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Civil Service Commission
City of New Orleans
Michelle D. Craig, Esq, Chair
Ronald P. McClain, Vice-Chair
Joseph S. Clark
Tania Tetlow
Stephen S. Caputo

RE: February 20 2017 Civil Service Agenda Item # 7
NOPD Request for 16 Unclassified Positions

Dear Commissioners:

I wish to take this opportunity to express my views on behalf of the Crescent City Lodge of the Fraternal Order of Police regarding the New Orleans Police Department's recent request for the creation of 16 additional unclassified positions within the New Orleans Police Department.

First and foremost, unclassified positions are the exception to the rule as it relates to a system of merit-based employment. The Louisiana Constitution states there are two types of employees in the civil service system – there are unclassified employees and, then, there is everyone else. The Constitution goes on to describe the limited positions which can be unclassified. (LSA-Const. Art. 10 § 2) There are statutes in Title 33 which similarly limit the positions that qualify for an unclassified designation. Unclassified positions are the exception rather than the rule.

The New Orleans Police Department's request for 16 additional unclassified positions is intended to replace the special rate of pay for officers currently in command of 16 NOPD divisions, commonly referred to as "Commanders." Prior to the creation of the special rate of pay for "Commanders," these positions were held by classified employees. The current "Commander" position was proposed after a failed effort to create the unclassified position of "Police Colonel" for these assignments.

The New Orleans Civil Service Rules state that an unclassified position may be created if:

1. After a thorough review and analysis of the duties and responsibilities of the position, the Commission has determined that they neither are appropriate for, nor should they be performed by, a classified employee employee, and

2. The position is essentially of a sensitive nature, having considerable discretion and policy-making authority, which is not subject to further review or modification; and
3. The position is audited on a regular basis by the Civil Service Department to determine the continuing appropriateness of the unclassified status.

The NOPD believes that these positions are not appropriate for classified employees because they carry with them a “very high public profile” and “are charged with implementing sweeping reforms as well as meeting high performance standards.” Isn’t that true of every officer wearing the uniform? The NOPD goes on to say that it is imperative that the Superintendent have the authority to remove and replace individuals holding those positions should they fail to meet the Superintendent’s expectations. This should immediately result in red flags flying and alarm horns sounding.

The Superintendent’s desire to be able to place and replace individuals in this job classification based on some non-existent criteria is the antithesis of the merit-based system of employment. The same can be said of the current promotional process. Police officers, particularly high-ranking officers, are expected to be able to “do the right thing” without the fear of political reprisal or discipline absent cause. The Superintendent’s desire to be able to “swiftly replace leaders who are not performing to standard” leaves employees susceptible to the type of political interference and employment actions the Civil Service system is designed to prevent.

The NOPD goes on to state that Commanders are provided with “**near-autonomous** control of their divisions, with the ability to make both tactical and strategic decisions with **little oversight.**” Civil Service Rule III, Sec. 7.1 requires that unclassified employees have “considerable discretion and policy-making authority **which is not subject to further review or modification.**” “Near-autonomous” and “little oversight” clearly implies that the discretion and policy-making authority is subject to both review and modification. Officers holding these positions may very well be able to make tactical and strategic decisions without further review. However, tactical and strategic decisions are not policy-making decisions. Officers holding the positions of Police Officer, Police Sergeant, and Police Lieutenant make tactical and strategic decisions every day. Finally, participation in a “wide variety of policy-making committees” does not constitute policy-making authority which is not subject to review or modification.

In addition to not meeting the requirements of Civil Service Rule III, Sec. 7.1, there is sufficient flexibility in the rules to meet the Superintendent’s needs. There is currently a one-year working test period. If someone who has been promoted to a classified, senior leadership position is not performing up to standard, that individual can be demoted to his or her prior classified position. Beyond that one-year working test period, the disciplinary process is available to deal with an officer who is incompetent to fill the position. Additionally, the Superintendent controls transfers. If a classified employee is not able to perform in a particular assignment, it is fully within the Superintendent’s authority to transfer that person out and transfer a new person in.

The addition of 16 unclassified positions would leave the NOPD with 22 unclassified employees. What other City department has that many unclassified positions? One thing that is

clear about this request is that the “Commander” position as it exists today as a special rate of pay is an unjustifiable abuse of the Civil Service Rules and flies in the face of the Civil Service system. The job currently being performed by “Commanders” has historically been performed by classified employees in the positions of Police Captain and Police Major. These options are still available to the NOPD. These options would allow the NOPD the flexibility they desire and maintain the Civil Service system of merit-based employment.

On behalf of the Crescent City Lodge of the Fraternal Order of Police, I am requesting that this request for 16 unclassified positions be denied. Furthermore, the Commission should fight to maintain the merit-based system of employment by eliminating the special rate of pay position of “Commander” and facilitating testing for Police Captain and Police Major to ensure the police department has sufficient leadership to succeed in its efforts to become the best police department in the country.

The Fraternal Order of Police represents 90% of the active police officers employed by the New Orleans Police Department. Additionally, the Fraternal Order of Police represents more than 6,000 law enforcement officers in the State of Louisiana and more than 330,000 law enforcement officers nationwide. The Fraternal Order of Police is “The Voice of Our Nation’s Law Enforcement Officers.”

Sincerely,



Donovan A. Livaccari,
Fraternal Order of Police
Crescent City Lodge #2