



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

April 30, 2002

TO: Elaine Truman, Manager III, Office of Human Resources

FROM: David E. Stevenson, Assistant County Attorney

RE: When a position is abolished in a Regional Service Center
Only employees of the Regional Service Centers are
Subject to a resulting Reduction-in-Force

You have asked me, in my capacity as counsel to the Office of Human Resources, to provide you with legal advice to assist you in identifying the class of employees who are subject to a Reduction-in-Force ("RIF") that may occur as the result of the abolishment of a position in one of the Regional Service Centers.

It is my understanding that earlier this year it was expected that the County Executive's proposed Fiscal Year 2003 budget was going to provide that a current position would be abolished in one of the Regional Service Centers. It was expected that the abolishment of this position would result in a RIF. The position that was to be abolished is one of several positions in the same occupational class that are currently filled by incumbents working in each of the Regional Service Centers. The position to be abolished was also in the same occupational class as the position filled by one or more employees who work in the Office of the Chief Administrative Officer (CAO), on the second floor of the Executive Office Building. The position to be abolished, and the other positions within the same occupational class located in the Regional Service Centers, are OPT bargaining unit positions covered by the Collective Bargaining Agreement between the County and MCGEO.

The Office of Human Resources (OHR) was in the process of determining which employees would be subject to RIF procedures as a result of the abolishment of the subject position, when the budget plan calling for the abolishment of the position was modified. You have asked me to provide you with advice for your future guidance, in the event that positions are abolished in the Regional Service Centers in coming years.

Background Information

The heads of the several Regional Service Centers are appointed by the CAO, and the

Regional Service Centers are under the general supervision of the CAO. Although the Office of the Chief Administrative Officer is established under Section 1A-201 (a) of the County Code as a principal office of the Executive Branch, the longstanding practice in the CAO's Office, in OMB, and in OHR has been to consider the five Regional Service Centers as administratively separate from the Office of the CAO.

The Office of Management and Budget has for many years considered the budget for the Regional Service Centers to be separate from the budget of the CAO's Office. The annual, aggregate budget for the five Regional Service Centers is submitted separately from the budget for the CAO's Office, as if it were the budget of a separate "department." And the annual budget for the five Regional Service Centers is considered and approved by the County Council as a budget separate and distinct from the budget of the CAO's Office.

Section 1-8 of the County Personnel Regulations defines "Department director" as: "The administrative head of a department or principal office of County government, or designee, who serves as the appointing authority." Within this context, the CAO has designated each of the heads of the five Regional Service Centers as the administrative head of their respective Regional Service Centers, and the CAO has delegated to each head of a Regional Service Center the authority to appoint the employees who staff that Regional Service Center. The Personnel Action Forms (PAF's) regarding hiring and other important personnel actions at a Regional Service Center are signed by the head of the Center.

It is my understanding that OHR has, for many years, considered the five Regional Service Centers as constituting one combined office, separate from the Office of the CAO. In this regard, although the employees of the Office of the CAO are not eligible for membership in either the Office, Professional and Technical ("OPT") or the Service, Labor and Trades ("SLT") collective bargaining units established under Section 33-105 of the County Code, OHR has determined that the employees of the several Regional Service Centers are "employees" eligible for bargaining unit membership under Section 33-102 of the County Code. This distinction is important, because Section 33-102 (4) (G) of the County Code states that persons who work for the Office of the Chief Administrative Officer are not "employees" who can become members of a collective bargaining unit. Since OHR considers the employees of the Regional Service Centers to be eligible for bargaining unit membership, OHR obviously doesn't consider the Regional Service Centers to be part of the Office of the CAO.

Legal Analysis

When a position is abolished under a Reduction-in-Force, Section 30-2 (b) of the Personnel Regulations notes that an employee who is subject to the RIF may be transferred, demoted or terminated. Section 30-2 (c) of the Personnel Regulations states: "If a position is

abolished in a department or office, only the employees in the same occupational class and department as the abolished position are subject to the RIF." The reference to "department or office" in Section 30-2 (c) is a reference to the terms "department," "principal office" and "office." Therefore, Section 30-2 (c) provides that the scope of a RIF (the class of employees subject to the RIF) is limited to the employees of the department, principal office, or office where a position has been abolished.

The departments and principal offices of the Executive Branch are identified in Section 1A-201 of the County Code. Sections 1A-102 and 1A-104 of the County Code provide that the heads of departments and principal offices are appointed officials who are not merit system employees. The Regional Service Centers are not a department or principal office of the Executive Branch. For instance, the heads of the Regional Service Centers are merit system employees, rather than appointed officials.

In addition to the departments and principal offices of the Executive Branch, there are also "offices" of the Executive Branch. A number of such "offices" are identified in Section 1A-203 of the County Code. The principal earmarks of an "office" are that it has its own budget, separate and apart from the budgets of other departments, offices and agencies, and that its head (although not an appointed official) exercises appointing authority regarding subordinate employees. Another important factor is whether the office is practically recognized within County Government as constituting an "office."

Because the five Regional Service Centers are recognized in the County's budget as a distinct entity separate from the Office of the CAO, because the CAO has delegated appointing authority to the several heads of the Regional Service Centers, and because OHR has long considered the five Regional Service Centers to constitute, for practical purposes, an office separate and distinct from the Office of the CAO, it is my opinion that the five Regional Service Centers, together, constitute an "office" for purposes of the scope of a RIF, as that "scope" is established by the current framework of the Personnel Regulations. Although the Regional Service Centers are not expressly identified as an office in Section 1A-203 of the County Code, they possess sufficient practical incidents of an office to constitute a de facto "office" for purposes of the application of the County's Reduction-in-Force Regulations.

Since many employees of the Regional Service Centers are members of the OPT collective bargaining unit, if a bargaining unit position on the complement of a Regional Service Center is abolished in connection with a RIF, the County is obligated to follow the RIF procedures described in Article 27 of the MCGEO Collective Bargaining Agreement ("CBA"). Article 27.2 of the CBA states: "Only employees in the same class and department as the eliminated position(s) are subject to the reduction-in-force." And Article 27 of the CBA makes clear that a "department" is defined as, alternatively, a "department/office/agency."

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Although the RIF procedures described in Article 27 of the CBA between the County and MCGEO apply to employees in bargaining unit positions in the several Regional Service Centers, the RIF procedures of Article 27 of the labor contract do not apply to employees serving in positions in the Office of the CAO, because Section 33-102 (4) (G) precludes employees in the Office of the CAO from being bargaining unit members. Therefore, the labor contract presumes that the Regional Service Centers are separate from the Office of the CAO, for purposes of conducting a RIF that affects bargaining unit positions.

Conclusion

As previously noted, Section 30-2 (c) of the Personnel Regulations states: "If a position is abolished in a department or office, only the employees in the same occupational class and department as the abolished position are subject to the RIF." (Emphasis added). Since the Regional Service Centers constitute a de facto "office" separate from the Office of the CAO, only employees in the same occupational class as the abolished position who work in the several Regional Service Centers are subject to a RIF that results from the abolishment of a position in a Regional Service Center. Employees who work in the Office of the CAO are not subject to a RIF that results when a position is abolished in one of the Regional Service Centers, even though the employees in the Office of the CAO are in the same occupational class as the abolished position. The Office of the CAO and the Regional Service Centers are not the "same office" for purposes of the conduct of a RIF.

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cc: Parker Hamilton, Assistant CAO
Marc P. Hansen