

FINAL

MANAGEMENT AUDIT REPORT
OF
THE MERIT SYSTEM ORDINANCE
HUMAN RESOURCES DEPARTMENT
REPORT NO. 01-125



CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT



City of Albuquerque
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Internal Audit Committee
City of Albuquerque
Albuquerque, New Mexico

Audit: Merit System Ordinance
Human Resources Department
01-125

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INTRODUCTION

The Office of Internal Audit conducted a management audit of the Merit System Ordinance, 3-1-1 ROA 1994, Human Resources Department (HRD). The Merit System was established to govern the hiring, promotion and discharge of City employees and to provide for the general regulation of City employees.

The Chief Administrative Officer (CAO) of the City is responsible for the administration of the merit system. The CAO has the following responsibilities under the Merit System Ordinance:

- To exercise leadership in and encourage the development of effective personnel administration.
- To recommend changes to the Merit System Ordinance.
- To develop and approve Personnel Rules and Regulations.
- To issue administrative instructions to provide guidance and policy.
- To establish a compensation plan for classified City employees.
- To designate a Deputy CAO or department head to act in his or her behalf if unable to carry out the duties of the CAO.

The Director of HRD directs all of the administrative and technical activities of HRD under the general direction of the CAO. There are 6,049 permanent and 1,476 temporary City employees as of July 27, 2003.

SCOPE

Our audit did not include an examination of all the functions, transactions and activities related to the Merit System Ordinance. Our test work was limited to the following areas.

- Compliance with the Merit System Ordinance
- Adequacy of internal controls
- Opportunities for improvement

Our fieldwork was completed on June 23, 2003. The audit report is based on our examination of the auditee's activities through the completion date of our fieldwork and does not reflect events or accounting entries after that date. This audit and its conclusions are based on information taken from a sample of transactions and do not purport to represent an examination of all related transactions and activities.

The audit was conducted in accordance with Government Auditing Standards, except Standard 3.33, which requires an external quality control review.

FINDINGS

The following findings concern areas, which we believe would be improved by the implementation of the related recommendations.

1. THE CAO SHOULD ENSURE THAT THE PERSONNEL BOARD OPERATES AS REQUIRED BY THE MERIT SYSTEM ORDINANCE.

The Merit System Ordinance states, "There shall be a Personnel Board composed of five members. Two members shall be appointed by the Mayor . . . Two members shall be selected by the employees by election and then appointed by the Mayor. The remaining member shall be selected by the other four members . . ."

The Merit System Ordinance defines the role of the Personnel Board (Board) as serving in an advisory capacity in the administration of the City's personnel program. The Board has the following authority:

- To advise and assist the CAO and the HRD Director in adopting Personnel Rules and Regulations.
- To advise and assist the CAO and the HRD Director in the improvement of personnel standards.
- To advise the CAO and the HRD Director on personnel administration problems and recommended solutions.
- To inquire, after consulting with the CAO, into any personnel issues.

The Board is also responsible for rendering a decision on appeals made by classified

employees who have been suspended without pay for more than five days, demoted for disciplinary reasons or discharged. The process requires the employee to appeal in writing within 10 days of the disciplinary action to the CAO with a copy to the employee's department head. The Merit System Ordinance requires the CAO to refer the request to the Board. The Board refers the appeal to a Personnel Hearing Officer for a hearing to gather evidence on the issue. The Personnel Hearing Officer prepares a report summarizing the evidence from the hearing and a recommendation. The Board makes a decision that includes the findings of the Personnel Hearing Officer and the conclusions of law using the evidence presented. The proceedings of the Board can only take into consideration the Personnel Hearing Officer's recommendation, any written submissions from the parties to the issue, and oral argument by the parties concerning the evidence admitted at the hearing. The Board does not hear testimony. After the Board makes a decision, the City or the employee may appeal the decision to District Court within 30 days.

As of the beginning of June 2002, the City did not have an operating Board. Three board members terms had expired, one board member had passed away, and the one board member whose term was still active, resigned. There were 21 cases waiting to be heard by the Personnel Hearing Officer with a final decision to be rendered by the Board. Of these, nine were terminations that the City could be liable for back salaries and benefits of approximately \$375,000 if the board overturned the terminations. In June 2003, five of these cases were still awaiting decisions. The potential liability had increased to approximately \$418,000.

On February 27, 2002, City employees voted for two Board members as required by the Merit System Ordinance. These Board positions were for (partial) terms ending September 1, 2002 and September 1, 2003.

All appointments to the Board must be confirmed by the City Council regardless of whether they are elected by the employees, appointed by the Mayor or nominated by the Board. The proposed Board appointments are communicated to the City Council through an executive communication (EC) prepared by the Assistant to the Mayor for Boards and Commissions. When the EC was prepared for the two Board members elected by the employees, the EC erroneously stated that their terms would end in June 2005. The Merit System Ordinance states that the term can only be for two years and all terms expire September 1st. If a vacancy occurs, the position should be filled to complete the vacant position's term.

The Board recognized that the new Board members were elected to complete the terms of the previously vacated positions. When the Board met on August 21, 2002, the two Board members who were elected by the employees drew lots to determine which member's term would expire September 1, 2002 and which would expire September 1, 2003.

The Board member whose term was to end September 1, 2002 was reappointed on October 21, 2002 for another term. The reappointment was made after another election to vote for

this member to serve an additional term. The EC to the City Council to reappoint this member stated that the member's term would end on September 1, 2003. The EC also listed the other member elected by the employees as having a term that expires on September 1, 2004.

It appears that the Assistant to the Mayor for Boards and Commissions does not understand the requirements of the Merit System Ordinance for filling Board vacancies. Board positions are for two years unless a member is filling a vacancy that occurred during a previous member's term. In that case, the newly appointed Board member would complete the term. However, the ECs for these appointments each had incorrect terms identified for the Board members.

As of June 2003, the board position status is as follows:

- Member appointment, elected by City employees, confirmed June 26, 2002, first term expired September 1, 2002. Member was elected and reappointed to serve a second term on October 21, 2002, with a term that should expire September 1, 2004.
- Member appointment, elected by City employees, confirmed June 26, 2002, term should expire September 1, 2003. (One EC lists the expiration date as June 24, 2005, another list the expiration as September 1, 2004.)
- Member appointment, Mayoral appointee, confirmed June 26, 2002 with an expiration date listed on the EC of June 24, 2005, then reappointed on August 19, 2002, with a term to expire September 1, 2004.
- Member appointment, Board appointee, confirmed February 3, 2003, term to expire September 1, 2003.
- Vacant Mayoral appointee. (Member appointment was confirmed October 15, 2001 with an expiration date of June 24, 2004. This member resigned December 2002.)

While, the board is able to make decisions with a quorum of three members, two members' terms will expire on September 1, 2003 and another position was vacant at the time of our audit. Therefore, the City may not have a functioning Personnel Board after September 1, 2003.

The Merit System Ordinance states "Board members shall serve two-year terms which expire September 1." The Public Boards, Commissions and Committees Ordinance, 2-6-1 ROA 1994, states, "All appointments shall be for terms of three years unless the appointment is to fill a vacancy; provided that the initial terms of members of newly established public boards, commissions and committees shall be staggered and shall be for either one, two or three

years." The terms for Personnel Board members should be consistent with the requirements of the Public Boards, Commissions and Committees Ordinance.

The Merit System Ordinance requires that the board advise and assist the CAO to effectively administer personnel policy at the City. If the board is not appointed properly it cannot contribute the necessary support to the CAO and the City.

RECOMMENDATION

The CAO should administer the merit system and ensure that the Personnel Board is operating as required by the Merit System Ordinance.

The CAO should recommend revisions to the Merit System Ordinance to change the terms of the Personnel Board members from two years to three years to be consistent with terms of the Public Boards, Commissions and Committees Ordinance.

EXECUTIVE RESPONSE FROM THE CAO

“The CAO agrees with this finding, but points out the difficulty of finding people willing to serve on the Personnel Board. For example, a recently confirmed appointee resigned from the Board before even attending a single meeting. A replacement has been identified by the Mayor’s Office and the name has been sent to the Council for confirmation (action scheduled for the August 18, 2003 meeting).”

“The CAO has also contacted the City Clerk’s office to initiate the process for City employees to vote for two Board members, and has requested that the ballot make the term of the appointment very clear.”

“Additional steps are being taken to ensure that expiring terms are identified sufficiently in advance to have the Personnel Board at full strength at all times.”

2. THE CAO SHOULD DEVELOP PROCEDURES TO ENSURE THAT INDIVIDUALS WHO MAY HAVE A CONFLICT OF INTEREST ARE NOT ALLOWED TO RUN FOR PERSONNEL BOARD POSITIONS.

One of the Board members, whom City employees voted for on February 27, 2002, may be related to the Management Union (Local 3022 AFSCME, Council 18, AFL-CIO) president. Both the Union president and the Board member have the same last name and the same home address.

The Board renders decisions upon the appeal of classified employees of the City who have been suspended without pay, demoted or discharged. The Management Union contract states “An employee shall be entitled to be represented by a Union representative throughout the proceedings related to disciplinary action of the employee to advocate for the employee.”

If the management union represents an employee during a Personnel Board hearing, and one of the Board members is related to the management union president, it is an apparent conflict of interest.

The Merit System Ordinance does not include a Code of Ethics to address potential conflicts of interest or other ethics issues for Personnel Board members. A Code of Ethics for the Personnel Board could prevent future apparent conflicts of interest.

RECOMMENDATION

The CAO should develop procedures to ensure that individuals who may have a conflict of interest are not allowed to run for Personnel Board positions.

The CAO should recommend revisions to the Merit System Ordinance to add a Code of Ethics for Personnel Board members.

EXECUTIVE RESPONSE FROM THE CAO

“The CAO agrees with this finding. In reviewing this finding, it was determined that there may be insufficient guidance regarding conflicts of interest in the Merit System Ordinance or personnel rules and regulations. Amendments will be proposed if considered necessary or appropriate.”

3. THE CAO SHOULD RECOMMEND REVISIONS TO THE MERIT SYSTEM ORDINANCE TO LIMIT THE PERSONNEL HEARING OFFICERS TO TWO TERMS.

When an employee has been suspended without pay for more than five days, demoted for disciplinary reasons, or discharged, the employee may appeal the discipline to the Board within ten calendar days of the occurrence of the disciplinary decision. The Board then refers employees' appeals to a Personnel Hearing Officer to conduct an evidentiary hearing. The Personnel Hearing Officers have the power to administer oaths, subpoena witnesses and compel the production of documents pertinent to any hearing.

The Merit System Ordinance states “A Personnel Hearing Officer shall provide services under a contract with the city and shall not be considered an employee of the city for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the city for any reason except violation of the Code of Judicial Conduct. In the event the city does not have a contract with any Hearing Officer, the board may appoint or the parties may agree to a Hearing Officer to hear a specific case.”

The City has agreements with three Personnel Hearing Officers.

- One of the Personnel Hearing Officers has had contracts with the City of Albuquerque for 15 years. On his resume, he listed City Hearing Officer June 1987 to December 13, 2001.
- A second Personnel Hearing Officer also listed on his resume City Hearing Officer September 1993 to mid 1996. He also had an agreement dated June 6, 2000 for services to be completed by December 13, 2001.
- A third Personnel Hearing Officer had an original agreement dated March 9, 2000 through December 13, 2001.

There were no Personnel Hearing Officers on contract from December 13, 2001 to October 24, 2002. An employee was terminated in October 2001. His attorney requested a hearing on numerous occasions with a Personnel Hearing Officer. Because there were no Personnel Hearing Officers, the City reinstated the employee without the benefit of presenting the case to a Personnel Hearing Officer. The employee was reinstated on August 10, 2002 with a three-day suspension.

The City had contracts with the Personnel Hearing Officers to provide services from July 1, 2002, through June 30, 2003. These contracts were not signed until October 24, 2002, and there were no invoices paid on these contracts until November 2002. At the time of the audit, the CAO's office was in the process of completing a supplemental agreement to extend these contracts to June 30, 2004.

The Personnel Hearing Officers' agreements have been continually renewed every two years. The merit system states that the term of the contract shall be no more than two years, however, it does not prohibit the contract from being renewed every two years. When the Personnel Hearing Officers are allowed to hear City cases for an indefinite term, the Personnel Hearing Officers may lose objectivity when hearing employee cases.

The City should have the opportunity to have other perspectives other than someone who has been hearing City cases for ten or more years.

RECOMMENDATION

The CAO should recommend revisions to the Merit System Ordinance to limit the extension of Personnel Hearing Officer contracts to two terms. A Request For Proposal should be prepared for Personnel Hearing Officers after two terms.

The CAO should develop procedures to ensure that there are current contracts for Personnel Hearing Officers.

EXECUTIVE RESPONSE FROM THE CAO

***“The CAO respectfully notes that the Merit System Ordinance and city personnel rules and regulations are exceedingly complex. The likelihood that a hearing officer can develop expertise in this area during a two-year contract so that he can deal effectively with the cases before him is small. However, the CAO agrees that it might be prudent to limit Personnel Hearing Officer contracts to no more than two consecutive terms, without precluding the possibility of an additional contract after a break in service.*”**

“The CAO has requested that the Purchasing Officer improve the tracking system for personal service contracts to ensure that Departments are notified of expiring contracts in sufficient time to take appropriate action.”

4. THE CAO SHOULD ENSURE THAT THE PERSONNEL POLICIES ARE NOT SET ASIDE WHEN HIRING EMPLOYEES FOR CLASSIFIED POSITIONS.

The Merit System Ordinance provides for the CAO to hire, promote, evaluate, transfer, and assign employees.

The Personnel Rules and Regulations state, “The Chief Administrative Officer may transfer an employee administratively to any position within the City provided the employee is qualified.” The Personnel Rules and Regulations also state, “All classified vacancies will be advertised to City employees, except . . . as provided in Section 102.4 . . .” 102.4 Employees Given Placement Preference states “C. Employees transferred as a result of Chief Administrative Officer action . . .”

HRD employment analysts are responsible for assisting user departments in filling vacant positions. HRD is responsible for recruiting, advertising, and circularizing vacant positions. HRD is also responsible for qualifying applicants for interview and selection.

The CAO has total signature authority and total control over the Merit System Personnel Policy. Therefore, the CAO can hire, promote, transfer and assign employees at will without utilizing HRD hiring and recruiting procedures.

When a new Mayor came into office in December 2001, numerous staff changes took place. The Budget Officer became the Accounting Officer and the DFA Director became the Budget Officer. The Budget Officer and the Accounting Officer positions are classified positions. Individuals hired for a classified position should be advertised and go through specific hiring procedures. Other City employees should have had the opportunity to bid on the Budget Officer and Accounting Officer positions as classified positions to ensure the most qualified candidates were hired.

The Merit System Ordinance gives the CAO authority to bypass the system. A well-designed control system that is set-aside at management's discretion can be equivalent to no control in terms of risk.

RECOMMENDATION

The CAO should ensure that the personnel policies are not set aside when hiring employees for classified positions.

EXECUTIVE RESPONSE FROM THE CAO

“As noted in the finding, the Merit System Ordinance gives the CAO authority to bypass the system. The CAO respectfully submits this authority was included to allow some flexibility in responding to operational needs of the City including, but not limited to, forced placements in the case of proposed lay-offs or other personnel actions requiring prompt response.”

5. HRD SHOULD ENSURE THAT ALL HRD ANALYSTS AND ALL HRD DEPARTMENT COORDINATORS RECEIVE A CURRENT AND COMPLETE HRD HIRING PROCEDURES MANUAL.

HRD has a procedures manual for use in hiring employees; however, it is not complete. There is information for processing normal new hires. And, there is a complete and updated section on Insurance and Benefits. However, there is no information to refer to for new hires that require unusual procedures. The manual does not have policies and procedures for other important duties, such as classification and compensation, testing, training and records. New employment analysts need a reference tool to refer to for procedures, processes, questions and answers or city standards. The purpose of a manual or handbook is to provide a reference for HRD employees/analysts to use during the hiring process.

Analysts must complete many required steps to hire new employees based upon criteria in the Merit System Ordinance. Jobs must be advertised, employees interviewed, etc. HRD is also relying on HRD employees who have institutional knowledge as to how processes or procedures operate. When new HRD employees are hired they must rely on other employees for training on internal processes.

HRD is currently working to complete the procedures manual. A complete and current HRD manual will contribute to the improvement of procedures. In addition, the manual may improve the efficiency and effectiveness of the HRD. Standardized procedures will also help assure compliance with the Merit System Ordinance.

RECOMMENDATION

HRD should complete and distribute a current manual to all HRD Analysts and department Coordinators. The manual should outline the functions of the department and the department policies and procedures for performing those functions.

EXECUTIVE RESPONSE FROM HRD

“HRD provided IA with a copy of the HR Procedures Manual at the exit conference on July 31, 2003. When an update to the manual is approved, HR employees are provided only with the updated section, not a replacement for the entire manual. Because HRD has moved toward the increased utilization of electronic processes, which undergo continuous review and improvement during implementation, HRD has agreed with department HR Coordinators to furnish training and updates rather than an ongoing stream of revised procedures. When these processes are finalized, HR employees and Coordinators will receive final approved procedures for the manual.

“HRD is also currently piloting a cross training initiative with clerical staff in HRD. Cross training will be expanded to other areas in the future.”

6. HRD SHOULD ENSURE THAT EMPLOYEES’ TERMINATION FILES ARE COMPLETE.

Processing terminated employees includes various procedures including the completion of a P-1 (personnel action form), completion of an employee clearance form, and acquiring a letter of resignation (or notation from the department).

A random sample number generator was utilized to select a sample of terminated employees for fiscal and calendar year 2001. A review of 2% of a total population of 1,375 or 27 terminated employee files found the following:

- Three P-1s were not on file.
- Thirteen Employee Clearance Forms were not on file.
- Five letters of resignations or notations from the department were not on file.

P-1s ensure that employees’ employment history is stopped, and document a reason for termination and the date terminated. Employee Clearance Forms ensure that all City property (cell phones, keys, equipment) is returned, that ISD is contacted to stop employee access to City systems, and that the timekeeper stops the terminated employees’ payroll timecard schedule so the employee does not continue to receive paychecks.

The Employee Clearance Form originates in the department, and then goes to Payroll, then to HRD. The Insurance and Benefits Division of HRD signs for PERA and medical

insurance then keeps their copy for HRD files and returns a copy to Payroll. If the Clearance Form is not properly and timely completed, the City is subject to financial loss in case the employee does not return City property or accesses City computers.

HRD has a checklist of documents to be filed in employees' personnel files. There is no supervisory review to ensure that the files are complete and that the checklist is completed.

RECOMMENDATION

HRD should review terminated employees' files for completion prior to closing out and putting files in storage.

EXECUTIVE RESPONSE FROM HRD

“HRD currently reviews files on an annual basis, but concurs that a more frequent review process including supervisory review should be implemented.

“HRD will advise departments via memo that:

- a) Employee Clearance Forms for employees placed in Physical Layoff as well as for terminated employees should be forwarded to HR, and***
- b) In the absence of an employee letter of resignation a notation to the file must be made and forwarded to HRD.***

“HRD will take additional steps to ensure PONE's and all required documents are on file.”

CONCLUSION

By implementing these recommendations, the Human Resources Department will better fulfill its responsibility to administer the City's Merit System Ordinance.

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