

Portland Custodians' Civil Service Board

Established 1937

February 10, 2021

Board Minutes Summary

The Official Minutes of the Portland Public Schools Custodian Civil Service Board are Sound Recordings of the Meetings. The following is a summary of the February 10, 2021 meeting.

A meeting of the Portland Public Schools Custodian Civil Service Board was held on February 10, 2021, via Google Meet and in person in the WyEast Conference Room at the Blanchard Education Service Center, 501 N Dixon Street, Portland, Oregon. Present at the meeting of CCSB were Board Chair Paul Breed, and Board Member Brian Caufield. Board Secretary Jo McClain was also in attendance via Google Meet. The presiding officer of the meeting was Paul Breed.

Preliminary meetings matters included verification of parties in attendance. Protocols for wearing masks and social distancing were discussed prior to beginning the meeting.

The meeting was called to order at 4:09

**1. Approval of Minutes**

Minutes of the meetings of the October 2, November 5, and December 22, 2020 meetings were approved as written.

**3. Discussion of Board's Order re McSwain  
Appeal/Reconsideration**

The remaining agenda items were taken out of order and the appeal of Mr. McSwain was addressed first. Cody Elliot spoke to the matter.

Mr. Elliot first addressed the issue of compliance with the Board's order, saying PPS had advised Mr. McSwain that he was not considered past over as a result of the promotion, and there was nothing in his file that indicated he had been. He said he believed there had been a miscommunication between PPS and the Board about that issue.

Mr. Breed was pleased to hear adding that the information he had had was that PPS would not comply with that order. Mr. Elliott confirmed he had verified that nothing in Mr. McSwain's file indicated he had been passed over, that Mr. McSwain had been notified, and he felt there had been a miscommunication.

Mr. Elliott said another reason he was attending was to let the Board know PPS wanted to have a dialogue about the Writ of Review process. He said the reason PPS filed the writ of review was not about concern for Mr. McSwain's individual circumstances, but also that PPS was concerned about the rules of involuntary freezing being passed. over. He said the order treats Mr. McSwain differently than those others who were not chosen, which raises concerns. Mr. Elliott said he would like to have Board amend the order to apply to all the other candidates who were interviewed. If that were done, PPS would dismiss the petition. He noted that resolution would not necessarily address the concern about the rules being followed, but this

circumstance has raised the issue and brought them to the attention of PPS and the Board.

Mr. Breed asked if he (Mr. Elliot) thought the Board should revise their rules so they had the authority to give relief from involuntary freezing if they thought that was appropriate. Mr. Elliott said from a legal standpoint, if the Board wants to have some authority to take some actions, it would make sense to have the rules reflect that authority. He said the rule leaves no real discretion whether a custodian who is not selected for a position is passed over or not. He talked about other decisions the Board had made and why he thought the issues were different.

Mr. Caufield said he saw two issues raised by Mr. Elliot - disparate treatment as to the others in the applicant pool, and a resulting awareness by the Board that the process could be improved. He then asked, "What does it raise an awareness of?"

Mr. Elliot said that is important to PPS that the rules are applied the way they are written, noting disagreement about whether the board acted within its authority.

Mr. Caufield questioned why the Board's order was disparate treatment as the other applicants had not chosen to appeal. He said this order was based on Mr. McSwain's appeal, and the others had waived their right to the process by not appealing.

Mr. Elliot said he might agree if the Board had concluded that one of the rules had been violated with respect to Mr. McSwain, but the Board had not done so.

Mr. Caufield reiterated that he did not understand PPS's position because the other candidates were not part of the appeal. There followed discussion about the potential for "people coming out of the woodwork" to take advantage of appeals they had not been part of, and how likely that might be. Mr. Elliot did not think that would happen because there was a timeline in which to file an appeal, but Mr. Breed noted that CCSB had never considered a Notice of Appeal to be jurisdictional, and had heard at least one appeal filed past the period for filing.

Mr. Breed said Mr. Elliot's remarks seemed to say that the Board's order awarded Mr. McSwain something even though we had not found in his favor. Mr. Breed said he had never viewed the order as giving Mr. McSwain anything in particular. He said the hiring process in this case "left a bad taste" and he felt anyone considering whether to apply for a promotion might believe "the fix was in and they could not get it because the people in charge of hiring had pre-selected" someone else. He said such a person would be deterred from applying for a position since they knew they would then be frozen if they did not get the promotion. He said the Order was an effort to fashion a response to what we saw as a defect in the hiring process.

Ms. Sabedra said PPS disagreed that the process was flawed and PPS has complied with the recommendation to review its practices and had come up with good solutions to make the process transparent in the future.

At this point Mr. Ed Harris asked how long Mr. Breed had been on the panel. He asked if Mr. Breed had ever offered to come and sit through a review. He said he believed it would be educational for members of the Board to "sit through an interview . . . to truly understand it."

Mr. Caufield interjected that he could highlight several instances in which the process was flawed and followed with several examples. He said he understood that were there was a statement by the District about training in awareness and confidentiality, but based on his past experience in hiring and best practices, as both he and Chair Breed had said, "it just did not mesh" and "just did not set well with the best practices of a hiring process." He also gave some examples of best practice policies.

Mr. Harris explained he was not asking about the order, but whether or not Mr. Breed wanted to sit in on a hiring interview. Mr. Caufield said he would be happy to do so.

Mr. Tim Carman said he was trying to figure out how the board would want the district to be able to conduct interviews if none of the managers can participate in the interview process. Mr. Caufield said he did not believe that requirement was part of this Order.

In response to a question from Mr. Breed, Ms. Sabedra asked if there any questions or concerns about suggestions PPS made in their January 25 document outlining a plan to increase transparency. Mr. Caufield said the Board wanted a more

neutral process or neutral panel instead of all three panel members from the custodial ranks. He suggested one from the school, one from HR, and one from the custodial ranks.

Ms. Sabedra indicated that "at some point" and "maybe a year or two ago" CCSB had agreed that HR members could sit on the panel but were not required to do so. There was no consensus that this agreement did or did not happen. Mr. Caufield then pointed out that the Order said the PPS would provide a best practice plan under which, by a date certain, in the future PPS would include in hiring panels a member from custodians, the school in which the promotion would be placed, and HR.

Mr. Leavitt interjected at this point, explaining that PPS has always reached out to the principal of the relevant school, but that some were more involved in that aspect than others. He added that trying to get multiple people from multiple departments is challenging. He said HR representatives are always welcome to come, but it is hard to do remotely. He said there is always someone from the management team and there is always an offer to SEIU to always sit in. Mr. Tim Curtin added that he had always attended interviews (except the one in question), and he thought the process had gone well.

[At this point in the meeting Mr. Carl McSwain joined via Google Meet.]

Mr. Mark Posey said he thought a problem was that people brought in from outside the department do not understand the process. He gave a scenario in which a principal familiar with

someone who works in the building believes "we can hire them." Mr. Posey added that once the process is started the principal realizes they cannot just move forward with that plan..

There was significant discussion about the issue of who can be on the interview panel, who was even available to be on the panel, and the principals who might not be direct supervisors might make comments to custodial supervisors. Mr. Leavitt explained that all facility operations managers more than likely have supervised all employees at some point as they come up through the ranks, and move between clusters in the schools. He concluded that it is "nearly impossible" to have a panel that has not supervised a particular applicant.

Mr. Caufield asked whether PPS could make the attempt to obtain a panelist that had not had that situation so there is fresh set of eyes and no inherent bias so applicants don't believe the process to be a futile one. He said there are always ways to improve and the Board's role is try to make sure there is no favoritism or nepotism. He added, "Quite frankly, the District's response, and I don't know it was intended to be this way, to me, well, was sort of like, I read your order, and thank you, but we are going to run our interviews the way we want to." He added that he was now hearing that now there is not going to be anyone from HR, and going to be hard to find someone who has not supervised anyone in the past.

Mr. Breed said that perhaps there should be a rule change, but Mr. Caufield cautioned that "Frank is right. If everyone has supervised everyone [you can't do it.]" He suggested that there

at least be an effort to try to make the process as fair as possible. Ms. Sabedra said PPS always try to have a building representative, and if possible a facilities operation manager. She added if HR is available and wants to do that, we have no problem with that. She said PPS is looking at the order to find where they can improve and where the sticking points are. She said PPS has ideas they are going to be implementing, plans to create forms that are easier to understand, improve communications, implement new training programs, and talk to people who are part of the process to get more ideas.

Mr. Caufield asked how often head custodial positions come open, to which Mr. Leavitt said it could be once every six months, or there could be 30 in a short period, depending on retirement, reclassifications, attrition. Mr. Stetson added that he had been with PPS for 37 years and all but two interviews had gone the same way with no issues.

Mr. Breed and Mr. Caufield briefly discussed possible ways to change or add to the existing rules while acknowledging some of the difficulties PPS had explained. Mr. Breed asked for comment from Mr. McSwain who confirmed that PPS had emailed him a letter saying he was not frozen, adding "The reason I brought my case was because I had heard so many times that the hiring process is not fair, and that's why I did the case."

## **2. Discussion/Approval of Hiring Lists**



Mr. Leavitt reported that the last test posting resulted in 43 applications, 23 of whom took the test. 15 were interviewed, and 13 passed. The average test score was 97.85, the average interview score was 65.73, with an overall test score of 81.79. Mr. Leavitt said that at the beginning of the day PPS had 13 vacancies, but now had 15, so they had a moving target.

The list was approved.

#### **4. (Pending) Discussion/Approval Rule 3 Revisions**

Mr. Leavitt said PPS was not ready to present the Chapter 3 revisions. Those items was carried over to the next meeting.

The meeting was adjourned at 5:11 and no further meeting scheduled at that time.

The Board Members moved into executive session which was held off tape.

Jo McClain  
CCSB Secretary