

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

INTEROFFICE MEMORANDUM

TO: Office of the City Attorney, Director of
Personnel

FROM: Dan Lindheim, Acting City
Administrator

DATE: July 2, 2008 File No: (enter text)

RE: **Role and Duties of the Office of Personnel Resource Management and the Office of the City Attorney and Process to Address and Coordinate labor and personnel matters**

The purpose of this memorandum is to clarify the roles and responsibilities of the Office of the City Attorney (OCA) and the Office of Personnel Resource Management (OPRM) regarding labor and personnel matters and to specify the process for addressing and coordinating them. As always, it is expected that all parties will cooperate and conduct their work and interactions in a professional manner. It is also understood that OCA and OPRM will safeguard confidential information and communications; all internal communications other than with an attorney, including all e-mail communications, are subject to discovery in litigation.

CITY POLICIES

OCA will update Administrative Instructions that address, in whole or in part, statutory or other legal obligations of the City (Family Medical Leave, etc.), but prior to finalization, shall provide a draft to OPRM for review and comment. OPRM will update all other Administrative Instructions, but prior to finalization, shall provide a draft to OCA for review and comment.

REVIEW OF PERSONNEL POLICIES/PROCEDURES

No later than September 1, 2008, OPRM will provide OCA with all of its internal policies and procedures regarding recordkeeping, enforcement or compliance with statutory or other legal obligations of the City (Family Medical Leave, etc.). OCA will advise OPRM whether any internal policies or procedures require revision in order to conform to evolving legal standards.

NOTICE AND CONSULTATION ON DISCIPLINARY MATTERS

In order to reduce cost to the City through reduction of unnecessary back pay awards, OPRM will advise OCA of any proposed employee discipline in excess of 10 working days. OCA will advise OPRM within 2 days whether such proposed discipline meets the legal threshold for defensibility at arbitration. Should it not, OPRM will confer with OCA to develop a recommendation for discipline that is legally defensible.

EXCHANGE OF INFORMATION

OCA will promptly provide OPRM with copies of any arbitration decisions it receives. OCA will review such decisions with OPRM, should OPRM request such a review. On a monthly basis, OPRM will provide OCA with a chart identifying each matter that is at Step 3 in the grievance process, including the name of the employee or identity of the matter, the union that is bringing it, the amount of discipline that is at issue, and a brief synopsis of the basis for discipline or a description of the contract or other matter that is being grieved.

TRAINING

Because training on statutory or other legal obligations must incorporate evolving legal standards, OCA will conduct or develop, in consultation with OPRM, training on AIs or policies that address, in whole or in part, statutory or other legal obligations (such as Family Medical Leave).

NEGOTIATED SETTLEMENT AGREEMENT IN OPD

Employee Relations will handle all meet-and-confers with City unions, other than those involving matters relating to the Negotiated Settlement Agreement. Should any meet and confer involve an issue for which a Writ of Mandate or other legal remedy may be sought, OCA shall be present at the meet and confer.

SELECTION OF CITY NEGOTIATORS, REVIEW OF BARGAINING PROPOSALS AND NOTIFICATION CONCERNING NEGOTIATIONS.

OPRM must consult with and include OCA in all discussions concerning selection of negotiators for contract negotiations. OPRM will provide OCA with copies of all bargaining proposals that implicate the Fair Labor Standards Act, other statutory obligations, grievance or arbitration, or any matter susceptible to legal challenge. OPRM will notify OCA of any negotiations concerning such issues, so that it may attend.

AGENCIES AND DEPARTMENTS' RIGHT TO CONSULT COUNSEL

Agencies and departments are encouraged to consult with OCA should labor or personnel issues arise that may require legal advice, have legal implications for the City, and/or expose the City to liability.

CONSULTATION CONCERNING MATTERS THAT MAY GIVE RISE TO LEGAL EXPOSURE

OPRM shall consult with OCA on matters that may give rise to legal exposure, such as decisions to alter application, hiring and selection processes, decisions concerning disclosure of personnel records or information for bargaining, decisions that may be challenged on the basis of “contracting out,” etc.

RECORDS RETENTION

I OPRM shall retain all records for a minimum of five years.

PERIODIC REVIEW

The City Administrator, Acting City Administrator or designee, OCA and OPRM will meet at intervals to ensure that the process established by this protocol serves the interest of the City, reducing back pay awards, liability exposure and costs to taxpayers from payouts to the lowest possible level.

cc: (optional)