

**CITY OF LOS ANGELES
BOARD OF FIRE COMMISSIONERS
HUMAN RELATIONS DEVELOPMENT (HRDC)/PERSONNEL COMMITTEE**

BFC 12-151
DRAFT

**Minutes
February 13, 2012**

1. **ROLL CALL** – Commissioner Casimiro Tolentino, as Chairperson of the Personnel Committee, called the meeting to order at 9:02 a.m. in the Board Room. Commissioner Genethia Hudley-Hayes was present. He commented that normally the meeting is held in the 1830 Conference room; he apologized as the room did not encourage dialogue. Hopefully, they can work through it and the next Committee meeting will be set up in other conference room. Deputy City Attorney Janet Jackson was also present.
2. **PUBLIC COMMENT** – None.
3. **NEW BUSINESS**

- A. Verbal report on the EEOC claim of Anthony Almeida and Department's implementation of settlement agreement.

Commissioner Tolentino commented that the important item for Commissioners is that there is a degree of transparency of everything done in the Department; the important part for him is that he reads for the first time the EEOC settlement agreement in the newspaper versus something coming to the Commissioners as to what is occurring. Today, he hopes they can review some of these things and bring it to the Fire Commissioners.

Chief Deputy Daren M. Palacios apologized. He is aware they did have a closed session and they were briefed on that settlement a while back, regarding Almeida, because it did have to go to Personnel Committee and Budget and Finance for final approval and they did settle it. EEOC had an agreement that they were going to run the press statement by LAFD and by the City Attorney prior to release, and they did not abide by that. LAFD was as surprised as Commissioners were. They had no idea the news article was going to be there, per the City Attorney that negotiated the settlement, Jenny Park.

In terms of where we are in terms of implementing the settlement terms, he asked Ms. Maria Aslan, Sr. Personnel Analyst, to present this information. She was pulled in as a subject matter expert at the end to help develop the training. He is aware they have identified a few people to do the training; Ms. Aslan was a subject matter expert and he will let her articulate the points on that item. He asked for confirmation regarding what the Commissioners were requesting.

Commissioner Hudley-Hayes asked that they be reminded of the claim, the Department's settlement agreement and how it is being implemented.

Ms. Aslan, Fire Department's EEO Coordinator, stated that the Department has been working on the implementation as early as August 2011 because they knew this was coming up. The actual conciliation agreement went before full Council in Closed Session on October 5; they were expecting the EEOC to signoff before the end of the calendar year of 2011; they did not receive the signoff until the end of January; this provided them three additional months to work on the implementation of the conciliation agreement. There are three different requirements that come with the conciliation agreement: the distribution element, the training element, and the invitation/reporting element with the EEOC. Distribution element will begin as early as next week; it is a distribution of a posting that goes to all Fire Department bulletins

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that talks about the conciliation, specifically what our commitment is going to be and that will be to provide training in order to potentially eliminate further occurrences of this type of incidents. It will go out to all Fire Department bulletins; hopefully, Fire Chief is signing off on it today; the bulletin was put together by the EEOC, not the Fire Department.

Commissioner Tolentino asked if they had a copy of that and Commissioner Hudley-Hayes asked if they could get a copy to see it before it goes out.

Ms. Aslan responded that it is going to be going out this week, they can get the Commissioners a copy of the signed bulletin; it is drafted by the EEOC. The Fire Department in agreement with the EEOC put the bulletin together; she believed they had very little leniency on changing the wording on the bulletin, or the posting.

Commissioner Hudley-Hayes commented they do not want to change the wording. The problem as she sees it, more and more at Commission meetings they keep getting things that come to them that have already been done and that they have no idea about; there was no discussion, there was no closed session. If the Commission is the body that has to look at policies, procedures and practices, and rules and regulations, it is difficult for her to feel as though she is discharging her duty if she comes to a Commission meeting and she gets a slew of items that have already happened and she does not know anything about any of them; and then the Commission is asked to 'receive and file' the items. That feels to her like they are simply 'rubberstamping' something they have not talked about, that they do not know anything about, and possibly 4-5 months later they see something in the paper or somebody 'accosts' them. Commissioner Tolentino agreed. Recently she was accosted by something that happened at UCLA; she had no idea what it was; that is where their frustration is coming in. As a Commissioner, she is not trying to second guess the Department; she just wants to see things ahead of time. So if it is just sent to Commissioners, at least they will know.

Ms. Aslan stated it was her understanding that the posting may have been part of the actual conciliation package which she did not receive until last week; she only had a draft in her possession. Ms. Aslan stated to both Commissioners that she would make every effort in the future, as she has in the past, to ask if all the proper chain of commands or the proper chains have been informed of what is occurring; she made that commitment to the Commission.

Commissioner Hudley-Hayes asked that the information be provided to the entire Commission; Deputy City Attorney suggested providing it to the Board Secretary for complete distribution to the entire Commission.

Ms. Aslan requested clarification; would they like to receive a copy of it [bulletin] first before sending it for full Department-wide distribution. Commissioner Hudley-Hayes stated yes.

Ms. Aslan stated that the other distribution that would be occurring is the Discrimination Prevention Policy Handbook. The goal for the EEOC was to ensure staff knows the proper complaint process, expectations in preventing discrimination, retaliation, harassment and any type of hazing. The training element is going to be the biggest challenge; as early as October 13 the LAFD identified four different DVDs that could be installed in Department-wide computers; titles reviewed/considered are *Harassment Is, a Clear Picture: Harassment in the Public Sector*, *Four Generations at Work* and *Drop by Drop Subtle Discrimination*. They felt this was a good opportunity for them to address several areas of potential discrimination harassment. It is her understanding that the DVDs are in the process of being purchased; she recalls meeting with In-Service Training staff in August after the DVDs were identified

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with the assistance of the Personnel Department and asked if there were going to be any issues with the vendor if they decided to modify their talking points or their guides and she was assured that there were not, but she believes they are still waiting for the purchase of the DVDs. She believes the trainer has been identified as our Human Relations Advocate, Mr. Greg Apodaca, and they anticipate the first training session will occur in July 2012. The EEOC was adamant and the conciliation agreement states that the trainers will be the Chief Officers; Chief Officers will be training their subordinate staff members. The Human Relations Advocate, Mr. Apodaca, will train the Chief Officers on how to present the materials; similar to a train-the-trainer process. Commissioner Hudley-Hayes stated that this may be the only way to proceed at this point in time, but she is not a big fan of train-the-trainer. Commissioner Tolentino stated it seems to be too top down.

Ms. Aslan stated that it is going to be a challenge, it is from the top down; ironically, when they went before the Council on October 5, that was one of their biggest concerns; they felt the Command Staff were not fully taking responsibility. The EEOC conciliation agreement was written to almost prematurely address the Council's concern and stated those at the top will be responsible for providing the training because they are expected to clearly communicate the Department's expectations to their command.

Commissioner Hudley-Hayes asked in regard to the train-the-trainer element; will there be some way built in that they can sample to see how that is being delivered? One of the problems with training of the trainers is that everybody, which is what human beings do, takes a piece of something, i.e. once I am delivering it from my perspective, sometimes things go awry. Because we want uniformity, how will you look to make sure there is consistency?

Ms. Aslan stated they were not given a lot of leniency and the EEOC had the same concerns. The training is a two-part training for the Chief Officers; it is your basic EEO for supervisors which is an 8-hour training that the Personnel Department puts together which they will try to condense to a 4-hour training, included in that period will be how to use the DVD that is going to be distributed Department-wide and how to use the talking points or the leader's guides in presenting that information. The Chief Officers are not going to do the EEO and You or EEO for Supervisors training to their commands, they are going to be the ones presenting the vendor's DVD; they will have very specific talking points, they are going to be dissuaded from adding their own creativity, dissuaded from perhaps giving the [perception] 'this is not me, this is something the Administration wants us to do' and she as the EEO Coordinator is committed to make site visits to monitor the presentation and in addition to that the conciliation agreement mandates that they let the EEOC know when the training is going to be performed. Making some drop-in visits to monitor the training is to ensure consistency.

Commissioner Tolentino inquired regarding the third element. Ms. Aslan stated that regarding the invitation/reporting element, individuals are going to have to be presented with comment cards which will be distributed by the Chief Officers when arriving at the Fire Station (her vision) and are passed out following the presentation. Chief Officers are supposed to collect the comment cards and return them to Ms. Aslan. She will be monitoring the progress of the training, review comments, share with management what might be good/bad comments, obtain a sampling of the success rate. The challenge in this is that it is a 3-year conciliation agreement; similar to the Goverson distribution. Another challenge in the distribution is having members understand that this is not somebody else's doing as with the Goverson distribution; it is EEO-related materials, this is our doing and we need to comply as closely as possible.

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Commissioner Tolentino commented it appears there is a lot of information to be absorbed; if this item is sent to the Fire Commission, a written report would be more appropriate.

MOTION (Tolentino/Hudley-Hayes): That the Board is provided a written report regarding the EEOC matter.

ADOPTED: AYES – 2

Deputy City Attorney Janet Jackson asked if it is for the first meeting in March; Commissioner Tolentino clarified for whichever one fits.

Ms. Aslan requested clarification regarding the information for the written Board report as she may be the person tasked with it. Commissioner Tolentino commented what she presented today should be included and add-on the history of the claim, the process within the settlement agreement, the terms of the settlement and a timetable of how everything will be accomplished. Commissioner Hudley-Hayes added, so they understand the training component, in addition to what Ms. Aslan reported about the history; the settlement and she wants to understand the three elements shared today: distribution, training and invitation/monitoring/recording.

Commissioner Tolentino stated that this may be addressed in the training portion, but is the Department taking proactive steps so none of this happens again; if it is the training that is fine, but if there are things additionally that the Department can do, in addition to what the settlement agreement states, please let them know. Ms. Aslan stated that the implementation of the Complaint Tracking System is going to help the Department capture these types of complaints much quicker, she believes that the Professional Standards Division (PSD) is going to provide the benefit of moving these types of investigations much quicker and she also believes that the close working relationship between PSD and the other Bureaus and the Offices is most likely going to help them monitor those individuals that perhaps they have tried to keep out of harms way in a manner where they may have been temporarily relocated/detailed; which is one of the issues that lead to the settlement.

Commissioner Tolentino stated that would be good to put in the report so that if we need to go beyond the reconciliation/settlement agreement that is a positive step for the Department.

Chief Deputy Palacios introduced Captain Richard Fields to provide an update on the videos being acquired; this information will be included in the written report as well. He added that he is clear regarding action items that they are to inform the Commission ahead of time and address all the other action items.

Captain Fields reported they are in the process of purchasing the videos from CRM and one of their issues was the copyrights. Once they sell us one copy of the DVD, what are we going to do with it? We assured them that we were going to keep it in-house and manage the distribution. They have agreed to allow us to use it as part of our learning management system; each individual member can log into the learning management system and watch the video, therefore we would have a tracking of the individual, not just the group, and track that progress. They have placed the order, the purchase order is in place and they are waiting for their signatures back releasing the copyright issue to the City; with the City's process he anticipates it should be 4-6 weeks before the videos are in-hand.

Commissioner Tolentino asked for the cost of the videos. Captain Fields responded that the list price for the first two titles is \$845 a piece and the remaining two are \$945 a piece and all

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are being paid by Vocational Education Training (VET) funds; it is an alliance that the Fire Department has with East L.A. College for 393's or CalJAC reporting. Every month each work location turns in a monthly report of training, those hours translate into reimbursement monies from the participating educational institutions. They use those funds to then purchase things that directly relate to the training of members.

Commissioner Hudley-Hayes asked for clarification. Captain Fields stated that there are two basic funds; CalJAC and VET. Depending on what we are trying to purchase (they cannot purchase salaries, pay overtime), but they can purchase materials, products, i.e. the Apple Computer Project was purchased, all the hardware was purchased through VET funds. So when the Fire Station goes out and they do training, or get on the computer and do sexual harassment training for supervisors. Commissioner Hudley-Hayes commented that in this particular case these are CalJAC funds? Captain Fields responded these are VET funds.

Commissioner Hudley-Hayes asked for clarification regarding the recuperative portion. Captain Fields stated that the monies they have to make the purchase are as a result of money they have recuperated.

Commissioner Hudley-Hayes commented that when the DVDs are received, you have the trainer of trainers and then the DVDs get pushed out to the Fire Stations, correct? Captain Fields stated yes, to a training/learning computer. Commissioner Hudley-Hayes reiterated they are on the computers in the Fire Stations and individual members can log in individually and can in fact train themselves; in the Fire Stations you will know which crew members on whichever rotations they are on (A, B, or C) have actually logged in and viewed the DVD and completed that module of training. Therefore, we will be able to say in the future who logged in, took the training, so unfortunately you now cannot claim that you were unaware of the expectation. It is used as a tool to train and also used as a tool to help people understand the organization's expectations. Captain Fields stated yes, and on an individual basis.

Commissioner Hudley-Hayes commented that is how we have the checks and balances. Captain Fields stated members would log in with their employee identification number; eventually the information will be captured on our learning management system – a database that any administrator can query to capture a number of different factors.

Commissioner Hudley-Hayes commented this has to do with this whole new communication system, tracking system, we have and the software we have. Chief Deputy Palacios added it will be tied into the training database.

PUBLIC COMMENT

Mr. Frank Lima, UFLAC, commented that regarding the EEOC, they do not have objections to rules and protecting the integrity of the badge; regarding the mention of funds and how it will be paid, the VET fund and the CalJAC fund was brought up – he wanted to remind the Commission that the CalJAC is a result of the legislation from the CPF State organization, but at this time they do have an audit going on with the CalJAC fund in regard to certain expenditures and at this time the labor side of the CalJAC has not seen a proposal for any type of purchase of DVDs.

Commissioner Hudley-Hayes stated that because they are in this kind of odd operating mode, as opposed to being in that smaller room and can talk back and forth; does it mean they cannot talk back to Mr. Lima. Deputy City Attorney Jackson stated they could talk back to Mr. Lima. Commissioner Hudley-Hayes commented that when they are doing 'public

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comment' in the Commission meeting, they simply receive what the person is saying and do not have back-and-forth conversation because it is not allowed; as this is a Committee meeting can they talk back-and-forth with Mr. Lima. [Fire Chief Cummings arrived at approximately 9:25 a.m.]

Deputy City Attorney Jackson stated that traditionally the method of the inclusiveness in the way in which you run the Committee is acceptable here, even though we are in a more distant situation. Commissioner Tolentino asked Mr. Lima what his objection was in using the CalJAC or VET funds. Mr. Lima stated there was no objection just that at this time the labor side of the CalJAC Committee has not seen any proposals in regards to any DVDs. Commissioner Hudley-Hayes clarified it was not the CalJAC, it is VET funds. Fire Chief Cummings commented that their process for using CalJAC is they meet with UFLAC to get their signatures first.

B. Review of Fire Department Rules and Regulations.

Commissioner Tolentino commented that for background purposes, they are to review the rules and regulations because it has come up several times, he recalls in Stakeholders meetings where they were trying to reconcile several different rules and regulations and they were showing up in different documents; they received the Preamble also and a copy of the current rules and regulations.

Fire Chief Cummings stated that Chief Deputy Palacios is getting Battalion Chief Trevor Richmond to speak to it directly, but he knows what they received in their package was a revised Preamble that they put out with the Rules and Regulations and also what Planning did was they went back and they captured all of the current Rules and Regulations as they exist so we would have one version and that is what they wanted to put before this Committee and then the Fire Commission so they could approve that one version that is there and then they will be coming again with a Board Report with some recommended additions that have been gleaned from PSD, from some of the cases they have had when they have seen trends and there are some things that are not addressed in the current Rules and Regulations.

Fire Chief Cummings stated that what the Commissioners have is that merely they went back and captured the latest version of what actually currently exists for the Rules and Regulations; as they were posting it electronically it kept going back to old versions and then the new versions that were there; this represents the latest version of the Rules and Regs as it should exist on the portal.

Commissioner Tolentino stated he was not sure what Fire Chief Cummings meant, is this [the document provided today] the current Rules and Regulations governing us? Fire Chief Cummings stated yes. Commissioner Tolentino stated there are several preambles and now he is proposing another Draft Preamble; Fire Chief Cummings stated yes, there are preambles from previous Fire Chiefs, what this would do would be to supplant the last letter that was put in by the former Fire Chief and this would become the Preamble for the Rules and Regs.

Commissioner Hudley-Hayes commented that it appears that the letter they see from Chief Bamattre is just a letter, not a Preamble and the letter they see dated March 2, 2007 from Chief Barry is just a letter, not a Preamble; Fire Chief Cummings stated yes.

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Commissioner Hudley-Hayes commented that the Preamble here is the one that was worked on by the Commission; Fire Chief Cummings stated yes. She asked if one [draft Preamble] would take the place of the other one. Fire Chief Cummings stated the plan was for this Preamble to be put in in addition to the one that is currently sitting in there; they wanted to make sure that they captured the points that were in the existing Preamble, but they also want to set out the intent of the Rules and Regulations with this new Preamble.

Commissioner Hudley-Hayes commented that they are unable to do that right now because they got it 20 minutes ago; she confirmed that he is going to take this draft and somehow integrate it with the one in the packet that was provided. Fire Chief Cummings stated yes.

Commissioner Hudley-Hayes commented that in a 'quick read' these are two very different things; one is talking about the spirit of something, very individually about your vision for the organization; the other is a Preamble that talks about the Rules and Regulations and outlines them; she is not sure how he would integrate it, but she needs to see that; instead of seeing two different ones. Fire Chief Cummings stated they will consolidate the document; he believed that was the document she got, with the two consolidated and not the two separate ones. Fire Chief Cummings added that this Preamble was intended to capture from the audit, from the Internal [Independent] Assessor, the fact that we can not have a rule and a regulation for everything that is imaginable for someone to do, therefore, this was to give people those overarching guidelines for how they apply the Rules and Regulations. When we talk about acting professionally all the time, demonstrate through you actions and quality of your work, the values we place on teamwork, act with integrity.

Commissioner Hudley-Hayes stated she saw that, but that is not a Preamble. To her what this says is, here is a Preamble which is pretty much explaining the members are required; what the responsibilities are, the policies and rules and regulations, State and Federal legislation, etc. It would seem that this [draft Preamble] would be something that would come after this [current Preamble] to say here is our Preamble and this is how we see it being implemented, or this is what we are asking for members to do. This is more a philosophical document [draft Preamble] whereas this is a Preamble for a codified set of rules and regulations. In the draft Preamble what he is saying to members is we expect you to embrace the Rules and Regulations in this way; we expect you to understand that the Rules and Regulations simply mean that members should embrace, act professionally, demonstrate through actions and act with integrity. Fire Chief Cummings stated he understood and agreed. Commissioner Hudley-Hayes stated that she understood that the Preamble included in the packet was the one the Commission voted on and agreed to; she believes the draft Preamble is a good companion piece and it should be included. She also agreed that it is very good that they do make sure that people understand that there is not going to be a rule or a regulation that is going to cover everything, that is why it is a living document and organic; because once you see a trend a rule or policy or regulation will be needed to cover that particular set of circumstances. Fire Chief Cummings stated absolutely, especially with technology changing as fast as it is; they have not envisioned some of the things that are going to be coming in the next few years.

Commissioner Tolentino stated that in addition to Commissioner Hudley-Hayes' suggestions, he requested some of the redundancy be eliminated; maybe Chief Bamattre's and Chief Barry's cover letters are no longer needed; an expectation is that they would look at each page, literally, and say which ones need to be changed or modified; for example, Apparatus Operators, maybe they have changes some of the responsibilities; we now have Communications staff; but to look at each one and tell the Commissioners what he wants to

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retain, which one he wants to modify/add; what Fire Chief Cummings was suggesting with the social media popping in, there should be a rule about how social media is applied; he saw the smoking section where there are exemptions – he recalls from speaking to Chief Barry when he saw an incident, that there were no exemptions; in flipping through the handout, he spotted one.

Commissioner Tolentino stated that they ought to reconcile anything that is inconsistent, reconcile any redundancy; he recalls from a stakeholders meeting that they had so many rules and regulations that were either in conflict, inconsistent or they were found in a different place. If you are charging somebody with a violation of a particular rule and they cite the set of Rules and Regulations it ought to also be referenced in another set and the language should be the same; so that there is no conflict. Fire Chief Cummings stated absolutely and that the intent was, as they had several different versions that were online, they wanted to start by ensuring that they had only one version; this version, online – this is the most recent information and then next they will be bringing forward the changes that PSD has identified as the trends and anything that is in conflict. So there will be a set of addendums, revisions to rules, removing some rules to bring things into line with what we are actually seeing and doing that review that Commissioner Tolentino is referring to, to ensure that they are consistent across the Rules and Regs.

Commissioner Tolentino asked if there was a timeline. Fire Chief Cummings stated that he was not sure how soon PSD will be ready to bring forward those changes; he asked Battalion Chief Graham Everett regarding a timeline.

Battalion Chief Everett stated that they can start prioritizing that and put it on the agenda to start moving forward; they have not started working on a lot of those items, a lot of them they have learned over the past four years – since they have been in existence; he would need to get back to Fire Chief Cummings on a timeline, on when they can start working on that and get a finalized document.

Commissioner Hudley-Hayes requested a timeline at the next Commission meeting, to be able to tell Commissioners when staff believes they can get a first draft to Commissioners; Battalion Chief Everett stated yes. She added that she and Commissioner Tolentino understand the constraints his staff has, so if he can just provide a timeline that seems reasonable to him, but not in 2025, that would be fine. Thereafter, Commissioners could just get quick updates about the status, a one-pager. Basically, indicating if they are on time, timetables are still current/good and moving along. Again, she did not have time to read the packet because they got delivered 20 minutes before they came into this meeting.

Commissioner Hudley-Hayes clarified that Commissioners want to ensure they have only one document that has to do with Rules and Regulations. She added that she likes the fact that it is being separated into what the Administrative Office does, the Fire Chief separated out, Bureau Commanders separated out and Division Commanders separated out; she appreciates the transparency.

Chief Deputy Palacios stated that they share the same concern about the conflicts and inconsistencies; they want to ensure they go through page-by-page to be sure they capture those items that are in the Rules and also how they reflect back to the Disciplinary Guidelines as well.

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Commissioner Hudley-Hayes stated that in the business of being completely transparent, they have asked the Office of the Independent Assessor the same thing; they will be looking at it too, over and against what they find and what they look at and what they see; she is sure they will work with the Department to make sure that when everything gets reconciled we have a document that is ready to come forward to the Commission for approval.

Commissioner Hudley-Hayes stated that she does not want there ever to be a time when because there are different Rules and Regulations floating around, someone can make a decision that the discipline is incorrect because they find something in one document that in fact abrogates something that is in another document; and a person walks right through and cannot be disciplined. They are not trying to get in the way of the Department; they do not want to wordsmith it for the Department; that is what they do because they are the professionals and the people that understand operationally, they understand EEOC; the Commissioners' intention is to get one codified document that they can approve and then staff has the authority to do what they need to do with it and no one can ever say the Commission never saw this. Fire Chief Cummings stated that that is their goal; with getting the current version to them so PSD will be able to say this is the one that was approved at full Commission on this date; until any other revisions come this is the final document, get rid of all other documents.

Commissioner Hudley-Hayes commented that she noted the top right corner of each page indicated when the page was revised; Fire Chief Cummings agreed. She added that the Commissioners need a document that states exactly when the entire packet was brought forth, there was a public discussion, the Commission signed-off on it and here is what staff has to work with; Fire Chief Cummings stated that is how they would put it out.

Commissioner Tolentino requested an update on this item at the next Commission meeting; Fire Chief Cummings agreed. Commissioner Hudley-Hayes stated an update, a timeline and some kind of benchmarking for them to know where staff is and so there will be a record of what those benchmarks will look like; Fire Chief Cummings agreed. Commissioner Hudley-Hayes stated that they needed to bring this forward to full Commission because those are 'actionable' items; Deputy City Attorney Jackson concurred; there will need to be a report that comes forward on March 6 about the actions that were taken in the Committee.

4. OLD BUSINESS – None.

5. FUTURE AGENDA ITEMS

- EEOC Posting – Maria Aslan
- Written report of EEOC Matter to March 6, 2012 Board Meeting – Maria Aslan
- Rules and Regulations Timeline to March 6, 2012 Board Meeting – Battalion Chief Everett

6. NEXT MEETING – To be announced.

7. CLOSED SESSION

- A. Conference with Legal Counsel pursuant to Government Code Section 54957(b)(1) – Public Employee Discipline/Dismissal/Release/Personnel.

Deputy City Attorney Jackson stated there was no closed session item. Commissioner Tolentino stated that in the past the Committee has reviewed discipline; Deputy City Attorney Jackson stated that was prior to the advise given by the Labor Division, Zina Houston, and

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Special Assistant, Pete Echeverria, who indicated that the review of the discipline, dismissal, release, promotion, since the Board does not have individual power over discipline, it is not appropriate to go into closed session on those items. The list that is sanitized without the name of the individual being disciplined that can be discussed in open session.

Commissioner Tolentino stated that the Committee had a past practice of looking at disciplinary actions in closed session, so what has changed? Deputy City Attorney Jackson stated that the legal opinion from the City Attorney's Office has changed; that legal opinion indicated that it was not within the authority of this Board to review discipline specifically as it related to an individual in closed session; because this Board is in charge of policies they can look at discipline and discipline trends and individual discipline that was enacted against a member and that can be done in open session.

Commissioner Tolentino clarified that if they do not have access to the original documents, if they want to review trends; for example, if there are more DUIs being disciplined; how would they pull that information out? He is using this as an example because he recalls specifically another Personnel Committee meeting in which they were reviewing the Personnel files and they began to inquire why were there so many DUIs suddenly occurring; and they began to flip through the Personnel folders to see whether they were unique for this particular area or not.

Deputy City Attorney Jackson stated that is not permissible; in order to review discipline trends as it relates to DUIs, the Board would be able to look at the date of the discipline, the action that was disciplined for a DUI complaint against a Firefighter and the ultimate discipline that was imposed; they could not go further than that.

Commissioner Hudley-Hayes agreed that they do not meet out discipline, but asked how would they determine the consistency? For example, if the Committee stated they were interested in getting a look at a trend analysis on any number of things, i.e. DUIs, hazing, racism, and they know that people have been disciplined around those issues; and so the Department comes forward and provides a trend analysis; and the Committee asks how do you know? How does the Committee know that what they are told by the Department is based upon factual data? Somebody is looking at the Personnel records, who's looking?

Deputy City Attorney Jackson stated the Department is looking, the Fire Chief is in charge of discipline. Commissioner Hudley-Hayes asked if PSD is looking; Fire Chief Cummings stated that PSD reviews them and he can review them as well. Commissioner Hudley-Hayes commented that PSD would look at these individual personnel records and say they have noticed that there is an uptick in DUIs, or in hazing or harassment around one of these protected classes, i.e. sexual orientation, gender, ageism, bias based on religion, and that would come forward. Deputy City Attorney Jackson stated or ask for a written report with their documentation; they could provide documentation in their report although it would not be a specific name associated with the discipline. Commissioner Tolentino clarified that they are not interested in the name; they are interested in the discipline that is being impacted; they are interested in the fact that it is race periodically, that a Chief Officer is disciplined differently from a Firefighter; he recalled early on in the Personnel Committee they wanted to know because at that point in time there was the hazing controversy, the inconsistent discipline; they wanted to know in general how were these disciplinary guidelines being imposed; at some point they noticed how DUI cases were measured. Therefore, they reviewed the personnel file to look to see whether there were certain trends or practices and he recalled Ms. Bea Lopez, was the person going through it and keeping track of what was going on; then

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they reported back in the Personnel Committee as to what the trends were; Commissioner Tolentino asked how they reconcile the current opinion with their responsibilities as an oversight?

Commissioner Hudley-Hayes expressed a concern regarding checks-and-balances; if the Commission cannot do it and they are saying that the Independent Assessor does not get to do it, where are the checks-and-balances? She is happy to understand that the information would come forward from Fire Chief Cummings, but she would want to understand where the 'check' is coming from; how does that 'data' get checked? She is hugely concerned about being able to make sure that the data is good data and reconciled with what she is told by Fire Chief Cummings.

Chief Deputy Palacios stated that they are preparing a PSD Annual Report; perhaps they present the report to the Personnel Committee early on, prior to the full Commission, in order to draw those questions out in this forum. Commissioner Hudley-Hayes clarified her point, where is the 'check'; the report can be presented, the Independent Assessor is present because that is one of the things that he is suppose to be looking at, discipline and consistency; the Independent Assessor's Office does not have any way to check that to make sure that what is being reported actually has a foundation and is valid, then how do they as Commissioners in discharging their duty say to the public they have received the information, have put the checks-and-balances in place and know that these trends are valid; they know that this consistency of discipline is valid because the Department has done something; the check-and-balance has happened and the Commission is now clear that everything is taken care of; it appears to her that that is not going to be able to happen and that makes her uncomfortable as a Commissioner. She does not want items to come to the Commission or the Committee and for her to have to sign-off on it and she has no way of knowing that at some point and time they can check that it is OK; not saying that anybody is trying to do something, not saying that anybody is trying to get around anything, but if you are 'tasked' with making sure that you are saying to the public there is transparency, there has to be some way to have checks-and-balances. Otherwise, all of this is illusory. Deputy City Attorney Jackson stated she understood her concern.

Commissioner Hudley-Hayes commented that if three months down the line it happens again, as it did when they first came on, they are in the newspaper again. Deputy City Attorney Jackson stated that the Board does have to act under the restraints of the Brown Act and the advice from the City Attorney's Office. Commissioner Hudley-Hayes stated that she understood Deputy City Attorney Jackson's position, but she feels they are not going to be able to discharge their duty as well as they should; Commissioner Tolentino stated that other than the opinion there is nothing in his mind that really changed, he thought they were in the process in fact when they had their first Personnel Committee, those files just came to the Committee for closed session and in fact they were informed that this is the Personnel Committee responsibility; to review these disciplinary actions and they started to look at them and consideration of prior discipline was not being considered. Therefore, they started reviewing the Personnel files to see which ones had prior discipline and whether it was consistent or not; that seems to him like a normal course of review; for a Commissioner and in a Personnel Committee setting.

Deputy City Attorney Jackson stated that under the constraints of the Brown Act, they can only go into closed session under the personnel exception when you are dealing with the individual discipline, dismissal, release of personnel, and it has to be under the authority that

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is vested with the Commission and because the Commission is not in charge of removal or dismissal, discipline of the employee it is not appropriate to go into closed session.

Commissioner Hudley-Hayes stated they are in charge of the Fire Chief, are they not? Deputy City Attorney Jackson stated they are in charge of the Fire Chief; Commissioner Hudley-Hayes stated and he gets to look and they do not, but they are in charge of him? Deputy City Attorney Jackson stated correct.

Commissioner Hudley-Hayes stated that did not work for her; Commissioner Tolentino stated the point is they are not looking at the individual names; the name of anyone did not enter. For example, they are looking if Firefighter A – does he have prior discipline, Chief Officer B – what is the prior discipline, why is that getting A discipline and the other one is getting a C discipline? What is the difference, is it just the rank, the time in place, is there a prior discipline – those are the kinds of things that they were doing which he thought were very helpful to try to figure out what is going on and in getting an influence developing some of the disciplinary guidelines.

Commissioner Hudley-Hayes stated that if Deputy City Attorney Jackson recalled when they were working with her, they put that sheet together because they had an opportunity to look at those personnel records and she believed it was Deputy City Attorney Jackson working with staff. Commissioner Tolentino stated it was Ms. Bea Lopez.

Commissioner Hudley-Hayes stated they were able to see the individual, the number of times that this particular category of discipline – that this person had had this particular infraction, then they could see why and could explain why that person got this type of discipline as opposed to another person; she recalled there was a person's name, the number of years they had been in the Fire Department, then the categories in which there had been infractions and then there was why they got this discipline; the Committee was able to see that; in going through those files they were able to see specific information regarding justification for discipline provided.

Fire Chief Cummings stated that this sounds very similar to their Disciplinary Action Summary that they put out and has the names redacted, but has the rank, time on the job, infraction and how many occurrences and then the penalty; were the personnel files actually there? Commissioner Hudley-Hayes stated they absolutely looked at them, but the summary was a result of them from time-to-time being able to look at personnel files. The reason that there is an Independent Assessor is because it was envisioned that now that was what the Independent Assessor would be able to do because they were able to do it at some point in time before this new thing happened; they would not be doing it now, but the Independent Assessor's Office would be doing that, that person would be going back and looking at that, but that is how that summary came about; when they first came on the Commission there was no such thing as that summary, and it was not until there was a Personnel Committee that they began to look at individual personnel files.

Commissioner Tolentino stated it also had the details of the particular action; for example, it actually told you what item was misplaced; he recalled very specific transmitters that held a higher degree of value; that is why there was this imposition of a different kind of a discipline. They would also be able to inquire – this 35-year Firefighter Captain II; he thought you hold up at a higher standard than a Firefighter on second or third year of probation. But they were able to get details that they were quite surprised because it would use the general terms like misplaced equipment; for the first time you are looking to see specifically why, what specific equipment was missing/lost.

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Commissioner Hudley-Hayes stated she understood this item could not be reconciled today, she believes that it diminishes the Commission's ability to do its job of oversight and it absolutely means that the Independent Assessor is stripped of everything that the public believed was going to happen when that initiative was passed and made into law; now it takes all of that away.

8. ADJOURNMENT

The meeting was adjourned at 10:07 a.m. (Tolentino/Hudley-Hayes)

Meeting minutes prepared by Leticia Gómez.

Attested by:

Commissioner Casimiro U. Tolentino
Chair, HRDC/Personnel Committee

Leticia Gómez
Commission Executive Assistant I

Date: February 16, 2012