MEMORANDUM OF LAW

DATE: September 30, 1987

TO: Rich Snapper, Personnel Director
FROM: City Attorney
SUBJECT: Authority to Force a Class Transfer to Avoid a Layoff

You indicated, in a memorandum dated September 8, 1987, that the San Diego Municipal Employees Association (MEA) presented a communication to the Civil Service Commission at its regularly scheduled meeting of September 3, 1987 requesting that the Civil Service Commission order the appointment of three laid off employees to job classifications in which the three employees had never served. As part of the communication, MEA challenged the previous advice given to you by this office in the attached June 16, 1981 memorandum. That memorandum concluded that the Personnel Director had only limited authority to force a class transfer to avoid a layoff. In order to respond to MEA, you have asked us three questions:

1. Is the original opinion still current and valid?
2. If not, what authority does the Personnel Director have to force such appointments and what is the extent of his authority?
3. If so, does the Civil Service Commission have authority to force such appointments and what is the extent of its authority?

The June 15, 1981 memorandum was based on an analysis of Charter sec. 129 - Removals, Suspensions and Layoffs; Civil Service Rule V - Layoff and Reemployment; San Diego Muni. Code sec. 23.0601 and Personnel Manual Index Code L-5 - Separation and Disciplinary Action. In that memorandum, David H. Morris, Deputy City Attorney concluded:

> ╒Tσhere is no authority in either the rules or the Personnel Manual which creates an obligation or gives you the power to impose a laid off employee upon an otherwise unwilling appointing authority in classifications in which that employee has not previously service. This, of course, does not preclude from attempting to place laid off employees in positions outside of their line of retreat on a mutually voluntary basis.

With one exception, there have been no changes to the applicable Charter provisions, Rules of the Civil Service Commission or the provisions of the Personnel Manual since the June 16, 1981 memorandum was issued. Rule V, Section 4 of the Rules of the Civil Service Commission ╒San Diego Muni. Code sec. 23.0604) was amended by Ordinance No. O-16076 (New Series) on November 7, 1983 to give employees suffering a layoff the right of competition for retention in equal classes in which he or she served satisfactorily. The previous rule only gave employees the right to compete for retention in the next and successively lower classes in which they had served satisfactorily. However, the provision of San Diego Muni. Code sec. 23.0604 concerning the right of a permanent employee whose layoff is imminent to transfer has not changed and still reads: "Subject to the provisions of Rule VI and IX, a permanent employee whose layoff is imminent shall have the right of transfer to any vacant position in the same class or subdivision thereof in any other department." In light of the explicit language of Rule V ╒San Diego Muni. Code sec. 23.0604σ it is clear that the analysis contained in the June 16, 1981 memorandum is still valid.

Because we believe that the original memorandum is still current and valid, we need not address your second and third questions as they are now moot.

JOHN W. WITT, City Attorney
By
John M. Kaheny
Deputy City Attorney

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Attachment
ML-87-103