

December 19, 2013

A Regular Meeting of the Board of Fire and Police Commissioners was held on the above date, commencing at 5:56 P.M.

PRESENT: Commissioners: Sarah W. Morgan, Chair
Kathryn A. Hein
Paoi X. Lor
Ann Wilson
Marisabel Cabrera
Steven M. DeVougas

ABSENT: Commissioner: Michael M. O'Hear (Excused)

ALSO PRESENT: Mark Rohlfing, Chief, Milwaukee Fire Department and
Edward Flynn, Chief, Milwaukee Police Department

The Chair reconvened the Board in Regular Session, having previously met in Executive Session from 5:15 p.m. to 5:50 p.m. pursuant to Section 19.85 (1)(c) Wis. Stats. to consider employment, promotion, compensation or performance evaluation data of any public employee over whom the Board has jurisdiction or exercises responsibility, to wit: Reappointment of Electronic Technician.

The Director presented for adoption minutes of the Regular Meeting of December 5, 2013. Commissioner Cabrera asked to have the following incorporated as the last sentence on page 5, Section 4.d) POLICE DEPARTMENT: Commissioner Cabrera requested a data report showing the total number of plates scanned and the total number of arrests made based on use of the automated plate readers. Commissioner Hein moved approval of the minutes as corrected, seconded by Commissioner DeVougas. The motion carried unanimously.

1. UNFINISHED BUSINESS

a) The Director returned to the Board the November 15, 2013 letter from Chief Flynn regarding the request for reappointment of Dwayne A. Nash to Electronic Technician. Commissioner Hein moved to deny the request, seconded by Commissioner DeVougas. The motion carried unanimously.

2. EXAMINATIONS:

a) The Director presented for approval the Fire Captain eligible list consisting of 60 names, introduced by Kristen Urban, Fire and Police Commission (FPC) Human Resources Representative. Ms. Urban informed the Board the last examination for this position was conducted in 2010. A new job analysis was created. The FPC, Fire Department and consultant-I.O. Solutions, created a new job related selection process for Fire Captain. The exam included written and oral components. Candidates will receive written feedback on their examination. Commissioner DeVougas moved to approve the eligible list, seconded by Commissioner Hein. The motion carried unanimously.

b) The Director presented for approval the Fire Lieutenant eligible list consisting of 70 names, also introduced by Kristen Urban. Ms. Urban informed the Board the last examination for this position was conducted in 2009. A new job analysis was created. The FPC, Fire Department and consultant-I.O. Solutions, created a new job related selection process for Fire Lieutenant. The exam included a written and oral exam. Candidates will receive written feedback on their examination. Ms. Urban thanked the Milwaukee Fire Department (MFD) for their assistance with the examination process. Commissioner DeVougas moved to approve the eligible list, seconded by Commissioner Hein. The motion carried unanimously.

Commissioner Wilson stated she was concerned with the demographics of the results not including many people of color.

c) The Director presented for approval the Police Sergeant eligible list consisting of 244 names, introduced by Toni Vanderboom, FPC Human Resources Representative. Ms. Vanderboom informed the Board the last examination for this position was conducted in 2009. A new job analysis was created. The examination process consisted of three components: a written exam, oral exam and a career review board. Assessors from around the country assisted, along with representatives of the Milwaukee Police Department (MPD). The candidates will receive their final score, explanation of their score and written feedback on their examination. The information should be mailed out in six to eight weeks. Commissioner Hein moved to approve the eligible list, seconded by Commissioner Lor. The motion carried unanimously.

Commissioner Wilson stated she was concerned with the demographics of the results not including many people of color.

d) The Director presented for approval the Police Detective eligible list consisting of 109 names, also introduced by Toni Vanderboom. Ms. Vanderboom informed the Board the last examination for this position was conducted in 2005. A new job analysis was created. The examination process consisted of three components: a written exam, oral exam and a career review board. Assessors from around the country assisted, along with representatives of the Milwaukee Police Department. The candidates will receive their final score, explanation of their score and written feedback on their examination. The information should be mailed out in six to eight weeks. Commissioner DeVougas moved to approve the eligible list, seconded by Commissioner Hein. The motion carried unanimously.

e) The Director presented the Police Officer eligible list consisting of 327 names to be amended and extended, also introduced by Toni Vanderboom. Ms. Vanderboom informed the Board she sent out personal history questionnaires in August to 900 police officer candidates. They completed the written examination in 2010, in addition to a physical ability test, one and one-half mile run, an oral exam, a writing sample exercise and completion of the personal history questionnaire. She requests the eligible list be amended and extended to include 120 candidates who completed all of the examination steps. Ms. Vanderboom thanked MPD for all their help with the examination process, especially the Human Resources Division and the Background Investigation Division.

Chief Flynn stated he understands in order to have a class in spring, the amendment and extension of this list is necessary. He would like to have a new list generated sooner since the list is already four years old, with 1,500 candidates processed. He requests a continuous recruitment, or something along those lines. He also asked if the extended list could be terminated earlier than 2015. Director Tobin stated the lists can be terminated prior to 2015 by a motion from anyone. This list would be used for the upcoming January 2014 class and possibly the second class in 2014 class. A testing and recruiting committee meeting will be scheduled to speak about the details. Ms. Vanderboom stated the 120 candidates will get us through the anticipated summer class and maybe some for the winter class. We may also need to process more candidates to get the 120 candidates for 2014. Director Tobin stated this list contains individuals who were held over due to medical or military duty. Commissioner Wilson moved to amend and extend the eligible list to December 19, 2015, seconded by Commissioner Hein. The motion carried unanimously.

3. FIRE DEPARTMENT:

a) The Director presented correspondence dated December 6, 2013 from Chief Rohlifing, wherein he notifies the Board two Captains, four Lieutenants and seven Heavy Equipment Operators were reverted to their previous ranks due to the decommissioning of four apparatus. Chief Rohlifing informed the Board that they will be reverted back to their previous ranks, some for a short period of time before they are promoted from the eligible lists approved earlier.

4. POLICE DEPARTMENT:

a) The Director presented correspondence dated December 11, 2013, from Chief Flynn, wherein he notifies the Board that Kealoha T. Hunt has been promoted to the position of Telecommunications Specialist, to fill an existing vacancy, effective December 22, 2013. Commissioner DeVougas moved to approve the promotion, seconded by Commissioner Hein. The motion carried unanimously.

b) The Director presented correspondence dated December 3, 2013, from Chief Flynn, wherein he notifies the Board that Office Assistant III Christine Hackbarth was discharged pursuant to Core Value 3.00-Integrity, referencing Guiding Principle 3.01, under Personnel Order 2013-106.

c) The Director presented correspondence dated December 10, 2013, from Chief Flynn, wherein he notifies the Board that Police Sergeant Joel Kujawa was granted an unpaid medical leave of absence until January 8, 2014, effective November 19, 2013; and Police Officer Robert Kendziorski was granted an unpaid medical leave of absence until May 11, 2014, effective November 11, 2013.

d) The Director presented correspondence dated December 13, 2013, from Chief Flynn, wherein he notifies the Board of Standard Operating Procedure 735 – Automated License Plate Readers (ALPR). Commissioner Cabrera stated the questions that were asked should not be interpreted as an attack on the Milwaukee Police Department or mistrust towards them. As a commissioner, it is her duty to consider the public's interest in any activities the police department participates in. She does agree that ALPRS is a useful tool in locating stolen vehicles and in criminal investigations, but she is not convinced that it is necessary to maintain a database containing innocent individuals' information as to where their vehicle has been. She stated she made a request at the last meeting for a report, but she has not received it. The report would be helpful to her to determine the effectiveness of the use of the information. If innocent individuals' information is stored compared to those involved in criminal activity, she does not feel the expense is justified. Also, we do not have information on how much it would cost to store the information. Commissioner Cabrera stated she looked up the statute and it does not state the maximum period is seven years, but it does state the minimum is seven years, which you could keep the information longer, if you wanted to. It does provide for an exception if it is petitioned. She is unclear as to why we are waiting for a petition. There is legislation being considered, but we do not know when that will go through. We do not need to wait for that to act. If it is different than the SOP, an amendment can be filed. Chief Flynn informed her that it is better to have a policy and amend it at a later date, than not to have a policy at all. The goal is to have something to comport with standard practice at this time. Commissioner Wilson asked about the urgency for the use of the SOP. Chief Flynn informed her that sometimes policy does not keep up with practice. This is a technology that was available to them and implemented. Over time they realized they needed some procedures that govern its use and those procedures comport with their understanding of state law based on advice they received from the City Attorney's office. It is important to have something memorialized. Going forward, it will be amended. It has already been tweaked to include some of the Board's concerns regarding storage. The length of storage is not something being pushed by the police department. Chief Flynn stated they would rather not store the information that long. It was an issue when they installed the video cameras in the cruisers; state law required storage for seven years. The technology was incredibly bulky and it used up an enormous amount of storage space on their computers. They found it burdensome. They ended up spending money on a new digital system because it took up less space. The intent of the law was to force the department to hold on to the information in case someone someday needed it for an open records request. The timelines are put in with the notion that it is more transparency rather than convenience for the police department holding on to the data. He further stated someone suggested a storage period of sixty days. We feel that is too short a period. The current storage is far longer than they would desire or need. They could live with a year, but feel it is best to defer to the legislature because they are the ones who crafted the law in the first place. Commissioner Cabrera stated the legislature does allow you to petition to decrease the seven year period. She cannot understand why they do not petition for the lesser amount of time and put that in the SOP. Chief Flynn stated it would be something they would examine

with the City Attorney's office. Commissioner Cabrera stated she wanted to comment about the tour on Wednesday and that she appreciated all the safeguards set into place. She especially appreciated Captain Salazar's comment that the department will pursue criminal charges against anyone who abuses the system. Commissioner Cabrera restated her concerns with the storage of innocent individual's information being stored. Chief Flynn informed everyone that it is not their information that is being stored, only the license plate numbers. If later on an investigation requires an electronic canvas of what vehicles were parked within two blocks of a crime scene, they can look up what the plate number means. Commissioner Wilson reaffirmed with Inspector Hoerig that you cannot tell if the plate is that of a law abiding citizen until the plate is run. Inspector Hoerig stated that it was asked why the plates that are not involved in criminal activity cannot be taken out. When the plates are first read, they do not know if those plates were involved in criminal activity. If a month later, they are looking for a specific plate involved in a crime they then read that plate's information. If your license plate is in there and you were not involved in a crime, listed as a missing person, or anything in their policy, it is a good chance that your plate will never be connected with you or looked at. Commissioner Morgan asked Chief Flynn if by having the policy it puts more teeth behind if someone abuses the policy. Chief Flynn agreed that having a policy makes it clear what is permitted and what is not permitted. That is important if you are going to hold people accountable. There has to be a directive for them to disobey in order to hold them accountable. Commissioner Cabrera stated it is her understanding that the information used now, there is more limited access, so it seems that the opportunity for abuse now would be less than once there is an SOP. Inspector Hoerig informed her that they do not have a way to hold people accountable without the SOP. The SOP outlines what is permissible and what is not permissible. The SOP lays out what would be an abuse of the system. So if a member violated the policy and came before the Commission, the department could state they understand and know the policy. By employment contract, they have to follow policy as outlined by the Chief of Police and this Board. Commissioner Hein stated she was somewhat skeptical about this policy before their tour and does appreciate the meeting and feels a lot better about the safeguards the department is putting on the access of this information. She stated she is in agreement with Commissioner Morgan that it is better to have a policy in place and amend it, than to not have a policy. With the ability to receive audit reports, she has no problem approving the SOP tonight. Commissioner Cabrera reiterated that she asked for a report and has not received it. Inspector Hoerig stated she was at the meeting and she apologizes if Commissioner Cabrera asked for a report. That is not what she remembers Commissioner Cabrera saying. She remembers Commissioner Cabrera stating at some point she would like to get some figures on how many plates and alerts they had. Inspector Hoerig informed Commissioner Cabrera she will get the report. She did not realize Commissioner Cabrera was asking for a formal report. Often times when the Commissioners ask for a report, Director Tobin notifies them and they go through a process to get the report.

Chris Ahmuty, Executive Director of the American Civil Liberties Union of Wisconsin (ACLU), felt it was unfortunate that the Commissioners were going to act on the SOP with all the unanswered questions from the last meeting, and developments that have occurred daily regarding automated license plate readers. He passed out an informational list to the Board and pointed out a couple of items. Boston Police Department has suspended their license plate reader system due to a MuckRock/Boston Globe investigation. There were serious problems with the program. The system was put into minority neighborhoods which resulted in racial disparities and a number of arrests. There are many problems with it, including mass surveillance. The language in the proposed SOP is rather vague that institutionalizes some racial disparities. A policy is better than no policy, but you want to get it right because you do not know how long the amendment process is going to take. You need access to the logs so you can see how the program is being laid out. He suggests that the non-encountered hits be purged from the system. Not only the SOPs govern conduct, but the Code of Conduct can govern them as well. If someone inappropriately uses the system, that can be addressed with the Code of Conduct in absence of the SOP. Commissioner Cabrera moved to table the SOP. There was no second. Commissioner Hein moved approval of the SOP, seconded by Commissioner Lor. By a vote of five to zero, the motion carried. Commissioner Cabrera abstained.

e) The Director informed the Board the communication regarding Police Personnel Planning for 2014 has been removed from the agenda and will be scheduled for a later date.

5. PUBLIC COMMENT:

Lamon Pippin, Fire Captain with the Milwaukee Fire Department, spoke regarding the Captain's eligible list which expired in February. He passed out an informational list to the Board. He was the first person promoted to Captain from the list in June. He just began the testing process for Battalion Chief which will conclude on January 6, 2014, with results available January 9, 2014. Due to the reversion in ranks notice brought before the Board earlier in the meeting, he is being reverted back to Lieutenant. Lieutenants are not eligible to test for Battalion Chief. He is requesting that the new Captain's eligible list not go into effect until after the Battalion Chief testing process is concluded. Director Tobin informed him that the list was approved and is effective as of today, December 19, 2013. He recommended Captain Pippin speak with Chief Rohlfing for a resolution to the issue.

6. ADJOURNMENT:

Commissioner DeVougas moved to adjourn the meeting, seconded by Commissioner Lor. The motion carried unanimously.

The meeting concluded at 6:42 P.M.

Respectfully submitted,

Michael G. Tobin
Executive Director

MGT:cj