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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 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 analysis will be provided with a report on the agreement. If the direction is to proceed with a

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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 (Senior Secretary)	Administrative Assistant II

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Port Classification	City Classification
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 on impacts
e.	Agree to share reinstatement lists	Meet and confer with affected unions on impacts
f.	Agree to allow transfers of employees within shared classifications	Meet and confer with affected unions on impacts
g.	Agree to provide personnel files of employees who bump from one organization to the other	Meet and confer with affected unions on impacts
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 on impacts
i.	Include a City requirement for periodic audits of the Port's personnel practices	Standard contract language

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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 Administrator 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. Pursuing such an agreement will enable the City's administration to seek 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 accept staff's recommendation that the City Administrator proceed with negotiating 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:
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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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