

ANTHONY COPELAND
MAYOR

ANTHONY P. SERNA
FIRE CHIEF



WAYNE CAULEY
COMMISSIONER

WILLIAM HAZEL
COMMISSIONER

MICHAEL WIEDEMANN
COMMISSIONER

**FIRE CIVIL SERVICE COMMISSION
MINUTES FOR FEBRUARY 8, 2021**

Call to Order: Commissioner Hazel called the meeting to order at 4:34 PM.

Roll Call: Present: Commissioners: Hazel, Cauley, Wiedemann

Also Present: Chief Serna, Chief Inspector Carpenter, Attorney Harris and Attorney Shelice Tolbert and Rec'd Secretary Dina

Motion to Amend the Agenda and address Old Business first was made by Commissioner Wiedemann. Second by Commissioner Cauley.

Roll Call: Ayes Commissioner Cauley, Commissioner Wiedemann and Commissioner Hazel

Old Business: Commissioner Cauley reaffirming

Attorney Harris addressed the Commission to deal with the question of Commissioner Cauley appointment which was raised by Commissioner Wiedemann. Attorney Harris stated he reviewed Ordinance 3339 codified under 35.125 outlines how the 3rd member is chosen. Per the ordinance the 3rd member is chosen by the other two members. The ordinance does not make reference to the member being chosen by election or reaffirmation. Attorney Harris reviewed the written minutes and audio recordings and during the last couple of meetings terminology was thrown around and technically not a part of the rules. There is no election necessary nor reaffirmation necessary. The rules stated that the other two members shall choose the 3rd member.

At the November meeting Commissioner Bruno selected Commissioner Cauley and would be reaffirmed at the December meeting. Attorney Harris restated that the rules do not state anything about a reaffirmation being necessary. It is a choice of the two Commissioners. Attorney Harris stated in the audio of the November meeting Commissioner Bruno speaking directly to Commissioner Cauley and the group that after Commissioner Cauley confirmed his interest in returning stated he would be reaffirmed at the December meeting. At the December meeting Commissioner Hazel made his selection of Mr. Cauley.

Commissioner Hazel stated he is for reappointing Mr. Cauley. Commissioner Wiedemann made reference to the rules and stated he would like to hear the audio from the December meeting. Commissioner Wiedemann stated he spoke with former Commissioner Bruno who said he did not vote.

Attorney Harris stated the rules nor statute require a vote. All three members are not brought in the same way. One is appointed by the Mayor. One is elected by the membership and the third member is chosen by the other two members.

Commissioner Wiedemann stated that the members be chosen in a like manner (ie...himself by election, Commissioner Hazel by the Mayor and the other member by the other two Commissioners)

Attorney Harris agreed but stated that in the November meeting, a demonstration of former Commissioner Bruno's choice makes it clear his choice is Commissioner Cauley to be reaffirmed at the December meeting. Former Commissioner Bruno believed there needed to be reaffirmed and no such reaffirmation is required.

Commissioner Wiedemann asked how far in advance does this need to be done. The rules say after expiration. Attorney Harris agrees the rules need to be clear as to how soon the choice need to be made; however, this was done in November.

Commissioner Hazel asked what needs to be done. What action is required?

Attorney Harris stated that a further discussion needs to take place only if there is no agreement as to reappointing Commissioner Cauley. If the two members are in agreement, then the conversation is mute.

Commissioner Wiedemann states the wanted to look into other candidates that would be available.

Attorney Harris suggested that Commissioner Cauley abstain from today's vote to allow time for this issue to play out. There is no rush for a decision at today's meeting. In order to conduct business, you only need two members. That is a quorum and the Commission can move forward with today's meeting.

For the record, for the minutes of this meeting there is a difference of opinion and it will be looked into further. It can be addressed at the next meeting or in between with correspondence that needs to heard.

Commissioner Hazel stated he is okay with reappointing Mr. Cauley. Commissioner Wiedemann stated he is not in agreement and would like to look into the matter further.

Attorney Harris for clarity of the record, Mr. Cauley should abstain for today. The law spells out that if the parts cannot agree on an appointment of the 3rd member then the Circuit Court judge would make the decision. Although the state law was repealed, prior to it being repealed it was adopted in its entirety by City and it is grandfathered in. It is frozen in time because it was properly adopted prior to the date of repeal.

Commissioner Cauley is okay with abstaining for the meeting and asked if it goes to the Circuit Court Judge will it be resolved in 30 days prior to next meeting. Attorney Harris responded that generally court matters do not get resolved that quickly.

Commissioner Hazel if nothing can be resolved by the next meeting the board would act as a duo and not a trio? Attorney Harris—that is correct and the only wrong thing about it is that if the 2 cannot reach an agreement at meetings there is tie and things cannot move forward and if one of the members does not show up then there is no quorum and no meeting can be held.

At this point, the meeting moved forward.

Approval of Minutes: Motion to Approve Minutes of January 11, 2021 made by Commissioner Wiedemann. Second by Commission Hazel. It was noted that the minutes needed to be corrected to show that they should read in the "Roll Call" as Attorney Tolbert and not Attorney Hazel.

Roll Call: Ayes: Commissioner Hazel, Commissioner Wiedemann **Abstain:** Commissioner Cauley
Motion Carries

Correspondence: Email:

- The email from Joseph Villegas was read in to the record. *See Attached #1*
- The email from Local 365 Civil Service Complaint #3 was read into the record. *See Attached #2*
 - Discussion: Commissioner Hazel asked Chief Serna if he wished to respond. Attorney Tolbert on behalf of Chief Serna stated that a past memo dated December 2, 2019 from Chief Serna regarding trade not being allowed. Trade days were suspended until further notice. It has not been lifted. Chief has discretion over trading policy. Under the rule and Personnel and Duties of Fire Chief as commanding officer of general operation he has the discretion.

Attorney Harris asked if there was any feedback from the Commissioners. Commissioner Wiedemann stated that in the 23 years he has been on the department, trading was controlled by the Assistant Chief. Chief Perez was the only other Fire Chief to limit trading and only for training purposes. As for memo only in effect for a little while. The memo was brought to his attention because he was allowing lots of trading. Under the rules he Assistant Chief has control. The Chief's role is to approve and not disapprove.

Commissioner Hazel asked Attorney Harris if a ruling needed to be made. Attorney Harris stated he will need to look into the information provided in this meeting. Attorney Tolbert will provide Attorney Harris with the what was referenced today. Attorney Harris also asked for any prior memo's mentioned by Commissioner Wiedemann to review also.

Commissioner Hazel stated the Commission will wait for all of the facts and present it at the next meeting. Commissioner Wiedemann agreed

Union President David Mata was allowed to comment and stated that Rules are here and should be followed. If the Chief can overrule them than what is the purpose of the rules and the Commission. Rules are there and should be upheld. Trades should be allowed and avoid call offs. It benefits everyone. The rules should be followed by all.

- The email from EC Local #365 Civil Service Complaint #2 was read into the record.
See Attached #3
 - The Chief stated he is trying to work with Union President David Mata with regards to the vacancies. Any move ups are a domino effect. Moves are made to try to cover day to day operations. It's difficult to fill and have made some not all.
Union President David Mata advised he is willing to work with the Chief. The issue should have been addressed a long time ago. He has help. When you start at the top and work your way down.

- Commissioner Hazel suggested they get together and work it out. Attorney Harris asked it be addressed in the next 30 days and see status in the next meeting.

- The email from Local #365 Civil Service Complaint #1 was read into the record *See Attached #4*
 - Union President requested the email be read in the record even though the issue regarding Mr. Cauley was addressed at the beginning of the meeting.

Regular Business: None

New Business: Entry level process moving forward

Other Business: Invoices—Recording Secretary Dina Rodriguez advised that she recently became aware of the Commission budget. There are 3 outstanding invoices for those that conducted promotional interviews back in November and because they are over 60 days old they need board approval to move forward with payment.

Motion to approve payment made by Commissioner Hazel. Second by Commissioner Wiedemann.

Roll Call: Ayes: Commissioner Hazel, Commissioner Wiedemann **Abstain:** Commissioner Cauley

Notices: Recording Secretary Dina Rodriguez advised the Commission that after speaking with Counsel and the Public Access Counselor stated she would be doing away with preparing a notice for every meeting as it is not necessary. So long as this is a recurring meeting it need only be notice once with all

the scheduled dates, time, location and currently zoom information. Unless the meeting is a special meeting or executive session then it would require a 48-hour notice.

Adding to that, Commissioner Hazel would like to continue with email packets rather than hard copies.

(Attorney Harris excused himself from the meeting)

Public Comment: Angel Galarski—questioned whether the Commission had to meet in executive session to discuss Mr. Cauley. Attorney Tolbert stated she understood that they were going to exchange information and not actually meet. Commissioner Wiedemann added that he didn't have anyone specific in mind but wanted to make sure things are done correctly.

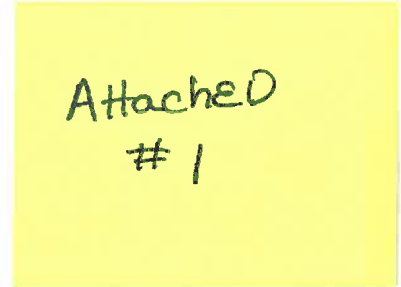
Adjournment: Motion to adjourn made Commissioner Hazel. Second by Commissioner Wiedemann

Roll Call: Ayes: Commissioner Hazel, Commissioner Wiedemann **Abstain:** Commissioner Cauley

Adjourned: 545PM

Enedina Rodriguez

From: Joseph Villegas Sr <vill1302@gmail.com>
Sent: Monday, February 1, 2021 1:55 PM
To: Enedina Rodriguez
Subject: Trade denied



February 1, 2021

Commissioners,

On Jan 7, 2021 I filled out and completed a department trading form that is required by Article XI Section 41 Part C. for the day of **Jan 12, 2021**. The trade was with 2nd Class Firefighter Adam Fulk who is qualified to work in my position of **Chauffeur** as required by Article XI Section 41 Part D. The trade was approved by Assistant Chief Snyder on **Jan 7, 2021** as required in Article XI Section 41 Part C. On **Jan 8, 2021** I was informed by Chief Serna through an email that the trade was NOT approved, no cause or reason was given. Under Article XI Section 41 Part B reads "All trading days in the East Chicago Fire Department shall be under the provisions of this section without exception." I have been a firefighter for 22 years and until recently trades have always been at the discretion of the Assistant Chief and were only denied because of training. I believe Article Section 41 gives this power to the assistant Chief but also Article II Section Two Part A "The Assistant Fire Chief shall be in command of a turn, or such other designation given to the Fire Department Personnel as may be applicable, and shall be second in command to the Fire Chief and shall be governed by Public Law #4, Indiana Acts, 1972, and all of the rules and regulations adopted by the Commission"; Part K "The Assistant Fire Chief shall make adjustments of personnel and equipment as may be necessary for the safe and proper operation of the Fire Department during his tour of duty" and Part T "The Assistant Fire Chief has command and authority over the shifts to which they are assigned. In an emergency, he has authority over other sections and divisions of the Fire Department". Further, I believe the Fire Chief must follow the rules and regulations of the commission. Evidence of this can be found in Article II Section One Part D "The Fire Chief shall enforce the written rules and regulations of the Commission". I believe my trade should have been approved as it complied with all trading rules in our Civil Service Rules and Regulations. It also was not in conflict with any local, state, or federal laws and is allowed according to the Fair Labor Standard Act 29 U.S. Code §207(p)(3). Trading is a valuable benefit to the firefighters and the department, not allowing can create excessive calls and additional overtime, not to mention low morale. I ask that you consider a ruling in which trades must be allowed as long as they are within the current written rules and regulations.

Sincerely,

Acting Chauffeur Joseph Villegas Sr

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Joe Villegas Sr

219-712-1302 Cell, Fax 219-512-9031 | Vill1302@gmail.com

Enedina Rodriguez

From: East Chicago Local 365 <ecfdlocal365@gmail.com>
Sent: Monday, February 1, 2021 3:39 PM
To: Enedina Rodriguez
Cc: Angel Gilarski
Subject: Civil Service Complaint (3)

Attached
2

Civil Service Commission,

The issue of "trading days" in accordance with Civil Service Rules has been illegally violated by Fire Chief Anthony Serna for a long period of time and we ask that this situation be addressed accordingly at the February 8th meeting.

It is the responsibility and duty of the commission to uphold the Civil Service Rules as described in its entirety. It is the responsibility of the Fire Chief and all members of the East Chicago Fire Department to adhere to these same rules. Article II, Section 1 Fire Chief, subsection (A) states, the Fire Chief shall be the commanding officer of the Fire Department, and shall be governed by Public Law #4, Indiana Acts, 1972, and ALL of the rules and regulations adopted by the Commission.

With that, Fire Chief Anhtony Serna is violating the trade rule as written and adopted by the Civil Service Commission under Article 11 General Rules, Section 41. Trade requests from members of the East Chicago Fire Department have been denied even after all steps have been taken in accordance to Section 41. There is no section of the Civil Service Rules which state the Fire Chief can halt trades. There is no section in the Civil Service Rules that give the Fire Chief the authority to deny any trade request period. In fact, subsection F under Section 41 states a situation which if denied by the "Assistant Chief", that firefighter can APPEAL that denial to the Fire Chief or Acting Fire Chief.

Section 41, subsection B clearly states: "ALL TRADING DAYS IN THE EAST CHICAGO FIRE DEPARTMENT SHALL BE UNDER THE PROVISIONS OF THIS SECTION WITHOUT EXCEPTIONS.

Trading of days amongst firefighters has a benefit to both the administration side and suppression side. By allowing trades to occur, which is something that has been taking place for decades, gives the ability for firefighters to attend personal duties that he/she may not have been able to attend due to vacation limitations and/or Turn assignment. This also limits the need for a member to "call-off" therefore saving in additional and unnecessary overtime costs to the city. Under the current work schedule and conditions of the Fire Department, trading of days would be extremely beneficial to each Turn who may be short qualified driver/operators and officers. Trading of days can also improve the overall morale of the department and its members. We ask the commission to review these rules and take into consideration the benefits which I have addressed to enforce the trade rule as written under section 41.

Respectfully,

David S. Mata, Jr.
President - IAFF Local 365

Enedina Rodriguez

From: East Chicago Local 365 <ecfdlocal365@gmail.com>
Sent: Monday, February 1, 2021 2:29 PM
To: Enedina Rodriguez
Cc: Angel Gilarski
Subject: Civil Service Complaint (2)

Attached
3

Civil Service Commission,

On November 6, 2020, Temporary District Chief Alan Abascal was injured while on duty. Since his injury, his temporary vacancy has not been filled according to Civil Service Rules and the role of Temporary District Chief is long overdue. According to Civil Service Rules, Article II Personnel, Section 6 District Chiefs, Subsection E, specifically outlines the procedures and instructions for filling the temporary vacancy of the District Chief position by seniority of time in grade Captains.

In Article II Personnel, Section 12, Subsection B, the rule clarifies what the term "temporary vacancy" means and by which this vacancy shall be filled according to the period of time for which the injured member has been off duty.

According to these rules, the Fire Chief has failed to follow the Civil Service Rules by NOT filling the temporary vacancy of the District Chief position due to the injury of Captain Alan Abascal on November 6th, 2020. This temporary vacancy should have been filled on December 9th by the next senior time in grade Captain of the East Chicago Fire Department.

On December 28, 2020, Assistant Fire Chief Carlos Aburto was injured while on duty. Since his injury, his temporary vacancy has not been filled according to Civil Service Rules and District Chief Frank Mendez has not been named Acting Assistant Fire Chief. According to Article II Personnel, Section 6 District Chiefs, Subsection D, specifically outlines the procedures and instructions for filling the temporary vacancy of the Assistant Fire Chief by a District Chief. Also note, District Chief Mendez is next on the eligibility list for Assistant Fire Chief.

In Article II Personnel, Section 12, Subsection B, the rule clarifies what the term "temporary vacancy" means and by which this vacancy shall be filled according to the period of time for which the injured member has been off duty.

According to these rules, the Fire Chief has failed to follow the Civil Service Rules by NOT filling the temporary vacancy of the Assistant Fire Chief position due to the injury of Assistant Fire Chief Carlos Aburto on December 28, 2020. This temporary vacancy should have been filled on January 30, 2021 by District Chief Frank Mendez.

Furthermore, by failing to name District Chief Mendez as Acting Assistant Fire Chief, this action has also prohibited the next senior time in grade Captain from filling another Temporary District Chief position

These issues of vacancies were brought to the attention Chief Serna by myself and several other members of the Fire Department in December 2020 and January 2021. A list of eligible time in grade Captains was also given to

Enedina Rodriguez

From: East Chicago Local 365 <ecfdlocal365@gmail.com>
Sent: Monday, February 1, 2021 2:30 PM
To: Enedina Rodriguez
Cc: Angel Gilarski
Subject: Civil Service Complaint (1)

Attached
4

Civil Service Commission,

Last civil service meeting (Jan 11th) an issue was brought up concerning the state of reappointment of commissioner Cauley. If you can recall, the issue was supposed to be reviewed by Attorney Harris and he informed us that he would get back to us soon. We have since heard no word from him and would like to add this situation to the agenda for the February 8th meeting.

At the December 14th Civil Service Meeting, a vote of reaffirmation was supposed to take place for commissioner Cauley. However, this action was not done due the absence of commissioner Bruno. According to Civil Service Rules, House Enrolled Act No. 1228, Section 2 states how the commission is to be composed and under subsection (c) states how the third member shall be chosen. These actions were not taken in the December meeting and we were under the impression that this vote would take place in the January meeting with the addition of newly elected commissioner Wiedemann. This was brought up during the meeting and Attorney Harris advised commissioner Cauley was reaffirmed in December. We believe this action to be false and illegal as it does not correspond with the proper commissioner appointment rules set forth under the above stated sections. Therefore, all civil service business which took place in the January meeting and any further business with Dwayne Cauley should be considered illegal and should hold no merit until the proper appointment of the third commissioner is done in accordance with civil service rules by Commissioners Hazel and Wiedemann.

Respectfully,

David S. Mata, Jr.
President - IAFF Local 365