

TO: Common Council

FROM: Bradley J. Wirtz-Human Resources Director
Michael D. Lipski-Compensation and Benefits Manager

DATE: July 13, 2009

SUBJECT: Updated Personnel Rules

The Personnel Rules are the document which outline the Civil Service procedures for the City of Madison. They cover everything from filling positions, reclassifying positions, movement of existing City employees to different positions either through demotion, transfer, or promotion, layoffs, and discipline of non-represented employees. The authority for the Personnel Rules is found in Chapter 3.53(4) of the MGO. The existing Personnel Rules date to 1970, and while minor modifications have been made since then, the document essentially remains unchanged since that time. The Rules have proved useful. However, in recent years, organizations such as MPSEA have raised issues with the fact that the Rules do not provide much detail and leave many personnel decisions open to interpretation. After reviewing the 1970 Personnel Rules, the Human Resources Department concluded that the Rules should be updated. The Human Resources Department drafted a revised, expanded draft of the Personnel Rules which was first presented to the Personnel Board for consideration in February, 2009, and has been on the agenda as a discussion item since that time. The Board has made numerous recommendations and revisions which have been incorporated into the final draft. On Monday, July 13, 2009, the Personnel Board voted to recommend the updated Rules to Council for final adoption.

The updated Rules, for the most part, contain Human Resources practices that have been in effect for a number of years and which were encompassed by the old rules. However, the 1970 Rules failed to provide detail in most areas. The goal with the updated Rules is to “fill in the blanks” regarding how Human Resources actions are carried out within the City. To this end, an extensive glossary of Human Resources terms has been included at the end of the updated Rules to aid in understanding. This document will provide a roadmap regarding the updated Rules, highlighting changes and similarities with the 1970 Rules.

Chapter 1: Introduction

The language in this chapter is a combination of language from the 1970 Rules and the MGO Chapter 3.53(4). The change from the 1970 Rules is the inclusion of the MGO language which outlines the purpose of the Personnel Rules.

Chapter 2: Personnel Board

The language in this chapter did not appear in the 1970 Rules. However, the Human Resources Department and Personnel Board agreed that language outlining the role of the Personnel Board is important to include in the Rules. Most of this language comes from the MGO Chapter 3.53(3).

Regarding the language about a Board member being a representative of organized labor, the Board and HR Department agreed that language should be inserted ensuring that the representative is not directly affiliated with any labor organization that has a collective-bargaining agreement with the City. This is to prevent any conflict of interest that may occur regarding decisions relating to employees of the bargaining unit.

In addition, language was added defining a quorum so that the Board would know what actions it can address in case a full Board is not present for a meeting. The Board agreed that a full-Board is necessary when dealing with an Appeal or with changes to these Rules. Otherwise, 3 members would constitute a quorum for all other actions before the Board, mainly dealing with classification decisions.

Chapter 3: Appointments to City Government

The language in this chapter is an expansion of language found in Chapter 7 of the 1970 Rules. The 1970 Rules defined different appointments within City government. The updated Rules also discuss the different types of positions within the City and add a couple appointment types, including emergency, provisional, acting, and stagehand appointments. Much of this added language is based on MGO 3.53.

The updated Rules also contain definitions for over-, under-, and double-filled positions. Regarding under fills, language was added clarifying that an employee in an under-fill situation should have no expectation of reaching the budgeted level at a future date.

The Human Resources Department and Personnel Board advocate a change in this section regarding emergency appointments. Currently, an emergency appointment can only be made for 10 days before seeking Council approval for a longer period of time. The updated Rules provide for a 30 day emergency appointment because there may be instances where an emergency appointment is made but Council won't meet in the intervening 10 day period. Providing a 30 day emergency appointment will ensure that there is a Council meeting in the period of time if an extension is necessary.

The updated Rules also contain a definition of a stagehand position and stagehand appointment based on the WERC ruling that stagehands are City employees.

Chapter 4: Classification Policies and Procedures

Much of the language in this chapter is an expansion on Chapters 2, 3, and 14 of the 1970 Rules. However, the updated Rules provide much needed detail regarding how positions are classified and moved within the City's classification and compensation plans. MPSEA and other City entities have requested that this detail be provided to create clarity in the process. In addition to the added detail, many of the terms in this chapter are specifically defined in the Glossary.

The updated Rules include a policy statement regarding Classification and Compensation, to parallel the policy statement relating to Employment Procedures and Layoff.

The updated Rules provided an expanded section on position studies, including how a request is made, the HR process for the study, factors which go into evaluating whether a change in classification and/or compensation is necessary, and a new review process if employees are dissatisfied with the result of a study.

Chapter 5: Selection Policies and Procedures

The language in Chapter 5 of the updated Rules is based on Chapters 4, 5, 6, and 8 of the 1970 Rules. The purpose of this Chapter is to define how applicants can apply for and move through the selection process in order to obtain a position with the City. Chapter 5 of the updated Rules outlines this process and where there is additional information not found in the 1970 Rules, it is merely a clarification of Human Resources policies and procedures that have been in place for years.

Regarding the review of examination results, the updated Rules contain a change from the 1970 Rules. The 1970 Rules permitted an applicant to review the results of an examination. The 1970 Rules also provided that the Human Resources Director shall use appropriate means to insure the security of examination material. The updated Rules still contain the language about insuring the security of examination materials. However, the updated Rules, in order to promote the security of examination materials, now prohibit applicants from reviewing an examination that has been turned in. The updated Rules do provide for an appeal process (Chapter 5 K) for applicants who are excluded from the recruitment process, and this had not been included in the 1970 Rules. This balances the prohibition on seeing examination materials once the materials are turned in.

Regarding certification of additional names, the 1970 Rules contained a provision that if an Appointing Authority requested additional names to be certified and the Human Resources Director refused, the Appointing Authority could appeal that refusal to the Personnel Board. However, the new rules remove that appeal right. The Board is not involved in any other part of the selection process and so it would be difficult for the Board to resolve issues relating to the certification of names. The Human Resources Director administers these Rules on a daily basis so it is more appropriate for the Director to determine whether certification of additional names is appropriate without any right to appeal that determination.

The updated Rules contain provisions relating to reference checks and background checks for selected candidates. These provisions clarify existing Human Resource policies.

The updated Rules contain a change in compensation for new employees. Currently, employees are hired at Step 1 of the compensation schedule and move to step 2 after successful completion of probation, regardless of the length of probation. This means that employees on a longer probation need to wait longer until receiving their first pay increase. The new Rules state that employees will move to step 2 of the compensation plan after six months of employment, regardless of the length of probation. This change is to promote fairness and potentially allow for better evaluations of new employees by removing the financial penalty of a longer probation. Currently, the Appointing Authority gets to determine whether employees serve a 6-month or 12-month probation period, which remains unchanged in the new rules. However, now it is possible that employees in the same classification, but in different departments, could end up receiving

the first pay increase at different times because one department only requires a six month probation and the other department requires 12 months. In addition, it may remove the reluctance of some Appointing Authorities to place new employees on a 12-month probation period because employees will not have to wait for that first increase, and 12 months may allow for a better assessment period.

The 1970 Rules contained a provision requiring an Appointing Authority to document in writing the reason for selecting a candidate whenever 2 or more names were certified. This provision has been removed as this has not been done in practice for years. In addition, putting such reasons in writing could cause legal problems later if a candidate who was not selected were to file a lawsuit. The better practice is to discuss such selection decisions orally with the Human Resources Director.

The 1970 Rules contained a provision regarding merit increases. Because the City does not provide merit increases, this has been deleted from the updated Rules.

Chapter 6: Probation and Trial Period

This chapter is based on Chapter 9 and 13 of the 1970 Rules. However, the updated Rules reflect the difference between a probation period, which only applies to new hires, and a trial period, which is an evaluation period for permanent City employees who move to different positions. (Chapter 13 of the 1970 Rules discussed the rights of employees on a trial period but did not use the term “trial period.”) The updated Rules provide guidelines for when a trial or probation period is required, the documentation process for each, and the rights of employees and the City during each period.

The 1970 Rules included 2 provisions regarding extensions of a probation period. In 9.01 of the 1970 Rules, the language states that a probation period could be extended for six months but further extensions needed approval of the Board. However, 9.02 said that the Human Resources Director had the authority to extend a probation period for as much as 12 months. The updated rules vest this authority with the Human Resources Director and not the Board. The Board is not in a position to evaluate performance of individual employees to determine whether a probation or trial period extension is appropriate. Also, if the extension relates to a trial period and later the employee faces a performance-related disciplinary action or involuntary demotion which results in the Appeal Process being invoked (Chapter 9), the Board may be in a position to review the Appeal. However, if the Board authorized an extension of the Trial Period, this could create a conflict of interest. Therefore, placing this authority with the Human Resources Director is appropriate.

Chapter 7: Demotion, Transfer, Promotion, Reinstatement, and Placement

This chapter outlines how permanent City employees can move to different positions within the City. The language is an expansion of Chapters 10, 11, and 12 of the 1970 Rules. However, the updated Rules provide greater detail and also include provisions for Reinstatement and Placement of employees, which were not part of the 1970 Rules. Reinstatement refers to an employee who resigns and later wishes to return to her/his former position. Placement refers to

employees who may need workplace accommodations which cause them to take a different position within the City.

The demotion and transfer sections in the updated Rules have been expanded to discuss the different types: voluntary, involuntary, and competitive. The associated rules for each type of movement are also outlined.

The 1970 Rules provided that the Human Resources Director could establish the salary on an involuntary demotion. This is changed in the updated Rules to provide that if the salary isn't red-circled (or allowed to remain the same), it will be placed at the step in the compensation plan closest to the employee's salary prior to demotion. This takes the element of subjectivity out of the decision, an element that may create potential liability in a discrimination lawsuit. In addition, while the 1970 Rules provided that an employee who is involuntarily demoted will serve a probation period, the updated rules eliminate this provision. It is possible that the trial period provision could be abused and used as an excuse to remove an employee from the position.

The 1970 Rules provided for a probation period for an employee taking a voluntary demotion. However, the updated Rules remove this provision. An Appointing Authority already has the discretion as to whether to accept a voluntary demotion so if the Appointing Authority is willing to take the employee on, there should be no need for the trial period. If the Appointing Authority wants the trial period, then the Appointing Authority can choose to go the route of a competitive process and a competitive demotion does allow the employee to serve a trial period.

Regarding promotion, the updated Rules provide greater detail as to the rights and rules relating to promoted employees. The 1970 Rules do not define the salary upon promotion. The updated Rules provide definition for salary upon promotion, stating that the salary should be set at the step closest the employee's salary prior to promotion, but not exceeding the maximum, and where possible assures a 5% increase in pay, consistent with HR practice. The Board further recommended allowing the Human Resources Direction to use discretion in placing the salary higher in cases of exceptionally well-qualified or experienced candidates, similar to the authority to hire a new employee above the minimum of a salary range.

Chapter 8: Layoff and Recall

Chapter 8 of the updated Rules is a revision of Chapter 16 of the 1970 Rules. However, Chapter 8 of the updated Rules parallels the language in MGO 3.53 relating to layoffs, which differs in places from the 1970 Rules. As ordinance language supersedes the terms of the 1970 Rules, the updated Rules are based on the ordinance. The updated Rules also discuss classification series (such as Human Resources Analyst 1, 2, and 3) and indicate that layoff will be done by classification title, and not by the group as a whole. For instance, Human Resource Analyst 1 will be treated as a separate classification title than Human Resources Analyst 2 and Human Resources Analyst 3. The updated Rules also provide a process for recalling laid off employees, a section not found in the 1970 Rules.

Chapter 9: Discipline

Chapter 9 of the updated Rules is based on Chapter 17 of the 1970 Rules as well as MGO Chapter 3.53. No significant changes were made to this section. However, the updated Rules confirm the Board's right to seek additional briefs on appeal.

Chapter 10: Resignation

The language in Chapter 10 of the updated Rules is from Chapter 15 of the 1970 Rules.

Chapter 11: Review of the Rules

This language in the updated Rules is new. It is important to require a regular review process so that it isn't another 39 years before the Rules are updated! Hopefully wholesale changes will not be required every 5 years, but minor modifications will be made and this will ensure the Rules remain viable and address the needs of the City.

Chapter 12: Glossary of Human Resources Terms

This language in the updated Rules is new. The 1970 Rules included definitions of Appointing Authority and Board. The new glossary is to help readers understand the meaning of terms found throughout the Rules and that are in common usage in Human Resources.