

Clearwater, Florida, December 5, 2013

The Unified Personnel Board (UPB) met in regular session 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; Keith Bailey; Andrea S. Daggett; Keith C. Dekle; Angela Outten; and Joan Vecchioli.

Not Present: Ricardo Davis, Vice-Chair.

Also Present: Peggy Rowe, Director of Human Resources; Michelle A. Wallace, Senior Assistant County Attorney; Laura M. Todd, Board Reporter, Deputy Clerk; and other interested individuals.

AGENDA

EAC	<u>Item I. Employees' Advisory Council Representative</u>
Human Resources	<u>Item II. Consent Agenda</u>
	Request Approval of the Minutes of the Regular Personnel Board Meeting held November 7, 2013.
	<u>Item III. New Business</u>
	Approval of the Appointment of Personnel Board Appointee.
Human Resources	<u>Item IV. Informational Items</u>
	1. Action Taken Under Authority Delegated by the Unified Personnel Board to the Human Resources Director.
	2. Reappointment of the following Personnel Board Members: Keith Dekle by the Employees' Advisory Council. Andrea Daggett by the Board of County Commissioners. Joan Vecchioli by the Constitutional Officers for 2014-2015.
Public Safety Services	<u>Item V. Appeal of Termination</u>
	Request from the Animal Services Department to Dismiss the Appeal of Tyson Youts, Terminated on September 25, 2013, due to his Failure to Appear at the Prehearing Conference.
County Attorney	<u>Item VI. Workshop</u>
	Review of the Personnel Act.

CALL TO ORDER

Chair Andriso called the meeting to order at 6:35 P.M.; whereupon, he led the Pledge of Allegiance to the Flag.

EMPLOYEES' ADVISORY COUNCIL (EAC) REPRESENTATIVE

Mr. Toney reported that Pinellas County Tax Collector Diane Nelson was the guest speaker at the November Delegates meeting, and congratulated her for receiving the Governor's Sterling Award, the highest award an organization can receive for performance excellence in Florida; that the EAC will meet with the Appointing Authorities on December 18, noting that the joint meetings are held twice a year to update the Authorities on employee needs, wants, and concerns and are a method of communication between the Council and the Appointing Authorities; and that Clerk of the Circuit Court and Comptroller Ken Burke will be the guest speaker at the January Delegates meeting. He provided the 2014 meeting dates for both the EAC Representatives and Delegates, a copy of which has been filed and made a part of the record, and invited the members to attend give the Board's perspective of its interaction with the EAC.

On behalf of the EAC, Mr. Toney thanked the County Administrator for the additional administrative leave on Christmas Eve; whereupon, Ms. Rowe clarified that all of the Appointing Authorities will offer Christmas Eve off, in addition to Christmas Day.

Mr. Toney indicated that the EAC is in the midst of elections; that the Council rotates about half of the representatives each year; that there are a couple of run-offs; and that he will report the results of the elections at the next meeting.

Mr. Toney reported that another good benefit coming to the employees is a change in the Health Flexible Spending Account. He related that in the past, an employee determined how much money to set aside for medical expenses for the year and if the money was not used by the end of the year, it was lost; and that now employees will be able to carry over up to \$500.00 per person. Ms. Rowe related that it is a change in federal legislation; that the information came out late; and that employees will have another opportunity to enroll in the Health Flexible Spending Account; whereupon, she clarified that it is not for dependent care.

Mr. Toney related that the EAC appreciates County Attorney Jim Bennett reviewing the Personnel Act; whereupon, he stated that if the discussion allows for questions, he would like the opportunity to participate. He related that the EAC has concerns about management charging employees with violating certain state or federal laws, such as the Health Insurance Portability and Accountability Act (HIPAA), in appeals of termination; and that he would ask Attorney Bennett to address the issue later in the meeting.

CONSENT AGENDA – APPROVED

Motion	-	Ms. Vecchioli
Second	-	Mr. Dekle
Vote	-	6 – 0

Minutes of regular meeting held November 7, approved.

NEW BUSINESS

Approval of the Appointment of Personnel Board Appointee - Deferred

Chair Andriso requested that approval of the appointment of the Unified Personnel Board appointee be deferred to next month's meeting, as Mr. Davis is not present, and no objections were noted.

INFORMATION ITEMS

Human Resources Director Action Taken Under Authority Delegated by the UPB

This item was not addressed in the meeting. The document titled *Action Taken Under Authority Delegated by the Personnel Board* has been attached and made a part of the minutes.

Three Unified Personnel Board Members Reappointed

Chair Andriso indicated that the Board has three reappointments: Mr. Dekle, appointed by the Employees' Advisory Council; Ms. Daggett, appointed by the Board of County Commissioners; and Ms. Vecchioli, appointed by the Constitutional Officers; whereupon, he welcomed the members continued participation.

APPEAL OF TERMINATION

Request from Animal Services Department to Dismiss the Appeal of Tyson Youts – Granted

Chair Andriso indicated that the Board received a request from the Animal Services Department to dismiss the appeal of Tyson Youts, who was terminated on September 25 due to his failure to appear at the prehearing conferences; and that since Board Counsel is not

December 5, 2013

present, it is an informational item; whereupon, discussion ensued as to whether the Board is required to take action.

Thereupon, Mr. Bailey moved, seconded by Ms. Vecchioli that the appeal of Tyson Youts be dismissed for failure to appear at the prehearing conferences.

Responding to query by Ms. Vecchioli, Attorney Wallace indicated that notice was sent to Mr. Youts on October 14, via certified mail, and he signed for the package on October 17; that he failed to appear at both scheduled prehearing conferences; and that he is not present tonight.

Thereupon, upon call for the vote, the motion carried unanimously.

This proceeding has been electronically recorded, a copy of which has been filed and made a part of the record.

WORKSHOP

Review of the Personnel Act

County Attorney James L. Bennett referred to a diagram titled *Unified Personnel System*, a copy of which has been filed and made a part of the minutes, and discussed the process of reviewing the Board's rule-making jurisdiction, noting that he reviewed the Special Act, the statutes, and the enabling authorities in preparation for today's discussion. He related that the Board will have to wrestle with three conceptual ideas, or "hitching posts": (1) what the law says, (2) what is good public policy, and (3) what is the prudent thing to do in the decision-making process, noting that there are no clear answers; whereupon, he indicated that fundamental to the process is ensuring that the Rules fall within the Board's jurisdiction and do not impinge upon the authority of the Appointing Authorities, which has been granted by the Special Act, the Constitution, the statutes, or by ordinance.

Referring to the diagram, Attorney Bennett indicated that the Appointing Authorities deal with ambiguity every day, which makes the hitching posts important, noting that another critical hitching post is situational awareness, as in sorting through issues, as the Board needs to know where a Rule lands.

Attorney Bennett stated that under the Special Act, Ms. Rowe is the Board's sole employee; that she is charged with implementing the Board's mission, as well as the

administration of the Human Resources Department, noting that she is in charge of everything from budgeting to supervision to strategic planning for her department, and is her own Appointing Authority.

Attorney Bennett related that the Board's rulemaking authorities in the Special Act are broad and completely undefined in terms; and that its arenas are classification, discipline, hiring, employee development, and lay-offs; whereupon, he related that it is necessary to balance the exercise of authority in such a way that the Board allows the maximum amount of flexibility within each of its operating spheres; and that it not interfere with the Appointing Authorities authority. He indicated that areas outside of the Board's jurisdiction would be the budget and issues that are closely aligned with the budget such as leave, holidays, benefits, Workers' Compensation, and accommodations under the Americans with Disabilities Act, all of which fall under the Board of County Commissioners and/or the individual Appointing Authorities.

Attorney Bennett indicated that for purposes of uniformity, some issues are housed in Human Resources such as the Family Medical Leave Act compliance, risk issues associated with a commercial driver's license, the wellness policy, the drug-free workplace, and anti-harassment policies, which are derived from the independent authority of the Appointing Authorities, noting that the Authorities are legally responsible for compliance; whereupon, he discussed the core issue of the Unified Personnel System.

In summary, Attorney Bennett related that he presented a conceptual framework for reviewing the Rules and a sense of where the Board is in the structure, recognizing the need to balance and harmonize conflicting authority between the Board's Rules and the Appointing Authorities; and that the Board must balance when to exercise authority and when to rely on the hitching posts discussed earlier in the workshop; whereupon, he invited questions from the Board.

In response to query by Mr. Toney regarding a recent termination case for violation of the HIPAA, Attorney Bennett opined that the Board does not have authority over criminal violations of federal law; and that he reviewed the record of the previous termination case, and the violation was for a zero tolerance rule for failure to comply with HIPAA; whereupon, he indicated that the HIPAA violation had to be brought forward in order to bring in the violation of a Personnel Rule, which was the basis for the discipline.

Responding to query by Mr. Dekle as to an employee violation of HIPAA, Attorney Bennett stated that it was his understanding that zero tolerance means just that, it is a terminable offense; whereupon, Ms. Vecchioli opined that what elevated the case to termination,

and what the Board struggled with, was that a single infraction could result in termination without prior warning to an otherwise excellent and long-serving employee, and discussion ensued regarding zero tolerance, and federal and state law as it relates to the Personnel Rules.

During discussion and in response to queries by Mr. Dekle, Attorney Bennett related that the Appointing Authorities develop many personnel policies and rules; and that an example would be when the Sheriff recently announced a zero tolerance policy for his employees receiving a citation for Driving Under the Influence (DUI); whereupon, he stated that Emergency Medical Services' (EMS) work is steeped in HIPAA issues, subject to extraordinary penalties for violations by employees, which is a zero tolerance issue that is within the context of the Appointing Authorities' function; and that it is an Appointing Authority's prerogative to structure personnel and rules in ways that effectuate its mission.

Responding to queries by Ms. Outten and Vecchioli, Attorney Bennett, with input by Attorney Wallace, related that there are two findings that the Board must determine in an appeal of termination: (1) whether the appellant committed the activities for which he or she was disciplined; and (2) that cause existed for the disciplinary action in that the activity violated Personnel Rules.

Ms. Rowe related that there are a number of deficiencies in the disciplinary rule that allow an Appointing Authority to dismiss an employee on the first offense, although the rule is designed to be a progressive disciplinary opportunity to correct an employee's performance or behaviors in the workplace; that the preferred way is to start with an oral reminder, then a written reminder, and then suspension, but there are certain offenses for which there is no second opportunity. She related that the Appointing Authority generally takes into account the totality of an employee's history; that deciding to terminate someone is not something that comes, or should come, easily; and that while it is a difficult decision, there are circumstances that rise to the occasion of an immediate dismissal with no additional opportunity, irrespective of the number of years of service; whereupon, she indicated that there will always be different policies within departments based on the requirements of the job and service to the citizens.

In response to query by Mr. Dekle regarding a former employee with a suspended drivers license due to a DUI, Ms. Vecchioli stated that termination was an insurance issue because the employee was ineligible to be covered by the County's insurance; whereupon, Ms. Rowe clarified that if an employee is required to drive as part of the employee's job, there are certain liabilities that the County takes on when employees drive their vehicles or drive on behalf of the County; and that an employee with a suspended license can no longer do the job for which

he or she was hired, not because of the DUI, but because of the inability to drive, and discussion ensued concerning whether the Board has the ability to question County policy.

Chair Andriso opined that for as long as he has been on the Board, it has been extremely fair in appeals of termination; that the Board agonizes over the decision to terminate an employee; that the decisions the Board makes do not come lightly; and that the Board takes each case individually, and rules on the merits of that particular case.

Ms. Daggett commented that the goal of the Board should be the underlying fairness; that it has a duty to review the facts and specific circumstances that play into the existing laws or public policy; and that there will be continuous dealings with ambiguity, which makes some of the decisions rather difficult.

In response to query by Mr. Dekle, Chair Andriso confirmed that, in the past, the Board has questioned an Appointing Authority regarding policy; that if Ms. Rowe feels that something needs to be brought to the attention of the Appointing Authorities, she will bring it forward, noting that it is not the Board's role to go to the Appointing Authority, and discussion ensued wherein Mr. Bailey opined that a termination of appeal hearing is not the time for the Board to question a rule or policy of the Appointing Authority and provided input regarding his 20 years of experience on the Board of Adjustment.

During discussion and in response to query by Mr. Dekle, Ms. Rowe related that the Board has no authority over items connected to the budget such as holidays, Workers Compensation, annual leave, and leave of absence; and that an Appointing Authority has the authority to make day-to-day business decisions that are described more in a policy format, and discussion ensued regarding budget issues.

Mr. Dekle indicated that he could not accept the blanket statement that if it is a budgetary issue, it does not fall within the Unified Personnel Board jurisdiction, as, ultimately, everything affects the budget; that there were reasons that the Special Personnel Act and the Unified Personnel Board were created, including to correct inadequacies and provide uniformity; that he does not want to be part of the Unified Personnel Board that gives up the authority with which it was historically endowed; that there were reasons for the Personnel Rules to be enacted; and that he would be very hard pressed to support, without special extenuating circumstances, any recommendation to move a Personnel Rule into a policy, noting that Personnel Rules are intentionally hard to change, but policies can be changed on a whimsy.

December 5, 2013

Ms. Vecchioli responded that she is sensitive to Mr. Deckle's concerns about relinquishing authority that has been delegated to the Unified Personnel Board, but is balancing his concerns against Attorney Bennett's comments that the Board is to provide some consistency and fair treatment rather than to be involved in day-to-day operations of the departments. Mr. Dekle commented that there is ambiguity throughout as to where authority lies; whereupon, Attorney Bennett replied that he did not intend to throw the blanket of the budget over everything, though it could arguably be stretched to do so; and related that the Special Personnel Act was adopted in 1977 and other Special Acts have been adopted since, including the Pinellas County Charter and most of the statutes governing the Constitutional Officers, noting that attorneys on both sides would enjoy arguing that issue.

Ms. Vecchioli indicated that she had been under the impression that Attorney Bennett was going to walk the Board through the Personnel Act, itself.

Thereupon, Attorney Bennett indicated that he would make himself available to Mr. Davis, as he was unable to attend the meeting, and noted that the members could call him with further questions.

MISCELLANEOUS INFORMATION ITEMS RECEIVED

The following miscellaneous information items were received for filing:

1. Management and Supervisory Notes for December 2013.
2. Training Schedule for December 2013.
3. Minutes of the EAC Delegate meeting of September 26, 2013.
4. Minutes of the EAC Representatives meeting of October 26, 2013.

ADJOURNMENT

The meeting was adjourned at 7:46 P.M.

Chair

December 5, 2013

This Page Intentionally Left Blank



IV. 1.

Human Resources Director**Action Taken Under Authority Delegated by the Unified Personnel Board**

The Human Resources Director, having been granted delegated authority to act on behalf of the Unified Personnel Board, has taken the following action from **November 2, 2013 thru November 22, 2013.**

UPWARD RECLASSIFICATIONS as Result of Classification Appeals in DEI

<u>Position</u>	<u>Classification</u>	<u>PG</u>	<u>Classification</u>	<u>PG</u>
Encumbered BCC/C1374	Office Spec, Sr	CL8	Util Maint Spec 2	CL9 (\$14.26-\$21.86)
Encumbered BCC/C2926	Acctg & Fin Clk	CL9	Bus Supt Spec	CL12 (\$16.51-\$25.74)
Encumbered BCC/C1073	Traf Signal Tech 1	CL10	Traffic Signal Tech	CL11 (\$15.72-\$24.36)
Encumbered BCC/C1077	Traf Signal Tech 1	CL10	Traffic Signal Tech	CL11
Encumbered BCC/C1912	Traf Signal Tech 1	CL10	Traffic Signal Tech	CL11
Encumbered BCC/C2272	Traf Signal Tech 1	CL10	Traffic Signal Tech	CL11
Encumbered BCC/C2743	Traf Signal Tech 1	CL10	Traffic Signal Tech	CL11
Encumbered BCC/C3532	Traf Signal Tech 1	CL10	Traffic Signal Tech	CL11
Encumbered BCC/C1237	Acctg & Fin Tech	CL11	Bus Supt Spec, Lead	CL15 (\$19.11-\$30.11)
Encumbered BCC/C1076	Traf Signal Tech 2	CL12	Traffic Signal Tech, Sr	CL13 (\$17.33-\$27.22)
Encumbered BCC/C2274	Traf Signal Tech 2	CL12	Traffic Signal Tech, Sr	CL13
Encumbered BCC/C2527	Traf Signal Tech 2	CL12	Traffic Signal Tech, Sr	CL13
Encumbered BCC/C2654	Traf Signal Tech 2	CL12	Traffic Signal Tech, Sr	CL13
Encumbered BCC/C2659	Traf Signal Tech 2	CL12	Traffic Signal Tech, Sr	CL13
Encumbered BCC/C3702	Traf Signal Tech 2	CL12	Traffic Signal Tech, Sr	CL13
Encumbered BCC/C868	Crew Chief 3	CL13	DEI Opns Mgr Asst	CL19 (\$23.23-\$37.54)
Encumbered BCC/C3333	Safety Specialist	CL13	Bus Supt Spec, Lead	CL15 (\$19.11-\$30.11)
Encumbered BCC/C1222	Safety Specialist	CL13	Bus Supt Spec, Lead	CL15
Encumbered BCC/C1506	Elec/Mech Tech 2	CL15	Elec/Mech Tech, Sr	CL18 (\$22.12-\$35.53)
Encumbered BCC/C1247	Eng Spec 1	CL17	DEI Opns Mgr Asst	CL19 (\$23.23-\$37.54)
Encumbered BCC/C1156	Elect Equip Tech Sr	CL18	Wastewtr Fac Maint Supv	CL20 (\$24.39-\$39.82)

ADDITIONS

<u>SPEC</u>	<u>TITLE</u>	<u>EEO4</u>	<u>OT</u>	<u>PG</u>
<u>NO.</u>		<u>CODE</u>	<u>CODE</u>	
17207	Water Quality Monitoring Manager	Officials & Manager	Exempt	SM5a (\$71,079-\$107,685)
10278	Division Manager, Development Review Services	Officials & Managers	Exempt	SM4a (\$78,950-\$114,825)

December 5, 2013

Human Resources Director
Action Taken Under Authority Delegated by the Unified Personnel Board
Page 2

TITLE/PAY GRADE CHANGE

<u>SPEC NO.</u>	<u>CLASSIFICATION</u>	<u>PG</u>	<u>CLASSIFICATION</u>	<u>PG</u>
16550	Traffic Signal Technician 3	CL14	Traffic Signal Technician, Lead	CL15 (\$19.11-\$30.11)

TITLE CHANGES

<u>SPEC NO.</u>	<u>PRESENT CLASSIFICATION</u>	<u>PG</u>	<u>RECOMMENDED CLASSIFICATION</u>
16974	Business Support Supervisor	CL15	Business Support Specialist, Lead
13562	DEI Asst Operations Manager	CL19	DEI Operations Manager Assistant

REVISIONS

<u>SPEC NO.</u>	<u>TITLE</u>	<u>PG</u>
13530	Tree Trimmer	CL8
13534	Tree Trimmer, Senior	CL9
16792	Business Support Specialist	CL12
02428	Environmental Specialist	CL13
16794	Business Support Specialist, Lead	CL15
10900	Emergency Management Coordinator	CL16

CAREER LADDER

Revisions were made to the following career ladder:

Environmental Specialist	CL13	Environmental Specialist 1	CL14
--------------------------	------	----------------------------	------

EXTENSION OF TEMPORARY PROMOTION in Communications

<u>POSITION</u>	<u>CLASSIFICATION</u>	<u>PG</u>	<u>EXTENDED</u>
BCC/C1404	Project Tracking Technician	CL11	6 months