
INVESTIGATIVE MEMORANDUM ON MANAGEMENT ISSUES (PI05-26)

October 31, 2005

To: Giovanni Prezioso
Jeffrey Risinger
James McConnell

From: Walter Stachnik

Re: Legal Review of Settlement Agreements (PI05-26)

During a preliminary inquiry recently conducted by our Office, we learned of a settlement agreement entered into to resolve an administrative grievance. The settlement agreement was signed by the grievant and the grievant's supervisor. The grievance concerned an unacceptable rating of the grievant by the supervisor. The Office of General Counsel (OGC) did not review the proposed settlement agreement.

OHR and OGC staff indicated that normally an OGC attorney is assigned to settlement negotiations and to review a proposed settlement agreement. In this case, an e-mail notification from OHR to OGC regarding the grievance was apparently overlooked through inadvertence. Subsequently, OHR entered into the settlement agreement without having it reviewed by OGC.

We believe that OHR and OGC should develop policies and procedures regarding the role of OGC in settlement negotiations and the review of settlement agreements. OGC involvement is necessary to ensure that all legal issues are considered and addressed before the agency is bound by an agreement.

OHR noted that an OHR employment attorney in the Employee Labor Relations Branch drafted the settlement document following the e-mail request to OGC. OHR further noted that besides the OHR attorney's supervisor, two additional levels of managerial review occurred (including the Commission's Executive Director) before the supervisor was authorized to sign the document.

OHR indicated that the OHR legal review and additional managerial review on the settlement seemed sufficient at the time. The administrative grievance process under which the settlement was reached does not allow for a third party appeal and the settlement did not result in financial obligations for the agency. Nevertheless, OHR concurs with our recommendation.

OGC concurs with our revised findings and recommendation.

Recommendation A

OHR and OGC should develop policies and procedures regarding OGC's role in settlement negotiations and the review of proposed settlement agreements.

cc: Darlene Pryor
Richard Humes
Adam Ramsey
Peter Uhlmann