



Mixed Messages

San Francisco Mayor Gavin Newsom has been highlighting a resurgent City in recent speeches including his State of the City Address. He has highlighted the Capital Improvement Projects currently under way, with over \$4 billion being earmarked for the next decade and the need to hire and train professional employees to complete these complex projects. The Mayor has emphasized increasing tax revenues of over 5 percent and unemployment being down 30 percent, which both contribute to an increase in the City's operating budget. He speaks of large companies opening up headquarters in San Francisco like CH2M Hill and US Bank, companies that will be competing with the City for professional employees.

But this positive news was not reflected in the Mayor's Budget Office's Budget Instructions sent to City departments in early December; asking them to trim budgets and absorb half of their employees' pension contribution, all with the backdrop of a looming deficit.

Specifically, the Mayor is calling for departments to prioritize direct services while shaving three percent off their General Fund subsidies. His office also declares that

there is still an \$80 million deficit facing the City and that any revenue improvement in the coming fiscal year will be offset by expenditure growth and mandated contributions to the Rainy Day fund.

With the Hetch-Hetchy rebuild, the Third Street Light Rail, Geary Corridor, and MUNI's expansion westward, the City needs to recognize that to compete for the very best accountants, chemists, engineers, planners, and more, it needs to invest in its current workforce and in its recruitment strategy. The City also needs to take its own Civil Service Reform agenda seriously and begin working towards improving its hiring and training programs. The City will be negotiating contracts with most of its unions over the next few months.

Save these Dates...

SF Bargaining Conference

Tuesday, January 17, 2006

5:00 to 7:30 p.m.

Dinner included

Delegate Assembly

Saturday, January 28, 2006

8:30 a.m. to 12:30 p.m.

Berkeley City Club
(downtown Berkeley)

RSVP to sarahc@ifpte21.org

Position-Based Exams: *Human Resources Director Proposes Rules*

A key element of proposals for "civil service reform" are efforts to facilitate hiring permanent employees within sixty days. To that end the HR Director has proposed rules for "position-based" exams. The idea is that current procedures for hiring provisional employees would result in permanent hiring from an eligible list. This is an idea that has been around for some time and now exists in somewhat different guises for many of our members in the form of "continuous testing" for engineers, rehab professionals (OTs and PTs, as well as other municipal employees such as registered nurses), and registries for information technology and other groups.

The Director's proposed rules eliminate most appeals to the Civil Service Commission and substitutes the Director for the Commission as the appellate body. This didn't make much sense for at least two reasons, the first being that there are very few appeals and those that are filed really don't hold up exams (as they once did); the second problem is more serious, namely that Prop L removed the Commission from direct governance of the City's personnel department and transformed the Commission into an appellate body to hear appeals on all DHR actions. We asked our lawyer what he had to say. His response follows.

Date: Fri, 16 Dec 2005 16:19:18 -0800

To: David Novogrodsky dnovo@ifpte21.org

From: Duane Reno

Subject: Civil Service Rules For Appeals of Decisions of Human Resources Director - Final Draft

This is in response to your inquiry as to whether the San Francisco Civil Service Commission can lawfully adopt rules that give appellate authority to the Human Resources Director for final decisions on examination (and other) appeals.

Section 10.101 ("General Powers And Duties") of the San Francisco Charter states in part as follows:

"The Commission may hear appeals from an action of the Human Resources Director in a manner and form which it shall prescribe.

"The Commission may hear appeals from an action of the Human Resources Director in accordance with its rules, including but not limited to:

"1. Allegations of discrimination as defined in Article XVII of this Charter. Notwithstanding any other provisions of this Charter except the fiscal provisions hereof, the decision of the Commission regarding allegations of discrimination shall forthwith be enforced by every officer and employee;

"2. Allegations of fraud; and

"3. Allegations of conflict of interest."

Section 10.103 ("Human Resources Director") of the Charter states in part as follows:

"The Human Resources Director shall establish a system of job classification. The decision of the Human Resources Director regarding classification matters shall be final unless appealed to the Commission; provided, however, that nothing herein shall be construed to alter the scope of bargaining set forth in the following sections of the 1932 Charter: 8.400, 8.403, 8.404, 8.405, 8.407-1, 8.409 et seq. and 8.590-1 et seq."

The first issue we need to address is whether these charter provisions require the Commission to have any rule at all that provides for appeals to the Commission of decisions of the Human Resources Director on examination and other classification issues. Inasmuch as Charter Section 10.103 expressly recognizes that a decision of the Human Resources Director regarding classification matters may be appealed to the Commission (in which event this section states that the Director's decision is not final), it is my opinion that this Charter section should be interpreted as imposing a duty and authority on the Commission to hear such appeals.

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Duane Reno Memo continued...

The next issue is whether the Commission may delegate this duty and authority to the Human Resources Director. The Civil Service Commission cannot lawfully adopt any rules that delegates any authority to the Human Resources Director that the Charter expressly vests in the Commission unless the Charter also expressly permits the delegation. This is clearly established by *San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 896, in which the California Court of Appeal held that the Fire Commission could not delegate its power to adopt and modify fire department rules and regulations to an arbitrator.

In that case, the City and IAFF Local 798 had entered into a memorandum of understanding which provided that grievances were subject to binding arbitration. Grievances were defined so as to include disputes relating to the terms and conditions of employment in the department. The Court of Appeal held that because the San Francisco Charter expressly confides the formulation of the fire department's rules and regulations covering terms and conditions of employment to the Fire Commission, the Fire Commission could not lawfully delegate that authority to anyone else.

The same principle applies to the Civil Service Commission. Any authority that the Charter expressly vests in the Commission cannot be lawfully delegated by the Commission to anyone else unless the Charter expressly permits such delegation. Nothing in the Charter expressly permits the Commission to delegate its appellate authority over decisions of the Human Resources Director to the Human Resources Director. Accordingly, the Commission cannot lawfully adopt a rule to that effect.

It may be permissible for the City to provide an alternative appellate process in place of the process for appeals of decisions of the Human Resources Director to the Civil Service Commission. In this regard, in *Taylor v. Crane* (1979) 24 Cal.3d 442 the Supreme Court upheld the validity of a collective bargaining agreement providing for binding arbitration of appeals of the Berkeley city manager's employee discipline decisions. The Supreme Court explained that under the Berkeley City Charter the city manager's decision to discipline an employee was not a final decision on the issue of whether the employee was to be disciplined. Instead, the city manager's decision was appealable to the personnel board. There was no provision in the Berkeley Charter prohibiting an alternative form of appeal, such as arbitration. Accordingly, an agreement for appeals of the city manager's employee decisions to binding arbitration did not violate the Berkeley Charter.

Under the San Francisco Charter, on the other hand, when the Civil Service Commission hears an appeal of a decision of the Human Resources Director, the Commission's decision is the final decision on the issue that is the subject of the appeal. *Taylor v. Crane* may permit the City to agree to an alternative form of appeal, such as arbitration. However, an appeal of the Human Resources Director's decision to the Human Resources Director is not an appeal at all but rather a request for reconsideration. Therefore, a rule purporting to delegate the Civil Service Commission's appellate authority to the Human Resources Director would be invalid because it would deprive employees of their right under Section 10.103 to appeal the Director's decisions on classification matters.

Please do not hesitate to call if you have any questions or if I can be of any further assistance in this matter.

Ed Walsh: *Our Candidate for the Retirement Board*

By now you should have received your ballot to fill a seat on the San Francisco Retirement Board. We have the opportunity to elect Ed Walsh, president of our Administrative Analyst Chapter, to this important board where he can advance our interests. "The Retirement Board," Walsh notes, "has a direct affect on our members. It directs the investments that sustain our pensions. We also need support from the Board if we are going to make pension improvements."

Walsh is also concerned that constituent services have been neglected. He cites the COLA (cost of living adjustment) for San Francisco retirees, as an example. Currently, the COLA (2%) that retirees receive is based

upon simple interest. This means that if your pension is \$40,000 per year, you always receive \$800 as the cost of living adjustment (\$40,800 pension). If the COLA, however, were based upon your pension adjusted for inflation, you would receive \$41,616 the next year and so on. Walsh asks, "What kind of COLA doesn't take inflation into account?"

In addition to Local 21, Ed has received endorsements from SEIU Locals 790 and 535, as well as, TWU Local 250-A.

The Voting Process

All active and retired members of the San Francisco Retirement System are eligible to vote. The ballot must be returned in a signed and sealed return ballot envelope. *Failure to sign the exterior of the return envelope will invalidate the ballot.*

Mark your ballot as soon as it arrives in the mail. The deadline to return the ballot to the Dept. of Elections is January 31 at 5 p.m. - it must be received by the Dept. of Elections by this date. Completed ballots can be returned to the Dept. of Elections via U.S. mail (first class postage of 39¢ required), inter-departmental mail or in person (City Hall, Room 48). You may also submit your completed ballot to a Local 21 steward or officer, or to the Local 21 office, if you want to participate in a raffle (read below).

Should you lose or spoil your ballot, a replacement may be obtained from the Dept. of Elections. To request a replacement ballot, you need to complete a form which can be downloaded from: <http://www.sfgov.org/site/uploadedfiles/election/Docs/PerjuryNotice.pdf>.

Opportunity to Win a Flat Screen T.V. or iPod Shuffle When You Vote!

In order to be eligible to win a Magnavox 17" HD-ready flat panel LCD or an iPod Shuffle, you must give your completed, sealed ballot to a chapter officer or submit it to the Local 21 office by no later than, 5 p.m. on Tuesday, January 17. Raffle participation is not dependent on who you vote for. The drawing will be held at the S.F. Council meeting on Wednesday, January 18. The winners will be notified that afternoon.

Recreation and Park Department Update

In the San Francisco Pipeline Special Edition (October 17, 2005) we reported that Rec/Park was attempting to fill a professional planning position with a non-planning class. We are pleased to report that the Department has re-evaluated its decision and will use a Planner IV classification. This is important because it safeguards the professionalism and expertise of the department and challenges a pattern of shifting professionals out of civil service to create more "at-will" positions.

Note: In our last article, we quoted Yomi Agunbiade, General Manager at Rec/Park, as saying, "If I wanted a Local 21 planner at Rec and Park, I would have gotten one." Agunbiade responded that he should be quoted as saying, "If I wanted a planner at Rec and Park, I would have gotten one." We stand by the quote as presented originally and have offered the General Manager an opportunity to address our membership.

Reminder to Use the Employee Development Fund

As of December, the Employee Development Fund had a balance of \$125,000. We encourage everyone to utilize this fund before the end of the fiscal year, June 30, 2006. If any money remains on June 30, 2006, it will not rollover to the next fiscal year.

