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August 14, 2017

Memorandum

To: Human Resources Committee
From: Brian Running
Re: Request for Exception from Human Resources Policy B-10

This Memorandum is to give you background information and legal aspects of the referral to the Committee for an exception to Policy B-10, to be heard at Wednesday's meeting.

The April 25, 2016 Acknowledgement. In April of last year, I was consulted by Donna Whalen regarding the application of Derek Jack for a Community Service Officer position with the Police Department. A Community Service Officer is a non-sworn member of the Police Department, and it was explained to me that CSO is a short-term position having the primary duty of patrolling parks. I was told that Mr. Jack had been hired as a CSO the previous summer, as well.

Derek Jack is Police Chief Russell Jack's son. Ms. Whalen was concerned that his hiring might be a violation of Policy B-10, the City's nepotism rule. I was asked for my opinion whether B-10 prohibited the hiring of Mr. Jack as a CSO.

B-10 does not prohibit relatives of City employees from working with the City, and it also does not prohibit those relatives from working in the same department with another City employee. In fact, it states that the City desires that employees' relatives work for the City. What it does is to prohibit employees from working under the direct supervision of relatives, and it prohibits City employees from hiring their relatives. The complete text of B-10 is attached, with relevant parts highlighted for reference.

When creating B-10, the Common Council deliberately used the word "direct" when describing the prohibited supervisory relationship. "Supervise" is defined to mean hiring, firing, or disciplining, so direct involvement in hiring, firing or disciplining is prohibited. Indirect supervision of relatives, including hiring, firing, and disciplining, is therefore not prohibited.

HR employees, department heads and those "who influence selections" may not "engage" their own relatives. They are not prohibited from engaging others' relatives. It's not clear why the word "engage" was used instead of "hire," but I have to assume that they are meant to have the same meaning.

Therefore, the plain meaning of B-10 is that as long as the department head is not hiring his or her own relative, and is not directly supervising his or her own relative, B-10 does not prohibit the relative of a City employee from working in a department with that City employee. Whether we agree with that policy or not, and whether we like that result or not, that's what the policy says. Rules must be followed as they are written.

It was represented to me that Chief Jack was not involved in the hiring of his son, the hiring was done by Deputy Chief Dennis Angle. It was also represented to me that CSOs are not under the direct supervision of the Chief. Under those circumstances, I could not find that Derek Jack's hiring was prohibited by B-10.

To ensure that the circumstances represented to me were true, I prepared an acknowledgement form for Chief Jack to sign. It was drafted for general use by any City employee who may have a relative working in his or her department, because I also learned that there were other departments in which relatives were working. A copy of the acknowledgement is attached. As you can see, it essentially recites the language of B-10, and has the City employee agree that he or she will not take any actions that would create a violation of B-10, i.e., participation in hiring, firing, or discipline; or direct supervision. The acknowledgement form is not a waiver or suspension of B-10, it reinforces B-10. It is also not a blanket permission for relatives to work in the City, it is only an acknowledgement that under certain circumstances, as long as the rules of B-10 are followed, employees can work together in the same department.

Circumstances Are Different Now. It is now proposed that Derek Jack be hired as a police officer. Whereas a CSO is not a sworn officer, and may be hired and supervised by someone in the Police Department other than the Chief, that is not the case with sworn officers. By state statute, the chief of police <u>shall</u> appoint subordinates, subject to approval by the Board of Police and Fire Commissioners. Wis. Stats. §62.13(4)(a). Sworn officers are the only subordinates subject to PFC approval – CSOs and other Police Department staff are not subject to approval by the PFC. Therefore, a police chief is bound by statute to hire the sworn officers, unlike the hiring of CSOs. Since B-10 expressly prohibits the hiring of a relative by a department head, and §62.13 requires the Chief to hire his sworn officers, B-10 prohibits the Chief from hiring his son as a sworn officer. That's the difference between last year and now, and that is what you're being asked to consider an exemption from.

The Mayor Has Authority to Direct Police Department Hiring. By state statute, the mayor of a city is the head of the police department. Wis. Stats. §62.09(8)(d). The police chief's command of the police force is subject to the direction of the mayor, and "The chief shall obey all lawful written orders of the mayor or common council." Wis. Stats. §62.09(13)(a). Therefore, even in the absence of a specific HR policy, or even if an HR policy specifically allowed the hiring of family members, a mayor has the authority to prohibit the hiring of a chief's son as an officer. There are numerous valid policy reasons for issuing such an order, and the order would be lawful. In the present matter, regardless of B-10, the Mayor was within his authority to direct that Derek Jack not be hired as a sworn officer.

The Board of Police and Fire Commissioners Has Final Approval Authority. The Board of Police and Fire Commissioners is an independent body, and is not bound by HR rules in the conduct of their duties. The PFC certainly can choose to abide by HR rules or Common Council

wishes, but it is an independent body specifically to avoid being bound up in politics. It's worth remembering that the PFC can act independently in its own discretion in approving, or not approving, the hiring of any sworn police officer.

Granting Exemptions to Policies. Although it has been pointed out to me that a few exceptions to HR policies have been made in the past, it is our position that granting exceptions to policies that do not include an express provision for doing so may raise issues of constitutional equal protection and due process. The issue would arise when a City employee reads B-10, and thinks, "Well, there's no leeway in that policy, no way my daughter can ever work for the City," not knowing that the HR Committee or Common Council may grant ad hoc exceptions. In that way, an employee may be denied equal protection or due process of the law.

At a minimum, it raises fairness issues for City employees. From a purely practical, political viewpoint, granting exceptions to policies that are generally enforced upon all employees is not advised. It suggests exactly the kind of favoritism that a nepotism policy is supposed to prevent.

If the Committee wants to recommend revising B-10, it can (and should) do so. At a minimum, I recommend that B-10 be revised to eliminate ambiguities caused by its current language, especially the use of the words "direct supervisory relationship." If the Committee feels it is appropriate to allow exemptions from the rule, then a provision for exemptions should be stated clearly in the rule, and the grounds for granting an exemption should also be clearly stated.

I cannot emphasize enough that this memo and my comments are not directed personally at the Chief or his son. The task here is to separate personalities from the decision-making process, and to create and enforce rules that are fair for everyone involved, including citizens and taxpayers, both now and in the future.

Employment of Relatives

A. PURPOSE

Employment of relatives of current City employees or elected officials may cause problems for management of this City, ranging from pressure to hire, to morale problems when a relative is disciplined*, etc. The Human Resources Committee, as authorized by the Common Council, has set this policy into writing restricting the employment of relatives based on the principle of achieving a more efficient operation and with reference to equal opportunity, affirmative action and the Ethics Code.

B. POLICY STATEMENT

As a matter of policy, this City does not employ or transfer members of a present employee's immediate family within the same department where a direct supervisory relationship would exist.

Additionally, this policy stipulates:

- No member of a family will directly supervise another family member.

- Human Resources Department positions, department heads and those positions who influence selections will not engage their own relatives.

- All applicants for employment will follow the prescribed hiring procedures of this City.

- All applicants considered for employment will meet all minimum qualifications as listed on the relevant job description and position posting.

C. DEFINITIONS

(1) "Employment" shall mean any position which is full-time, seasonal, provisional, part-time excluding limited term employees.

(2) "Employee" shall be construed as any appointed or elected person filling a City position, whether paid or unpaid.

(3) "Immediate family" is defined as an employee's spouse, child, parent, brother, sister, and in-laws.

(4) "Supervise" shall mean positions with the responsibility to hire, terminate or discipline.

 *Other situations: funeral leave, shift scheduling, vacation request, work assignments and flow of classified or confidential material.

It is our desire that relatives of current City employees (or elected officials) will seek to enter employment within the City; therefore no family member will be denied making application for City employment, however, no preference will be given on that basis.

As a reminder, it is the intent of the Human Resources Committee, the Mayor, and Common Council that this policy be considered part of the City's nondiscriminatory employment policy as listed under the Federal and State laws and executive orders; and is only part of a basic procedure (for recruiting and selecting employees), that does not intentionally or inadvertently work to screen out minority or female group members.

Passed this 8th day of April, 2004.
Approved this 8.th day of April, 2004

Acknowledgement of Policy
Human Resources Policy B-10, Employment of Relatives

City of Waukesha Human Resources Policy B-10 provides that it is the policy of the City to encourage relatives of City employees to work for the City, but that those relatives will not be treated differently than other employees in their hiring, performance of duties, discipline, or termination.

Specifically, Policy B-10 prohibits a family member from directly supervising another family member, and prohibits a family member who is in a position to influence the hiring of employees from participating in the hiring of another family member.

To ensure compliance with this policy, this acknowledgement is executed by the undersigned, who is a current employee of the City and whose family member is or will become an employee of the City.

The undersigned acknowledges and represents that:

1. He or she has not, and will not, participate in any way in the process of hiring, disciplining, promoting, demoting, changing the compensation or benefits, or firing of any member of the undersigned's family that is also an employee of the City.

2. He or she has not, and will not, directly supervise any member of the undersigned's family that is also an employee of the City.

Date:

(sign above)
Print name:
Title:

Names of relatives employed by the City: