

ORANGE COUNTY HUMAN RESOURCES PROCEDURES OUT OF DATE, OUT OF TIME

SUMMARY

County government is one of the largest employers in Orange County. It is a reasonable expectation, therefore, that Orange County's Human Resources procedures be efficient, practical and contemporary. One of the primary documents which defines the procedures for personnel administration is entitled, "Orange County Merit System Selection Rules and Appeals Procedure." It provides guidance for recruitment, hiring, promotion, equal employment opportunity, appeal and dismissal. It is the "map" used each day by the County's Human Resources professionals as they navigate the maze of rules and regulations impacting their body of work -- and it was last revised in 1978. As improbable as it may seem, this seminal document was created before cell phones, personal computers or the Internet became part of everyday working life.

The 2007-2008 Orange County Grand Jury found it odd that such an important cornerstone of County administration, referenced daily by the agencies of County government, could be so outdated. After an investigation resulting in this report, the Grand Jury learned that at least four previous attempts to rewrite the Selection Rules and Appeals Procedure were never completed. The current Human Resources management staff has made the update of this document a priority. Hopefully this effort will bear fruit. The employees of Orange County and the taxpayers, whom they serve, deserve nothing less.

REASON FOR INVESTIGATION

While investigating complaints regarding the hiring and promotion practices within agencies of County government, the 2007-2008 Orange County Grand Jury became aware that a central document governing this process, "Selection Rules and Appeals Procedure" (SRAP), was drafted in 1977 and last revised November 20, 1978, when an IBM Selectric typewriter and a bottle of White-Out™ were clerical state-of-the-art technology and rotary-dial telephones were still commonplace. The Grand Jury believes that a document so fundamental to the daily business practices of Orange County warrants more attention than one update every 30 years. As the Grand Jury's effort came to focus on the neglect of SRAP, it became obvious that there has been little sense of urgency to modernize this document over the years. This is not good governance. The last audit authorized by the State of California found Orange County's written procedures to be "...no longer consistent with current practice."¹

¹ Orange County Personnel Management Program Review, Report of Findings, 2004, Cooperative Personnel Services, Merit System Services.

Additionally, the structure of the Human Resources (HR) function has evolved greatly since 1978 and bears no semblance today to the organization that existed when these rules were written and revised. Each agency now fields its own HR team with the manager reporting to the agency head, not through the central Orange County Human Resources (OCHR) organizational structure. HR budgets reside within the individual agencies and the HR function is now decentralized as the agencies of County government exercise much more freedom (and responsibility) in their recruitment and hiring practices. Outside County government, Federal and State programs which demand compliance have been enacted or evolved; new legislation and case law have weakened some programs and strengthened others.

The watershed event that prompted the reorganization was, of course, the bankruptcy filing by Orange County in 1994, the largest municipal bankruptcy in U. S. history. The fiscal impact was devastating and the Personnel Department (as it was then called) was particularly hard hit. Department budget and staffing levels have been under steady pressure ever since. The Human Resources function has lost over 60 positions during this period. In January 2008, the latest staff reduction was the Administrative Manager position overseeing Organizational Development, the duties and responsibilities for which have been divided among other managers, who undoubtedly already have a full plate of assignments and obligations. Hence, the trend which has contributed to the neglect of the Selection Rules and Appeals Procedure (SRAP) remains in place as the County struggles to manage very finite assets.

A positive first step to break this syndrome may be in the offing as the current Human Resources management leadership moves to revamp this department and revise the SRAP, a formidable task in the current environment and the subject of this study.

METHOD OF INVESTIGATION

The Grand Jury interviewed Human Resources (HR) professionals at various Orange County agencies and departments as well as at central Human Resources (OCHR). In order to develop a comparison, a sense of history and the status-quo in other jurisdictions, the Grand Jury also spoke to Human Resources managers at San Diego, Riverside, San Bernardino, Ventura and Santa Barbara counties. Orange County information technology (IT) professionals were also consulted as well as vendors and personnel management professionals outside County government. OCHR's website was researched. During the course of its investigation the Grand Jury drew upon the publications and documents listed in References.

BACKGROUND AND FACTS

In 1977, the Orange County Board of Supervisors adopted a resolution establishing the authority for a merit system regarding personnel administration within County government. Simply put, this meant that all appointments, promotions, demotions and discharges would henceforth be based solely on performance. The resolution does not apply to some positions such as extra help, assistants and clerical employees of members of the Board of Supervisors, secretaries to elected department heads and other "at will" positions. Upon adoption of this resolution, Orange County's personnel practices became subject to California Local Agency Personnel Standards (LAPS), which define the six Merit Principles by which the County must abide to maintain an Approved Local Merit System (ALMS). The Orange County document establishing this State approved merit system is the Orange County Merit System Selection Rules and Appeals Procedure (SRAP), which was last revised 30 years ago.

Why, one might ask, is it so important for Orange County to maintain its standing as an ALMS county? Why should the County not define its own personnel standards and manage itself accordingly? Why wade through pages of LAPS regulations adding to the bureaucratic burden of everyday business? These are very good questions for which there is one very good answer -- money.

The Significance of Local Agency Personnel Standards (LAPS)

LAPS is actually in the California Code of Regulations, Title Two, Administration, Division Five, Local Agency Personnel Standards. Chapter 1, Article 1 says it all: "These standards must be met by a local agency wishing to establish its own Approved Local Merit System in order to qualify for certain state and federally funded programs. In Approved Local Merit Systems, the State Personnel Board Executive Officer will review each system for sufficient conformity with applicable Federal requirements. If sufficient conformity is found, the approval will be continued."

So there it is. The Federal Government has vested in the State Government the authority to audit County Government. The relationship assures that Federal dollars are administered by County employees who have been recruited, hired and promoted as Washington and Sacramento dictate. Their position is "if you want our money, you play by our rules," and the stakes are high. Orange County Social Services Agency (SSA)² had a recommended budget of \$711,302,320 for FY 2007-2008, of which \$673,292,696 were "pass through" dollars from Federal and State programs. Emergency Services³ (essentially the Sheriff-Coroner) had \$633,261,174 in recommended Federal and State funding. Child Support Services (CSS)⁴ had \$58,687,731. Although LAPS compliance directly impacts only SSA, Emergency Services and CSS, almost every agency and department of the County has a significant

² Including programs for which Social Services Agency has budget authority. All dollar amounts derived from the County of Orange Fiscal Year 2007-2008 Budget Workbook.

³ Ibid. Including programs for which Emergency Services (Sheriff-Coroner) has budget authority.

⁴ Ibid.

portion of its budget funded by State or Federal agencies. When the magnitude of funding is considered, compliance with LAPS takes on new significance.

An interesting aside on the subject of Federal compliance can be found in the area of Child Support Services. In Orange County, CSS may be involved in the collection of child support in certain cases as ordered by the courts. When it is involved, it is one of the few agencies of the County that actually generates revenue, contributing to the County general fund. The State of California is obligated by the Federal Government to deploy an approved, computerized data base management and collection program which must be utilized by each county in the state. This assures a homogeneous system statewide -- a Federal mandate. Unfortunately for the residents of Orange County, the State's system has been determined to be in non-compliance by the Federal Government. As a result, hundreds of millions of dollars earmarked for California (some of which would have come to Orange County) have been withheld by Washington. California is one of only two states to have funds denied; the other is South Carolina. Aside from the obvious reality that this is not good governance and that Orange County has no control over the situation, it drives home the cold, hard fact that the Federal Government can and will withhold program funds when their rules are not followed.

Could Federal and State funding be negatively impacted by LAPS non-compliance? Highly unlikely but possible. Could an outdated SRAP cost Orange County money? Most improbable. But the fact remains that state audits have repeatedly recommended that SRAP be rewritten and that thus far the suggestions have essentially been ignored. At some point, Orange County must respect the position of the State's auditors and find the resources and resolve necessary to update SRAP.

Merit System Services and the Audit Function

By contract with the California State Personnel Board, Merit System Services⁵ (MSS) ensures that personnel systems of local jurisdictions receiving Federal and State monies for Social Services, Emergency Services and Child Support Services programs comply with California Local Agency Personnel Standards (LAPS). For Counties with an Approved Local Merit System (ALMS), such as Orange County, MSS periodically (about every four or five years) conducts a personnel program review measuring procedures against the six merit principles defined in LAPS⁶. The six merit principles are:

- Recruitment, Selection and Career Advancement
- Classification and Compensation
- Training
- Separation, Layoff and Employee Evaluation
- Equal Employment Opportunity, Employee/Management Relations and Appeals

⁵ Merit System Services is a subsidiary of Cooperative Personnel Services, providing personnel consulting, placement and review services for governmental agencies throughout the United States.

⁶ Barclay's Official California Code of Regulations, 2002

- Political Rights and Prohibitions

Orange County's last MSS review was completed in 2004. The section of the report entitled, "Highlights of Major Findings" states that "Orange County is in general compliance with ALMS standards as stated in LAPS, Chapter 1," followed by recommendations to bring the County into full compliance. The first recommendation, and by far the most powerful, states that:

The Orange County Selection Rules and Appeals Procedure were last revised in 1978 and are no longer consistent with current practice.

The Selection rules vest responsibility and authority for the merit system in the Assistant CEO/Human Resources Director (Personnel Director). The Assistant CEO/Human Resources Director is responsible for the county-wide merit system but has little or no control over departmental recruitment and selection procedures and practices. The revised rules should spell out the relationship and responsibility for Central HR with respect to agencies/departments, particularly, in relation to recruitment and selection. Additional audit policies and procedures need to be developed and implemented to insure agencies/departments are operating within the adopted system. Periodic audits by central HR must be conducted to insure consistency.⁷

The last paragraph in the Highlights of Major Findings section reiterates, "In summary, we feel very strongly that Merit System Selection Rules and Appeals Procedures need to be updated to reflect current practices and procedures. These should be put in place to ensure agency/department practices comply with the revised rules." The outdated nature of SRAP is mentioned three more times throughout the report. This is tantamount to having someone grab your lapels and scream in your face. The State's auditor cannot say it more plainly or forcefully -- SRAP must be rewritten. So, alas, Orange County has held the State Personnel Board at arm's length, working around the shortcomings of a grossly outdated SRAP. What will happen next year when MSS knocks at the door and asks to review SRAP? Will Orange County have a new and contemporary procedure to show them, or once again present the old SRAP and undergo another harsh critique? An examination of the situation in OCHR may provide insight as to the future of SRAP.

⁷ Orange County Personnel Management program Review, Report of Findings, 2004, Cooperative Personnel Services, Merit System Services.

Selection Rules and Appeals Procedure Update

The present Director of Human Resources and Employee Relations (HR Director), with extensive background in HR and Information Technology (IT), is well qualified to lead this department forward, but daunting tasks lie ahead. The staff at Central Human Resources (OCHR) is composed of some 40 professionals who handle the entire menu of "umbrella functions" for all County agencies, including:

- Equal Opportunity/Access
- Organized Labor Contract Negotiations
- Agency/Department audit of Recruitment and Hiring Practices (SRAP)
- Grievance Procedures
- Training Programs/Resources
- Benefits Administration
- Information Technology (including NEOGOV)⁸
- Classification Definition/Planning
- Performance Management Programs

Major projects in process or planned for the immediate future include a rewrite of OCHR's "Policies and Procedures Manual," which will incorporate an OCHR overview, agency and department responsibilities, and labor relations and discipline. Also in the works is a "Countywide Recruitment Strategic Plan," which will include a "Countywide Hiring Authority Guide" as well as a "Classification Improvement Plan" and revised SRAP. These are not minor undertakings and will be a mighty challenge for the OCHR staff. The Grand Jury believes that several major areas of concern must be addressed when SRAP is rewritten.

1. Language throughout SRAP needs extensive modernization. Terminology such as "Personnel Director," "Personnel Department," "typewriter/typing skills," "magnetic tape typewriter operator," etc. must be eliminated. Reference to "official forms," supplied by the Personnel Director (i.e. paper job applications) becoming the property of the Personnel Department, must be replaced by reference to the Internet and the County's online systems. Obsolete terms and concepts permeate the entire document.
2. The structure of SRAP must be totally redefined to reflect the decentralized character of the HR function in the County. SRAP in its present form vests all authority for recruitment, selection, etc. in the "Personnel Director" running the "Personnel Department," where the County's HR work is done. Current practice (since HR reorganized in 1996 following the 1994 bankruptcy) finds all responsibility for recruitment, selection, hiring and all other day-to-day HR functions in the individual agencies and departments, which implement and enforce all OCHR's standards, policies and procedures. This dichotomy is at the heart of the MSS critique of SRAP, which must be rewritten to reflect the actual

⁸ NEOGOV is a private contractor providing on-line job opportunities for the County

HR procedures in Orange County, whatever they may be. Past efforts at updating SRAP have concentrated on increased flexibility and responsiveness while still maintaining merit principles. The challenge will be to rewrite with facility and user-friendliness in mind while maintaining merit principles and LAPS standards.

3. Agencies and departments of County government must abide by the procedures written into the new SRAP. A key finding in the MSS audit of 2004 noted that the interpretation of merit principles varied greatly from agency to agency and "... there is little capability on the part of Central HR [OCHR] to monitor or control uniformity." The evaluation highlighted other, more technical discrepancies as well.
4. OCHR procedures for oversight and audit of agencies and departments must be well defined and closely enforced. The recruitment, interview and hiring process varies from agency to agency. OCHR randomly audits approximately 5% of all cases. Only three staff members at OCHR are devoted to agency audit and oversight. Staffing is an obvious problem here. For the decentralized HR model to operate in a uniform, consistent manner more resources must be devoted to the audit function. MSS says, "Due to the lack of required structure to the interview process and no record of the results, this system has the potential for lack of uniformity of treatment of candidates and lack of consistency in its operation. It is desirable that steps be taken to insure that this process avoids these pitfalls."
5. Candidate background must be more thoroughly vetted. Procedures to check for criminal records, confirm educational background, work experience and professional certifications must be viable and stringent. When the Grand Jury interviewed individual agencies and OCHR, the answers to some questions were quite surprising. The Grand Jury discovered that deliberate misrepresentation during the hiring/promotion process within the County may not be automatic grounds for dismissal; that specifically defined educational requirements in some cases are considered by some HR professionals in the County as "artificial barriers to advancement;" that some agencies do not bother to check educational claims made by applicants -- if you say you are a Harvard MBA, as far as they are concerned, you are a Harvard MBA. If you state during the hiring process that you have never been arrested for DUI but you actually have been and it subsequently comes to light, your job is not necessarily in jeopardy. As improbable as it may seem, omissions and false statements are considered on a case-by-case basis. If you have been a good County employee, or your supervisor really supports you, or your indiscretion is not material to your job description, you will probably keep your job.

OCHR should coordinate with County Counsel to draft new language which would be included as a standard statement in each job posting, defining the

County's right to terminate any employee upon discovery of a material omission or misrepresentation during the employment process.

6. Appeals procedures have evolved greatly over the years. SRAP goes to great lengths to define a very formal procedure, overseen by the Personnel Director, which is handled entirely at the OCHR level. This does not reflect current practice. The County's Equal Employment Opportunity (EEO) plan, which more accurately describes appeals and should be incorporated into the new SRAP, was published in 1999. It has since been updated three times and is reviewed biennially by outside counsel. All grievances and appeals start at the agency level, where most problems are resolved. However, employees may, if they so desire, take their appeal directly to OCHR's compliance officer for a formal hearing or even appeal outside the County to the Federal Equal Employment Opportunity Commission depending on the gravity of the complaint. In such a situation an arbitrator would be approved by both sides and the decision would be final and binding on both parties. In 2007, 28 cases were handled at the OCHR level and 27 were settled; one case is still pending. The rewritten SRAP must reflect contemporary procedures and address current practice as it relates to grievance, appeal, reduction in force and dismissal.
7. Federal, State and County programs must be addressed by SRAP as appropriate. For example, the Affirmative Action Program no longer exists as originally conceived. Other programs which could be addressed in the new SRAP include:
 - a. Equal Employment Opportunity (EEO) Program -- A Federal program dealing with fair and equal treatment in the workplace
 - b. Americans with Disabilities Act (ADA) -- A Federal program dealing with workplace access and work environment definition
 - c. Health Insurance Portability and Accountability Act (HIPAA) -- A Federal law dealing with health record confidentiality
 - d. The Hatch Act and Little Hatch Act -- Federal Laws dealing with inappropriate political activity by public sector employees
 - e. Department of Fair Employment and Housing (DFEH) Regulations -- A State law dealing with discrimination in employment, housing and public accommodations
 - f. Leadership Excellence and Development (LEAD) program -- A County program to develop leadership talent
 - g. Educational and Professional Reimbursement Program (EPRP) -- A County program dealing with continuing professional education

- h. Performance Incentive Program -- A County program to enhance employee performance
- 8. Automation and information technology (IT) must be incorporated into the new SRAP. The County's talent recruiting and screening are now accomplished online. NEOGOV, a private contractor, provides online services to all agencies of County government through its Insight online software product. Candidates match their applications with job postings via OCHR's web page. The larger agencies and departments are the most avid proponents of NEOGOV Insight; it is a tremendous labor-saving system. This system is also user-friendly. Once candidates have set up an account they can customize job applications and resumes for openings in which they have an interest. The agencies use the system to screen and qualify candidates and even score online tests. In the near future NEOGOV will add a feature which will certify educational background and work experience, replacing a manual process which can be very labor intensive and time consuming. NEOGOV provides an established work-flow process assuring adherence to merit principles established by LAPS. Although NEOGOV is a private contractor providing this service and there is no assurance that its contract will be renewed, the processes established must be expanded and improved by OCHR and reflected in the new SRAP.

CONCLUSION

The obvious conclusion to this report is that the Orange County Merit System Selection Rules and Appeals Procedure must be rewritten. In Human Resources a culture has evolved which has found a way, through dedication to purpose, innovation and flexibility, to work around obstacles such as an obsolete SRAP. The Grand Jury has respect for the HR professionals in Orange County government. Much of the administrative difficulty they endure daily is inflicted by fiscal restrictions that require them to do more with less than other counties in Southern California, which are staffed at measurably higher levels than Orange County. For example, in researching this report, the Grand Jury found that the HR function has lost over 22% of its staffing since 1996; that a neighboring county of comparable population and county payroll has an HR staff of about 400, 185% of HR staff level in OC. This neighboring county won accolades and received citations for its accomplishments in Human Resources management. Why? As a wise man once said, "follow the money." The 1994 bankruptcy devastated Orange County. The collective hubris of the County's financial leadership, driven by insatiate fiscal pressure and enabled by lax oversight, still costs this County tens of millions of dollars each year. HR has borne more than its share of the pain.

Compounding the problem has been inconsistent leadership at OCHR. There have been four HR Directors in the last five years. Energy flows from the top in any organization; without resolve, nothing can be sustained. The current HR leadership possesses unique skills. Military experience, years of HR background and IT management expertise provide key leadership tools sorely needed to lead the way for OCHR. Management's

IT experience could be extremely beneficial as technology and automation could compensate for diminished staff levels.

The rewriting of the Selection Rules and Appeals Procedure (SRAP) will be a challenge. All agencies and departments in the County, as well as organized labor, County Counsel, the Board of Supervisors and all other stakeholders must be included in the process. It will not be easy, but it must be done and done correctly. The taxpayers of Orange County deserve nothing less.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2007-2008 Orange County Grand Jury has arrived at the following findings:

F-1 The Orange County Merit System Selection Rules and Appeals Procedure (SRAP) was last revised November 20, 1978. The Grand Jury found that:

- **The SRAP contains outdated terminology.**
- **The SRAP does not reflect the current decentralized structure of the Human Resources function.**
- **The SRAP is inconsistently interpreted among County agencies and departments.**
- **The oversight and audit procedures of Orange County Human Resources (OCHR) are marginally effective.**
- **The appeals process described in SRAP does not reflect current practice.**
- **The SRAP references government programs which have evolved or been redefined.**
- **The SRAP does not reference government programs which have been established since 1978.**
- **The SRAP does not reflect current practice in reference to computerized or on-line capability and utilization.**

F-2 The Human Resources function in Orange County has lost over 22% of its staff since 1996 and continues to shrink.

F-3 Background screening of job applicants is inconsistent and not verified in most cases.

F-4 Recruitment, hiring and promotion practices are inconsistent from agency to agency, deviating from the merit principles governing recruitment, selection and career advancement procedures, as defined in California Local Agency Personnel Standards (LAPS).

F-5 Material misrepresentations by job candidates in the hiring/promotion process may not result in termination.

Responses to Findings F-1 through F-5 are requested from the Director of Human Resources and Employee Relations.

Responses to Findings F-1 through F-5 are required from the Board of Supervisors.

Response to Finding F-5 is requested from County Counsel.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings of this report, the 2007-2008 Orange County Grand Jury makes the following recommendations:

- R-1 Rewrite the Orange County Merit System Selection Rules and Appeals Procedure without further delay.**
- R-2a Authorize the County Internal Auditor to perform a study of Human Resources department structure and staffing levels, comparing Orange County to surrounding Approved Local Merit System (ALMS) counties, and provide recommendations to the Board of Supervisors.**
- R-2b Provide appropriate funding and staffing to rewrite Orange County Merit System Selection Rules and Appeals Procedure (SRAP).**
- R-3 Redefine background screening procedures to verify job applicant qualifications, experience and credentials.**
- R-4 Implement consistent recruitment, hiring and promotion practices throughout County government in accordance with merit principles as defined in California Local Agency Personnel Standards (LAPS).**
- R-5 OCHR coordinate with County Counsel to draft new language which would be included as a standard statement in each posting, further defining the County's right to terminate any employee upon discovery of a material omission or misrepresentation during the employment process.**

Responses to Recommendations R-1, R-3, R-4 and R-5 are requested from the Director of Human Resources and Employee Relations.

Responses to Recommendations R-2a, R-2b and R-5 are required from the Board of Supervisors.

Response to Recommendation R-5 is requested from County Counsel.

REQUIRED RESPONSES:

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

§933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

REFERENCES

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5. "County of Riverside Personnel Management Program Review: Report of Findings", October 2007. Cooperative Personnel Services, Merit System Services. Sacramento, California.
6. Merit System Services' correspondence to OCHR, October 25, 1999.
7. Merit System Services' correspondence to OCHR, January 28, 2005.
8. OCHR correspondence to Merit System Services, February 15, 2005.
9. Merit System Services' correspondence to OCHR, December 6, 2007.
10. California Department of Child Support Services correspondence, January 29, 2001.
11. California Government Code Section 19800-19810.
12. California Code of Regulations. Title 2. Administration. Division 5. Local Agency Personnel Standards. Revised April, 1990.
13. "Orange County Merit System Selection Rules and Appeals Procedure" revised November 20, 1978.
14. "County of Orange Fiscal Year 2007-2008 Budget Workbook"
15. Orange County Personnel and Salary Resolution, January 10, 2003.
16. Memoranda of Understanding for various bargaining units in Orange County Government. 2004-2007, 2007-2010.
17. Orange County Equal Employment Opportunity Plan (Board Resolution 99-514) Effective Date: 4/29/03, Last Revised 4/01/06.
18. Orange County jobs available website (www.ocgov.com/jobs).
19. NEOGOV website (www.NEOGOV.com)