



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

SACHI A. HAMAI
Chief Executive Officer

Board of Supervisors
HILDA L. SOLIS
First District
MARK RIDLEY-THOMAS
Second District
SHEILA KUEHL
Third District
JANICE HAHN
Fourth District
KATHRYN BARGER
Fifth District

November 22, 2017

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Hilda L. Solis
Supervisor Sheila Kuehl
Supervisor Janice Hahn
Supervisor Kathryn Barger

From:

Sachi A. Hamai
Chief Executive Officer

REPORT BACK ON IMPROVING ACCOUNTABILITY WITHIN THE CIVIL SERVICE PROCESS (ITEM 10, AGENDA OF TUESDAY, APRIL 4, 2017)

On April 4, 2017, your Board adopted a Motion by Supervisors Mark Ridley-Thomas and Sheila Kuehl, instructing the Chief Executive Officer (CEO), in consultation with the Executive Officer of the Board, County Counsel, District Attorney, Sheriff, Director of Personnel, the Chief Probation Officer, Inspector General, and other Departments deemed necessary and appropriate, to report back to the Board in writing within 60 days with a review and analysis of Civil Service Rule 18.02. On June 5, 2017, the CEO requested an additional 90 days to respond to the Motion in a complete and comprehensive manner.

As part of the Motion, your Board asked for recommendations on: 1) whether Civil Service Rule 18.02 should be amended to allow discharges, reductions, or reassignments of County employees to different positions if they are found to have previously made false statements, misrepresentations and omissions of material facts in internal investigations; and 2) an assessment of which County classifications might be appropriately subject to a Brady list or the amended Civil Service Rule (CSR).

Key findings:

- Amending the CSRs to authorize a retrospective review of previously-decided Civil Service cases involving acts of dishonesty is limited by law. Any application of amended CSRs would be prospective;

- There are sufficient countywide and departmental policies and procedures in place to address acts of dishonesty committed by County employees;
 - Departments have broad authority to transfer or reassign employees because of acts of dishonesty; and
 - We identified 265 classifications, totaling approximately 46,000 budgeted positions, that may directly impact public safety and, therefore, would be prospectively subject to an amended CSR or Board policy.
- I. **Whether Civil Service Rule 18.02 should be amended to allow discharges or reductions of County employees to different positions if they are found to have previously made false statements, misrepresentations and omissions of material facts in internal investigations;**
- A. Civil Service Rule 18.02 provides that a permanent County employee may be discharged from County service or reduced in rank or compensation.

County CSRs should not be amended to permit a retrospective review of **prior adjudicated** matters involving acts of dishonesty. Principles of fairness and due process makes seeking additional penalties for previously-decided administrative cases difficult. For employees covered by Public Safety Officers Procedural Bill of Rights Act (POBR) or Firefighters Procedural Bill of Rights Act (FBOR), a retrospective review may be impermissible. In general, employees covered by these statutes must be served with a final notice of discipline within one year from the date the department discovered the act of misconduct.

This one year statute of limitations, as well as fundamental fairness, makes disciplining employees based on prior adjudicated matters extremely limited and is not recommended.

B. Amending the CSRs to Address Future Acts of Dishonesty Impacting Public Safety

While it would be difficult to amend the CSRs to discipline for prior acts of dishonesty, amendments could be made to the CSRs to address future acts of dishonesty. CSR 18.031, which already indirectly permits a department to discipline an employee for an

act of dishonesty, could be amended to specifically address acts of dishonesty, with particular emphasis on employees that have an impact on public safety.

Another way to address acts of dishonesty is through limiting the Commission's discretionary ability to overturn a department's imposition of discipline when the issue involves public safety. The CSRs presently grant the Commission exclusive authority over disciplinary matters. CSR 18.02(C) could be amended to limit the Commission's discretionary ability to overturn a department's determination of an appropriate level of discipline in matters involving sustained acts of dishonesty and where public safety is impacted. We have included, as an attachment to this report, a model CSR amendment.

Proposed amendments to the CSRs would need to be negotiated. As a practical matter, it is unlikely the parties will agree to any substantive modifications because the current rules already give the departments the ability to take appropriate administrative actions, up to and including termination, against employees with sustained acts of dishonesty. Therefore, implementation of an amendment that structurally alters the CSRs will likely only be feasible after first completing good faith negotiations and then only after exhaustion of the County's lengthy impasse procedures. Further, although we believe an amendment limiting the Commission's ability to overturn a department's decision on discipline is permissible, there is a strong likelihood of a constitutional challenge. This makes the successful completion of any amendments to the rules subject to a protracted negotiation process and possible legal challenges.

Finally, with respect to the issue of transfers or reassignments based on alleged acts of dishonesty, those are often handled outside of the disciplinary appeal process. The ability of a department to transfer general service employees with a sustained act of dishonesty is limited only by transfer language contained in their respective Memoranda of Understanding. That is, departments generally have broad discretion in deciding whether to transfer or reassign employees, subject only to standard notice requirements. However, critical safety employees covered by either POBR or FBOR are afforded appeal rights when a transfer or reassignment is for punitive reasons. In such cases, those punitive transfer or reassignments are often part of the disciplinary appeal case.

C. Alternatives to Amending the CSRs

Two actions were identified that could be undertaken by the Board to address dishonest employees that have an impact on public safety: (1) incorporating Government Code 3305.5 into the County's procedural rules; and (2) issuing a Board policy on dishonesty.

1. *Incorporate Government Code Section 3305.5 into the County's procedural rules governing civil service hearings*

California Government Code Section 3305.5 provides public safety officers protections from punitive action by an agency solely because an officer's name has been placed on a Brady list. Evidence that a public safety officers name was placed on a Brady list may be introduced into an administrative proceeding only after the underlying acts or omissions are proven and the officer is found to be subject to some form of punitive action.

Although this section of the Government Code has not been codified in County rules, its provisions have been followed since its adoption in January 2014. Your Board may consider codifying Section 3305.5 into the rules governing administrative hearings to reinforce the Board's strong public policy commitment to hold public safety officers to the highest standards. Its inclusion in the rules also demonstrates the Board's commitment to protect public safety officers against any procedural abuses in administrative proceedings.

2. *Issuance of Board Policy on Dishonesty*

Based on the consensus of many stakeholders, there are already sufficient policies and procedures in place to address acts of dishonesty in the workplace. A review of both countywide and departmental disciplinary guidelines found that **all** departments employing public safety employees and those employing other critical positions have sufficient policies in place to address acts of dishonesty.

Although sufficient policies exist, the County will likely benefit from the issuance of a Board policy declaring its strong public policy position requiring a high degree of honesty for all employees in the workplace. For employees in vital positions, this policy will serve to place them on notice of the County's intent to hold them to the highest standards. This policy should include reference to the Law Enforcement Code of Ethics, which emphasizes honesty as a fundamental duty of all peace officers in the State.

A Board policy, in contrast to negotiating structural changes to the CSRs, permits more flexibility. As discussed below, the number of employees potentially working in vital position impacting public safety is approximately 46,000. A policy may be changed, modified or altered rather quickly when necessary. This is especially true when the unions assist and provide input at early stages. Moreover, after consulting with several unions,

all of them expressed a genuine desire to work with the County to improve accountability where public safety is impacted.

II. An assessment of which County classifications might be appropriately subject to a Brady list or the amended CSR.

As part of the information gathering process to determine the possible classifications that may be impacted by this Motion, the Department of Human Resources (DHR) requested all departments review their classifications and submit recommendations as to which positions are engaged in tasks that directly impact public safety where lives are at stake. DHR solicited input from all the departmental stakeholders and received recommendations. In addition, internal stakeholders formed a committee that identified four (4) separate categories of potential classification that fit the intent of the Motion: public safety/law enforcement; social services; health; and, emergency services. The classification analysis identified 265 classifications, totaling approximately 46,000 budgeted positions that may be covered by a new rule. This includes both represented and non-represented employees. Further analysis will need to be completed to determine whether the specific classifications identified in the above categorize fit the intent of the motion.

Due to the substantial number of potentially covered classifications and impacted employees, the process of applying a disciplinary rule change to an enumerated group of this size may be difficult. Normally, countywide rule changes or policies are vetted through the Coalition of County Unions (CCU) and/or SEIU Local 721 Bargaining Policy Committee (BPC); however, since the contemplated changes involve disciplinary matters, it is likely a consultation or negotiation will need to occur with individual bargaining units. This is especially true for our public safety units. One way of dealing with the large number of potentially impacted employees is to adopt a "phased-in" approach starting with the primary classifications of public safety/law enforcement.

Recommendations

We are committed to improving accountability within the civil service process and outlined below are recommendations to move the County forward in that direction.

- Create a Board policy emphasizing the requirement of the highest degree of honesty for vital positions impacting public safety;

Each Supervisor
November 22, 2017
Page 6

- Direct CEO and DHR to consult with labor on a Board policy;
- Once a Board policy has been presented and adopted, implement a phased-in approach to initially cover the most vital classifications impacting public safety;
- Incorporate Government Code 3305.5 into the CSRs procedural rules governing civil service hearings; and
- May consider an amendment to the CSRs that require the Commission to grant deference to a department's decision regarding the level of discipline for sustained acts of dishonesty involving vital safety positions.

The approval and implementation of these recommendations is a matter for Board determination.

If you have any questions, please contact Tim Pescatello, Manager, Employee Relations at (213) 974-4029 or tpescatello@ceo.lacounty.gov.

SAH:JJ:MM:JMN
RCM:TP:mj

c: Executive Office, Board of Supervisors
County Counsel
District Attorney
Sheriff
Human Resources
Office of the Inspector General
Probation

Attachment

18.02 C (BOLD INDICATES NEW LANGUAGE)

The commission may not consider any information or charges made by the appointing power unless they are contained in the letter of discharge or reduction, nor any made by the employee unless the employee has previously provided them to the appointing power for consideration, unless such information or charges were not then known and could not reasonably have been expected to be known by the appointing power or the employee. The commission shall determine whether or not the discharge or reduction is justified

In determining whether or not a discharge or reduction is justified, the commission shall consider whether an employee's duties impact public safety. For such employees, the commission shall place great weight on public safety and shall not modify a department decision if to do so would manifest an indifference to public safety and welfare. Discharge or reduction shall not be modified because prior penalties for similar conduct have been different.

The public has a right to the highest standard of behavior from those they invest with the power and authority of a public safety officer. Honesty, credibility and temperament are crucial to the proper performance of a public safety officer's duties. Dishonesty is incompatible with the public trust. False statements, misrepresentations and omissions of material facts in internal investigations or public records shall be considered justification for discharge absent circumstances clearly demonstrating a lack of impact on public safety.

In evaluating whether discharge or reduction is justified, the commission or a hearing officer shall consider whether an employee may be required to testify in the course of their job and whether employee conduct may require disclosure under Brady v. Maryland (1963) 373 U.S. 83. Any hearing officer may bifurcate a hearing to receive evidence regarding whether an employee's name has been placed on a "Brady list" or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83 pursuant to Government Code section 3305.5.