

**Charter Review Commission
Civil Service Chapter
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Good morning. My name is Barbara Langhenry and I am the Chief Counsel in the City's Law Department. I have a few opening remarks about the Civil Service provisions in the Charter. Lu Ambroz, the Secretary of the Civil Service Commission, Trudy Hutchinson, Director of Personnel and Human Resources, and Ken Silliman, the Mayor's Chief of Staff, will then discuss proposed changes to the Civil Service provisions.

Civil Service is a long-established, good-government principle intended to make government employment a fair and open process. It was specifically designed to put an end to the "to the victor go the spoils" system of public employment and establish a merit-based approach to hiring in the public sector. As much as it was designed to protect many public employees from arbitrary employment actions in hiring, promotions, demotions, suspensions and terminations based upon political rather than performance-based considerations, the civil service system was also designed to ensure that the public receives what it richly deserves, a highly competent, accountable and efficient workforce dedicated to the public good.

I want to briefly give you an outline of the Civil Service Commission's functions as currently provided in the Charter. The Mayor appoints five members to the Civil Service Commission to six year terms each. The Mayor designates one of those members as the Secretary of the Commission. Lu Ambroz is the current Secretary of the Commission. To qualify for appointment, a person must be an elector of the City and hold no other public office. The Commission may have no more than three members of the same political party. The members are not at-will appointments of the Mayor. The Charter outlines a removal process that involves a public hearing. The Commission itself chooses its president and appoints its employees.

The Civil Service of the City is divided into the classified service and the unclassified service. The members of the unclassified service are specified in the Charter to include, all elected officials, all directors, the Clerk of council, the Chief of Police, three deputies and eleven commanders, members of boards and commissions, a secretary for the Mayor and each director, 8 executive assistants to the Mayor, students, crossing guards and auxiliary police. Additionally, the courts have determined that City lawyers are in the unclassified service. Employees in the unclassified service are at-will employees who are completely accountable to the Mayor or the Council. There are currently about 500

people in the unclassified service, but that includes about 350 crossing guards. That leaves 150 unclassified employees who are not crossing guards.

All other City employees are in the classified service. The members of the classified service are subject to the Civil Service rules. The City currently employs about 8215 people. About 7700 of those are in the classified service.

It is important to note that about 77 percent of the City's employees belong to unions. That equals 6324 employees. Union membership is relevant because the relationship between the City as a public employer and its employees was significantly altered since the last time any changes were made to the City Charter. Beginning in 1984, public employees were ensured the right to collective bargaining. Now, under a uniform state-wide public employee collective bargaining law, the City as the employer and its unions bargain over core areas affecting terms and conditions of employment such as hours of work, overtime, bids procedures, promotions and transfers, grievances from disciplinary actions, wages and benefits. Under Ohio law, collective-bargaining agreements supersede local ordinances, civil service rules, and even the Charter. Thus, for the vast majority of our employees, over 6000 of them, most of the employment actions such as promotions and discipline operate outside the scope of civil service. About 1400 employees are fully subject to all of the Civil Service provisions.

However, there is one important Civil Service area that is not superseded by collective bargaining. That is, the testing and qualification of candidates for employment, the establishment of eligible lists, and the original appointments from the eligible lists. Make no mistake, Civil Service remains a critical means of selecting, retaining, and growing an efficient and competent government workforce.

Back to the classified service. For those positions which are deemed to be classified and subject to civil service protections, the Charter divides them into three separate categories: the competitive class, the noncompetitive class and the ordinary unskilled labor class.

1. The competitive class consists of positions for which it is practical to determine the merit and fitness by competitive test. The competitive test may contain objective questions, or have subjective criteria that can be objectively scored and ranked. Secretaries, clerks, and water pipe repair workers are examples of positions in that class. If a position in the competitive class must be filled, the appointing authority asks the Civil Service Commission for certified candidates from an established eligible list. The Commission certifies the top three candidates and the appointing authority may choose one of those.
2. The noncompetitive class consists of positions that require "peculiar and exceptional qualifications of a scientific, managerial, professional or educational character." Examples are superintendents, commissioners, nurses, and consulting engineers. For these positions traditional tests are not sufficient to determine which applicant has the particularized skill and who might demonstrate the

overall highest merit and fitness for the position. Selection for these positions often requires a certain amount of judgment to determine who is best for the job. Those of you who are in a position to participate in the hiring of employees know that you do not want to have the score on a test be the sole basis for selection of certain employees. For example, Council aides. The Charter gives the Civil Service Commission the exclusive authority to determine which positions fall into this category.

3. The third class of classified employees, the ordinary unskilled labor class is, in our era, a misnomer. Every job requires a certain level of skill and the name given by the charter is somewhat pejorative. What the charter recognizes, however, is that there are some positions for which it is impractical to give any kind of competitive test. As long as certain eligibility requirements are met, citizens are able to be placed on the eligibility lists without any test. Examples are waste collectors, custodial workers and municipal service laborers.

The Civil Service Commission has the sole authority under the Charter to determine job classifications, and duties and responsibilities for all positions that fall within the classified service. There are over 900 separate classifications recognized by the Commission.

The Charter also mandates that the Civil Service Commission adopt rules for the appointment, promotion, transfer, lay-off, reinstatement, suspension and removal of employees in the classified service.

Appointments to the competitive class in the classified service are made from eligible lists that are created as a result of the competitive exam and candidates are ranked on the list based on the score on the competitive exam. These eligible lists are in force for two years.

For the unskilled labor class, the place on the eligible list is established based on the order of application for the job provided an applicant meets certain minimum requirements such as age and physical fitness. The eligible list for the unskilled labor class may be established continuously or may be established when there are vacancies to be filled. In either case, an applicant's name does not stay on the list for more than one year.

If there is not an eligible list for a position in the competitive class, the position may be filled temporarily without a test for a period not to exceed ninety days. During that 90 day period, the Civil Service Commission is supposed to hold the necessary tests. The Charter also provides for a different kind of temporary appointment. An employee may also be temporarily employed for transitory work without a test, but for no more than sixty days.

Employees who are appointed to the classified service, or who are promoted, serve a probationary period not to exceed six months.

In addition to appointments to positions, the Civil Service Commission addresses promotions, transfers, disciplinary suspensions, demotions, and terminations. As noted above, with the 1984 state law regarding the right to collectively bargain, most of the union-member employees are not affected by these provisions. These provisions regarding promotions, transfers, disciplinary suspensions, demotions, and terminations apply to roughly 1400 employees.

The Civil Service Employees Association presented you with copies of various court determinations. All but one of those documents relates to a case that is currently pending in the Cuyahoga County Common Pleas Court centering on the Civil Service Commission's duties under the Charter regarding appointments to City jobs in the absence of an eligibility list. Remember that the Charter allows a temporary appointment for 90 days, without a competitive exam, if there is no eligibility list. The Civil Service Commission is then supposed to test for the position within those 90 days. The City has a number of employees who were not tested for the positions they hold and they have been in those positions for longer than 90 days. The court has ordered the City to test these employees and the City is actively doing that and reducing the number of employees who are temporary.

The lawyer for the Municipal Construction Equipment Operators' Labor Council presented you with a proposed amendment to Section 132 concerning the appointment or transfer of an employee. The lawyer attached a court opinion to his letter leading you to believe that the opinion involves charter 132. The opinion did not involve Charter 132, but concerned the interpretation of language in a collective bargaining agreement.

The presentations over the prior couple of weeks may have left the impression that the Civil Service Commission is so dysfunctional that the City is a cesspool of political hiring with a legion of unqualified employees. If that is the impression you got, that is not a correct impression. Many of you know or work with City employees and can reflect on those contacts and realize that this impression is not correct. Additionally, none of the news articles ostensibly showing the evils of political hiring that were attached to the Civil Service Employees Association's presentation involved the City of Cleveland.

However, the City administration recognizes that the Civil Service Commission does not always function as effectively as it should. Thus, the City is making various recommendations that are aimed to allow the Civil Service Commission to operate effectively and to preserve the goals of a civil service system.