

**City of Cleveland**  
**Responses to CSEA and MCEO Proposed Changes to the**  
**Civil Service Provisions of the**  
**Cleveland Charter**

**April 10, 2008**

**A. Civil Service Employees' Association**

**1. Proposed Charter Amendment One:  
Record Transparency and Availability**

The Civil Service Employees' Association (CSEA) proposes to amend Charter 134 and Charter 135 to make "records readily available for inspection and copying." CSEA also proposes that the list of persons in the classified service include whether their appointment is temporary or regular.

The City of Cleveland is obligated to follow Ohio's Public Record Law, Ohio Revised Code Section 149.43. Ohio's Public Record Law generally requires that public records "shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." ORC 149.43(B)(1). Ohio's Public Record Law provides recourse for a person who believes that records have not been provided to them as required under the law. The amendments to Charter 134 and Charter 135 concerning public records are not necessary in light of State law. The City proposed no amendments to Charter 134.

The proposed amendment to Charter 135 concerning the identification of whether an appointment is temporary or regular is not necessary because the Charter requires that the list of persons in the classified service show the "date and character of each appointment," and the "character" of the appointment includes whether it is temporary or regular.

The City proposed amending Charter 135 to reflect the computerization of the City's payroll and other systems, but the City's proposed amendment does not remove the requirement that the list of persons in the classified service show the "date and character of each appointment."

**2. Proposed Charter Amendment Two:  
Appeals to the Civil Service Commission  
For suspensions of ten days or less**

Charter 121 currently provides that an employee may appeal a suspension of more than ten days. The CSEA proposed amending Charter 121 to remove the ten day requirement, thus allowing an employee to appeal a suspension of any length.

The City proposed renumbering Charter 121 to Charter 137-1 to move it into the Civil Service Chapter. It is currently out of place in the Police and Fire Service Chapter. This move will make it easier to find the provision.

The City proposed amending Charter 121 to allow an employee to appeal a suspension of more than three days, rather than the current ten days. This change addresses the fairness issue that the CSEA raised, but does not unduly burden appointing authorities in addressing disciplinary issues with their workforce. In the State Civil Service laws, an employee who is not required to be paid overtime compensation may appeal a suspension of forty or more work hours (which, assuming 8 hour days, is one week) and an employee who is required to be paid overtime compensation may appeal a suspension of twenty-four or more work hours (which, assuming 8 hour days, is three work days).

The City also proposed amending Charter 121 to require the appointing authority, rather than the department director to transmit the charges to the Civil Service Commission, and to reflect the current disciplinary appeal process where the appointing authority reviews the findings and recommendations of the hearing officer, and determines a final course of action. That final course of action may be affirmed, disaffirmed or modified by the Commission and shall represent the final judgment.

**3. Proposed Charter Amendment Three:  
Any changes to the classifications within the classified  
service must be submitted by the Civil Service Commission  
to the City Council for Approval**

Currently, the Civil Service Commission alone creates classifications, eliminates classifications, and identifies the duties and responsibilities associated with any classification. Charter 126 states, "The Civil Service Commission shall be the sole authority under the Charter to determine the grade and classification of positions as to duties and responsibilities in all branches of the classified service." Charter 128 provides that the Civil Service Commission rules must provide "[f]or the standardization and classification of all positions and employments in the classified service...." The City

Council is not currently involved in determining classifications, but does establish the schedule of compensation for each classification under Charter 191.

Interestingly, the CSEA does not propose striking the provision in Charter 126 giving the Civil Service Commission the “sole authority” to determine classifications and their duties and responsibilities. The CSEA does propose that the following sentence be added to Charter 128, which concerns Civil Service rule provisions, “Any changes to the existing classifications after the date of passage of this section, including the creation or elimination of any classification or any changes to the duties and tasks assigned to the classifications, shall be submitted to the City Council for approval and will take effect only after said approval.”

The Cleveland Charter provides for a separation of powers. Charter 24 states, “The legislative powers of the City, except as reserved to the people by this Charter, shall be vested in a Council. . . .” Charter 67 states, “The executive and administrative powers of the City shall be vested in the Mayor, directors of departments and other administrative offices provided for in this Charter or by ordinance.” The City’s employees assist the Mayor, directors of departments and other administrative offices to carry out the necessary executive and administrative tasks. The executive branch of the City’s government is in the best position to determine the duties and responsibilities of employees who assist in carrying out the City’s executive and administrative tasks. The determination of duties and responsibilities is an executive or administrative responsibility given to the Civil Service Commission by the Charter at Section 126. The determination of duties and responsibilities necessary to run the City is not a legislative function. If the City Council were allowed to interfere with this function, the executive branch may be impeded in carrying out its required duties and responsibilities.

#### **4. Proposed Charter Amendment Four: Transparency in the justification for City layoffs**

The CSEA proposes that a new subdivision be added to the Charter provision regarding rules to require that the department or division that seeks to layoff an employee must file a financial justification prepared in accordance with standards issued by the Government Accounting Standards Board with the Civil Service Commission. The CSEA further proposes, “The statement of justification, including supporting financial statements, shall be part of the public record and shall be published in the City Record for three consecutive weeks prior to the layoff(s) becoming effective.”

To support this proposal, the CSEA states, “The State of Ohio currently requires that when an employee is subject to a layoff, a statement of justification must be filed stating the exact reason for the layoff.” The CSEA provides no cites to the Ohio law that requires this. A review of relevant Ohio law reveals that a statement of justification is filed in a very limited circumstance. Furthermore, unlike the CSEA proposal, the relevant Ohio law does not contain a publication requirement. Additionally, relevant

Ohio law makes no reference to the Government Accounting Standards Board in its discussion of layoffs for lack of funds.

Ohio Revised Code 124.321 states that State employees may be laid off for a lack of funds. If the employees are paid by warrant of the director of budget and management, the director of budget and management must determine whether there is a lack of funds. The Ohio Administrative Code at 126-2-01 states the method that the director of budget and management must use to determine whether there is a lack of funds. If an employee is paid by warrant of the director of budget and management, which is a position similar to the City's Director of Finance, the director of budget and management has no responsibility to file a statement with any agency. If an employee is paid other than "by warrant of the director of budget and management," then the appointing authority determines whether there is a lack of funds and files a statement of rationale and supporting documentation with the director of administrative services, which is a position similar to the City's Director of Personnel and Human Resources. Thus, the only filing requirement in State law is when the employee is not paid by "warrant of the director of budget and management." All City employees are paid by warrants issued out of the Department of Finance. The City of Cleveland has no situation similar to the State where the Department of Finance does not issue the paychecks. The requirement of filing a justification for layoff for lack of funds contained in State law is not applicable to the City.

The reference to the Government Accounting Standards Board in the CSEA proposed amendment is confusing. The Government Accounting Standards Board is an entity of the Financial Accounting Foundation.<sup>1</sup> The Board's mission "is to establish and improve standards of state and local governmental accounting and financial reporting that will: \* Result in useful information for users of financial reports and \* Guide and educate the public, including issuers, auditors, and users of those financial reports."<sup>2</sup> It does not appear that the Government Accounting Standards Board provides guidance on statements of justification for layoffs based on lack of funds.

The City of Cleveland follows GASB standards to prepare its financial reports. Its annual budget process and financial reports currently are published. The annual budget is published when it is adopted. The Comprehensive Annual Financial Report is published annually in the late Spring and is publicly available. Thus, information about the City's finances currently is readily available.

In the past twenty years, there have been only a few instances of layoffs for lack of funds. Those types of layoffs are serious events that are not whimsically addressed by the City. It does not appear that there are abuses in this process and thus these additional requirements do not appear to be necessary.

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<sup>1</sup> See "Facts about GASB" from the Governmental Accounting Standards Board website, GASB.org, attached.

<sup>2</sup> See "The Mission of the Governmental Accounting Standards Board" from the Governmental Accounting Standards Board website, GASB.org, attached.

## **5. Proposed Charter Amendment Five: Elimination of the non-competitive class**

The CSEA proposed to eliminate the noncompetitive class in the classified service. To justify this, the CSEA asserts that competitive tests may satisfactorily determine any employee's fitness for a position.

The City administration believes that traditional tests are not sufficient to determine which applicant demonstrates the overall highest merit and fitness for certain jobs. A certain amount of judgment is necessary to determine qualifications for certain jobs and an interview frequently is a better way to make that judgment. The City administration proposes an amendment to the description of the noncompetitive class in Subsection 2 of Charter 126, which subsection identifies the three classes in the classified service. The City administration believes that the language it proposes more specifically identifies the noncompetitive class. The City's proposed amendment to Charter 128 (2)(b) states, "The noncompetitive class shall include all positions requiring specialized training, skills requiring certifications, licensure, peculiar and exceptional and qualifications of a scientific, business, managerial, professional or educational character, as may be determined by the Commission; the fitness of applications in the for which may be determined by non-competitive class tests shall be based on the applicant's knowledge, skills and abilities relative to the qualifications for the position."

## **6. Proposed Charter amendment Six: Election of Members of the Civil Service Commission**

The CSEA proposes that members of the Civil Service Commission be elected by the citizens of the City of Cleveland. The current Charter provides that the Mayor appoints the members of the Civil Service Commission to six year terms. The Charter further provides that the members may be removed for cause after a public hearing. The members are not at-will appointments of the Mayor. The CSEA proposes popular election of the Commission members because it believes that the members must be independent of the Mayor's office.

Participation in a City-wide election requires an extraordinary amount of time and access to resources. Most of Cleveland's citizens would not be inclined to expend that time or have access to the necessary resources. An election would be a contest based on popularity and name recognition, or would involve practiced politicians who are accustomed to such a race. A popular election would not result in the best Civil Service Commission for the City.

If the Charter Review Commission believes that the membership on the Civil Service Commission is deficient, it could evaluate and change the qualifications for membership, rather than taking the drastic step of requiring a City-wide election.

## **B. Municipal Construction Equipment Operators' Labor Council**

### **Amend Charter 132 concerning limitation of appointment or transfer**

The Municipal Construction Equipment Operators' Labor Council (CEO Union) proposes an amendment to Charter 132 titled "Limitation on Appointment and Transfer" to add the sentence, "Absent emergency, no person employed by the City shall perform the work identified by the Civil Service as appropriate for a specified classified position, unless that employee has passed a competitive test for that specific classification, and was put on a hiring list for or was already working in that specific classification." The CEO Union states that this amendment is necessary because Cleveland assigns work outside of a person's classification "based on politics rather than civil service rules." The CEO Union further states that this behavior was the subject of recent litigation resulting in a contempt of court finding. The court opinion attached to the CEO Union's statement to the Charter Review Commission does not concern Charter 132. It concerns an interpretation of the work jurisdiction contained in a collective bargaining agreement. Assignment and transfer of work is governed by many of the collective bargaining agreements and thus Charter 132 does not apply to those union employees.

The City administration proposes to repeal Charter 132 and to allow the Civil Service Commission to address transfer of employees through its rules. This would give the Civil Service Commission the flexibility to adopt rules that reflect the needs of the City. The status quo for union members under a collective bargaining agreement that addresses assignment and transfer of work would not change under the City's proposal.



**Governmental Accounting Standards Board**

## Facts about GASB

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*The Governmental Accounting Standards Board (GASB) was organized in 1984 as an operating entity of the Financial Accounting Foundation (FAF) to establish standards of financial accounting and reporting for state and local governmental entities. Its standards guide the preparation of external financial reports of those entities. The Foundation's Trustees are responsible for selecting the members of the GASB and its Advisory Council, funding their activities and exercising general oversight-with the exception of the GASB's resolution of technical issues.*

*The GASB's function is important because external financial reporting can demonstrate financial accountability to the public and is the basis for investment, credit and many legislative and regulatory decisions.*

### **The Mission of the Governmental Accounting Standards Board**

The mission of the Governmental Accounting Standards Board is to establish and improve standards of state and local governmental accounting and financial reporting that will:

- Result in useful information for users of financial reports and
- Guide and educate the public, including issuers, auditors, and users of those financial reports.

### ***Uses and Users of Governmental Accounting and Financial Reporting***

Accounting and financial reporting standards are essential to the efficient and effective functioning of our democratic system of government:

- Financial reporting plays a major role in fulfilling government's duty to be publicly accountable.
- Financial reporting by state and local governments is used to assess that accountability and to make economic, social, and political decisions.

The primary users of state and local government financial reports are those:

- To whom government is primarily accountable—its citizens,
- Who directly represent the citizens—legislative and oversight bodies, and
- Who finance government or who participate in the financing process—taxpayers, other governments, investors, creditors,

underwriters, and analysts.

Government administrators also are users of financial reports; whether they are considered primary users depends on whether they have ready access to internal information.

### ***How the Mission Is Accomplished***

To accomplish its mission, the GASB acts to:

- Issue standards that improve the usefulness of financial reports based on the needs of financial report users; the primary characteristics of understandability, relevance, and reliability; and the qualities of comparability and consistency.
- Keep standards current to reflect changes in the governmental environment.
- Provide guidance on implementation of standards.
- Consider significant areas of accounting and financial reporting that can be improved through the standard-setting process.
- Improve the common understanding of the nature and purposes of information contained in financial reports.

The GASB develops and uses concepts to guide its work of establishing standards. Those concepts provide a frame of reference, or conceptual framework, for resolving accounting and financial reporting issues. This framework helps to establish reasonable bounds for judgment in preparing and using financial reports; it also helps the public understand the nature and limitations of financial reporting.

The GASB's work on both concepts and standards is based on research conducted by the GASB staff and others. The GASB actively solicits and considers the views of its various constituencies on all accounting and financial reporting issues. The GASB's activities are open to public participation and observation under the "due process" mandated by its Rules of Procedure.

### ***Guiding Principles***

In establishing concepts and standards, the GASB exercises its judgment after research, due process, and careful deliberation. It is guided by these principles:

- *To be objective and neutral in its decision making* and to ensure, as much as possible, that the information resulting from its standards is a faithful representation of the effects of state and local government activities. Objective and neutral mean freedom from bias, precluding the GASB from placing any particular interest above the interests of the many who rely on the information contained in financial reports.
- *To weigh carefully the views of its constituents* in developing concepts and standards so that they will:
  - Meet the accountability and decision-making needs of

- the users of government financial reports, and
- Gain general acceptance among state and local government preparers and auditors of financial reports.
- *To establish standards only when the expected benefits exceed the perceived costs.* The GASB strives to determine that proposed standards (including disclosure requirements) fill a significant need and that the costs they impose, compared with possible alternatives, are justified when compared to the overall public benefit.
- *To consider the applicability of its standards to the separately issued general purpose financial statements of governmentally owned special entities.* The GASB specifically evaluates similarities of special entities and of their activities and transactions in both the public and private sectors, and the need, in certain instances, for comparability with the private sector.
- *To bring about needed changes in ways that minimize disruption of the accounting and financial reporting processes.* Reasonable effective dates and transition provisions are established when new standards are introduced. The GASB considers it desirable that change should be evolutionary to the extent that can be accommodated by the need for understandability, relevance, reliability, comparability, and consistency.
- *To review the effects of past decisions* and interpret, amend, or replace standards when appropriate.

### ***Due Process***

The GASB is committed to following an open, orderly process for standards setting. The GASB will endeavor at all times to keep the public informed of important developments in its operations and activities.

The due process procedures followed by the GASB are designed to permit timely, thorough, and open study of accounting and financial reporting issues. These procedures encourage broad public participation in the accounting standard-setting process and communication of all points of view and expressions of opinion at all stages of the process. The GASB recognizes that general acceptance of its conclusions is enhanced by demonstrating that the comments received in due process are considered carefully.

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