

**TOWN OF EAST HARTFORD PERSONNEL APPEALS BOARD
SPECIAL MEETING MINUTES**

Monday, November 8, 2021
Virtual Meeting via Microsoft Teams

Present:

Personnel Appeals Board Members

Shaun Jones, Chair
Godfred T. Ansah
Richard Bates

Appellant

Ofc. Jason Guerrero

Counsel for Management

Floyd Dugas, Esq.

Counsel for the Personnel Appeals Board

Richard Gentile, Assistant Corporation Counsel

Other

Stephen McEleney, Esq.
Michael Daniels, Clerk

Absent:

Personnel Appeals Board Member

Rosamond White, Alternate

CALL TO ORDER

Chair Shaun Jones called the meeting to order at 5:33 PM. Mr. Daniels called the roll.

Members indicated that they received the agenda via email and did not require one to be sent in the mail.

Mr. Ansah moved to waive receiving the agenda via US Mail.

Mr. Bates seconded. All voted in favor, none voted opposed.

Chair Jones moved to amend the minutes of November 1, 2021, to show that during the conversation between Mr. Ansah and Ms. White regarding the Recruitment Manual, Mr. Ansah further explained that it was not his intention to usurp the powers of the H.R. Director or any other government entity within the Town of East Hartford but by utilizing his experience and the experience of everyone he was trying to minimize potential future issues resulting in appeals that could be avoided in the future because of everybody

being on the same page with respect to the merit rules and procedure, and Mr. Ansah additionally mentioned that in the recommendation, the Personnel Director was supposed to be one of the members working on the Recruitment Manual.

Mr. Bates seconded. All voted in favor, none voted opposed.

Mr. Ansah moved to approve the minutes of November 1, 2021.

Mr. Bates seconded. All voted in favor, none voted opposed.

Mr. Bates said he considers the November 3rd memo from the Corporation Counsel to the Human Resources Director to be invalid because it incorrectly refers to the minutes of the July 29th meeting instead of the August 2nd meeting. Atty. Gentile said this is a Scrivener's error and does not invalidate the opinion.

Chair Jones said he believes the Board intended to consider Ofc. Guerrera and the other two individuals they added to the eligibility list as having passed the oral exam. Chair Jones said he would like an official opinion from Corporation Counsel addressed to the Personnel Appeals Board to clarify the meaning of the original job announcement with respect to the grading of the oral exam. He also said he wanted clarification on if candidates can still be considered to have failed the oral exam if the Personnel Appeals Board has affirmed their appeals of that oral exam. He said he believes the Board intended to consider the candidates as having passed the oral exam but did not add additional points to their scores because they did not feel they were the appropriate party to do this.

Mr. Bates said he is not looking for a formal opinion from Corporation Counsel. He read from the August 2, 2021, minutes where he said he hoped a reasonable person could determine the ordering of the candidates on the eligibility list within the guidelines of the personnel department. He asked to have an outside attorney to review the matter of seniority points not being taken into consideration when ranking the additional names on the list.

Mr. Ansah said he thought the three additional names would be added to the list in the 8th, 9th, and 10th positions out of a total of ten and would not displace any names already on the list.

Ofc. Guerrera asked for the spelling of his name to be corrected in any future opinion letters.

Chair Jones asked if any member wanted to make a motion to ask the Corporation Counsel for a clarification on if the Board's affirmation of an appeal of the oral exam should mean the candidate should be considered as having passed the oral exam. Mr. Bates said that he did not think Corporation Counsel would provide any information beyond the information provided in the memo to the Human Resources Director. He reiterated his request for an outside attorney's

opinion. Chair Jones suggested that the Board request an official opinion from Corporation Counsel addressed to the Board to clarify their jurisdiction.

Mr. Bates explained that he considers the appeals from Ofc. Guerrero and Ofc. Thomas to be separate appeals from those already decided. He believes they fall under the Board's authority to hear appeals regarding where names are placed on the eligibility list. Chair Jones said there could be a question to the Corporation Counsel about how the Board felt their authority had been limited and they were discouraged to grade the candidates, but now they are limited because they did not grade the candidates.

Mr. Bates said he believes the decision to not include seniority points in ranking the additional names violates the Personnel Rules and Merit System. He said he believes the Town is trying to put the responsibility for that decision on the Personnel Appeals Board, but he does not believe the Board's decisions in the appeals should allow for seniority points to be disregarded. He said the Board's intention was for the names to be added to the list according to the Personnel Rules and Merit System, which he believes would include seniority points. Chair Jones said that if the Town considers Ofc. Guerrero as still failing having failed the oral exam, then he would not be able to be placed on the eligibility list, but the Board's decision to put him on the list means he should be considered as passing the oral exam.

Chair Jones suggested that there be a motion to ask the Corporation Counsel for a formal opinion to the Personnel Appeals Board clarifying how their decisions in the appeals are to be carried out with respect to the Personnel Rules and Merit System and the police contract. He asked that the Corporation Counsel clarify if they consider Ofc. Guerrero as still having failed the oral exam despite his appeal of that exam having been affirmed. He additionally asked for the opinion to clarify if the Board's decision had authorized the Human Resources Director to violate the Personnel Rules in disregarding seniority points, and if so, how the Board has that authority, or if the H.R. Director has the authority to do that independent of the Board.

Atty. Gentile said his silence during the preceding discussion should not be taken to mean he agrees with what has been asserted in the discussion. He said Board members are not interpreting the memo from Corporation Counsel to the HR Director correctly. He said the opinion says that by not re-scoring the candidates or requiring them to be placed in a specific order, the Board's decision only required the names to be added to the list and did not require the inclusion of seniority points or anything else to be done. Atty. Gentile pointed out that Mr. Ansah's comments have indicated that he interpreted the Board's decision this way. Atty. Gentile said there is no authority or funding for the Board to hire outside counsel. He said he would only issue an opinion to the Board if the questions are requested specifically in writing.

Mr. Ansah said he is not sure if the Board has the right to ask for outside counsel and is not sure where funding to hire outside counsel would come from. Mr. Bates said he believes nothing prohibits the Board from hiring outside counsel.

Ofc. Guerrero asked if the Board reports to the Mayor and if having a new Mayor may alter the proceedings. Atty. Gentile said this is not the case, as the Board is an independent entity.

Atty. McEleney suggested that the Board should clarify what it intended to do through its motions when deciding the appeals. Atty. Dugas said the Board's scope is very limited and it is already exceeding its authority. Chair Jones said he does not believe the Board can clarify its earlier decision based on the Corporation Counsel's previous opinion memo to the H.R. Director saying that the Board does not have authority in the current appeals.

Chair Jones said he will prepare a written request for an opinion from Corporation Counsel. He wishes for Corporation Counsel to give an opinion directly to the Board, rather than indirectly through the H.R. Director, stating whether the Board has authority in the current appeals in light of the eligibility list having been amended. Additionally, he wants the Corporation Counsel to clarify how the Human Resources Director was able to not follow the Personnel Rules in omitting points based on the Board's decisions and why the Human Resources Director still considers Ofc. Guerrero to have failed the oral exam despite his appeal having been affirmed and the Board never saying he should be considered to have failed the oral exam.

Atty. McEleney said the Corporation Counsel trying to limit the power of the Personnel Appeals Board despite the Board having overturned decisions in the past. He suggested they should act based on what they think is right and then let the Town challenge their actions if they disagree.

Mr. Bates said the Board was limited in their motions based on the court order and would have been very specific about what happened if not for the order. He said he disagrees with the portrayal of the Board being silent because he had called for the Personnel Rules be followed during the August 2nd minutes.

Chair Jones said he thinks it would be a violation of the Personnel Rules to not include seniority points and does not think the Board gave authority for the Human Resources Director to not include seniority based on their not re-grading the exam. Mr. Bates said he does not believe the Board could have specifically ordered the names on the list or given a grade without violating the protective order. Chair Jones agreed with this interpretation.

Atty. Gentile said that the Corporation Counsel's memo does not claim that the H.R. Director was able to violate the Personnel Rules; rather it states that her actions were consistent with the Personnel Rules and with the Board's decision. Atty. Gentile asked who Atty. McEleney was

representing at this meeting. Atty. McEleney said he was attending as an interested citizen and interested in the democratic process.

Atty. Gentile said he would not issue the Board a written opinion unless specifically asked for one. He believes the Board only acted in their authority regarding whether or not a name should appear on the eligibility list, not acting in their authority regarding scoring. He said this seems to be consistent with Mr. Ansah's interpretation of their decision.

Mr. Bates asked how the Board could have provided updated scores without violating the protective order. Atty. Gentile said he would require a written request for an official opinion. Chair Jones said another meeting will be needed to request an official opinion in writing. He said the issue is that Atty. Chadwick's memo said the Board did not require seniority points to be included, but he believes that by affirming the appeal and stating that the names should be added to the list consistent with the Personnel Rules, the Board intended for the candidates to be considered as having passed the oral exam which would require seniority points to be included. He does not believe the Board specifically needed to request seniority points to be added because they are already called for in the Personnel Rules. He will call another meeting to request an opinion based on these issues, and he says the Board will need to go along with the answer from Corporation Counsel.

Chair Jones asked if recordings of previous meetings are available. Mr. Daniels said open session meeting recordings are available via YouTube links on the Town's website. Ofc. Guerrera reminded the Board that there is a 90-day limit for an appeal to be decided. Atty. Gentile said he interprets the 90 days as starting when the Board accepts the appeal and that is a provision for an extension of 60 days.

The Board set a meeting for Thursday, November 18th at 5:30 PM.

Mr. Bates moved to adjourn.

Mr. Ansah seconded. All voted in favor, none voted opposed.

Meeting adjourned at 7:17 PM