

ADMINISTRATIVE LEAVE – THE ULTIMATE JOB SECURITY?

SUMMARY

Newspaper articles and records indicate that, in the last two years, Orange County has expended excessive funds on administrative leaves. The Orange County Grand Jury undertook this study to try to determine the amount of these expenditures and to examine the process and procedures that might be responsible for any excessive expenditures.

The Grand Jury found that the length of leaves varies by Orange County government departments, with the longest leaves being granted by the Probation Department. The administration of the Probation Department feels that their Department's employees, because of the nature of their work, need to be held to higher standards than other County employees. There is, therefore, frequent disagreement between the Probation Department and CEO Employee Relations about the necessity for disciplinary action and what form such action should take. Their work would be aided by a clear set of standards specifying what type of off-duty conduct is considered to impact job performance.

The Grand Jury's investigation also found that leaves could be shortened if officials from the Probation Department, CEO Employee Relations and County Counsel met together to discuss cases from their inception and then worked together to prepare cases for arbitration.

The investigation also disclosed that reports on the cost of administrative leaves forwarded to the Board of Supervisors do not indicate the full cost. A modification in the County Payroll and Accounting Systems to track these expenditures accurately would give the Supervisors a clearer picture of the duration and true cost of administrative leaves.

PURPOSE

The 2003-2004 Grand Jury received a complaint letter about an individual who was placed on paid administrative leave for more than a year before being dismissed. The person was eventually reinstated with full restitution of back salary and benefits after another year. The complainant also stated that "water cooler talk" was that a person would never be fired as an employee of

the Probation Department. The Grand Jury decided to investigate this case and its relation to the larger picture as described in many newspaper articles.

The purpose of this study was to evaluate the dismissal process for County employees, to determine if current procedures are adequate and consider possible alternatives that would reduce the length of the process and improve the preparation of cases, thereby saving Orange County money.

METHOD OF STUDY

The Grand Jury interviewed County elected officials, Probation management and management staff of many Orange County departments. It also interviewed the complainant and union representatives. The Grand Jury reviewed Memoranda of Understanding, Corporate Human Resources Policies and Procedures, court decisions, the Public Safety Officers Procedural Bill of Rights Act, the Chief Executive Officer (CEO) memo to the Board of Supervisors (BOS) dated May 2, 2003, the County Administrative Leave report (June 1998 – April 2003) and subsequent quarterly reports.

BACKGROUND

All references in this report to administrative leave mean granting of leave with pay. Orange County established its procedures for granting of administrative leave based upon court cases, *Skelly v. State Personnel Board*, 15 Cal.3d 194 (1975) and *NLRB v. Weingarten Inc.*, 420 U.S. 251 (1975); the State of California Government Code; and Memoranda of Understanding with employee associations. According to these procedures, the employer is required to conduct a full and comprehensive investigation into matters that may warrant disciplinary action to ascertain if the allegations are true and can be proven. If they can, the employer determines the appropriate level of discipline. Under California law, employees must remain on paid status during the investigation and any due- process proceedings that may follow. Administrative leave is used when the agency/department determines that it is not appropriate for the employee to remain on the job during the investigation.

In 1997, the oversight of administrative leaves was strengthened to ensure that the granting of leaves conformed to provisions of the *Orange County Personnel and Salary Resolution Policies*. These policies gave the agency/department head the power to grant up to 120 hours of leave:

An Agency/Department Head may authorize an employee to be absent with pay from his or her regular work area for reasons other than physical or mental illness for a period of time not to

exceed one hundred twenty (120) regularly scheduled working hours if the Agency/Department Head finds that such absence:

- 1. contributes to the employee's effectiveness in his or her assigned duties and responsibilities; or*
- 2. contributes to the functions and goals of the County.*

In order to extend leaves beyond 120 hours the agency/department heads are required to seek approval of the CEO:

An employee may be absent with pay from his or her regular work area in excess of one hundred twenty (120) regularly scheduled working hours upon a request by the Agency/Department Head, if the Human Resources Director or his/her designee and the County Executive Officer approve. Forms requesting an absence with pay from the regular work area in excess of one hundred twenty (120) regularly scheduled hours shall be prescribed by the Human Resources Director and shall state specifically the reason for the request and the beginning and ending dates of the absence. For purposes of this Section, regular work area shall mean the geographic area to which the employee is typically and appropriately assigned to work during the usual course of employment.

Past practice had been to delegate this review/approval process to the Chief of Employee Relations. This practice was modified to a two-step process in May 2003, with the Chief of Employee Relations reviewing and concurring with the leave request and then sent to the CEO for final approval.

ANALYSIS

Given the agreements with employee organizations and the law, the use of administrative leave is a required action within the County in appropriate cases. Early in 2003 the BOS requested an audit of administrative leaves for the five-year period starting with the 1998-1999 fiscal year. That audit indicated that the salary cost to the County for administrative leaves, as reported by the CEO, not Internal Audit, averaged about \$975,000 annually with an average of 57 employees involved. Fifty-six percent of the employees (Chart 1) and 77 percent of the costs (Chart 2) can be attributed to three agencies/departments – Probation, Sheriff-Coroner and District Attorney. Many of the employees within these organizations have peace officer status, and they are the ones most likely to be placed on administrative leave. This group is held to a higher standard of conduct than other County employees and is also covered by the Public Safety Officers Procedural Bill of Rights Act.

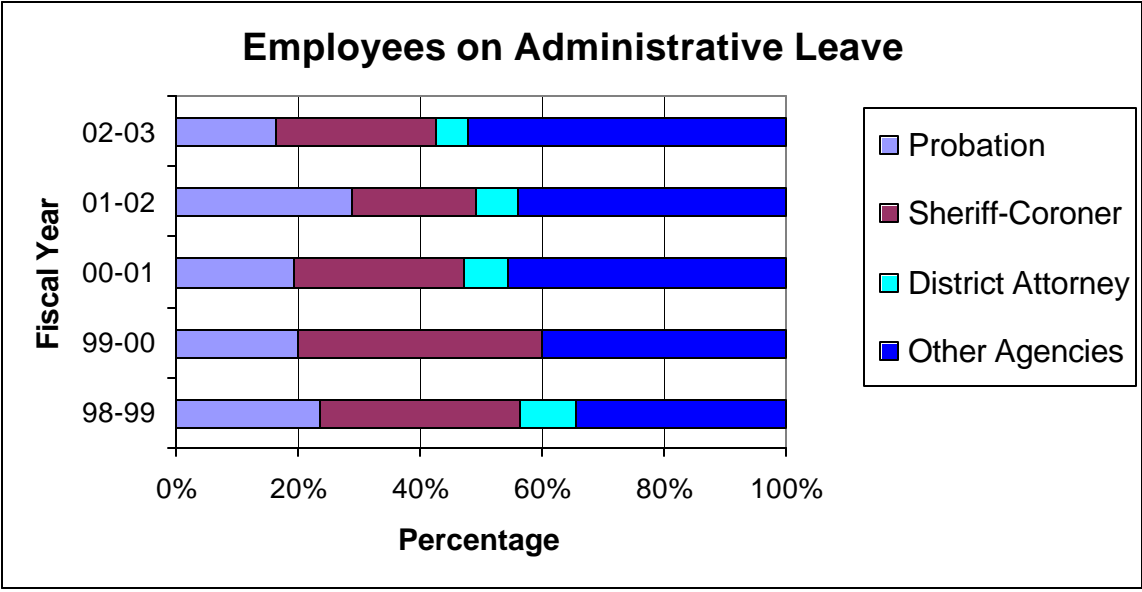


Chart 1

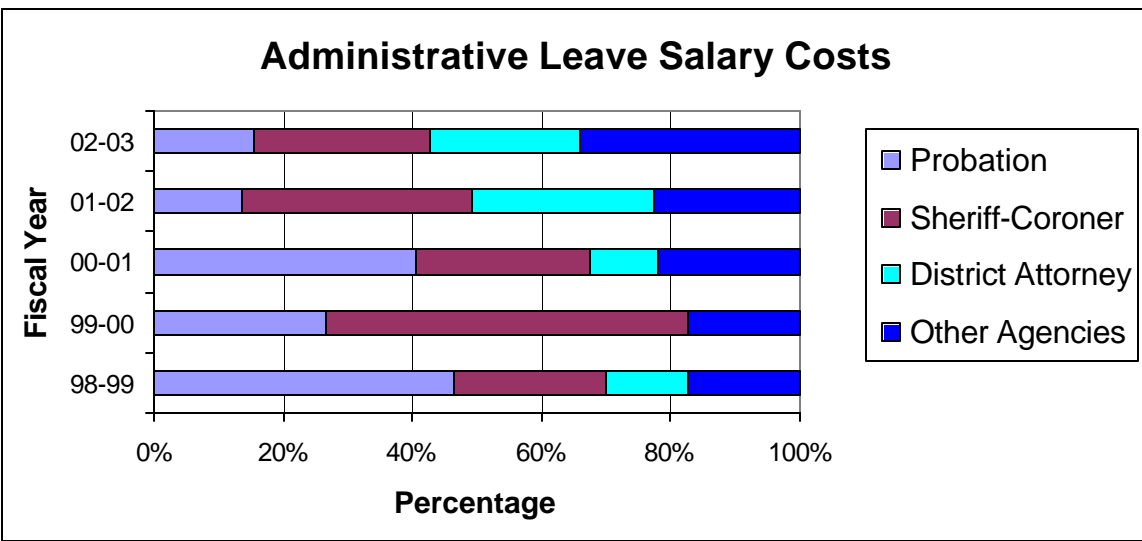


Chart 2

The CEO administrative leave reports for the first half of the 2003-2004 fiscal year indicate a definite improvement. If the trend continues for the entire year, the costs would be less than \$600,000. That sum would be very close to a 40 percent improvement over the average for the previous five years. It appears that approximately the same number of cases was involved, which implies that the length of case processing was reduced. Since the resources dedicated to the processing have not changed, one could draw the conclusion that BOS monitoring of the issue has been very important. Their oversight apparently has reduced costs.

As previously stated, according to the policy, each Agency/Department Head may authorize an employee to be absent up to 120 hours without CEO approval. Therefore, the costs presented to the BOS do not represent the full salary costs of administrative leaves. The numbers reported by the CEO represent only those actions reported to the CEO. The County accounting system tracks all types of paid leave using a single code of "LP" (leave with pay.) When reports are generated to track costs against budget, the paid leave is reported as regular salary. Consequently the real cost of administrative leaves is much greater than what is currently being reported.

The County has generally been successful once a decision has been made to dismiss an employee. Many of the employees decided to retire or resign before going to arbitration. Over the last two years, in the 13 arbitration hearings conducted, the County prevailed five times. The County lost the last four arbitration cases involving Probation Department employees. In reviewing the case described by the complainant, it was found that the individual was dismissed after 13 months on administrative leave and that an arbitration hearing held a year later resulted in the employee being reinstated. Although the Probation Department has been successful in dismissing many employees for cause, the number of unsuccessful arbitration hearings raises questions.

Interviews with the Probation Department indicate that the department and Employee Relations have a number of problems. The department reported that they have a difficult time communicating with Employee Relations on case status and that they have been given no access to County Counsel to discuss ongoing disciplinary cases. They also reported that they and Employee Relations often do not agree on the connection between off-duty conduct and job performance.

Changes in two areas within the dismissal process would reduce the cost of administrative leaves. The first is in the development of a valid case. The procedures used by many who deal with dismissal issues appear in the book, *Just Cause: the Seven Tests*, authored by Adolph M. Koven and Susan L. Smith. In that book, the following statement is made: "Most arbitrators would agree that in matters of discipline and discharge, other things being equal, the benefit of the doubt goes to the grievant (and the union)." In those situations in which a valid argument is made for dismissal, the Grand Jury determined that the employee associations will support the County and that many times the person will resign before the case is presented to the arbitrator. The key components in developing a case are a comprehensive investigation followed by a skilled review of the case. In general, the agencies/departments conduct the investigations, but not all departments possess the same investigative skills. Therefore the results of an investigation may not meet with the approval of Employee Relations. Once the investigation is completed, the

Agency/Department Head determines the appropriate level of discipline. The case is then referred to the CEO/HR for final approval if the level of discipline is determined to be dismissal. If Employee Relations finds a need to review the facts to substantiate the legality of the discharge, they work with County Counsel. After the review, Employee Relations approves or denies the discharge request. Often the Probation Department and Employee Relations do not agree on the strength of the case. It would improve the process if County Counsel, Employee Relations and the Probation Department would meet immediately after the case is submitted to the CEO/HR to discuss the case.

The second area is in the processing of cases. In the case reported by the complainant, the process took more than two years. Employee Relations works with County Counsel on dismissal cases by conducting a joint review of all cases. Processing would be greatly enhanced if the Agency/Department Head, County Counsel and Employee Relations would review the case together very soon after it is submitted. It would also improve processing if a single person in Employee Relations handled all dismissal cases and if that person were to represent the County during arbitration.

FINDINGS

Under *California Penal Code* §933 and §933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury has arrived at the following findings:

1. The actual costs related to administrative leaves are much greater than the amount reported to the Board of Supervisors.
2. The agencies/departments develop cases independently before submitting them to CEO/Employee Relations.
3. County Counsel becomes involved in dismissal cases only when requested to do so by Employee Relations.
4. Not all agencies/departments have the same human resources skill sets.
5. The County accounting system is not designed to capture the actual costs of administrative leaves.
6. The Probation Department is not in agreement with CEO/Employee Relations regarding sufficient cause for disciplinary action and the appropriate action required.

7. The CEO's reports to the Board of Supervisors for the first two quarters of the 2003-2004 fiscal year indicate a significant reduction in cost of administrative leaves from the previous five years.

8. Arbitration cases would be conducted more efficiently if all cases were assigned to the same individual in CEO/Employee Relations.

Responses to all findings are required from the Orange County Board of Supervisors and requested from the Orange County CEO.

A response to Finding 3 is requested from County Counsel.

A response to Finding 5 is required from the Auditor-Controller.

A response to Finding 6 is requested from the Probation Department.

RECOMMENDATIONS

In accordance with *California Penal Code* §933 and §933.05, each recommendation requires a response from the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based upon the findings, the 2003-2004 Orange County Grand Jury recommends that:

1. The Auditor-Controller change the County Payroll and Accounting systems to accurately track all costs related to paid administrative leaves. (Findings 1 and 5)

2. The CEO centralize some of the Human Resources functions that are currently within the agencies/departments. (Findings 2 and 4)

3. The County Counsel, Employee Relations and the appropriate Agency/Department Head meet to discuss each dismissal case soon after the investigation has been completed and the case has been submitted to Employee Relations. (Finding 3)

4. The County Counsel, Employee Relations, District Attorney's Office, Sheriff-Coroner and Probation Department representatives meet to determine what off-duty conduct standards might be applicable to employees with peace officer status. Representatives from employee organizations should also participate. (Finding 6)

5. The Board of Supervisors continue to track administrative leaves approved by the CEO and determine the actual cost of paid administrative leaves. (Findings 1, 5 and 7)

6. CEO/Employee Relations assign a single individual to all dismissal arbitration cases. (Finding 8)

Responses to all recommendations are required from the Orange County Board of Supervisors and requested from the Orange County CEO.

A response to Recommendation 1 is required from the Auditor-Controller.

A response to Recommendation 3 and 4 is requested from the Probation Department.

A response to Recommendation 3 and 4 is requested from County Counsel.

A response to Recommendation 4 is required from the Sheriff-Coroner.

A response to Recommendation 4 is required from the District Attorney.