

Clearwater, Florida, April 5, 2012

The Unified Personnel Board (UPB) met in regular session at 6:29 P.M. on this date in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida, with the following members present: Daniel M. Andriso, Chair; George E. Tragos, Vice-Chair (late arrival); Keith C. Dekle; James P. Koelsch; and Joan Vecchioli.

Not Present: Ricardo Davis.

Also Present: Peggy Rowe, Director of Human Resources; Robert C. Swain, Senior Assistant County Attorney; Tammy L. Burgess, Board Reporter, Deputy Clerk; and other interested individuals.

AGENDA

EAC

Item I. Employees' Advisory Council Representative

Item II. Consent Agenda

Human Resources

1. Request Approval of Housekeeping Revisions and Re-Instatement of Class Specifications in the Pay and Classification Plan.

Human Resources

2. Request Approval of the Audit of One Encumbered Senior Office Specialist Position, Two Encumbered Administrative Support Specialist Positions, and Two Encumbered Human Resources Technician Positions in the Human Resources Department.

Item III. Information

County Attorney

1. Jurisdictional Considerations Regarding Appeal of Michael Seel.

CALL TO ORDER

Chair Andriso called the meeting to order at 6:29 P.M.; whereupon, he led the members and attendees in the Pledge of Allegiance to the Flag.

EMPLOYEES' ADVISORY COUNCIL (EAC) REPRESENTATIVE

EAC Chairman Charles E. Toney reported that Human Resources Coordinator Jack Loring gave the Pay and Classification presentation at the last EAC Delegates meeting; and

that although some employees were a little tough on Mr. Loring because of the stagnant pay and lack of movement in the classifications process, they appreciated the opportunity to share the information with a larger number of employees.

Mr. Toney related that Human Resources has been conducting performance management workshops; and that concerns raised during one workshop included the varying frequencies of evaluations and the impacts of the new evaluation system, pointing out that some employees receive evaluations quarterly, while others only receive them annually; that employees that were above average are now being rated as “meets expectations;” and that there is a need for more rating levels.

Referring to EAC membership, Mr. Toney noted that there is one new Representative, Tori Tipton; and that a relatively new Representative, Christina Mallon, will be serving on the Suggestions and Awards Committee.

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At this time, 6:33 P.M., Mr. Tragos entered the meeting.

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Mr. Toney related that the Succession Management Group training is proceeding; that the director and manager levels have been completed; that 100 applicants for the supervisory level will be reduced to a workable class size of about 25 people; whereupon, he noted that Human Resources does not have adequate staffing to hold two classes simultaneously, but will continue to offer the different Succession Management classes.

Mr. Toney reported that a circuit court judge ruled that (1) the state’s changes to the Florida Retirement System (FRS) relating to the three-percent employee contributions and the cost of living were unconstitutional, (2) the employees are to be repaid with interest, and (3) the cost of living changes are to be reversed. He related that the Governor and the state immediately appealed the judge’s ruling; and that the Supreme Court has taken the appeal case, which should expedite the process; whereupon, discussion ensued regarding the potential repayment options, including a non-taxable repayment to the employees, and Senior Assistant County Attorney Carole Sanzeri provided input, pointing out that if the judge’s ruling is upheld, the employees would be repaid by the state; that the repayment may likely be spread out over time; that the County has paid its required contribution to the FRS since July 2011; and that the Legislature would determine how to charge the employers.

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Mr. Toney noted that the County Commissioners will hold public budget meetings on April 10 in Seminole, May 10<sup>th</sup> in Safety Harbor, and May 15<sup>th</sup> in St. Petersburg; and that the meetings provide a pleasant atmosphere for communicating with the Commissioners.

Mr. Toney stated that an issue arose last week concerning a seven percent budget reduction for the Clerk of the Court, which could result in some layoffs within the Clerk's Office; and that Human Resources will do their best to place any displaced employees in other areas of the County. Chairman Andriso noted that, unfortunately, the County has experience in addressing layoffs; and in response to his comments, Ms. Rowe indicated that the layoff process has been working well; that the Clerk has several vacant positions which could help offset any potential layoffs; and that other appointing authorities have agreed to assist with any employees displaced from the Clerk's Office.

Mr. Toney related that the lack of raises and pay incentives are concerns in that as the job market begins to open up, the County may begin to lose its best employees, pointing out that not only would the County lose the employee, it would also lose the investment in the employee and the employee's knowledge and experience. Ms. Rowe stated that there is a heightened sensitivity to the risk of losing employees, although she cannot say that there is a solution on the horizon; whereupon, Mr. Toney indicated that he will discuss the need to put some sort of compensation in place to retain good employees with the County Commissioners at the public budget meetings, noting that while it is difficult to discuss pay raises in the current economic situation, it is important to encourage the County to retain its employees.

Chairman Andriso indicated that the Board supports Mr. Toney speaking with the Commissioners, noting that the Board would like nothing more than to approve pay raises for all of the employees; whereupon, Mr. Toney noted that May 6 through 12 is Employee Appreciation Week.

CONSENT AGENDA ITEMS NOS. II.1 AND II.2 – APPROVED

Motion	-	Ms. Vecchioli
Second	-	Mr. Tragos
Vote	-	5 – 0

- #1 Housekeeping revisions and reinstatement of class specifications in the Pay and Classification Plan approved; changes reflect the current duties and responsibilities of the

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classifications, are housekeeping in nature, and will not affect the pay grade level of the classifications.

#2 Audit of five encumbered positions in the Human Resources Department approved, as follows:

<b>Position Number</b>	<b>Current Classification</b>	<b>Pay Grade (Salary)</b>	<b>Approved Classification</b>	<b>Pay Grade (Salary)</b>
HRD/C32	Senior Office Specialist	CL8 (\$28,246)	Administrative Support Specialist	CL11 (\$32,697)
HRD/C40	Administrative Support Specialist	CL11 (\$32,697)	Human Resources Technician	CL13 (\$36,046)
HRD/C45	Administrative Support Specialist	CL11 (\$32,697)	Human Resources Technician	CL13 (\$36,046)
HRD/C31	Human Resources Technician	CL13 (\$36,046)	Human Resources Support Specialist	CL17 (\$43,825)
HRD/C16	Human Resources Technician	CL13 (\$36,046)	No Change Recommended	No Change Recommended

In response to comments and queries by Mr. Dekle and Ms. Vecchioli, Ms. Rowe described the processes followed for reclassification, indicating that positions are reviewed (1) on a cyclical basis, and (2) at the request of an employee or individual manager; that the audit performed for the positions in the Human Resources Department was not part of a cyclical review; and that the guideline for cyclical reviews of positions is typically every three to five years, although the reviews have not been held to that guideline in recent years due to budgetary issues; whereupon, she explained the reasons for reviewing the aforementioned positions.

JURISDICTIONAL CONSIDERATION REGARDING APPEAL OF MICHAEL SEEL,  
UTILITIES

Senior Assistant County Attorney Robert C. Swain related that the Board, at last month's meeting, discussed how it wanted to address the grievance filed by Utilities employee Michael Seel, and instructed him to compile the relevant issues under the Florida Statutes and the Administrative Rules; that Mr. Seel requested that a copy of the Personnel Act also be provided; and that the requested documentation was provided through the agenda process. He reminded the Board that Mr. Seel is a Classified employee who applied for an Exempt position and is contending that the appropriate process was not followed; and indicated that the matter before the Board is to determine whether or not it has jurisdiction in an appeal; whereupon, he stated that the parties are in attendance and ready to present their respective arguments, pointing out that the Board does not have a set process for handling jurisdictional matters.

Referring to various documents provided in the backup packet, copies of which have been filed and made a part of the record, Mr. Seel stated his position that the Unified Personnel Board should have jurisdiction over the appeal; presented the basis for his position; and responded to comments and queries by the members, indicating the following:

- Under the Pinellas County Unified Personnel System Act, Chapter 77-642 – Laws of Florida, as amended, Exempt employees are subject to personnel policies, rules, and regulations established by the Unified Personnel Board, which were not followed.
- Compliance with the Florida Statute pertaining to Veterans' preference requires that all Category 1 and 2 Preferred Veterans, and the top three Category 3 and 4 Preferred Veterans, must be interviewed, as does the County's Hiring Checklist, noting that he is a Category 1 and 2 Preferred Veteran and was not interviewed; and that he knows interviews were held, but not how many.
- The procedures used by appointing authorities to hire Exempt employees, and Classified employees applying for Exempt positions, should require the appointing authorities to follow the personnel regulations.
- The detailed hiring process on the Human Resources website states that the process is mandatory for all supervisors and managers; and whether or not it is a policy adopted by the Unified Personnel Board, the mandatory nature of the document should require action to ensure compliance.
- Personnel Act, Section 1, subsection 2, does not apply to him in this situation, as he remained a Classified employee and was never hired into an Exempt

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position, thereby retaining the protections afforded to Classified employees by the Unified Personnel Board.

During discussion and in response to queries by Chairman Andriso and Ms. Vecchioli, Mr. Seel indicated that he saw a flaw in the system that negatively impacted him and other veterans; and that every Classified employee has the right to grieve if they have the proper basis; whereupon, Mr. Seel responded to queries by Mr. Koelsch regarding the minimum requirements for the position, pointing out that the questions are outside the scope of the jurisdictional issue before the Board.

Mr. Tragos recalled the previous reclassification of all of the Classified positions in the Business Technology Services (BTS) Department to Exempt status, which resulted in the termination of all Classified employees in the department, required the employees to interview for the newly created Exempt positions, and essentially removed the employees from the Board's jurisdiction; and pointed out that under Mr. Seel's definition of the Board's jurisdiction, all of the Classified employees terminated in the BTS Department may have been able to file appeals; whereupon, he related that the issue before the Board is whether it has the authority to review the appeal; and questioned the Board's ability to take action in this situation.

Ms. Rowe explained that the BTS Department position reclassifications were done in accordance with the Fair Labor Standards Act (FLSA) criteria, pointing out that many of the positions in the County would not meet the FLSA criteria for reclassification. She indicated that Constitutional Officers are elected and are technically Exempt employees for purposes of the FLSA, but not for employment purposes; and that Exempt employees follow the same personnel rules as Classified employees, are at-will employees, and have different hiring, termination, and appeal rights; whereupon, she noted that the County takes a very liberal stance on Veterans' preference, giving veterans preference at every step in the process; and in response to comments by Mr. Dekle, clarified that she is the only employee of the Unified Personnel Board.

Kevin Becotte, Department of Environment and Infrastructure, Water and Sewer Division, Plant Operations Section Manager, stated the appointing authority's position that, from a management perspective, the Board does not have authority over the appeal; whereupon, referring to the Personnel Act, he discussed the authority of the Personnel Board and the appointing authority's rights with respect to Exempt employees; and responded to comments and queries by the members, indicating the following:

- Appointing authorities have the latitude to hire anyone for Exempt positions, as there are no rules applicable to the hiring of Exempt employees, with the exception of the County's nepotism policy.
- Pursuant to the Personnel Rules, persons serving in Exempt positions shall be hired, promoted, demoted, suspended, or dismissed at the pleasure of the appointing authority, have no right to the exercise of the grievance procedure, and are subject to all other provisions of the Personnel policy.
- The Personnel Rules' reference to Veterans' preference discusses points and scores; however, there are no points or scores associated with Exempt positions.
- The County's interviewing policies for Classified and Exempt positions are different, as all applications for Exempt positions are forwarded to the departments to determine the qualified applicants, and the Human Resources Department reviews the applications for Classified positions and forwards only qualified applicants to the departments.
- The appointing authority believes the Veterans' preference process was followed, as outlined in the statutes.

In response to comments and queries by the members, Ms. Rowe provided input regarding the interview and hiring guidelines applicable to Exempt positions, and the required training for conducting interviews.

In response to queries by Mr. Dekle, Attorney Swain related that the Florida Law on Veterans Preference applies to this situation, noting that whether or not it has been met is a question of state law, which is separate from the issue before the Board; and that there is a remedy available through the Department of Veterans Affairs; whereupon, following brief discussion, Attorney Swain indicated that the merits of the case would be part of the next step in the process; and that the first step is determining whether or not there is something in the Personnel Act, Rules (as adopted), or procedures that the Board can rely upon to exercise jurisdiction.

Mr. Tragos stated that based on the Personnel Rules and the definition of an Exempt employee, he is unsure how the Board could exercise jurisdiction and whether it could enforce its position in court if it took jurisdiction; and expressed disappointment that there are no procedures relating to Classified employees moving to Exempt status and the Board's inability to interject itself into the matter to ensure due process occurred and the Veterans' preference applied.

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Thereupon, Mr. Tragos moved, seconded by Mr. Koelsch, that the Unified Personnel Board does not have jurisdiction to proceed under this particular situation, pointing out that the motion is specifically limited to Mr. Seel's case.

Discussion ensued wherein the members expressed their respective positions. Ms. Vecchioli stated that she supports the motion, but is conflicted regarding the issue, noting that it appears there is a process created by state law to address the issue, although she is uncertain whether Mr. Seel can avail himself of the process; whereupon, she indicated that the language in Section 1, subsections 1 and 2 of the Personnel Act, as amended, is somewhat ambiguous; and recommended that the language be clarified to reflect the intent that individuals applying for Exempt positions not be given the grievance procedural rights set forth in the Act.

Mr. Dekle stated that he strongly opposes the motion; that he believes the Board has jurisdiction, as Mr. Seel (1) never left the Classified service, (2) is still a Classified employee under the jurisdiction of the Unified Personnel Board, and (3) has the ability to exercise the grievance procedure; and that if the Board does not support Classified employees and give them access to the grievance procedure guaranteed to them in the Personnel Act, then the Board has abdicated its responsibility and authority; whereupon, he indicated that Mr. Seel's complaint is that a process was not followed, pointing out that the Board has authority over the process; and that the Veterans' preference issue has not been addressed with any significance.

Thereupon, upon call for the vote, the motion carried by a vote of 4 to 1, with Mr. Dekle casting the dissenting vote.

#### MISCELLANEOUS INFORMATION ITEMS RECEIVED

The following miscellaneous information items were received for filing:

1. Management and Supervisory Notes for April 2012.
2. Training Schedule for April 2012.
3. Minutes of the EAC Representatives meeting of February 15, 2012.

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ADJOURNMENT

The meeting was adjourned at 7:39 P.M.

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Chair