

**Employee Organizations Representing Attorneys,
Meeting with the Office of the City Attorney
In the Matter of Layoff Procedure**

February 25, 2010

Bill Carter
Chief Deputy City Attorney
Office of the City Attorney
City Hall East, 8th Floor
Los Angeles, CA 90012

Re: Management's withdrawal of "City Attorney Layoff Process" proposal and cessation of bargaining; response to management's request for summary of points supporting "last in, first out"

Dear Mr. Carter:

Upon withdrawing management's layoff process proposal at our meeting of February 18, you asked the City Attorneys' Association, the Managing Attorneys Association, and the employee organization representing the confidential attorneys (hereinafter, "employee organizations") for a summary of the information supporting a "last in, first out" interpretation of Rule 2 of the Rules Regarding Job Protection (hereinafter, "Rules"). Such an interpretation applies seniority to tenured attorneys as a class. Because management has withdrawn a proposal that would have imposed a contrary interpretation, the employee organizations have agreed to cease bargaining.

Pursuant to your request, the following authorities demonstrate that "last in, first out" is the established practice in the event of a layoff. First, the building blocks of any layoff procedure are in Charter sections 1050 and 1015:

- Charter section 1050 provides for tenure for any employee "who has served continuously as an attorney," provides job protection for "grades," and refers to the rules for a description of layoff procedures.
- ✓ Charter Section 1050 (a) states that "No person shall be . . . reduced in grade without good cause *who has served continuously as an attorney* in the Office of the City Attorney for two years or more immediately preceding the action."
- ✓ Charter section 1050 (b) states that "Every person having served for those periods enumerated in the preceding subsection who is . . .

reduced in grade, shall have the right to appeal to an impartial trier of fact in accordance with written rules promulgated by the City Attorney.”

- ✓ Charter Section 1050 (c) states that “The rules promulgated pursuant to the preceding subsection shall establish the procedures for layoffs”

- The principles contained in Charter section 1015 provide that “the person to be suspended shall be selected in the order determined by the length of service in such class and in classes of higher rank since regular appointment” and, further, that the “[p]ersons having the shortest length of service shall be suspended first.” Layoffs by pay grade would not be consistent with the principles contained in Charter section 1015, because such an interpretation inevitably would result in the layoff of more senior attorneys while less senior attorneys would be retained.

Second, the “last in, first out” practice is supported by the Rules, by the long standing administrative interpretation of those Rules, and by the universal understanding of attorneys in this office:

- Consistent with the principles contained in Charter section 1015, the Rule 2 establishes the procedures for displacement, stating, “Any person laid off shall be entitled to displace to a lower class of positions in which he or she formerly *held a regular appointment* and in which there is an employee with less seniority in that class.” Thus, a “class” under Rule 2 requires a “regular appointment”. In contrast, attorneys are not “appointed” to a pay grade. Rather, each attorney is appointed once at the beginning of his or her tenure as an attorney, serves a single probationary period upon appointment, and thereafter may be *promoted* to higher level pay grades. However, such an attorney may have been previously appointed to another “class,” such as the class of law clerk, which has a separate (one year) probationary period pursuant to Charter section 1050(a).
- Rule 1, discussing the possibility of demotion, does not refer to a promotional position as a “class.” Rather, it states that “The City Attorney may, for good cause, . . . *reduce in grade* any employee of the Office of the City Attorney” Thus, if a layoff procedure were to apply seniority to promotional pay grades, the drafters of the Rules necessarily referred to promotional positions as “grades” in Rule 1, but then referenced the same promotional positions as “classes” in Rule 2. However, because those different terms necessarily connote different concepts, “class” as it is used in Rule 2 may not refer to promotional pay grades.
- Anecdotal evidence supports the “last in, first out” interpretation of the Rules. Throughout the last thirty-five years, no attorney has ever been

notified of a demotion in pay grade as part of a potential layoff. No attorney has ever been told as a part of an office orientation or in a promotional process, in writing or orally, that he or she could lose that pay grade promotion as the result of a layoff.

- Evidence relating to the threatened layoffs in the early 1980's clearly supports a "last in, first out" practice. Senior Assistant City Attorney Mark Burton, then a law clerk, recalls law clerks being told that they might lose their jobs because newly appointed attorneys could be laid off, and could displace law clerks, if such laid-off attorneys had been regularly appointed to the class of law clerk. Contemporaneously, according to the *Los Angeles Times*, City Attorney Ira Reiner complained of the impact of layoffs on criminal prosecution, saying that "the issue involved the prosecution of criminals, since *the last hired would be the first fired* and they were the prosecutors." E. Baker, "Council OKs Funds from Reiner's Office," *Los Angeles Times* (January 30, 1982) at p. B1.
- Attorneys in our office, and City officials, historically have recognized the validity of the "last in, first out" interpretation of Rule 2. According to the City Attorney's responses to our records requests, the only seniority lists promulgated by the City Attorney's staff have been "last in, first out" lists of all tenured attorneys, including the June 2009 list promulgated apparently in response to the Mayor's request for a layoff list. Similarly, in about July 2009, this office published a list of 46 untenured attorneys exposed to an initial layoff, and again the first attorney on the lay off list was the last hired. On February 8, 2010 (in an official notice to "All City Unions (Except DWP)"), the City Administrative Officer listed 100 City Attorney positions subject to lay off, including the 65 least senior attorneys.

Third, the "last in, first out" practice is supported by contrasting the City Attorney's tenure structure with concepts of the City's civil service system:

- The term "class," in its civil service context, connotes those positions sufficiently similar in respect to duties and responsibilities that they can be grouped together under a common title for a single test of merit. A specific "class" always will have an examination process, an appointment resulting from certification of success on that examination, a probationary period for that class as part of the appointment process, and duties consistent with that class.
- City Attorney pay grades have none of the foregoing characteristics. Before the voters' approval of the job protections now in Charter section 1050, City Attorney Burt Pines specifically rejected civil service, and insisted that the proposed charter change called for a *tenure system*. As a result, a tenured attorney is appointed once by the City Attorney to act on his behalf. Such an appointee serves a single probationary period as an

attorney. An attorney may be reassigned to different tasks at the City Attorney's discretion, regardless of that attorney's pay grade. Consistently, in administration after administration, the City Attorney has exercised flexibility in assigning attorneys regardless of pay grade.

Attorneys in this office universally believe that the only appropriate interpretation of Rule 2 is "last in, first out," applying office seniority to the class of attorneys. There is no documentation or reliable recollection of any contrary interpretation known either to management or to the employee organizations. Thus, our mutual understandings and history establish that interpretation as the status quo.

We acknowledge that management has withdrawn its proposal modifying the office's long standing interpretation of Rule 2, and we agree that further meetings are unnecessary. However, in the future, if management wishes to implement an alternative layoff procedure in lieu of the status quo described above, the employee organizations represented here insist on the opportunity to meet and confer to conclusion prior to any change.

Respectfully submitted,

Judith Paul
Maie League
Garett Aubrey
Robt. H. J.
Wendy L. Gray
Ollie
Mark Francis Huston