commissioner Branchini and seconded by Commissioner Merritt-Smith to approve the minutes of the meetings held on: March 2, 2009; March 10, 2009; April 28, 2009; May 4, 2009; May 18, 2009; July 7, 2009. The motion carried.

AGENDA ITEM III: Interpretation of Rule 9.3 – Referral of Names from a Certified Employment Register.

Chair Sokolowski stated that the item before the Commission is a request by Local 3752 and Correctional Lt. Hal Stewart for interpretation of Rule 9.3 having to do with the referral of names from a certified employment register. The request is as a result of an interpretation provided by Chief Examiner Pietz.

Mr. Bill Dennis, representing AFSCME Local 3752, stated the union and C/Lt. Stewart disagree with the Chief Examiner's ruling, specifically Rule 8, Duration of Registers; the promotional register states that the term of eligibility for each promotional register and of the names appearing thereon shall be two years, Rule 8.7. Mr. Dennis stated that the rule clearly states the term of the register is two years and the union's position is that for a name on the register to be valid the position for which they are promoting needs to be available within the term of the register. He added to his knowledge there is no alternative in terms of presenting a name from the register for a future position opening. He stated if that were the case, it would limit the ability of others who have not tested yet for a new register for a future opening that may not even be known yet, so the Sheriff could stockpile people from a particular register for future positions of unknown hiring date.

C/Lt. Hal Stewart stated that the promotional register says two years, and that the current Correctional Captain register expired approximately September 17 and that per the Sheriff's e-mail there would be no vacant position until October 19th. During this period the Chief Examiner gave an interpretation that he perceives to mean that this could be carried on indefinitely with no limit. He stated that is unfair to the candidate that would be possibly looking at a position especially in an area where there are not a lot of promotions. He stated that Rule 8.7 seems very clear that the register expires after two years and there is no mention that if a list of names is requested before that point that it continues the list.

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C/Lt. Stewart referenced Rule 9.2 that states whenever the appointing authority wishes to fill a vacancy a written request must be made to the Chief Examiner stating the number of positions to be filled, and that at the time of the request there were no vacant positions available and it was over a month before there could be a vacant position. He cited Rule 9.3 that states the appointing authority shall forthwith appoint a person from those referred to a vacant position or positions, and that there was not a vacant position. He stated there is no means for an extension to the register and that to go past the two years is not provided for in the Rules.

Leann Paluck, representing the Guild, stated the Guild supports the position of 3752 that there cannot be a promotion off an expired list if the vacancy doesn't occur until after the register expires, so after September 17th our position is that there could not be a promotion off the expired list. She stated the belief that the remedy for this situation is actually under Rule 9.5, provisional appointments, and the Guild's position is that there should have been a provisional appointment until a new list was established for Correctional Captain for the anticipated vacancy.

Undersheriff Eileen Bisson advised the Commission that when promotional testing for 2009 was planned with Civil Service, the department did not anticipate a Correctional Captain vacancy. There became a promotion at the Chief level for corrections and the Sheriff looked at several things. He wanted to be sure the person he wanted to promote to Chief was off probation in the Correctional Captain classification, and that is Martha Karr whose probation ended October 5th. The next date for a promotion for the pay period was October 19th. She stated that previously a promotion had taken place in Corrections where the individual was referred and selected prior to the expiration of the register, with the effective date of the promotion after the expiration of the register.

C/O Bruce Meeker stated that there was a sergeant promoted under these circumstances and there was animosity created with those who were getting ready to test again and that someone was promoted off of a list that was expired. He stated his opinion that when the register expires you start the process over again and use temporary sergeants and temporary lieutenants. He stated that a test could be given back in 1984 and say the register could run for 25 years. He stated his belief that the proper way is once the list has expired to run the test again and start it from fresh.

C/Lt. Stewart stated the Sheriff had the opportunity to complete this process before the list expired and that he chose to pick a date that was over a month after the list expired to make his promotions, and that the Correctional Captain promotion could have taken place prior to the expiration of the list. He stated his opinion that when a promotional list expires there should always be another list in place, and that it's very clear the list is good for two years and if there's a rule it needs to be followed.

Phil Prettyman, legal advisor to the Commission, stated his opinion that if a name is selected off a register that isn't expired, there is nothing wrong with picking a name off a list that isn't expired and that is what Rule 8.7 speaks to. He cited Rule 9.1 which speaks to how each vacancy is to be filled, and that it says "each vacancy shall be anticipated sufficiently in advance to permit the chief examiner to determine who may be eligible for appointment or if necessary to establish classification or appropriate employment register" and stated his opinion that the rule talks about a period of time when interviewing etc. is being done. He discussed Rule 9.3 which talks about the appointing authority shall forthwith appoint a person from those referred, and that the term "forthwith" means "a variety of connotations...the term does not mean instantaneously or without any interval of time but it rather means as expeditiously as under the circumstances if reasonably possible." He stated that in terms of the selection process and when the appointing is going on, there may be a time when someone is pulled off a list and they may be appointed while the register is still unexpired, or they may be appointed

afterwards, and that he does not believe that is a problem. Mr. Prettyman cited information from the American Jurisprudence which talks about some basic rules of appointment for public employees and officers, that “one cannot be appointed to an office where there is no vacancy”, “two persons can’t serve the same office at the same time”, “this rule does not prevent appointments made in anticipation of a vacancy that ultimately occurs”, “the appointing authority may make a prospective appointment, that is an appointment that fills a prospective vacancy before the vacancy occurs and such appointments are generally valid” and that the only time it states that you can’t do it is if there is a rule that says you can’t and we don’t have that rule. He stated he supports the Chief Examiner’s interpretation because the situation is that a candidate was pulled from a valid unexpired list and the appointment could have been made before it expired or it could have been made after depending how long the selection process takes.

There was considerable discussion of various scenarios of making appointments from eligible lists, including concerns about potential extended appointment dates past the expiration date of a list due to favoritism, and including potential of having an appointment overlap an expired list and a new list.

Bill Dennis stated his opinion that there needs to be a stated period of time to make an appointment from a list. Commissioner Sokolowski stated that in terms of meeting the part of the rule requiring “forthwith” that it means without delay, that the process is moving along reasonably to make an appointment.

Leann Paluck stated that Rule 9.5 would fill the gap when there isn’t a list so it envisions a time where there is not a list and there is a vacant position that needs to be filled, and anticipates that there is a date by which the lists are no longer valid for vacancies. She stated the key issue here is that there wasn’t a vacancy before the list expired. Phil Prettyman clarified that there was an appointment made from a viable list that had not expired for an anticipated vacancy.

Following further discussion of various what-if scenarios, Phil Prettyman stated that forthwith is defined as being done at a reasonable period of time, not a year later, and that it must be done in as expeditious manner as circumstances are reasonably possible.

Sandy Pietz clarified that the County currently has a budgetary process in place that would preclude an appointment being made with an effective date a year later. She stated that to fill a position vacancy requires an approved “Request to Fill” form from Budget & Finance, and that names cannot be referred from a register until the Request to Fill is approved.

Chair Sokolowski stated Rule 9.2 says that “whenever” the appointing authority wishes to fill a vacancy they can put in the written request, and then the Chief Examiner is obligated under Rule 9.3 to refer from a certified register the names of the three persons highest on the employment register. The Chief Examiner has to use the register that is in effect when that request comes in. He stated that in terms of filling a vacancy in a prospective or anticipated manner that it has to be done “forthwith” and that means without delay, and filling a vacancy in three, four, five months or a year is not “forthwith”. He stated it needs to be within a reasonable period of time for interviews or the selection process to be completed but is not something that can be delayed for long periods of time. He stated the appointing authority has the discretion to determine when and if a vacancy should be filled but it has to be filled “forthwith”. Chair Sokolowski stated he did not see anything in the Rules that requires the appointing authority to request to fill a vacancy and the vacancy must be filled within the same period of time as the list is valid.

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Sandy Pietz noted that there is also a requirement in the Rules that the Chief Examiner must test and establish a list within 120 days of when a vacancy exists or as requested by the appointing authority, so that if there was a gap between when a register expired and when a new list is established, a vacancy would be filled by a provisional appointment.

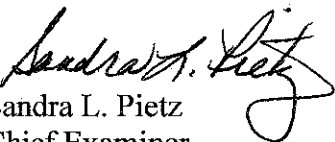
Commissioner Merritt-Smith stated her opinion that the process was completed in a timely manner, within a six week time period. Commissioner Branchini stated that with the timeline that has been presented, the process meets the definition of “forthwith”.

Hearing no further discussion, Commissioner Merritt-Smith moved to uphold the decision of the Chief Examiner regarding this matter. Commissioner Branchini seconded the motion and the motion carried.

NEXT MEETING: The next regular meeting of the Civil Service Commission is scheduled for November 10, 2009.

ADJOURN: With no further business to come before the Commission, the meeting adjourned at 5:49 p.m.

Respectfully submitted:



Sandra L. Pietz
Chief Examiner