

CIVIL SERVICE COMMISSION MINUTES

January 5, 2022

A meeting of the Civil Service Commission was held at 2:30 p.m., via Videoconference/Teleconference.

Present via Videoconference:

Bryan J. Fletcher
Melissa Johnson
Ira Sharp
Peter B. Smith

Absent:

Will Rodriguez-Kennedy (for Open Session Only)

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

Approved
Civil Service Commission
February 2, 2022

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING AGENDA
JANUARY 5, 2022**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters

2:30 p.m. OPEN SESSION: Videoconference/Teleconference

Notice pursuant to Government Code Section 54954.2.

**CLOSED SESSION AGENDA
Videoconference - Not open to public**

- A. Commissioner Sharp: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Vasu Vijayraghavan, Ph.D., Esq., on behalf of **2021-537**, Civil Engineer, appealing a Final Order of 90-Day Suspension and Charges from the Department of Public Works.

**OPEN SESSION AGENDA
Videoconference/Teleconference**

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Fletcher, Johnson, Sharp, Smith

Absent: Rodriguez-Kennedy

- B. **APPROVAL OF MINUTES:** Regular meeting of December 15, 2021.

Motion by Commissioner Smith to approve the minutes of December 15, 2021; seconded by Commissioner Fletcher.

Motion carried with all Commissioners present in favor.

- C. **NON-AGENDA PUBLIC COMMENT:**

None.

D. AGENDA ITEM DISCUSSION:

Item No. 3 was pulled for discussion by appellant and her attorney. A department representative was also available to provide input.

E. FORMATION OF CONSENT AGENDA

Items Nos. 1 and 4 formed the Consent Agenda.

Motion by Commissioner Johnson to approve the Consent Agenda; seconded by Commissioner Smith.

Motion carried with all Commissioners present in favor.

F. DISCUSSION ITEMS:

Item No. 3 was pulled for discussion.

AGENDA ITEMS

TELECONFERENCED PUBLIC MEETINGS

1. Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

RECOMMENDATION: Approve motion to find, pursuant to Government Code section 54953(e)(3), the Civil Service Commission has reconsidered the circumstances of the State of Emergency and state and local officials continue to recommend measures to promote social distancing.

Approved.

ELECTIONS

2. Election of President and Vice President of the Civil Service Commission for 2022.

Commissioner Smith motioned to nominate Commissioner Fletcher as the President and Commissioner Johnson as the Vice President of the Civil Service Commission for 2022; seconded by Commission Johnson.

Motion carried with all Commissioners in favor.

DISCIPLINE

Findings

3. Commissioner Sharp: Vasu Vijayraghavan, Ph.D., Esq., on behalf of **2021-537**, Civil Engineer, appealing a Final Order of 90-Day Suspension and Charges from the Department of Public Works.

FINDINGS AND RECOMMENDATIONS:

Both Appellant and her attorney addressed the Commission regarding the validity of HR Policy 121. Frances Rogers, Senior Deputy County Counsel, responded stating that Appellant's suspension is permissible under HR Policy 121. Following these comments, Commissioner Sharp presented his report to the Commission.

Employee 2021-537 appealed a Final Order of 90-day Suspension and Charges suspending her from the position of Civil Engineer in the Department of Public Works. The Civil Service Commission appointed ~~me~~, Commissioner Ira Sharp, to hear the appeal and submit findings, conclusions, and recommendations to the Commission. Thereafter, a hearing was held on December 6, 2021.

The Department's causes of discipline were insubordination and acts which are incompatible with and/or inimical to the public service.

Employee has been employed by the Department since May 31, 2019. She was first hired as an Assistant Engineer, and since February 28, 2020, to the present she is a Civil Engineer, working in the Construction Engineering division of the Department. Her current assignment involves capital projects of the County, which requires her to work both in the office and, to a lesser degree, in the field, with other Departmental employees and the County's contractors on the public projects.

In and around March of 2020, the Coronavirus disease (COVID-19) emerged throughout the world, and more particularly infections were identified in the State of California and San Diego County. As a result, the County of San Diego took action it deemed necessary in efforts to slow and help prevent the spread of the virus in County facilities. Work by the Department's personnel continued through "telework," and Employee was initially expected to work from home. By definition the COVID-19 virus was a pandemic (i.e., occurring

over a wide geographic area, affecting a great number of people), as early as the first quarter of 2020. At the present the pandemic is not over.

In mid-2021, State and County health orders were modified to allow non-essential employees to return to work "in place," but with restrictions, including (initially) wearing facemasks, to help prevent the spread of the virus.

On August 16, 2021, the Director of the Department of Human Resources approved HR Policy 121, making it effective for all County non-health care employees on August 23, 2021. The policy was established with the intent "to help reduce or prevent the spread" of the COVID-19 virus. HR Policy 121 does not mandate a vaccination; rather, employees were required to either provide proof of vaccination for the COVID-19 virus, or undergo COVID-19 testing each calendar week, provide verification of COVID-19 testing to their supervisor or departmental human resources officer ("DHRO") after each test, and "[c]ontinue to observe all other infection control requirements, including face coverings."

HR Policy 121 is supported by regulations and guidance from the State, Federal, and International Health Agencies.

Notably, HR Policy 121 provides that unvaccinated employees are allowed to be tested on County time and had the option of testing by their personal health care provider, at a County or State testing site, or through a County provided self-testing option, provided verification was completed and collected. Employees who have to travel to be tested can do so on County time and are reimbursed for mileage.

HR Policy 121 was forwarded to each of the Department's employees on August 17, 2021, by the Director, along with an email generally explaining the policy. The message from the Director concluded with the admonition for those unable to comply with the vaccination or testing requirements to contact their DHRO, immediately.

Following her receipt of this email from the Director, the Employee began a series of email and telephone communications between herself and her supervisors as well as the DHRO and, later, the Sr. DHRO. These communications all questioned the purpose and evidence to support HR Policy 121. In turn, the Department responded to Employee's emails with information addressing her questions and concerns.

On August 25, 2021, September 1, 2021, and September 7, 2021, the Department emailed the Employee to remind her that she needed to provide proof of testing for the weeks of August 23, 2021, August 30, 2021, and September 6, 2021, respectively. These communications were made based on the Employee's identification by the Department as being unvaccinated for the COVID-19 virus, in accordance with HR Policy 121. Each communication from the Department also provided the Employee with information relative to (1) the location of testing sites; (2) whether there is a cost for the test; and (3) other information to assist the Employee in obtaining the tests.

The Employee never provided either appropriate proof that she has received any of the COVID-19 vaccinations or proof that she has been tested for the COVID-19 virus for any of the three weeks following the effective date of HR Policy 121.

The Employee has argued that the requirement for either full vaccinations or weekly testing violates her constitutional right to privacy, as to provide proof of vaccinations or testing will disclose personal health information.

The Employee's objections to HR Policy 121 include her belief that it cannot be required of her without her "informed consent," and that it requires her to disclose her personal medical information to the County by either providing proof that she has received vaccinations, or that she has been tested for the COVID-19 virus. The Employee's use of these two grounds for refusing to disclose whether she is vaccinated or tested for the virus each week is misplaced.

Employee cannot raise the issue of informed consent with the County as justification for not complying with HR Policy 121; rather, she must rely upon, and have confidence in, the information provided by her personal physician when deciding whether to get the COVID-19 vaccination, and is not a criterion for whether an employee is obligated to comply with a County HR Policy. There has been no evidence presented that she has consulted with her physician and decided against getting the requisite vaccination; and simply requesting more and more information from the Department, about the vaccinations, the testing, or any other medical procedure, neither abrogates the enforceability of HR Policy 121, nor absolves the Employee from her responsibility to comply with the policy.

The Employee also contends that releasing any information of vaccination status, or the status of weekly testing, forces her to disclose confidential medical information to the Department. While disclosure of the Employee's vaccination status likely results in disclosure of medical information, disclosure can be mandated provided that the purpose of the information is job-related and consistent with business necessity. Similarly, screening for the COVID-19 virus, if job-related and consistent with business necessity, is allowed under federal and state employment laws. The Department and County must maintain such medical information in confidence, apart from the Employee's regular personnel files.

The Department has presented evidence that HR Policy 121 was adopted for job-related reasons, consistent with business necessity. HR Policy 121 was adopted specifically for the purpose "to establish and adopt workplace health and safety protocols *to help reduce or prevent* the spread of COVID-19."

Ultimately, the Employee's objection to the proposed discipline centers around her belief that the County has no reason nor right to require that she be either fully vaccinated or submit to weekly testing for COVID-19. The arguments presented in her communications questioned the "multiple health hazards of [the] dangerous 'vaccines'." The Employee's counsel even poses the question, "Was there, IS there, a pandemic?", as well as questioning the safety and efficacy of the available vaccines; the effectiveness of the approved testing methods; and whether face masks are necessary.

The existence of the COVID-19 pandemic and the threat it holds to the public generally and in San Diego County specifically is well established. The Employee's arguments to the contrary are hereby rejected.

Accordingly, the County's Human Resources Director was well within her powers to adopt HR Policy 121, and the Department was legally charged with the responsibility to apply the policy to the Employee. Employee's unwillingness to comply with HR Policy 121, and to refuse three requests to provide testing status to the Department clearly establishes insubordination. Additionally, such conduct clearly conflicts with the efficiency of Departmental operations and is, therefore, incompatible; further, her actions demonstrate hostility toward HR Policy 121 and the Department's implementation of the same.

Employee is guilty of insubordination and conduct that is incompatible with or inimical to public service.

The Department imposed a 90-day suspension without pay. The Department has provided evidence that utilizing patience and reason in responding to Employee's continued, only slightly modified or restated, questions, and its reasonable efforts to attempt to demonstrate to the Employee that she is required to provide either proof of complete vaccination or weekly testing status (if she was unvaccinated), to which she continues to steadfastly disagree, provide evidence that the Employee showed no signs that she might ever comply with the policy. Accordingly, to modify her suspension to something less than 90 days would unlikely deter the Employee from continued resistance to the policy.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of 90-day Suspension and Charges be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Sharp to approve the Findings and Recommendations; seconded by Commissioner Smith.

Motion carried with all Commissioners in favor.

SELECTION PROCESS

Findings

4. **2022-001**, Applicant, appealing the Department of Human Resources' removal of her name from the employment list for Correctional Deputy Probation Officer.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2 and her name has been returned to the employment list.

Item No. 4 Ratified.

ADJOURNED: 3:14 p.m.

ASSISTANCE FOR THE DISABLED:

Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters

should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.