

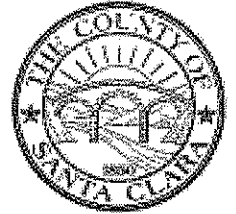
County of Santa Clara

Clerk of the Board

Personnel Board
County Government Center, East Wing
70 West Hedding Street
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(408) 299-5001 FAX 298-8460 TDD 993-8272

THIS RELATES TO FGOC
9.16.10 Item No. 8
Supplemental Information No.

1



September 16, 2010

To: Supervisor Dave Cortese, Chairperson
Supervisor Ken Yeager, Vice Chair
Finance and Government Operations Committee

From: Maria Marinos *Maria Marinos*
Clerk of the Board

Subject: Revised Amendment to Personnel Board Rules of Procedure

The Personnel Board originally recommended a rule change that was considered by the Finance and Government Operations Committee (FGOC) on August 19, 2010. The change was intended to address situations where a hearing held before less than a full board results in either a tie vote or fewer than the mandatory three-vote minimum for action. FGOC continued action on this item after Employee Services Agency (ESA) expressed concerns about the proposed rule, which gave the Personnel Board discretion to proceed with a hearing notwithstanding a request made by either party to continue the hearing until a full board is available. New language devised by ESA and a subcommittee of the Personnel Board was approved by the full Board on September 10, 2010 and is attached.

The language approved on September 10, 2010, modifies the prior recommendation to FGOC by eliminating the Personnel Board's option to override a request by either party to continue a termination hearing, but retains the option for hearings regarding all lesser forms of discipline. The modified language further specifies that in the absence of a request by either party, the Personnel Board may elect to either continue or hold the hearing, and in the event the hearing takes place but results in either a tie vote or fewer than the mandatory three-vote majority decision, the appeal will be reheard by a full, five-member board.

The Office of the Clerk of the Board serves as the ex-officio secretary for the Personnel Board, and this transmittal is forwarded on their behalf.

Attachment

RESOLUTION OF THE SANTA CLARA COUNTY PERSONNEL BOARD
PROVIDING A RULE OF PROCEDURE
TO ASSURE THREE VOTE MAJORITY ACTION

RECITALS

1. The County Charter gives the Personnel Board the power to hear disciplinary appeals. The Charter, through the Personnel Board, provides a fair and balanced forum expert in the issues presented by such appeals, and supported by the best traditions of administrative due process.

2. When it hears a disciplinary appeal, the Personnel Board can only act to resolve the appeal by the vote of a three member majority. Thus, if a four member quorum votes two to two, or a three member quorum is not unanimous, the Board has failed to act, and the outcome of the discipline remains unresolved without further proceedings. Because the Board currently lacks an effective means of ensuring the availability of a five member board to hear an appeal, the employee has been denied his or her opportunity to be effectively heard by the Board.

3. The Personnel Board wishes to avoid this result when possible and practical.

NOW, THEREFORE, IT IS RESOLVED that the Personnel Board's Rules of Procedure are hereby amended (subject to the approval of the Santa Clara County Board of Supervisors) to read as follows:

Section 10, entitled "Chairperson" is amended to add a new subsection 10.7.1 as follows:

10.7.1 – Assuring Majority Vote Decisions:

Before the beginning of a disciplinary hearing involving a decision to terminate an employee from County service where less than five Board members are present, the Board shall:

i) Upon the request of either party to the hearing or on the Board's own initiative, continue the matter to a date when all five members are present; or, in the absence of a request or decision by the Board not to proceed,

ii) Proceed with the understanding that if the Board members hearing the matter fail to reach a three vote majority decision, the appeal will be reheard by a full five member board.

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The Board retains the sole discretion to decide whether to proceed with a hearing involving an appeal of a decision to suspend or otherwise impose discipline that does not involve termination from County service where less than five Board members are present.

PASSED AND ADOPTED by the Personnel Board of the County of Santa Clara, State of California, on September 10, 2010, by the following vote:

AYES: Alvarez, Anderson, Cushing, O'Neal, Spector

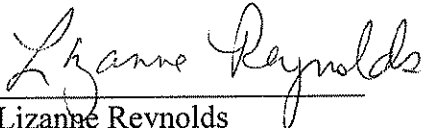
NOES: NONE

ABSENT: NONE

ABSTAIN: NONE


LIBBY SPECTOR
Chairperson

APPROVED AS TO FORM AND LEGALITY:


Lizanne Reynolds
Deputy County Counsel