

MINUTES
MULTNOMAH COUNTY BOARD OF COMMISSIONERS
MARCH 5, 1992 MEETING

Chair Gladys McCoy convened the meeting at 9:30 a.m., with Vice-Chair Sharron Kelley, Commissioners Pauline Anderson, Rick Bauman and Gary Hansen present.

- C-1 Request for Approval in the Matter of the Transfer of Found/Unclaimed or Unidentified Property on List 92-2 to the Department of Environmental Services, Purchasing Division, for Sale or Disposal Pursuant to Multnomah County Code 7.70
- C-2 In the Matter of the Recommendation for Approval of a Package Store, Change of Ownership Liquor License Application for the Sunshine Market to be Called THE POWELL SUNSHINE MARKET, 13580 SE Powell Boulevard, Portland
- C-3 In the Matter of the Appointments of Al Armstrong to the Department of Community Corrections Citizen Budget Advisory Committee and Debora Leopold to the District Attorney Citizen Budget Advisory Committee
- C-4 In the Matter of the Appointment of Janice R. Wilson to the Community Corrections Advisory Committee, District Court Judge Position

UPON MOTION of Commissioner Bauman, seconded by Commissioner Kelley, the consent calendar (C-1 through C-4) was UNANIMOUSLY APPROVED.

- R-1 Second Reading and Possible Adoption of an ORDINANCE Amending the Multnomah County Code, Section 5.10, Relating to Fees Assessed to Recover the Costs of Dishonored Checks

The Clerk read the proposed ordinance by title only. Copies of the complete document were available for those wishing them. A hearing was held, no one wished to testify.

UPON MOTION of Commissioner Hansen, seconded by Commissioner Anderson, ORDINANCE NO. 713 was UNANIMOUSLY APPROVED.

- R-2 QUASI-JUDICIAL HEARING on the Appeals of AFSCME, Local 88 and Linda D. Bedell in the Matter of the January 16, 1992 Merit System Civil Service Council Decision Regarding Violations of Personnel Rules by Unilaterally Putting Probationary Employees in Another Classification

Assistant County Counsel Jacqueline Weber explained her role is advisor to the Board and Assistant County Counsel Steve Nemirow is advisor to the Sheriff's Office.

At the request of Ms. Weber, appellants' attorney Don Willner confirmed that he waives any objection to Ms. Weber's role as County advisor.

Ms. Weber reported that the Board was provided with two different transcripts of the proceedings before the Merit Council,

in addition to briefs submitted by the parties. Ms. Weber stated that Mr. Willner has chosen to present argument for ten minutes and take five minutes for rebuttal and that Ms. Janet Jaron of the Sheriff's Office has fifteen minutes for argument. Ms. Weber explained that the Board is required to make a decision within 45 days of receipt of the January 22, 1992 notices of appeal, which would be Friday, March 6, 1992. Ms. Weber reported that an issue raised by the Sheriff's Office at the Merit Council level and in respondent's brief is whether either of the appellants have standing to bring an appeal before the Merit Council and therefore before the Board. Ms. Weber advised that the Board may or may not wish to hear arguments on that issue before they get to the merits.

In response to a question of Chair McCoy, Ms. Weber explained that the Merit Council decided that both parties had standing and regarding the issue that Linda Bedell was a temporary employee and therefore did not fit within the parameters of who may appeal to the Merit Council, the Merit Council decided it would interpret the term applicant broadly enough to include her. Ms. Weber added that MCC 3.10.225(d), which states that temporary employees shall have no appeal rights within the County, was not mentioned by the Merit Council or by either party and that she does not know whether they were aware of it.

In response to direction of Chair McCoy, Ms. Weber advised that following today's discussion, the Board may either affirm, reverse or remand the Merit Council decision.

In response to a request of Commissioner Bauman, Ms. Weber suggested that the Board allow the parties to make their arguments and that they may ask them to address the standing issue during their fifteen minute time limit.

Attorney Don Willner, representing AFSCME Local 88 and Linda Bedell, explained the appeal is on behalf of two temporary employees, Bedell and Collins, and two regular employees, Sines and Gustafson. Mr. Willner directed the Board to pages 12 and 13 of the transcript he prepared of the January 16, 1992 proceedings in which Merit Council Chair John Wight discussed the standing issue.

Mr. Willner advised that the transcript of proceedings submitted by the County was 66 pages versus the 97 page transcript submitted by the Court Reporter hired by his office, and expressed concern that a false transcript was submitted to the Board due to omissions and reversed or changed answers on key questions. Mr. Willner gave examples of instances where the transcribed versions differed and requested on behalf of his clients that the Board ask the District Attorney to investigate a possible violation of the Federal Civil Rights Act.

Mr. Willner explained that a merit system gives everyone the right to compete for a job, and stated that State law and the Multnomah County Charter, personnel rules and Code, which provide that the purpose of personnel rules on recruiting, appointing and promoting employees on the basis of their relative ability, knowledge and skills, including open consideration of applicants for initial appointment, were not followed in this case because Bedell, Collins, Gustafson and Sines would have liked to apply for

the job but were not given the opportunity because there was no competitive examination. Mr. Willner explained that under a merit system with an open, competitive examination, a probationary period and a regular appointment after time, Mr. Teed and Mr. Foster and the four individuals he represents would have had an opportunity to compete. Mr. Willner urged the Board to allow the appeal.

Janet Jaron, Sheriff's Office Manager for Personnel, Payroll and Training, reported that Steve Nemirow advised her a transcript was prepared for the County by an independent Court Reporter and that when she reviewed it, she noticed some items missing or incorrectly identified people. Ms. Jaron advised that she hand wrote corrections she could remember without benefit of the tape and returned it to Mr. Nemirow. Ms. Jaron advised that Mr. Nemirow informed Mr. Willner there were errors in the transcript and Mr. Willner requested to have a copy of it anyway.

Ms. Jaron reported that there are similarities between Civil Deputy and Corrections Officer jobs and some similarities in the testing process. Ms. Jaron stated that when the Merit Council asked if the positions were part of a promotional line, she said no, but that she believes the Employee Services Division would have allowed Civil Deputy experience to be qualifying to apply for a Corrections Officer job.

In response to a request of Ms. Jaron, Ms. Weber explained that only the appellant has opportunity for rebuttal.

Ms. Jaron reported that six months ago, Michael Teed and William Foster completed the full testing process and were hired from the Corrections Officer list and six weeks later the Corrections Officer positions were cut from the budget. Ms. Jaron explained that the Multnomah County Corrections Officers Association contract calls for placement on a layoff list and that consistent with past experiences, the Sheriff's Office looked for places within the department for Mr. Teed and Mr. Foster. Ms. Jaron explained that at the time this happened, two of four vacant Civil Deputy positions were cut and that Mr. Teed and Mr. Foster were placed into the other two positions. Ms. Jaron advised that three and a half months ago, Corrections Officer positions were restored to the budget and Mr. Teed and Mr. Foster were notified of a recall from the layoff list, but they were pleased with the Civil Deputy positions and after checking with the Employee Services Division and Labor Relations, the joint consensus was that Mr. Teed and Mr. Foster had the right to remain in the Civil Deputy positions. Ms. Jaron stated that when Mr. Teed and Mr. Foster stayed in the positions, Local 88 filed an appeal with the Merit Council, as did Linda Bedell, who was a temporary employee working as a Civil Deputy, and that the primary complaints were that Mr. Teed and Mr. Foster made one salary step more than three other Civil Deputies and that temporary employees had not been given an opportunity to compete for the Civil Deputy positions.

Ms. Jaron discussed the standing of the Union to bring an appeal, advising that the County Code and personnel rules allow an employee to bring an appeal if there is no contractual grievance process available. Ms. Jaron pointed out that neither Mr. Sines nor Mr. Gustafson filed an appeal with the Merit Council.

Ms. Jaron discussed the issue of timeliness, advising that the Merit Council did not rule on the Sheriff's Office question concerning the ten day rule for filing an appeal. Ms. Jaron stated that this was a highly unusual situation and that the Sheriff's Office regrets any hard feelings but the department was not prepared to let two highly qualified criminal justice professionals go or force them out of positions they really wanted and appeared to be entitled to.

Mr. Willner reported that the Board is not being asked to compare the relative merits of Mr. Teed and Mr. Foster and the four individuals he represents, but to look at whether there is a merit system in Multnomah County. Mr. Willner suggested that the Sheriff's Office could leave Mr. Teed and Mr. Foster as temporaries while an exam takes place and stated that all his clients are asking is that everyone be given the opportunity to compete for the positions and that it is not too late to follow the merit system of promotion.

At the request Commissioner Bauman, Ms. Weber stated that it seems fairly clear under the ordinance that a temporary employee, which Ms. Bedell was, has no appeal rights within the County. Ms. Weber stated that she does not think the Merit Council looked at that particular provision. Ms. Weber advised it was her understanding that two separate appeals were filed, one by Ms. Bedell separately and one by Local 88, and that apparently Local 88 filed its appeal stating that it was representing employees of its Union who would have been interested in this job had it been posted.

Chair McCoy stated that she does not feel Ms. Bedell had standing or any right to appeal.

In response to a question of Commissioner Bauman, Ms. Weber reported that Code section 3.10.025, entitled appeals from personnel actions, states there shall be a right of appeal by any employee of and applicants for the classified service. Ms. Weber advised that the Merit System Council interpreted that language broadly enough to include people who were anticipating applying had it opened up for applicants and to allow the Union to appeal. Ms. Weber advised that the Board had the option to either accept the Merit Council interpretations or it could read the ordinance language more narrowly.

Ms. Jaron commented that the concept of the Merit Council for represented employees is that it is a right of review if their contract doesn't offer any remedy or grievance process.

Ms. Weber reported she checked with Labor Relations and their position is if the contract itself is not violated, which in this case it was not, there is not a grievance procedure available.

Mr. Willner commented that the Merit Council ruled Bedell had standing as a potential applicant, not as a temporary employee and that Local 88 had standing to represent regular employees and Union members Sines and Gustafson.

Chair McCoy suggested that the only decision to be made by the Board is whether Ms. Bedell has standing.

In response to comments of Chair McCoy, Mr. Willner reported that traditionally throughout the United States where there is no remedy under a contract, the Union has represented its members in civil service hearings, before the National Labor Relations Board, before the State Employment Relations Board, in court cases and in many ways which are not part of the grievance clause, and that every time Local 88 files an unfair labor practice with the State Employment Relations Board, Local 88 is not following the grievance clause of the contract.

In response to questions of Commissioners Bauman and Anderson, Ms. Weber advised that the Board needs to be clear that there are two different parties whose standings are being challenged separately, and that the Board may either address the standing issue or go on to the merits when formulating its motion.

Commissioner Bauman moved and Commissioner Hansen seconded, to reverse the decision of the Merit System Council.

In response to a question of Commissioner Anderson, Ms. Jaron advised that the Sheriff's Office rationale for the cross transfer was that the jobs were sufficiently similar, had similar requirements in some respects, that there were some similarities in the testing process and that every indication was that they were well qualified to do a Civil Deputy job.

In response to Vice-Chair Kelley's request to hear the arguments from the maker and second of the motion, Commissioner Bauman stated that the Board's job is not to decide what is fair but what is right under the merit system and that it seems very clear a decision of convenience was made which opposes procedural rights under the merit system.

Commissioner Hansen advised that his feeling on seconding the motion and supporting the appeal, is that there are two separate jobs in which the County has set up a system with two different tests, and that all new Civil Deputies, temporary or full-time, should take the Civil Deputy test.

In response to questions of Commissioner Anderson, Ms. Jaron reported that there is only one vacancy for Corrections Officer at this time and that if the appeal is supported, the County would have to design and give a test for the Civil Deputy jobs. Ms. Jaron expressed concern over what would happen to Teed and Foster when they about three weeks away from becoming permanent employees.

In response to a question of Vice-Chair Kelley, Ms. Jaron advised she is not sure what will happen if the appeal is supported.

Mr. Willner stated that it is not the Union's fault a mistake was made months ago, as it acted immediately to try to correct it. Mr. Willner suggested that one of the employees might go back to the Corrections Officer position and the County could make the other one a temporary Civil Deputy until such time as the County could have an examination, create a list and select the best qualified person for the job.

Chair McCoy stated that it is not our place this morning to determine whether we create some positions or not. Chair McCoy advised that everyone acted in good faith and that she feels the Merit Council did its job and she is going to support its recommendation and will not support the motion for reversal because she feels it would be grossly unfair to everybody to start the process all over again.

In response to questions of Commissioner Hansen, Ms. Jaron advised it would take several months to create the Civil Deputy test, administer it and prepare the results and that she does not know whether a Corrections Officer position would open up during that interim.

Reversal of the Merit System decision was APPROVED with Commissioners Anderson, Bauman and Hansen voting aye and Commissioners Kelley and McCoy voting no.

In response to questions of Chair McCoy, Ms. Weber reported that the Board does not have another role to determine what will happen to these employees or what the Sheriff's Office will do in order to go back and essentially reopen the job under the merit system procedures. Ms. Weber advised there is a further right of appeal from this Board should the Sheriff's Office choose to take that route, in that they can appeal on a Writ of Review to the Circuit Court.

Commissioner Bauman requested that the Chair direct a letter to the District Attorney asking him to review what happened to the transcripts in this case and report back to the Board at his convenience.

Ms. Weber stated that the Chair should be aware the record of the Merit Council was simply a tape recorder placed on a table, there was not a Court Reporter or any other official recorder and two people who were unrelated to that process transcribed a tape in which they listened to various people talking who did not identify themselves.

Chair McCoy stated she would check it out.

Commissioner Anderson complimented Ms. Jaron on her presentation of the case.

There being no further business, the meeting was adjourned at 10:32 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Deborah C. Baustro