

2010 MAY 27 PM 2: 18

**CITY OF OAKLAND
AGENDA REPORT**

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Department of Human Resources Management
DATE: June 8, 2010

RE: A Report Identifying Issues Between the City and the Port Regarding Layoffs and a Recommendation that the City Administrator Negotiate and Execute an Agreement with the Port of Oakland and Affected Bargaining Groups to Identify and Address Differences Between the City of Oakland's Layoff Process and the Port of Oakland's Layoff Process;

- OR -

A Resolution Directing Staff to Develop an Amendment to the City of Oakland Charter Revising Article IX Personnel Administration to Create Separate Merit Systems for the City and the Port that Are Governed by One Civil Service Board

SUMMARY

For decades there has been a debate between the City of Oakland (City) administration and the Port of Oakland (Port) administration regarding the extent to which layoffs in one organization should impact the workforce of the other, with different solutions being administratively implemented at different times. The Oakland City Charter Article VII *Port of Oakland* establishes the Port as a department of the City of Oakland; and Title IX *Personnel Administration* provides for a competitive civil service governed by a Civil Service Board. The current economic crisis has resulted in layoffs of employees in every City department; the Port has separately implemented layoffs as well.

This report provides background information related to the issue of layoffs and "bumping" between the City and the Port, presents options for addressing the issues, and recommends that the City pursue an agreement with the Port that would address the most pressing concerns related to this issue.

FISCAL IMPACT

There are no fiscal impacts associated with the two pieces of legislation being offered for consideration.

If Council direction is to proceed with an agreement with the Port and, as the agreement is developed, there are elements of the agreement that have cost or savings implications, then that

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analysis will be provided with the agreement. If the direction is to proceed with a Charter Amendment for the November 2010 ballot, then there is an estimated cost of \$200,000 to place the item on the ballot and there would be additional costs associated with conducting voter outreach to garner support for the amendment.

BACKGROUND

The relationship of the City of Oakland (the City) to the Port of Oakland (the Port) and the personnel policies and rules that apply to that relationship are governed by the Oakland City Charter, the Civil Service Rules, and labor agreements with the various employee bargaining groups. Pertinent excerpts from the City Charter and the Civil Service Rules related to how the City/Port relationship is defined are included in *Attachment A*. Most of the time, the City and the Port operate independently of each other with respect to hiring, firing, and classification assignments. When economic pressures necessitate layoffs for either the City or the Port, issues arise regarding job classifications and whether employees for both organizations should be considered when determining seniority points.

There is only one Merit System under the City Charter that governs *all* Civil Service positions in the City and the Port. Many job classifications in the two organizations differ significantly, but a small group of them are very similar and are considered “shared” or “common” classifications, also called, “shared classes.” Whenever there is a reduction in force, both organizations are impacted by layoffs for positions in shared classifications. This has meant that City employees sometimes “bump” Port employees and vice versa.

When an employee is serving in a position that is eliminated through a reduction in force (layoff) process, if the employee has greater seniority than another employee in the same classification, then the most senior employee in the classification has the right to move to another position of the same classification and the employee in that position is laid off – a process commonly referred to as “bumping.” Senior employees are said to have “bumping rights.” Necessarily, the process by which seniority is determined and how to apply seniority points to an employee’s standing becomes critically important when determining which employees will be laid off and which ones will not. Also of concern is the process used to identify the position that an employee bumps into.

Under current administrative agreements with the Port, there are 12 job classifications that the City and Port have agreed are shared classifications. These are:

Port Classification	City Classification
Account Clerk	Account Clerk II
Senior Account Clerk	Account Clerk III
Office Specialist I (Intermediate Typist Clerk)	Office Assistant II
Office Specialist II (Intermediate Steno Clerk) (Senior Typist Clerk)	Administrative Assistant I
Administrative Specialist	Administrative Assistant II

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Port Classification	City Classification
(Senior Secretary)	
Semi-Skilled Laborer	Public Works Maintenance Worker
Gardener I	Gardener I
Gardener II	Gardener II
Gardener III	Gardener Crew Leader
Carpenter	Carpenter
Painter	Painter
Plumber	Plumber

The Port has modified many of its classifications to be either Port-specific or to redefine them such that they now differ significantly from similar City classifications. The changes in classifications have resulted in disputes between the City and the Port over which classifications should be considered shared classifications for the purpose of evaluating seniority points and bumping rights during layoffs.

KEY ISSUES AND IMPACTS

During the current economic crisis, the differences in the City's system and the Port's system for handling layoffs have raised challenging issues. If no action is taken, those challenges will continue to be a drain on City and Port resources and present risks to the City in the form of labor disputes and potential lawsuits.

Issues

- Without consistency in the process, layoffs in City/Port shared classifications create operational and labor problems for both the City and the Port;
- To date, the City and the Port have employed different methods for determining seniority points;
- To date, the City and the Port have employed different methods for mapping the bumping process (Port bumps within the Port before sending a less senior employee to the City; City bumps citywide, including the Port);
- Different job descriptions and different wage structures raise questions about the validity of the concept of "shared classes";
- The Port has amended its job specifications and classifications without involving the Civil Service Board;
- Ambiguity on these processes has created legal issues, conflicts, and confusion for at least 30 years.

Options

Staff has identified four potential options for addressing the issues between the City and the Port with regard to layoffs.

1. ***Negotiate an Agreement between the City and Port.*** This option would allow the City to develop an agreement to administratively address issues that do not require revisions to the Civil Service Rules or to any existing Memoranda of Understanding with its unions. Some of the proposed agreement terms will require Civil Service Board (CSB) approval and staff would engage in discussions with the Board on those items. The balance of the proposed changes are to arrive at agreements in interpreting existing rules, rather than creating new ones and would not require CSB approval. The advantage to this approach is that the City would not have to wait until after June 2011 when union contracts expire to proceed with implementation. The City *would* be required to meet and confer with the affected unions on the impacts of an agreement. Staff would work with the Port to reach agreement on the following:

	Action	Requirements
a.	Agree to the list of shared classifications, or agree to revise or abolish it.	Subject to Civil Service Board approval; meet and confer with affected unions (SEIU, Local 21) on impacts
b.	Enter into a formal "delegation of duties" agreement that empowers the Port Personnel Director to act as the City's representative on certain key personnel decisions related to Port employees	Depending on the content of the agreement, may be subject to CSB approval and meet and confer with affected unions
c.	Agree to the same timelines of layoffs to avoid waves of bumping.	Port and City administrations' agreement only
d.	Agree to the same process for calculation of seniority points	Meet and confer with affected unions
e.	Agree to share reinstatement lists	Meet and confer with affected unions
f.	Agree to allow transfers of employees within shared classifications	Meet and confer with affected unions
g.	Agree to provide personnel files of employees who bump from one organization to the other	Meet and confer with affected unions
h.	Agree to a common methodology for the use and timelines of performance evaluations and their impact on seniority	Meet and confer with affected unions
i.	Include a City requirement for periodic audits of the Port's personnel practices	Standard contract language

2. ***Amend the City Charter.*** This option would require that the language in Articles VII (Port) and IX (Personnel Administration) of the Charter be revised for the purpose of establishing that the City and the Port would maintain separate merit systems overseen by one Civil Service Board. The advantages of this approach would be that it would provide the most direct and complete way to address the issues for the long term, and the City would have more control over the content of the changes. The disadvantages to this option right now are:
- New costs – the City Clerk’s office estimates that adding a Charter Amendment to the November ballot would cost approximately \$200,000.
 - Short timeframe – to get on the ballot for November, Council will have to adopt a resolution and the Charter Amendment language no later than July 20, 2010; Charter Amendment language has not yet been developed.
 - There are numerous other changes to the Charter that the City might wish to consider, proceeding on this single issue for November may defer other important changes to a much later time.
 - If the City is pursuing other ballot measures for November, adding a Charter Amendment now might confuse voters and detract from other issues that are more critical to address.
 - Requires development of political support.

To refrain from choosing this option now does not preclude the City from making an amendment to the Charter at another time. Pursuing an agreement with the Port in the short term may have the effect of laying the groundwork for a Charter amendment, if the City wished to pursue that option at a later date.

3. ***Negotiate Amendments to the Civil Service Rules and Memoranda of Understanding.*** This option would require either seeking to reopen existing bargaining agreements or waiting until the current agreements expire in June 2011. In this scenario, the City would propose eliminating the “citywide” provisions in the Civil Service Rules and MOUs and add language that excludes the Port from the City’s layoff process. Even if the City does pursue an agreement with the Port now, it will be possible to consider this option again when negotiations with miscellaneous bargaining groups begin again.
4. ***No Change.*** The City could also choose to continue to work within the existing ambiguity.

SUSTAINABLE OPPORTUNITIES

Economic: No environmental opportunities are associated with actions resulting from this report.

Environmental: No environmental opportunities are associated with actions resulting from this report.

Social Equity: Resolving the outstanding issues between the City and the Port regarding layoffs will improve the consistent application of rules and practices which results in greater equity among the impacted employees.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no direct disability or senior citizen access issues associated with this report.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that City Council adopt a resolution authorizing the City Administrator to negotiate and execute an agreement with the Port of Oakland to identify and address differences between the City of Oakland's layoff process and the Port of Oakland's layoff process. Adoption of this resolution will enable the City's administration to pursue solutions to resolve long-standing issues administratively. Negotiations for the agreement between the City and the Port will also lay the groundwork for a future Charter Amendment, should Council later choose to proceed with that option.

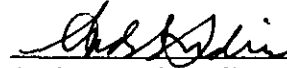
ALTERNATIVE RECOMMENDATION(S)

Staff also considered the option of developing an amendment to the City Charter that would establish separate merit systems overseen by one Civil Service Board. Staff does not recommend pursuing this option for the election in November because there are numerous other changes to the Charter that the City might wish to consider; and if the City is pursuing other ballot measures for November, adding a Charter Amendment now might confuse voters and detract from other issues that are more critical to address. Nothing in staff's recommendation to pursue administrative solutions precludes the City from pursuing a Charter amendment at a later time.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council adopt a resolution authorizing the City Administrator to negotiate an agreement with the Port of Oakland to address differences regarding layoff procedures.

Respectfully submitted,




Andrea R. Gourdine, Director
Department of Human Resources Management

Prepared by:
Kip Walsh, Administrative Services Manager II
Department of Human Resources Management

Attachment A – Excerpts from Governing Documents

APPROVED AND FORWARDED TO THE
FINANCE COMMITTEE:


Office of the City Administrator

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Governing Documents

Below are pertinent excerpts from the City Charter and the Civil Service Rules related to how the City/Port relationship is defined (*bracketed text refers to current sections of the Charter and Code where updates in the references have not kept pace with changes in the Code*):

Oakland City Charter, Article VII-Port of Oakland

Section 700. Establishment of a Port Department. To promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation, there is hereby established a department of the City of Oakland known as the "Port Department."(Amended by: Stats. November 1988.)

Section 701. Board of Port Commissioners. The exclusive control and management of the Port Department is hereby vested in the Board of Port Commissioners, which shall be composed of seven (7) members who shall be appointed by the Council, upon nomination by the Mayor.

Section 706. Powers and Duties of the Board. The Board of Port Commissioners shall have the complete and exclusive power, and it shall be its duty for and on behalf of the City (*subsections 1-20 omitted for brevity*):

(21) To employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation, and to require such officers, employees and agents to give a bond in such an amount as the Board may require for the faithful discharge of their duties. All offices and places of employment in the permanent service of the Board shall be created by ordinance duly passed.

Section 714. Personnel System. All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of this Charter, except the Executive Director and his two principal assistants, the Secretary of the Board, the Port Attorney and Legal Assistants, chief wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight. The exemption of such personnel from the operation of civil service rules shall not in any way affect such pre-existing civil service rights as such employee may hold. (Amended by: Stats. November 1988.)

Oakland City Charter, Article IX Personnel Administration

Section 902. The Competitive Service. The Council may establish departments, divisions, offices and positions of employment by ordinance, and may change or abolish the same and prescribe their powers, functions and duties. The Council may by resolution provide for temporary employment of services when required. The competitive Civil Service shall include all offices and employments in the City government except (*a and b omitted for brevity*):

(c) Department heads, one secretary to the executive director, the secretary of the board, commercial representatives and freight and cargo handlers and checkers employed by the Port Department; also such others engaged in the handling of ships and shipping as are found by both the Board of Port Commissioners and the action of the Civil Service Board as provided for pursuant to Article VI to hold positions peculiar to the operations of the Port as a commercial enterprise.

Oakland Municipal Code, Title 2 Administration and Personnel

2.08.010 Adoption of a personnel system.

In order to achieve the values of a modern system of personnel administration, enumerated in Section 800 [Section 900] of the Charter, and to provide for a personnel system based on merit as required by Section 804 [Section 904] of the Charter, including the constitution of a Civil Service Board in accordance with Section 501 [Section 901] of the Charter, the following personnel system is adopted. (Ord. 8979 § 1, 1974)

2.08.020 Administration.

The City Manager shall be responsible for the administration of the personnel system, in accordance with Section 404 [Section 503] of the Charter and subject to the provisions of this chapter. The City Manager shall appoint a Personnel Director who shall, subject to the direction of the City Manager:

- A. Be responsible for the efficient operation of the Personnel Department of the city;
- B. Prepare and maintain the Personnel Manual;
- C. Prepare and maintain the uniform position classification plan, including detailed position descriptions;
- D. Administer competitive examinations for positions in the classified civil service and maintain eligible lists of qualified candidates;
- E. Perform such other duties as the City Manager may assign.

(Ord. 8979 § 2, 1974)

2.08.030 Civil Service Board.

It shall be the function and duty of the Civil Service Board to enforce, through general supervision of the personnel system, the provisions of this chapter and of Article VIII [Article IX] of the Charter; to study, investigate and research into such areas and matters as the City Manager, or the Council through the City Manager, or the Board of Port Commissioners, may request, or as it may deem advisable; to make reports and recommendations in writing thereon and to formulate policy recommendations or recommended changes to the Personnel Manual for the better realization of the objectives of this personnel system, as set forth in Section 800 [Section 900] of the Charter; to approve the exception of positions under Section 802f [Section 902f] of the Charter; to perform the appellate duties and functions hereafter described; to review and approve changes to the Personnel Manual, excepting those which are administrative in nature, proposed by the City Manager, provided that changes in which the Board does not concur may be made with the approval of Council; and to perform such other duties and functions as the City Manager may from time to time request.

2.08.050 Port Department. The Board of Port Commissioners is authorized to establish personnel rules and procedures consistent with this chapter and the Charter and to provide for the administration of such rules for employees of the Port Department. Until the Board of Port Commissioners adopts such personnel rules and procedures, the rules of the Civil Service Board, insofar as they are consistent with this chapter, shall remain in effect with respect to Port employees. (Ord. 8979 § 5, 1974)

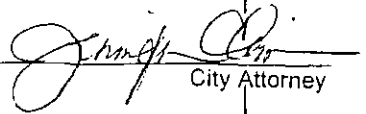
Oakland Civil Service Rules

Introduction. These Rules apply to all City and Port of Oakland employees, except where otherwise indicated in these Rules, or where an applicable Memorandum of Understanding (“MOU”) specifically conflicts with a Rule, in which case the MOU provision shall govern. The competitive civil service consists of all employees who are not in positions exempted by action of the Civil Service Board or exempted by section 902 of the City Charter as it may be amended.

Section 2.10 – Port Department. The Board of Port Commissioners is hereby authorized to establish personnel rules and procedures consistent with Ordinance 8979 and the Charter and to provide for administration of such rules for employees of the Port Department. Until the Board of Port Commissioners adopts such personnel rules and procedures, the rules of the Board, insofar as they are consistent with OMC 2.08.050, shall remain in effect with respect to Port employees.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

2010 MAY 27 PM **RESOLUTION** No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION DIRECTING STAFF TO DEVELOP AN AMENDMENT TO THE CITY OF OAKLAND CHARTER REVISING ARTICLE IX PERSONNEL ADMINISTRATION TO CREATE SEPARATE MERIT SYSTEMS FOR THE CITY AND THE PORT THAT ARE GOVERNED BY ONE CIVIL SERVICE BOARD

WHEREAS, the relationship of the City of Oakland (the City) to the Port of Oakland (the Port) and the personnel policies and rules that apply to that relationship are governed by the Oakland City Charter, the Civil Service Rules, and labor agreements with the various employee bargaining groups; and

WHEREAS, when economic pressures necessitate layoffs for either the City or the Port, issues arise regarding job classifications and whether employees for both organizations should be considered when determining seniority points; and

WHEREAS, without consistency in the process, layoffs in City/Port shared classifications create operational and labor problems for both the City and the Port; and

WHEREAS, an Amendment to the Charter of the City of Oakland revising Article IX Personnel Administration would provide a vehicle through which conflicts between the City of Oakland and Port of Oakland layoff processes may be resolved; now, therefore, be it

RESOLVED: That it is in the City's best interest to develop an Amendment to the Charter of the City of Oakland to address and resolve differences in the layoff process; and, be it

FURTHER RESOLVED: That the City Administrator be authorized to develop an Amendment to the Charter of the City of Oakland revising Article IX Personnel Administration to create separate Merit Systems for the City and the Port that are governed by One Civil Service Board.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California