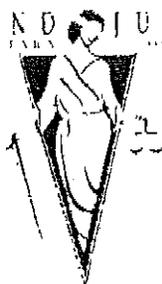


GRAND JURY
SANTA CLARA COUNTY

*8

June 16, 2011

Honorable Jose Esteves
Mayor
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Mayor Esteves and Members of the City Council:

The 2010-2011 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Rehiring of Pensioners: Bad Policy, Good Business or Both?**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

PLEASE NOTE:

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with each APPLICABLE Finding(s) 1 & 3. *If you disagree, in whole or part, you must include an explanation of the reasons you disagree.*
2. As stated in Penal Code § 933.05(b), attached, you are required to respond to each APPLICABLE Recommendation(s) 1 & 3, *with one of four possible actions.*

Your comments are due in the office of the Honorable Richard J. Loftus, Jr., Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Monday, September 19, 2011.**

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,


HELENE I. POPENHAGER
Foreperson
2010-2011 Civil Grand Jury

HIP:dsa
Enclosures (2)

cc: Mr. Thomas C. Williams, City Manager, City of Milpitas



2010-2011 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

REHIRING OF PENSIONERS: BAD POLICY, GOOD BUSINESS OR BOTH?

Summary

Recently reported public perception would suggest that municipalities engage in the practice of hiring numerous double dippers—persons who collect a government pension and concurrently receive government salary/payment for work. Further, public perception seems to be that this is a bad and costly practice and is a barrier to employment opportunities for new candidates. The Grand Jury sought to understand how Santa Clara County (SCC) and the fifteen SCC cities approach rehiring retirees, the number of rehired pensioners (RHPs) presently on payroll, and the pros and cons of this practice.

The Grand Jury found that all cities and SCC rehire retirees, but in very small numbers relative to the total number of employees: of nearly 26,000 employees countywide, ~1.6%, or 404, are RHPs who work, on average, nine hours/week. Cities and SCC limit rehired retirees to 960 hours in a fiscal year, which is less than half-time. In Grand Jury interviews, Human Resources (HR) managers outlined the costs of hiring a regular full- or part-time employee versus rehiring retirees and the advantages and disadvantages of this practice.

The Grand Jury found one case of possible abuse. Otherwise, rehiring retirees appears to be a prudent way to secure highly skilled talent for short-term tasks at a relatively low cost to economically strapped municipalities and does not in itself appear to be a barrier to hiring new workers.

Background

Santa Clara County and all of its fifteen cities rehire pensioners. Table 1 shows the data for the present fiscal year, July 2010 – June 2011. In all cases, year-to-date (YTD) numbers reflect fiscal year to date. The percent of RHPs as a function of total persons employed in the county ranges from 0 to 7.33% of total employees, and is just 1.55% countywide. Based on a 40-hour workweek, each RHP, on average, accounts for less than one-quarter of a full-time employee, working a countywide average of nine hours/week.

Table 1: Countywide survey of public sector agencies shows the number of rehired pensioners compared to full-time

Municipality	Number of Employees	Number of RHPs Hired FYTD	RHPs as a percent of total FTEs	Avg or actual RHP Hours F-YTD	Average RHP hrs/wk (based on 34 wks)
Campbell	155.0	1	0.65%	960	18
Cupertino	163.0	6	3.68%	246	8
Gilroy	237.0	5	2.11%	197	6
Los Altos	129.5	1	0.77%	355	11
Los Altos Hills	21.0	1	4.76%	213	6
Los Gatos	150.4	7	4.65%	2,249	9
Milpitas	381.0	1	0.26%	960	18
Monte Sereno	6.0	0	0.00%	0	0
Morgan Hill	170.4	5	2.94%	2,242	12
Mountain View	584.3	27	4.62%	5,721	6
Palo Alto	1,018.6	58	5.69%	28,351	14
San Jose	5,800.0	12	0.21%	183	14
Santa Clara	874.0	37	4.23%	277	8
Saratoga	54.6	4	7.33%	301	9
Sunnyvale	832.0	18	2.16%	3,834	7
SCC	15,421.0	221	1.43%	66,391	10
Totals	25,997.7	404.0	1.55%	112,479	9

Methodology

The Grand Jury interviewed SCC HR, finance and benefits managers, as well as a sampling of HR managers of large, medium and small population cities, to determine the HR practices of rehiring pensioners. The Grand Jury also surveyed all HR managers to gather specific data on the subject.

Discussion

All HR Directors/Managers interviewed confirmed they rehire a limited number of RHPs for various reasons as noted below:

- Continuity of service, such as in the following situations:
 - When a retiree provides very short notice of retirement (e.g., a family emergency), to allow time to recruit or succession plan
 - Until replacement is hired or fully trained

- Training, such as in the following situations:
 - When lack of time or union rules prevent transition training of a new hire from occurring prior to the departing individual's last day.
 - When remaining employees need to learn a job-specific concept or procedure that is well known by the retiree.
- Specific-knowledge or time-dependent projects, such as for the following:
 - Where an IT system being phased out has not been fully retired. No need to recruit, hire and train on a system that will not be in use, but needs to stay running until the new system is in place.
 - Where a detective is retired, but a case they investigated is now coming up for trial.
 - To complete a project started prior to retirement
 - Financial reports, with a short and urgent timeframe and that require very specific knowledge to complete.
 - To complete a short-term assignment or project that a retiree can perform quickly because their knowledge allows them to "hit the ground running" and/or is short enough duration that it does not warrant hiring a full- or part-time employee.
- Seasonal, part-time work (e.g., librarians, parks and recreation lifeguards)

Limitations on Rehiring Pensioners

The two pension plan providers to the cities and SCC, California Public Employees Retirement System (CalPERS) and the Federated Cities Retirement System, require contributions to the pension fund to resume if a rehired retiree works more than 960 hours in a fiscal year. To avoid this expense, all agencies limit RHPs to 960 hours per year if they return to work for an agency that has the same pension plan as the retiree's plan. San Jose's pension plan is managed through the Federated Cities Retirement System, and carries the same 960 hours limit. It is possible for a retiree from an agency with one pension system to be rehired by an agency with a different pension plan without a limit on hours. A typical accounting calendar assumes 2080 working hours per full-time employee. 960 hours is 46% of a full-time position, which is less than half-time. Most agencies will not authorize a requisition to add a position or to fill a vacant position unless workload demand is closer to 100% of a full-time person equivalent (FTE). Some agencies prevent a person retiring on disability from being rehired, and some agencies prohibit them from returning to the position they retired from on disability.

Occasionally there is a circumstance where an RHP is hired to fill a position that has a different retirement age. In this circumstance, CalPERS requires a 60 – 90 day cooling-off period before the RHP is permitted to end retirement, just to be sure that the RHP truly wants to end this "time off" benefit.

Wait Period

When a skilled employee retires, departments naturally feel the loss of that skill. Retraining or rehiring a new employee is time consuming. So it is understandable to want to immediately rehire a retiree. The City of San Jose has a 30-day waiting period preventing retirees from being rehired. This period is designed to test a rehiring department's dependency on a retiree by determining whether a department is actually able to perform the retiree's tasks in their absence. While a wait period makes sense in performing routine work, it does limit an agency from taking advantage of a highly skilled retiree to perform a time-critical task during the first 30 days of their retirement.

For retirees seeking to return to work as independent contractors, there is a wait period (typically two years) to ensure fair competition with other bidders. Typically, competitive bids are required in most purchasing departments; however, sole source justification situations can occur. In this case, buyers justify purchasing a resource without competition because that resource has a very unique skill not possessed by competitors or when work to be done has an urgent deadline that going out for competition would prohibit meeting.

Written Procedures

With the exception of San Jose, agencies interviewed do not have formal written procedures covering rehiring of retirees; however, all have approval and periodic review processes. In the approval process, HR and business manager approvals are required if a manager requests to bring a retiree back on payroll. A key reason for this approval is to determine whether a rehire is a retiree; if so, the 960 hours limit is put in place. Most HR and business managers interviewed confirmed they also receive a regular report detailing hours of RHPs, and closely monitor the use of RHPs to ensure the 960 hours limit is adhered to.

Some agencies have a pre-hiring step that first asks existing employees if they want the overtime work assignment an RHP would be recalled to perform. If existing employees turn down the assignment, managers are then free to rehire retirees for short-duration projects.

Succession Planning

Because managers typically rehire pensioners to perform the same work they did before retiring, the question of succession planning arose during Grand Jury interviews. Succession planning is a process whereby departments plan for who will be promoted into key positions in the event a person currently performing such critical work departs. In most cases, interviewees reported succession planning is done *ad hoc* at best.

The reasons why formal succession planning does not happen were somewhat consistent: in this economy, there is no need to succession plan because agencies are looking for ways to eliminate the vacated position. Particularly in today's tough economy, agencies reduce costs through attrition, redistributing work to remaining employees. Short term, if there is a delay in redistributing tasks, a retiree may be rehired to help bridge the transition.

The Grand Jury applauds agencies for rethinking how work may be done and who best to accomplish the tasks. As long as employees are not overly burdened with added responsibilities such that their performance suffers, it can be a good business decision to combine roles where it makes sense, e.g., San Jose's combining the directorship of the Airport and Team San Jose. Driven by budget woes, such creative thinking can create a healthier and higher performing work group.

To prepare workers for added responsibilities or to provide a broader view of the agency's work, agencies offer general development programs such as formal and informal mentoring and speed coaching for employees with interest. Some agencies conduct leadership development for a selected group of high potential employees to help transition them to higher-level responsibilities when those opportunities open up.

How Pay is Determined and What Benefits RHPs Receive

If brought back, an RHP's hourly wage is not to exceed their wage at retirement; however, in all cases the pay rate is that of the job the RHP will fill. For example, if the job the RHP is to perform is in a lower salary range than the one they retired at, the rehired pensioner is paid in the lower salary range. RHPs do not receive fringe benefits. Typical employer contributions for regular and RHPs are illustrated in Table 2. Hiring departments do enjoy a cost savings in not having to pay fringe benefits to RHPs.

Table 2: Employers enjoy cost savings when rehiring pensioners: RHPs receive wages but no fringe benefits.

Employment Cost Categories	Paid to regular, full-time Employee?	Paid to Re-hired Pensioner?
Wage	Yes	Yes
Medical Insurance	Yes	No
Dental Insurance	Yes	No
Vision Care Insurance	Yes	No
PERS/Pension	Yes	No
Social Security Contribution	Yes	No
Personal Time Off (Vacation, Holidays, Sick pay)	Yes	No
Long-term Disability	Yes	No
Employee Assistance Program	Yes	No
Life Insurance	Yes	No
Certification pay	Yes	No
401K Contribution	Yes	No
Medicare Contribution	Yes	No

Disadvantages of Rehiring a Retiree

While there are good business reasons to rehire pensioners, some personnel concerns are worth considering when rehiring a pensioner:

- Who is the boss? It can be challenging for the newly hired (replacement) person to establish authority if a retiree is still in the work environment
- Will old ways impede new ideas? If an RHP is present while reorganization is taking place, they may stand in the way of change
- Double-dipping? Perception of taking advantage of taxpayers twice—for their pension and for their RHP wages—for personal advantage
- Back-scratching? Perception that the rehired retiree is not actually doing anything, and the hiring manager is doing them a favor by supplementing retirement pay with additional earnings.

Union Leadership Influence

Unions are reportedly not in favor of rehiring pensioners, largely because if a person were hired to fill a full-time position, that individual would be a contributing union-dues-paying member. However, as noted above, most hiring managers hire retirees to fill a short-term, urgent need, for which a full-time person would not otherwise be hired.

Comment on Recent Rehires in the News

The San Jose Mercury News recently reported¹ on double-dipping abuses, implying a systemic use of a misguided hiring practice. The Grand Jury agrees with the article only in the instance of the rehiring of the City of Santa Clara Fire Chief. In this case, the City of Santa Clara rehired its retired fire chief more than six years ago. The initial reason given for rehiring the chief was because a search for his replacement was not fruitful. It has now been more than six years since the chief returned as a part-time worker. While the Grand Jury sees the business rationale of continuing this arrangement (the City of Santa Clara reports to have saved the city over a million dollars in salary and benefits), it is unclear how a fire chief can be considered a part-time job. If this is truly the case, perhaps the city should consider department consolidation and save even more money. Regarding the lack of qualified candidates, it should be noted that both San Jose and Milpitas have successfully recruited and hired well-qualified fire chiefs within this six-year period.

¹ "Best Part of Retiring? The Pay Raise—'Double-Dipping' Workers Get Pension and Contract Work," Karen de Sá, San Jose Mercury News (CA), December 31, 2010.

Outlook

Some HR managers indicated they expect a potential increase in the practice of rehiring retirees. As cities deal with the continuing wave of retiring baby boomers, combined with the scarcity of funds to hire replacements, RHPs offer an effective interim solution.

Conclusions

Most cities in SCC and SCC itself rehire retirees. For the most part, rehiring of pensioners is a good business decision, helping agencies to fulfill short-term or urgent work assignments where specialized skills, typically amassed over the career of a retiree, are needed. In some cases, retirees also have the capacity to work twice as fast as a new hire, thus saving agencies time. Hiring RHPs saves agencies the cost of fringe benefits that otherwise would be paid to a full-time replacement worker.

Some members of the SCC Board of Supervisors recently made public their opinions that rehiring pensioners is bad policy. By contrast, it appears hiring managers are making generally good business decisions in rehiring pensioners.

An unintended consequence of a relatively early retirement age (55 years for public sector employees versus a private industry average of 65) is that employees are incentivized to leave the workforce earlier than they may be ready to stop working. For instance, interviewees consistently stated that if they work past their retirement age, they "lose" money, because they could receive the same pay in pension while not working at all. This creates the well-publicized public sector pension liability that could be avoided for ten years or more by raising the retirement age. The early retirement age also creates a void agencies must fill and, because workers may wish to continue working past age 50 or 55, creates the desire to return to work as a rehired pensioner.

Findings and Recommendations

Finding 1

In spite of public opinion, there are situations that warrant rehiring pensioners and often it makes good business sense to do so. All managers interviewed follow existing procedures, which allow rehiring of pensioners.

Recommendation 1

If the County or the City/Town of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale desire to end the practice of rehiring pensioners, they should make that official by means of a policy decision.

Finding 2

For over six years, the City of Santa Clara has filled a previously 24/7 type of management job with a part-time employee. Clearly, the job is not a temporary or limited-time-urgent-needs position and six years is more than sufficient time to find a replacement.

Recommendation 2

The City of Santa Clara should consider consolidating with another agency's fire department for fire services and eliminate the part-time fire chief position or fill the position with a permanent part-time employee.

Finding 3

The fifteen towns and cities—Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale—and the County may be inadvertently creating a demand to rehire pensioners because the public sector retirement age is relatively young at 50 (police and fire) or 55 (administrative positions).

Recommendation 3

The fifteen towns and cities—Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale—and the County should continue to pursue a higher retirement age with its public sector unions and associations.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 19th day of May, 2011.

Helene I. Popenhager
Foreperson

Gerard Roney
Foreperson pro tem

Kathryn Janoff
Secretary



CITY OF MILPITAS

OFFICE OF MAYOR JOSE ESTEVES

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3029, FAX: 408-586-3056, www.ci.milpitas.ca.gov

January 17, 2012

Honorable Richard J. Loftus Jr., Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, California 95113

Dear Judge Loftus:

On October 18, 2011, the City of Milpitas received your June 16, 2011 letter referencing the 2010-11 Santa Clara County Civil Grand Jury Final Report, **Rehiring of Pensioners: Bad Policy, Good Business or Both?**.

This letter serves as our response to the Grand Jury's report, per 933 (c) of the California Penal Code, which requires the governing body of any agency or department which has been the subject of a Grand Jury report to respond to the Presiding Judge of the Superior Court on the findings and recommendations of the Grand Jury.

Finding 1

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RESPONSE:

- The City of Milpitas agrees with Finding 1.
- The City of Milpitas agrees with Recommendation 1.

The City of Milpitas currently outsources one fire inspector who is a pensioner. The annual savings to the City is approximately \$140,000.

Finding 2

For over six years, the City of Santa Clara has filled a previously 24/7 type of management job with a part-time employee. Clearly, the job is not a temporary or limited-time-urgent-needs position and six years is more than sufficient time to find a replacement.

Recommendation 2

The City of Santa Clara should consider consolidating with another agency's fire department for fire services and eliminate the part-time fire chief position or fill the position with a permanent part-time employee.

RESPONSE:

- Finding 2 and Recommendation 2 does not apply to the City of Milpitas.

Finding 3

The fifteen towns and cities - Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale – and the County may be inadvertently creating a demand to rehire pensioners because the public sector retirement age is relatively young at 50 (police and fire) or 55 (administrative positions).

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The fifteen towns and cities - Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale – and the County should continue to pursue a higher retirement age with its public sector unions and associations.

RESPONSE

- The City of Milpitas agrees with Finding 3.
- The City of Milpitas agrees with Recommendation 3.

The City of Milpitas recently adopted a two tiered retirement system increasing the retirement age to 55 (police and fire) and 60 (administrative positions).

Should you have any questions or concerns regarding our response, please feel free to call Thomas C. Williams, City of Milpitas City Manager, at (408) 586-3050.

Sincerely,

Jose S. Esteves
Mayor
City of Milpitas

Cc: City Council
City Manager Thomas C. Williams