



Office of the Auditor General/ Bureau du vérificateur général

AUDIT OF LABOUR RELATIONS

2007

Chapter 6

VÉRIFICATION DES RELATIONS DE TRAVAIL

2007

Chapitre 6

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EXECUTIVE SUMMARY

Introduction

The Audit of Employee Services was included in the 2007 Audit Plan of the Office of the Auditor General, first presented to Council in December 2004. This report focuses on the labour relations policies, procedures and practices including collective bargaining as well as the terms and conditions of employment and separation entitlements of non-unionized employees.

Background

The City of Ottawa as at January 1, 2008, employed close to 15,000 employees with approximately 14,000 of them unionized under 13 distinct collective agreements.

Audit Scope

The scope of this audit was to conduct a review of labour relations, including collective bargaining in 2006 within the City of Ottawa, but excluding transactions dealing with Ottawa Police Service as they have a separate human resources team which is not within the purview of the Employee Services Branch of the City of Ottawa.

Audit Objectives

The objectives of this audit were to:

- Determine whether labour relations, collective bargaining and employee relations (exempt employees) policies and procedures are in place and, if so, whether actual processes and practices are compliant with them.
- Determine if roles, responsibilities, delegated authorities and accountabilities of management and human resources with respect to the functions are clear, consistent, well understood and adequate for the functions being audited.
- Determine if the City is effectively enforcing its rights under the collective agreements and employment law, and if it is effectively protecting its rights in a cost effective manner.
- Determine if the City is effectively protecting its rights and the interests of management in negotiating new collective agreements.

Summary of Key Findings

1. Prior to the fall of 2006, the City did not effectively protect itself when contracting with new Management Professional Exempt (MPE) employees for senior management positions in that there was no clear safety valve in the absence of a probationary period to deal with unsuitable new hires. The issue was also one of

consistency and substantial cost in the case of an unsuitable new hire under the City's current severance structure.

2. New hires were not sufficiently informed of the terms and conditions of their employment and obligations (e.g., Terms and Conditions of Employment, Code of Conduct). The practice was not consistent for both internal and external candidates. Reference was made in the letter of employment for internal candidates to visit the intranet site to obtain the information. This information should have always been attached to the letter.
3. The severance pay provisions of the MPE Terms and Conditions of Employment and the guaranteed minimum amount of 18 months severance for a Deputy City Manager and 12 months for a Director are considered to be excessive in the case of short-term employees. Further, the MPE Terms and Conditions of Employment need to be updated to align with common law and minimum employment standards.
4. Management interviews and case review suggest that when internal issues arise such as unacceptable behaviour within the management ranks, there is unwillingness by some senior levels of management to do anything about it until the only option is termination.
5. There is no robust decision-making and accountability process to deal effectively with terminations for cause and involuntary separations to ensure substantiation of decisions to minimize the liabilities that the City might otherwise face. A policy exists for non-unionized employees, but we did not find it being applied to the more senior categories of excluded employees.
6. The administration of grievances through the grievance procedure is consistently untimely and not in keeping with the provisions of the collective agreement and good labour relations practices to the detriment of both parties and aggrieved employees.
7. The City's track record is not very successful in upholding the Employer's position through the grievance procedure and especially at arbitration.
8. The collective bargaining mandates are not driven and developed from long-term strategic plan objectives but are more bottom-up, short-term and operational mandates, which do not anticipate and pave the way for true business transformation.
9. Labour Relations advice is perceived by management to be good, but not timely.
10. Better relationships need to be established between Labour Relations and Legal Services.

Recommendations and Management Responses

Recommendation 1

That the City continue to clearly state the existence and application of probationary periods and explicitly communicate it. This clause could be waived by the City Manager in particular circumstances and in such cases the waiver must be appropriately documented.

Management Response

Management agrees with this recommendation.

All letters of offer include reference to the existence and application of a probationary period, unless agreement to waive the probationary period has been received by the City Manager at the time of hire. Documentation of the decision resides on both the employee file and the competition file.

Recommendation 2

That the City continue to inform new hires of their terms and conditions of employment as well as their obligations and that new employees be asked to acknowledge their understanding by signing a statement to that effect.

Management Response

Management agrees with this recommendation.

New hires are provided with all of the terms and conditions that make up the offer of employment including: their respective collective agreement / terms and conditions of employment, City Employee Code of Conduct, confidentiality clause and benefits information. Candidates must sign the letter of offer acknowledging that they have read and accept all of the terms and conditions of employment.

Recommendation 3

That the involuntary separation entitlements chart contained in the MPE Terms and Conditions of Employment document be updated to reflect common law standards including the minimum statutory provisions in the case of termination for cause.

Management Response

Management agrees with this recommendation.

Employee Services will report back to Council with a written report with recommended revisions to the involuntary separation entitlements for MPE staff by the end of Q3 2008.

Recommendation 4

That a more robust discipline policy be developed that deals specifically with progressive discipline for non-unionized and managerial employees that stresses the importance of timely and prompt correction of unacceptable behaviour by

management at all levels. Possible inclusions include a process similar to the current “last chance agreements” used with union employees who have had specific behaviour identified and subsequently submit to corrective measures at the risk of termination.

Management Response

Management agrees with this recommendation.

Management believes the current discipline policy is sufficient to meet the needs highlighted in the audit. Labour Relations will supplement it with a disciplinary procedure document, outlining specific steps to be followed when discipline is necessary for non-unionized City staff, by the end of Q3 2008.

Recommendation 5

That training for “managing managers” be developed and offered to senior decision makers at the City.

Management Response

Management agrees with this recommendation.

Labour Relations will develop a training program for senior decision-makers on the “management of managers” by the end of Q3 2008. Training will be offered commencing in Q4 2008

Recommendation 6

That the City develop a procedure for dealing with terminations for cause and involuntary separations that provides for a more robust decision making and accountability process to ensure that decisions of this nature are made with the involvement of all key stakeholders and subject matter experts (Labour Relations and Legal Services) to minimize liabilities in such cases. Elements of the procedure should deal with investigation, option analysis and implementation aspects of termination decisions to ensure the veracity of evidence and substantiation of decisions and, that the proper communication strategies are in place to mitigate unnecessary public exposure and to avoid undermining managers’ overall confidence to take action. This procedure should also provide a mechanism in the event of disagreement between the key stakeholders to escalate resolution up to the City Manager if necessary, to ensure that views are duly considered and factored into the final decision.

Management Response

Management agrees with this recommendation.

Although a formal procedure does not currently exist, such investigations, consultations, option analysis and substantiation of decisions occur now for terminations for cause and involuntary separations. Labour Relations, in consultation with Legal Services, will develop a formal procedure to be followed

when terminating non-union personnel that includes: investigation, option analysis, implementation aspects of termination decisions, and an escalation mechanism in the event of disagreement between key stakeholders. This procedure will be completed by the end of Q3 2008.

Recommendation 7

That the City undertake a review of the allocation of labour relations resources and service delivery model to provide the flexibility to respond to changing needs within the operation and provide consistent and responsive service levels across the whole operation. Clients must be made aware of who their Labour Relations Consultants are, and their alternates in a crisis.

Management Response

Management agrees with this recommendation.

The allocation of labour relations resources is ongoing given the limited number of resources available and high service demands. Pending Council approval of the 2008 budget, two additional senior labour relations resources will be allocated to the branch.

Labour Relations conducted a formal review of the allocation of resources and the service delivery model in February 2008, with the goal of providing more flexibility in responding to changing needs and in providing a consistent and responsive service to all clients.

A process will be in place by the end of Q2 2008 for communicating to clients who their assigned Labour Relations Consultant and alternate(s) are.

Recommendation 8

That Labour Relations, Legal Services and their clients enter into “service level agreements” that specifically detail who is responsible for making decisions, preparing documentation, responses, attendance at meetings and arbitration, regular reporting on status and resolution of grievances with performance indicators.

Management Response

Management agrees with this recommendation.

This recommendation has already been largely clarified through revisions made to the Delegation of Authority By-law (in April 2007).

Labour Relations and Legal Services will issue a joint memorandum to all of their clients outlining their roles and responsibilities regarding decision-making authority, by Q3 2008.

Recommendation 9

That in instances where Labour Relations or Legal Services are involved, to settle a matter or overrule a decision made by a director/manager, steps be taken to involve

the line manager in the decision making process prior to final determination; and that in instances of disagreement there be a means to escalate the matter to the appropriate level for impartial determination in the best interests of the City to avoid unfounded matters proceeding indefinitely.

Management Response

Management agrees with this recommendation, in principle.

While management agrees in principle with the recommendation, it should be noted that the line manager is involved throughout the decision-making process and may consult with the department head and City Manager at any time. It should be noted that the delegation of authority, as specified in By-Law 2005-503, ultimately determines the final authority to make a decision on labour relations matters.

Recommendation 10

That whenever a discipline incident leads to a grievance, Employee Services prepare a brief synopsis of the issue to consult with Legal Services at this very early stage. Legal Services may be able to provide insight into the strategy to avoid what may be needless wrangling or to identify the ingredients to success.

Management Response

Management disagrees with this recommendation.

Labour Relations staff settle the majority of grievances on discipline issues prior to arbitration. Therefore, management believes it would be an ineffective use of resources to prepare a synopsis and consult with Legal Services routinely on grieved disciplinary matters.

To maximize the value of Legal Services' contribution, Legal Services will be consulted on all significant disciplinary matters (i.e., dismissal) prior to the discipline being meted.

Recommendation 11

That whenever arbitration is scheduled, the affected manager, the Labour Relations Consultant and a representative of Legal Services be required as a matter of internal discipline policy, to convene a meeting immediately to review the issues which are the subject of the arbitration. As a result of this meeting, all three parties will agree on a course of action for the arbitration, and the client (manager) will be versed in settlement options and benefits in advance of the hearing – with all three parties committing to a course of action and helping to foster cohesive management resolve.

Management Response

Management agrees with the first part of this recommendation that preparation for arbitration be undertaken with the involvement of line management, Labour Relations and Legal Services in order to review the issues and all possible options for resolution.

However, management disagrees with the second part of this recommendation. Matters arising from the arbitration process properly reside in Legal Services under the Delegation of Authority By-law and should continue to be within their mandate as part of their role as a Centre of Expertise and the City's representative for all litigation matters.

Recommendation 12

That Employee Services provide a memorandum to all of their clients that clearly outlines the responsibilities of Legal Services, Employee Services and the client with regard to seeking advice, grievances and arbitrations.

Management Response

Management agrees with this recommendation.

As noted under recommendation 8, Labour Relations and Legal Services will issue a joint memorandum to all of their clients outlining their roles and responsibilities regarding decision-making authority, by Q3 2008.

Recommendation 13

That the necessary steps be undertaken to communicate to all involved, including the union, the importance of respecting the time limits in the collective agreement and that the necessary steps be implemented to track and improve upon the time lines to processing grievances from start to finish.

Management Response

Management agrees with this recommendation.

Management has instituted a tracking mechanism with prompts, which reminds labour relations consultants of grievance timelines while grievances are in process. In addition, at the recently concluded negotiations with CUPE 503 Inside/Outside, an agreement was reached to extend the timelines for handling grievances. Previous timelines were unrealistic and there was a lack of resources available for handling grievances on the part of both the City and the union.

Recommendation 14

That standards be developed to ensure that all necessary documentation is gathered and placed in grievance files from the outset including incident notes and all related information; and that a grievance summary be included in all files and updated as a file progresses through the grievance procedure and that proper training be provided to support consistent and complete documentation practices.

Management Response

Management agrees with this recommendation.

A process has been instituted and documented. As well, training has been provided on file maintenance. Grievance summaries will be provided on all grievances that

are referred to Step II of the grievance process. However, if a grievance was settled at Step I of the grievance process, a summary would not be necessary.

Recommendation 15

That changes be incorporated in the statistics that are maintained to include a measure of overall performance in terms of grievances completed/closed/settled successfully or unsuccessfully to provide a means of assessing overall effectiveness.

Management Response

Management agrees with this recommendation.

Management agrees that statistics should be maintained to provide a measure of overall performance. Statistics are kept regarding completed, closed and settled grievances. Additional statistics regarding successful or unsuccessful conclusion will be developed by Q3 2008.

However, management cautions that statistics about successful or unsuccessful settlement of grievances is subjective and is, subsequently, hard to define and may not provide a meaningful performance measure to assess overall effectiveness of grievance handling.

Recommendation 16

That a needs analysis or survey of all managers and directors be conducted to ensure that future training seminars are in line with client needs for additional new training, refreshers, on such matters as discipline, workforce adjustment, Code of Conduct, etc.

Management Response

Management agrees with this recommendation.

In order to ascertain training needs and design additional training for management staff, Employee Services will conduct a survey of all managers and directors, by the end of Q4 2008.

Recommendation 17

That a summary of internal discipline jurisprudence briefly outlining the facts, conclusion and quantum of discipline imposed be maintained and circulated semi-annually to inform managers and assist them in their decision making.

Management Response

Management agrees with this recommendation.

A summary of internal disciplinary jurisprudence will be added to the next Labour Relations, Human Rights & Employment Equity Bulletin, which is published twice a year, in order to provide guidance to line managers when imposing discipline. The next bulletin will be published in Spring 2008.

Recommendation 18

That the ultimate decision to proceed with matters be a joint decision between the parties concerned (Line Manager, Labour Relations, Legal Services) and that there be a mechanism (i.e., City Manager or delegate) to resolve differences between these parties in the event of disagreement for the interests of the whole and that such decisions be thoroughly documented to avoid having cases proceed to arbitration unnecessarily.

Management Response

Management disagrees with this recommendation.

Management agrees that the line manager should be involved throughout the decision-making process and should have the option of consulting with the department head and the City Manager at any time. This is the process that currently exists. However, management does not agree that a mechanism is necessary for the resolution of disputes.

In April 2007, the City Manager sub-delegated legal matters under the Delegation of Authority By-Law to the City Solicitor, including arbitrations. In addition, he sub-delegated various labour relations matters to the Director of Employee Services, including grievances.

In light of the fact that the grievance and arbitration processes are governed largely by the Ontario Labour Relations Act, it would be impractical to meet the requirements of recommendation 18, whereby: “the ultimate decision to proceed with matters be a joint decision between the parties concerned (Line Manager, LS, LR)”. The decisions made at the grievance level are within the jurisdiction of the Director of Employee Services in consensus with operating departments.

Conversely, when a matter has been referred to arbitration, Legal Services is the clear lead and, in the traditional legal model, undertakes such arbitrations with the clear direction of the operating department. This is true even where arbitrations arise from a policy grievance, at which time Legal Services would look to Labour Relations for direction/instruction.

Recommendation 19

That statistics on arbitration cases, wins, losses, draws and costs be implemented to facilitate overall performance measurement.

Management Response

Management agrees with this recommendation.

Consistent with recommendation 15, management cautions that categorizing arbitration awards, as a “win, loss or draw” may not provide meaningful performance measures to assess overall effectiveness of grievance and arbitration handling.

Legal Services will develop statistics related to arbitrations for their branch's performance measurements by Q3 2008.

Recommendation 20

That the City adopt a more strategic approach and longer term outlook to collective bargaining in keeping with its vision and long term objectives as confirmed and approved by Council and that there be a process in place to secure and maintain the commitment of Council to the stated mandate.

Management Response

Management agrees with this recommendation.

Council has been, and will continue to be consulted, prior to negotiations taking place to determine the most appropriate strategic approach for negotiations at the time. The consultation will include the strategic direction for both the current and upcoming rounds of negotiations.

Recommendation 21

That the current collective agreements be reviewed to identify impediments to achieving the City's vision and mid-term objectives, and that related bargaining strategies be developed to address shortcomings to change and flexibility.

Management Response

Management agrees with this recommendation.

With each round of collective bargaining, proposals are formulated in support of the City's vision and objectives, in order to negotiate the removal of impediments to achieving those objectives. The removal of these impediments is contingent upon successful negotiations.

Recommendation 22

That the strategy for the upcoming round(s) of collective bargaining in 2008 and potential implications be well understood by Council and well supported with the right strategies, action plans and resources to manage the process and its inherent challenges.

Management Response

Management agrees with this recommendation.

Presentation of the 2008 bargaining strategy was made to Council in November 2007.

Temporary resources have been provided to assist in achieving the objectives outlined in this strategy. As the duration of the upcoming agreements are finalized, a review of staffing needs will be undertaken. If increased permanent staffing is required, a report will be submitted to Council requesting additional resources in 2009.

Conclusion

The City's existing severances may be considered excessive in cases of unsuitable hires and short-term employees.

The City needs to review its disciplinary processes, practices and training as they pertain to the management cadre to deal effectively with internal issues when they arise such as unacceptable behaviour within the management ranks or dealing with unsuitable new hires to avoid unnecessary cost and litigation and, to foster a supportive and transparent environment for managers to deal effectively with unacceptable behaviour.

The City needs to establish a more robust decision making process and accountability process to deal effectively with terminations for cause and involuntary separations to ensure substantiation of decisions to minimize the liabilities that might otherwise be faced by the City.

The City needs to improve the administration of the grievance process as well as its arbitration and litigation track record, in keeping with good labour practices in order to measure its success rate and to ensure that it is effectively protecting its rights in a cost effective manner.

Management needs to provide to Council for approval a stronger framework and expectations for collective bargaining negotiations by establishing a clearly defined strategy that addresses the City's long-term objectives and future fiscal responsibilities.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

RÉSUMÉ

Introduction

La vérification de Services aux employés était prévue dans le Plan de vérification de 2007 du Bureau du vérificateur général, présenté pour la première fois en décembre 2004 au Conseil municipal. Le présent rapport porte sur les politiques, les procédures et les pratiques en matière de relations de travail, y compris la négociation collective, les conditions d'emploi et l'indemnité de départ des employés non syndiqués.

Contexte

Au 1^{er} janvier 2008, la Ville d'Ottawa avait près de 15 000 employés, dont 14 000 environ étaient syndiqués en vertu de 13 conventions collectives distinctes.

Portée de la vérification

La vérification visait à examiner les relations de travail, notamment les négociations collectives qui ont eu lieu en 2006, au sein de l'ensemble de l'administration municipale d'Ottawa, compte non tenu cependant des policiers, le Service de police ayant sa propre équipe de ressources humaines qui ne relève pas de la Direction des services aux employés de la Ville d'Ottawa.

Objectifs

Les objectifs de la vérification étaient les suivants :

- Déterminer si des politiques et des procédures régissent les relations de travail, la négociation collective et les relations avec les employés (employés exclus) et, le cas échéant, si les processus et les pratiques y sont conformes.
- Déterminer si les rôles, les responsabilités, les délégations de pouvoir et la reddition de comptes des cadres et des gestionnaires des ressources humaines en ce qui touche les fonctions à l'étude sont clairs, uniformes, bien compris et assortis aux fonctions en cause.
- Déterminer si la Ville exerce efficacement les droits que lui confèrent les conventions collectives et le droit du travail, et si elle les protège effectivement et de manière rentable.
- Déterminer si la Ville protège bel et bien ses droits et les intérêts de la direction lorsqu'elle négocie de nouvelles conventions collectives.

Principales constatations

1. Jusqu'à l'automne 2006, la Ville ne se protégeait pas adéquatement lorsqu'elle passait des contrats avec de nouveaux employés de la haute direction faisant partie du groupe exclu – direction et professionnels (GEDP), en ce sens qu'en l'absence

d'une période d'essai, elle ne disposait d'aucun exutoire si l'employé nouvellement embauché s'avérait inapte à remplir ses fonctions. Conformément à la structure d'indemnisation actuelle de la Ville, la cohérence et les coûts considérables dans les cas de nouveaux employés qui ne faisaient pas l'affaire étaient également en question.

2. Les employés nouvellement embauchés n'étaient pas suffisamment informés de leurs conditions de travail et de leurs obligations (p. ex., conditions d'emploi, Code de conduite), et la pratique suivie variait selon que les candidats venaient de l'interne ou de l'externe. En effet, la lettre d'embauche des candidats internes invitait ceux-ci à se reporter au site intranet de la Ville pour obtenir des renseignements. Or, cette information devrait être toujours jointe à la lettre d'embauche de tous les employés.
3. Les modalités d'emploi du GEDP relatives à l'indemnité de départ de même que l'indemnité minimale garantie équivalant à 18 mois de rémunération pour un directeur municipal adjoint et à 12 mois de rémunération pour un directeur sont jugées excessives dans le cas des employés retenus pour de courtes périodes. En outre, il faudrait mettre à jour les conditions de travail du GEDP pour les faire correspondre à la common law et aux normes d'emploi minimales.
4. Les entretiens tenus avec la direction et l'examen de cas donnent à penser que, lorsque des problèmes internes, comme un comportement inacceptable, surgissent parmi les membres de la direction, certains cadres supérieurs répugnent à intervenir jusqu'à ce qu'il n'y ait d'autre solution que la cessation d'emploi.
5. Aucun processus rigoureux ne régit la prise de décisions et la reddition de comptes pour traiter efficacement les cessations d'emploi motivées et les départs involontaires afin de confirmer la la documentation de décisions de manière à éviter le plus possible d'engager la responsabilité de la Ville. Une politique existe pour les employés non syndiqués, mais rien ne permet de croire qu'elle est appliquée aux cadres supérieurs faisant partie des employés exclus.
6. L'administration des griefs au moyen de la procédure de règlement des griefs accuse sans cesse un retard et ne respecte ni les dispositions de la convention collective ni les bonnes pratiques en matière de relations de travail, au détriment des deux parties et des plaignants.
7. Les antécédents montrent que la Ville réussit mal à défendre le point de vue de l'employeur pendant la procédure de règlement des griefs, tout particulièrement à l'étape de l'arbitrage.
8. Les mandats de négociation collective ne sont pas conçus en fonction des objectifs d'un plan stratégique à long terme : ils sont plutôt ascendants, à court terme et d'ordre pratique, ce qui ne favorise aucune transformation véritable du mode de fonctionnement.

9. Selon la direction, Relations de travail offre des conseils valables, mais pas au moment où ceux-ci sont requis.
10. Il faudrait améliorer la coopération entre Relations de travail et Services juridiques.

Recommandations et réponses de la direction

Recommandation 1

Que la Ville continue à faire part clairement et à faire observer des périodes d'essai qu'elle communiquera de manière explicite, quitte à autoriser le directeur municipal à supprimer la clause à cet effet dans des circonstances particulières, sous réserve d'une justification appropriée.

Réponse de la direction

La direction est d'accord avec la recommandation.

Toutes les lettres d'offre mentionnent l'existence et l'application d'une période d'essai, sauf lorsqu'un accord visant l'abolition de celle-ci a été reçu par le directeur municipal au moment du recrutement. La justification de la décision est inscrite au dossier de l'employé et au dossier du concours.

Recommandation 2

Que la Ville continue d'informer les nouveaux employés de leurs conditions d'emploi et de leurs obligations et exige que ceux-ci confirment les avoir comprises en signant une déclaration à cet effet.

Réponse de la direction

La direction est d'accord avec la recommandation.

Toutes les conditions de travail afférentes à l'offre d'emploi sont communiquées aux nouveaux employés, notamment : leur convention collective et leurs conditions d'emploi, le Code de conduite des employés municipaux, la clause de confidentialité et les renseignements sur les avantages sociaux auxquels ils sont admissibles. Les candidats doivent signer la lettre d'offre pour confirmer qu'ils ont lu et qu'ils acceptent toutes les conditions d'emploi.

Recommandation 3

Que le barème des indemnités de départ involontaire élaboré dans le document de conditions d'emploi et obligations pour le GEDP soit mis à jour de manière à correspondre aux normes de la common law, y compris les dispositions législatives minimales à respecter en cas de cessation d'emploi motivée.

Réponse de la direction

La direction est d'accord avec la recommandation.

Services aux employés déposera au Conseil municipal, d'ici la fin du troisième trimestre de 2008, un rapport énonçant les modifications recommandées au chapitre des indemnités de départ involontaire pour les membres du GEDP.

Recommandation 4

Que soit élaborée une politique disciplinaire plus rigoureuse traitant précisément des mesures disciplinaires progressives visant les employés non syndiqués et les cadres, laquelle fera ressortir l'importance de corriger rapidement et en temps opportun tout comportement inacceptable de la part des gestionnaires de tous les niveaux. La politique pourrait prévoir un processus semblable aux « accords de la dernière chance » aux termes desquels les employés syndiqués ayant eu un comportement déplacé doivent se soumettre aux mesures disciplinaires convenues au risque de se voir licencier.

Réponse de la direction

La direction est d'accord avec la recommandation.

La direction estime que la politique disciplinaire actuelle permet de répondre aux besoins mentionnés dans le rapport de vérification. Relations de travail élaborera, d'ici la fin du troisième trimestre de 2008, un document complémentaire qui énoncera les étapes précises à suivre lorsque des mesures disciplinaires doivent être imposées à des employés municipaux non syndiqués.

Recommandation 5

Qu'une formation sur « la gestion des gestionnaires » soit conçue et offerte aux décideurs supérieurs de la Ville.

Réponse de la direction

La direction est d'accord avec la recommandation.

Relations de travail concevra, d'ici la fin du troisième trimestre de 2008, un programme de formation sur la « gestion des gestionnaires » à l'intention des décideurs supérieurs de la Ville, en vue de donner la formation à compter du quatrième trimestre de 2008.

Recommandation 6

Que la Ville élabore une procédure qui établira un processus de prise de décisions et de reddition de comptes plus rigoureux afin que les décisions concernant des cessations d'emploi motivées et des départs involontaires soient prises en consultation avec tous les intervenants et les spécialistes en la matière (Relations de travail et Services juridiques) en vue de réduire le plus possible les risques qui y sont associés. La procédure devrait traiter des enquêtes, de l'analyse des options et de la mise en œuvre des décisions de licenciement de manière à corroborer les preuves, à documenter les décisions et à pouvoir recourir à des stratégies de communication adéquates pour atténuer le risque d'exposition publique inutile et éviter d'ébranler la

confiance générale du gestionnaire appelé à intervenir. La procédure devrait également prévoir, en cas de désaccord entre les principaux intervenants, un mécanisme de résolution par un supérieur selon une hiérarchie pouvant remonter au besoin jusqu'au directeur municipal, de sorte que tous les points de vue soient entendus comme il se doit et pris en considération dans la décision finale.

Réponse de la direction

La direction est d'accord avec la recommandation.

Bien qu'aucune procédure officielle n'existe à cet effet, les enquêtes, les consultations, l'analyse des options et la documentation des décisions sont des étapes maintenant suivies dans les cas de cessation d'emploi motivée et de départ involontaire. Relations de travail, en consultation avec Services juridiques, élaborera une procédure officielle qui régira le licenciement de membres du personnel non syndiqué, notamment les enquêtes, l'analyse des options, et la mise en œuvre entourant la décision, et prévoira un mécanisme de résolution par un supérieur en cas de désaccord entre les principaux intervenants. La procédure sera prête d'ici la fin du troisième trimestre de 2008.

Recommandation 7

Que la Ville examine l'affectation des spécialistes en relations de travail et le modèle de prestation des services en la matière afin de permettre la souplesse voulue pour répondre aux besoins changeants du secteur et de faire en sorte que les niveaux de service y soient uniformes et adaptés. Les clients devraient être informés du nom du conseiller en relations de travail qui leur est assigné et avec qui ils doivent communiquer, ainsi que du nom de son substitut en cas de d'urgence.

Réponse de la direction

La direction est d'accord avec la recommandation.

L'affectation des spécialistes en relations de travail se fait de façon continue étant donné le nombre limité des ressources disponibles et la demande élevée. Sous réserve de l'approbation du budget de 2008, deux autres spécialistes principaux en relations de travail seront ajoutés à la Direction.

Relations de travail a mené en février 2008 un examen officiel de l'affectation des ressources et du modèle de prestation des services, dans le but de fournir une plus grande souplesse pour répondre aux besoins changeants et d'offrir à tous les clients un service uniforme et adapté.

Un processus sera mis en place d'ici la fin du deuxième trimestre de 2008 pour que soient communiqués aux clients le nom du conseiller en relations de travail qui leur est assigné, ainsi que celui de son ou de ses substituts.

Recommandation 8

Que Relations de travail, Services juridiques et leurs clients concluent des « ententes sur les niveaux de service » précisant à qui il incombe de prendre des décisions, de préparer la documentation et les réponses, d'assister aux réunions et aux séances d'arbitrage et de faire périodiquement rapport de l'évolution des griefs et de leur règlement en fournissant des indicateurs de rendement.

Réponse de la direction

La direction est d'accord avec la recommandation.

La recommandation a déjà été en grande partie clarifiée par les modifications apportées au Règlement municipal sur la délégation de pouvoirs (en avril 2007).

D'ici le troisième trimestre de 2008, Relations de travail et Services juridiques enverront conjointement une note de service à tous leurs clients dans laquelle ils énonceront leurs rôles et responsabilités respectifs en ce qui a trait au pouvoir décisionnel.

Recommandation 9

Que, dans les cas où Relations de travail ou Services juridiques sont appelés à intervenir pour régler un problème ou annuler la décision d'un directeur ou d'un gestionnaire, des mesures soient prises pour faire participer le cadre hiérarchique en cause au processus décisionnel avant que la décision finale soit rendue, et qu'en cas de désaccord, un processus prévoie le renvoi de la question à l'échelon supérieur approprié aux fins d'une décision impartiale qui soit dans le meilleur intérêt de la Ville, de manière à ce que les questions non fondées ne traînent pas indéfiniment.

Réponse de la direction

La direction est d'accord en théorie avec la recommandation.

Bien que la direction est d'accord en principe avec la recommandation, il convient de souligner que le cadre hiérarchique participe à l'ensemble du processus décisionnel et peut en tout temps consulter le chef de service et le directeur municipal. En outre, c'est la délégation de pouvoirs, telle que la définit le Règlement municipal n° 2005-503, qui, en fin de compte, détermine où réside le pouvoir décisionnel final pour les questions de relations de travail.

Recommandation 10

Que dès qu'un incident de nature disciplinaire engendre le dépôt d'un grief, Services aux employés prépare une brève explication du problème en vue de consulter dès le début du processus Services juridiques, qui pourrait l'éclairer sur la stratégie à suivre, afin d'éviter des conflits qui risquent de s'avérer inutiles ou de cerner les ingrédients nécessaires à la résolution du problème.

Réponse de la direction

La direction n'est pas d'accord avec la recommandation.

Le personnel de Relations de travail règle la majorité des griefs relatifs à des questions de discipline avant que ceux-ci n'arrivent à l'arbitrage. Par conséquent, la direction considère comme une utilisation inefficace des ressources la préparation d'un résumé et la consultation systématique de Services juridiques pour chaque incident de nature disciplinaire faisant l'objet d'un grief.

Pour que la valeur de sa contribution soit optimisée, Services juridiques sera consulté sur toute question disciplinaire d'importance (p. ex., un licenciement) avant que ne soit imposée la mesure disciplinaire.

Recommandation 11

Que, dès que la date d'une séance d'arbitrage est arrêtée, le gestionnaire concerné, le conseiller en relations de travail et un représentant de Services juridiques soient tenus, en vertu d'une politique disciplinaire interne, de convoquer sans tarder une réunion pour examiner les questions soumises à l'arbitrage, à l'issue de laquelle les trois parties auront convenu d'un plan d'action pour l'arbitrage, et le client (le gestionnaire) sera informé des options qui s'offrent à lui pour régler le différend avant la tenue de l'audience et des avantages qu'il y a à le faire – les trois parties s'engageant à respecter un plan d'action et favorisant une prise de position ferme par la direction.

Réponse de la direction

La direction est d'accord avec la première partie de la recommandation, selon laquelle la préparation en vue de l'audience d'arbitrage doit se faire avec la participation des cadres hiérarchiques, de Relations de travail et de Services juridiques afin que les problèmes et toutes les options de résolution possibles soient examinés.

La direction n'est pas d'accord toutefois avec la deuxième partie de la recommandation. En vertu du Règlement municipal sur la délégation de pouvoirs, les questions découlant de la procédure d'arbitrage sont confiées, à juste titre, à Services juridiques, et la direction estime qu'elles doivent continuer à faire partie du mandat de celui-ci puisque cela s'inscrit dans son rôle de Centre d'expertise et de représentant de la Ville dans tout litige.

Recommandation 12

Que Services aux employés adresse à tous ses clients une note de service dans laquelle il énoncera clairement les responsabilités de Services juridiques, de Services aux employés et du client relativement aux avis, aux griefs et à l'arbitrage.

Réponse de la direction

La direction est d'accord avec la recommandation.

Comme il a été mentionné à la recommandation 8, Relations de travail et Services juridiques enverront conjointement, d'ici le troisième trimestre de 2008, une note de

service à tous leurs clients dans laquelle ils énonceront leurs rôles et responsabilités respectifs en ce qui a trait au pouvoir décisionnel.

Recommandation 13

Que les démarches nécessaires soient effectuées pour que toutes les parties concernées, y compris le syndicat, soient sensibilisées à l'importance de respecter les délais établis dans la convention collective et que les mesures voulues soient prises pour que le règlement des griefs soit accéléré et fasse l'objet d'un suivi du début à la fin du processus.

Réponse de la direction

La direction est d'accord avec la recommandation.

La direction a institué un mécanisme de suivi comprenant des messages-guides qui rappellent aux conseillers en relations de travail quels sont les délais à respecter une fois le processus de règlement des griefs enclenché. En outre, lors des récentes négociations avec la section locale 503 du SCFP représentant le personnel intérieur/extérieur, une entente visant la prorogation des délais de traitement des griefs a été conclue. Les délais précédents étaient irréalistes et la Ville et le syndicat manquaient tous deux de ressources pour traiter les griefs.

Recommandation 14

Que des normes soient élaborées pour faire en sorte que toute la documentation nécessaire soit rassemblée et versée dans le dossier de grief dès le début du processus, y compris les notes sur l'incident et tous les renseignements pertinents, qu'un résumé du grief soit inclus dans chaque dossier, puis mis à jour à mesure que le processus de règlement progresse, et qu'une formation adéquate soit donnée pour favoriser des pratiques de documentation uniformes et exhaustives.

Réponse de la direction

La direction est d'accord avec la recommandation.

Un processus a été institué et documenté. De même, une formation a été donnée sur la tenue des dossiers. Un résumé sera rédigé pour chaque dossier renvoyé au deuxième palier de la procédure de règlement des griefs. Cependant, une telle mesure serait inutile pour les griefs que l'on parvient à régler au premier palier de la procédure.

Recommandation 15

Que des changements soient apportés aux statistiques tenues pour qu'y soit incluse une mesure de rendement global au chapitre des griefs achevés/clos/réglés avec ou sans succès aux fins de l'évaluation de l'efficacité générale.

Réponse de la direction

La direction est d'accord avec la recommandation.

La direction convient qu'il faut tenir des statistiques pour évaluer le rendement général. Des statistiques sont compilées pour les griefs achevés, clos et réglés. Des statistiques additionnelles relatives aux conclusions avec ou sans succès seront élaborées d'ici le troisième trimestre de 2008.

Toutefois, la direction prévient que toute statistique sur le taux de griefs réglés avec ou sans succès est subjective et, par conséquent, difficile à définir, et ne constituera peut-être pas une mesure significative du rendement en vue de l'évaluation de l'efficacité générale en matière de traitement des griefs.

Recommandation 16

Que l'on détermine, au moyen d'une analyse ou d'un sondage, les besoins de chaque gestionnaire et de chaque directeur pour s'assurer que les prochains séminaires de formation répondent aux besoins des clients en matière de formation initiale ou complémentaire sur des questions telles que la discipline, le réaménagement des effectifs, le Code de conduite, etc.

Réponse de la direction

La direction est d'accord avec la recommandation.

En vue d'établir les besoins en matière de formation et de concevoir une formation additionnelle à l'intention du personnel de direction, Services aux employés effectuera un sondage auprès de tous les gestionnaires et directeurs d'ici la fin du quatrième trimestre de 2008.

Recommandation 17

Que l'on tienne pour la jurisprudence interne relative aux questions disciplinaires un résumé énonçant brièvement les faits, la conclusion et le quantum des mesures disciplinaires imposées et qu'on mette ce document en circulation deux fois par année pour informer les gestionnaires et les éclairer dans leur prise de décisions.

Réponse de la direction

La direction est d'accord avec la recommandation.

Un résumé de la jurisprudence interne relative aux questions disciplinaires sera intégré au bulletin de Relations de travail, Droits de la personne et Équité en matière d'emploi, publié deux fois par année, dès le prochain numéro, prévu pour le printemps 2008. Ces renseignements guideront les cadres hiérarchiques appelés à imposer des mesures disciplinaires.

Recommandation 18

Que la décision finale d'instruire une affaire soit prise conjointement par les parties concernées (le gestionnaire hiérarchique, Relations de travail, Services juridiques) et qu'un mécanisme (p. ex., le recours au directeur municipal ou à son délégué) soit prévu pour que les différends opposant ces parties soient résolus dans leur intérêt

mutuel, les décisions en ce sens étant pleinement documentées pour éviter que des cas se retrouvent inutilement en arbitrage.

Réponse de la direction

La direction n'est pas d'accord avec la recommandation.

La direction convient que le gestionnaire hiérarchique devrait participer à toutes les étapes du processus décisionnel et pouvoir consulter le chef de service et le directeur municipal en tout temps, ce qui correspond d'ailleurs à la pratique actuelle. Toutefois, la direction ne croit pas à la nécessité de mettre en place un mécanisme de résolution des différends.

En avril 2007, le directeur municipal a sous-délégué des questions d'ordre juridique, notamment les cas d'arbitrage, au chef du contentieux de la Ville, conformément au Règlement municipal sur la délégation de pouvoirs. En outre, il a sous-délégué diverses questions de relations de travail, dont les griefs, au directeur de Services aux employés.

Les processus de règlement des griefs et d'arbitrage étant régis largement par la *Loi sur les relations de travail de l'Ontario*, il ne serait pas pratique de satisfaire aux exigences de la recommandation 18 voulant « que la décision finale d'instruire une affaire soit prise conjointement par les parties concernées (le gestionnaire hiérarchique, Relations de travail, Services juridiques) ». Les décisions prises au palier de la procédure applicable aux griefs relèvent de la compétence du directeur de Services aux employés en coopération avec les services d'exploitation.

Inversement, lorsqu'une question est soumise à l'arbitrage, Services juridiques dirige le dossier et, conformément au modèle juridique traditionnel, entreprend le processus d'arbitrage avec des directives claires du service d'exploitation. Cela est aussi vrai pour l'arbitrage des griefs relatifs à une politique, auquel cas Services juridiques s'adresse à Relations de travail pour recevoir ses directives ou ses instructions.

Recommandation 19

Que des statistiques soient compilées sur les cas d'arbitrage, qu'ils aient été accueillis favorablement, rejetés ou ayant été à égalité, et sur les coûts, de façon à faciliter l'évaluation du rendement global.

Réponse de la direction

La direction est d'accord avec la recommandation.

Comme pour la recommandation 15, la direction prévient que le classement des décisions arbitrales en cas accueillis favorablement, rejetés ou ayant été à égalité ne constituera peut-être pas une mesure significative de rendement pour l'évaluation de l'efficacité globale en matière de traitement des griefs.

Services juridiques dressera des statistiques sur les résultats de l'arbitrage aux fins de l'évaluation du rendement de la Direction d'ici le troisième trimestre de 2008.

Recommandation 20

Que la Ville adopte une formule plus stratégique et une perspective qui soit davantage à long terme relativement aux négociations collectives, conformément à sa vision et à ses objectifs à long terme confirmés et approuvés par le Conseil, et qu'elle mette en place un processus pour obtenir et maintenir l'engagement du Conseil à l'égard du mandat énoncé.

Réponse de la direction

La direction est d'accord avec la recommandation.

La consultation du Conseil avant la tenue des négociations pour déterminer la formule stratégique adaptée aux circonstances correspond déjà à la pratique actuelle et continuera d'être appliquée. Elle établira l'orientation stratégique pour la ronde de négociations en cours et les rondes à venir.

Recommandation 21

Que les conventions collectives en vigueur soient examinées pour y repérer tout obstacle à la concrétisation de la vision de la Ville et à l'atteinte de ses objectifs à moyen terme, et que des stratégies de négociation connexes soient élaborées pour corriger les faiblesses au chapitre du changement et de la flexibilité.

Réponse de la direction

La direction est d'accord avec la recommandation.

À chaque ronde de négociations collectives, des propositions sont formulées à l'appui de la vision et des objectifs de la Ville dans le but de négocier l'élimination des obstacles à la réalisation de ces objectifs. Le résultat de cette démarche dépend toutefois de la conclusion avantageuse des négociations.

Recommandation 22

Que la stratégie pour les prochaines rondes de négociations collectives en 2008 et leurs répercussions potentielles soit bien comprise par le Conseil et bien appuyée par les stratégies, les plans d'action et les ressources adéquats pour la gestion du processus et de ses difficultés inhérentes.

Réponse de la direction

La direction est d'accord avec la recommandation.

La stratégie de négociation de 2008 a été présentée au Conseil en novembre 2007.

Des ressources provisoires ont été fournies pour favoriser l'atteinte des objectifs énoncés dans cette stratégie. À mesure que la durée des prochaines conventions sera arrêtée, un examen des besoins en dotation sera entrepris. Si une dotation accrue en

personnel permanent s'avère nécessaire, un rapport demandant des ressources additionnelles sera soumis au Conseil en 2009.

Conclusion

Les indemnités de départ actuelles de la Ville pourraient être considérées comme excessives dans le cas des nouveaux employés qui s'avèrent inaptes à remplir leurs fonctions et de ceux qui sont embauchés pour de courtes périodes.

Il est nécessaire que la Ville examine en fonction du cadre de gestion ses processus et pratiques disciplinaires et la formation qu'elle donne dans ce domaine afin de traiter efficacement les problèmes internes qui surgissent, comme le comportement inacceptable d'un gestionnaire ou l'inaptitude d'un nouvel employé à remplir ses fonctions, de manière à éviter les dépenses et les litiges inutiles et à favoriser un milieu de travail positif et transparent où les gestionnaires pourront traiter efficacement les cas de comportement inacceptable.

Il est nécessaire que la Ville resserre le processus de prise de décisions et de reddition de comptes pour traiter efficacement les cas de cessation d'emploi motivée et de départ involontaire afin de confirmer la documentation des décisions de manière à éviter le plus possible d'engager la responsabilité de la Ville.

Il faut que la Ville améliore l'administration du processus de règlement des griefs et son historique d'arbitrage et de litiges, conformément aux bonnes pratiques en matière de relations de travail, afin de mesurer son taux de succès et de s'assurer qu'elle protège effectivement ses droits de manière rentable.

Il est nécessaire que la direction soumette à l'approbation du Conseil des paramètres et des attentes plus précis relativement aux négociations collectives en établissant une stratégie claire qui tienne compte des objectifs à long terme de la Ville et de ses futures responsabilités financières.

Remerciements

Nous tenons à remercier la direction de sa bienveillante collaboration et de l'aide qu'elle a apportée à l'équipe de vérification.

1 BACKGROUND

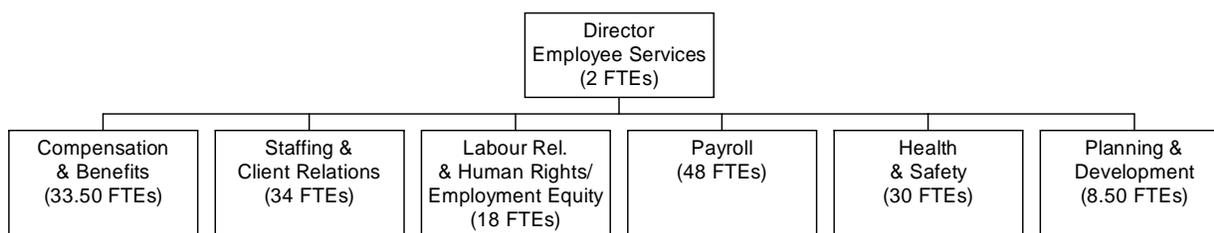
The Audit of Employee Services was included in the 2007 Audit Plan of the Office of the Auditor General, first presented to Council in December 2004.

The City of Ottawa as at January 1, 2008 employed close to 15,000 employees with approximately 14,000 of them unionized under 13 distinct collective agreements.

The role and responsibilities of the City are largely divided within four major departments. The Community and Protective Services Department is the largest with over 8,200 employees while the other three large departments; Business Transformation Services, Planning, Transit and the Environment and Public Works Services each have over 2,000 employees.

The Employee Services Branch reports to the Business Transformation Services Department and provides human resources services throughout the City of Ottawa except for Ottawa Police Service who have their own human resources (HR) team. The Branch has approximately 200 employees working within six centralized components (figure 1): Health and Safety; Staffing and Client Relations; Labour Relations and Human Rights and Employment Equity; Payroll; Compensation and Benefits as well as Planning and Development.

Figure 1: Organizational Chart - Employee Services Branch



The key objectives of the Employee Services Branch are to:

- Assist City managers to attract, train, develop and retain excellent employees, create a healthy and safe work environment and achieve effective performance;
- Support employees' careers with the City from hire to termination or retirement;
- Manage and enhance management and labour relations;
- Foster a workplace free of harassment and discrimination and accessible to all; and,
- Develop and implement human resource policies and programs that support the corporation and its employees.

The City utilizes a Centre of Expertise approach to service delivery, which is essentially to provide a single point of service for a large number of clients with similar business needs in order to achieve savings and efficiencies as opposed to a more decentralized approach. It is accomplished by minimizing duplications, concentrating specialized skills, bringing economies of scale and enabling maximum use of resources to respond to fluctuations in demand for service from different parts of the Corporation.

The Centre of Expertise service delivery model is an integral component of the City in how it delivers its many services and programs. The model allows both operating departments and Centres of Expertise to focus on their core capabilities. The Employee Services Branch offers its services and deploys its resources accordingly. Human Resources Consultants (HRC) are assigned client portfolios and are the interface between human resources services and managers for day to day activities while Job Evaluation Consultants (JEC) and Labour Relations Consultants (LRC) provide more specialized advice in their respective fields of expertise. Labour Relations works closely with Legal Services and Corporate Security.

The objectives of the Labour Relations and Human Rights and Employment Equity component are to:

- Provide support to all levels of management, supervisors and employees;
- Negotiate collective agreements on behalf of the City;
- Develop policies and programs to promote a workplace free from harassment and discrimination;
- Deliver human rights, employment equity and diversity training programs;
- Investigate harassment and discrimination complaints; and,
- Assist in resolving workplace conflicts.

There are 14 employees delivering labour relations services within the Labour Relations and Human Rights and Employment Equity Division. This level of staffing, 14 FTEs, has remained unchanged since 2004 and the average years of service for this group is 10 with only three employees with less than four years experience.

Legislation, collective agreements and various Human Resources policies, procedures and guidelines are the underpinning of human resources activities. Given its size, its amalgamation and the various operations conducted by the City, human resources and labour relations activities are numerous and complex particularly in light of challenges that a unionized environment of 14,000 employees under 13 separate collective agreements can present. These various collective agreements create a challenging human resources environment in terms of the various clauses of each respective

agreement and the variations in the terms and conditions of each group as they relate to compensation, staffing, classification, labour relations, etc.

Employees who are not represented by unions are either within the senior management cadre (levels 1 to 3), the Management and Professional Exempt Group (MPE) or the Supervisory and Administrative Support Group (SAS). These are governed by various policies, guidelines and terms and conditions of employment.

The scope of the audit addressed labour relations issues as they apply to both union and non-unionized employees. Figure 2¹ indicates the population by department and some labour relations related metrics:

Figure 2: : Population by Department and Labour Relations Metrics

	Population as at December 31/06		Grievance Proportion	
	Qty	%	Qty	%
Community & Protective Services	8,253	56%	151	28%
Corporate Services	2,206	15%	61	11%
Public Works & Services	2,254	15%	313	57%
Planning & Growth Management	2,072	14%	20	4%
City Manager	35	0%	0	0%
Office of the Auditor General	8	0%	0	0%
	14,828	100%	545	100%

2 AUDIT OBJECTIVES

The objectives of this audit were to:

- Determine whether labour relations, collective bargaining and employee relations (exempt employees) policies and procedures are in place and, if so, whether actual processes and practices are compliant with them.
- Determine if roles, responsibilities, delegated authorities and accountabilities of management and human resources with respect to the functions are clear, consistent, well understood and adequate for the functions being audited.
- Determine if the City is effectively enforcing its rights under the collective agreements and employment law, and if it is effectively protecting its rights in a cost effective manner.

¹ Based on the City organizational structure that existed as of December 31, 2006. Committee of Adjustment employees are NOT included.

- Determine if the City is effectively protecting its rights and the interests of management in negotiating new collective agreements.

3 AUDIT CRITERIA

3.1 Audit Objective #1:

Determine whether labour relations, collective bargaining, employee relations (exempt employees) policies and procedures are in place and, if so, whether actual processes and practices are compliant with them.

Criteria:

- Policies, procedures, collective bargaining processes are in place.
- Appropriate authorities / mandates are obtained.
- Files and/or processes are complete, well documented and compliant.
- Appropriate reporting, monitoring and management tools available and utilized.

3.2 Audit Objective #2:

Determine if roles, responsibilities, delegated authorities and accountabilities of management and human resources with respect to the functions are clear, consistent, well understood, properly executed and adequate for the functions being audited.

Criteria:

- Organization has clear articulated authorities, roles and responsibilities with respect to audited functions.
- Level at which authorities, roles and responsibilities are defined, articulated and exercised.
- Level of linkages between HR functions and business plans.
- Management understands the policies and procedures and level of involvement in HR activities.
- Useful tools and/or reporting mechanisms have been developed to assist managers.
- Appropriate information is communicated to senior management given that the intent is to assess whether management is receiving sufficient information on the progress of their files and whether they are equipped to deal with issues and next steps in processes.
- A corporate monitoring process is in place to ensure delegated authorities are properly and consistently applied across the Corporation by all branches.

3.3 Audit Objective #3:

Determine if the City is effectively enforcing its rights under the collective agreements and common law standards, and if it is effectively protecting their rights in a cost effective manner.

Criteria:

- Review internal City policy and/or practice for dealing with claims initiated by the union under the collective agreements or by exempt staff under their terms and conditions of employment. The goal of this criterion is to ascertain a) whether the terms of the collective agreements or terms and conditions of employment are being followed by the City, and b) to examine how the City prepares internally for dealing with initiated claims.
- Review a random sample of discipline incidents from 2006 under the collective agreements and compare them to the established City practices.
- Review a sample of active 2006 grievance cases to examine the effectiveness of the settlement process.
- Review a sample of discipline cases/terminations involving exempt employees.
- Evaluate management's knowledge of their role in the arbitration/litigation process, and evaluate their view on the employer's rights and collective agreement provisions as it relates to discipline and other applicable elements of the collective bargaining agreements and/or relevant employment law.
- Evaluate Labour Relations' support in preparing and advising management dealing with difficult situations in an effective and timely manner.
- Evaluate the litigation/arbitration process, and the steps in the decision making process for the purposes of cost effective settlements.

3.4 Audit Objective #4:

Determine if the City is effectively protecting its rights and the interests of management in negotiating new collective agreements.

Criteria:

- Evaluate how management/employers consulted during the negotiation process.
- Do management representatives participating in collective bargaining understand their role and are able to articulate their interests, positions and rationales.
- Evaluate how union bargaining demands are analysed, costed and aligned with other collective agreements.
- Evaluate how existing agreements can be streamlined to reduce asymmetry of language in the agreements.

- Document review of existing agreements for rules relating to discipline.

4 AUDIT SCOPE

- Review of labour relations including collective bargaining in 2006 within the City of Ottawa excluding transactions dealing with Ottawa Police Service as they are serviced by a separate human resources team which is not within the purview of the Employee Services Branch of the City of Ottawa.
- Examine roles, responsibilities, delegated authorities and accountabilities of management and labour relations resources with respect to the functions being reviewed.
- Review a cross section of grievances and arbitration cases selected randomly to ensure the appropriate documentation was contained therein, that the appropriate individuals were involved in the process and to ensure that timely service and preparation were provided to the client in preparation of a grievance or arbitration.
- Interviews with managers to assess their familiarity with their role in the process and to ascertain their comfort with the services which are being provided to them, and to identify areas for improvement.
- Review the collective bargaining processes, practices, mandate development and results of negotiated settlements to ensure that the City is protecting its rights and interests and maximizing its opportunities. Interviews with managers and senior managers who are involved in the negotiating process to ascertain the effectiveness and highlight areas of concern and areas for improvement.
- A review of dismissal, settlements, MPE Terms and Conditions of Employment and related processes and practices for exempt or non-unionized employee during 2006 to ensure that activities are consistent with employment legislation, contractual obligations and common law requirements. Interviews with managers to ascertain the effectiveness of the policies and procedures and to identify areas for improvement.

5 DETAILED FINDINGS AND RECOMMENDATIONS

5.1 Exempt Employees (non-unionized)

5.1.1 Policies, procedures and guidelines

Employees who are not represented by unions are either within the senior management cadre (levels 1 to 3); the Management and Professional Exempt Group (MPE); or the Supervisory and Administrative Support Group (SAS). These are governed by various policies, guidelines and terms and conditions of employment. In general, there are ample employee relations policies, procedures, guidelines and terms and conditions of employment to manage these exempt employees effectively.

5.1.2 Management and Professional Exempt (MPE) Terms and Conditions of Employment

5.1.2.1 Probationary Period

The MPE Terms and Conditions of Employment is a document designed to describe and explain the terms and conditions of employment for all employees who occupy positions that perform a management function and/or professional staff exempt from the collective bargaining process. According to MPE terms and conditions document any deviations to the terms and conditions must be approved by the City Manager and this requirement extends to letters of employment or contracts that alluded to them such as the case for new hires.

Prior to the fall of 2006, the City was not effectively protecting itself when contracting with new MPE employees for senior management positions in that there was no clear safety valve to deal with unsuitable new hires in the absence of a probationary period. While there was a reference in the MPE Terms and Conditions of Employment to a probationary period, it would appear from discussions with managers and the documents gathered that the application of a probationary period for new hires was occasionally waived for new senior hires. In one case, approval for the waiver was not obtained.

The only reference to the fact that a new employee was subject to a probationary period of six months appears as a definition portion in the MPE Terms and Conditions of Employment document. There was no other explicit explanation or any further mention within the document of a probationary period. Of the five letters of employment reviewed, there was no specific reference to a probation period and no indication that approval for the waiver had been obtained. However, reference to the MPE Terms and Conditions of Employment document itself was made in the offers of employment and was either attached to the letter of employment or a reference was made to check the City's intranet site. As stated earlier, any deviations to the MPE Terms and Conditions of Employment must be approved by the City Manager. Based on a review of five sample offer letters of employment, approvals were sought and obtained from the City Manager for all deviations from the MPE Terms and Conditions of Employment (examples found dealt with approval for deviations to performance pay entitlement, vacation leave provisions, market rate adjustments, parking, etc.) but none dealt with the waiver of the probationary period, and in one case at least, management indicated that the probationary period had been waived by Employee Services in error.

While the reference to probationary period is in fact in the MPE Terms and Conditions of Employment, it would appear that in the case of more senior appointments, there is a tendency or practice not to apply a probationary period for new hires because it is perceived that when dealing with the hiring of new senior level managers, it would be

very difficult to obtain qualified candidates from other jurisdictions when their employment is conditional upon passing a probationary period.

In fact, in a legal opinion obtained from the legal firm of Ogilvy Renaud, the City seeks their opinion with respect to the introduction of a probationary period. The opinion received does not favour the introduction of a probationary period because of the inherent disincentive it presents for potential new hires but recommends reducing the excessive amounts of severance provided under the City's severance pay structure for new hires and employees terminated early in their careers.

Recommendation 1

That the City continue to clearly state the existence and application of probationary periods and explicitly communicate it. This clause could be waived by the City Manager in particular circumstances and in such cases the waiver must be appropriately documented.

Management Response

Management agrees with this recommendation.

All letters of offer include reference to the existence and application of a probationary period, unless agreement to waive the probationary period has been received by the City Manager at the time of hire. Documentation of the decision resides on both the employee file and the competition file.

Recommendation 2

That the City continue to inform new hires of their terms and conditions of employment as well as their obligations and that new employees be asked to acknowledge their understanding by signing a statement to that effect.

Management Response

Management agrees with this recommendation.

New hires are provided with all of the terms and conditions that make up the offer of employment including: their respective collective agreement / terms and conditions of employment, City Employee Code of Conduct, confidentiality clause and benefits information. Candidates must sign the letter of offer acknowledging that they have read and accept all of the terms and conditions of employment.

5.1.2.2 Involuntary Separation Entitlements

The MPE Terms and Conditions of Employment document prescribes the separation payout that an employee is entitled to receive if the City terminates their service for reasons other than cause, resignation or retirement. The separation payout scale provides a progressive payout formula based on years of service and is capped at a maximum of 18 months and includes all applicable notice periods. Essentially, employees receive months of salary based on completed years of service (e.g., an

employee with 5 to 10 years of service would be entitled to 6 months salary). The MPE Terms and Conditions of Employment further stipulates that Branch Directors will receive a guaranteed minimum separation entitlement of 12 months pay, plus one week's pay for each year of continuous service, the total payment not to exceed 18 months. Deputy City Managers under these provisions are guaranteed a separation entitlement of 18 months.

In a legal opinion dated February 28, 2007, Ogilvy Renaud recommends that the City make changes to the MPE severance provisions to better reflect current notice period jurisprudence and common law severance practices. More specifically, the guaranteed minimum amount of 18 months for Deputy City Manager and 12 months for a Director was considered to be excessive in the case of unsuitable new hires and short-term employees. Further changes to align the City's practices with common law and minimum employment standards were also recommended in the opinion.

The City is not effectively protecting itself when contracting with new MPE employees for senior management positions and paying substantially more than the norm for unsuitable new hires, which could be otherwise avoided.

Finally, a review of seven severance payments made to employees who were terminated involuntarily during 2006 indicated that one error was made in the calculation and payment of MPE involuntary separation entitlement.

Recommendation 3

That the involuntary separation entitlements chart contained in the MPE Terms and Conditions of Employment document be updated to reflect common law standards including the minimum statutory provisions in the case of termination for cause.

Management Response

Management agrees with this recommendation.

Employee Services will report back to Council with a written report with recommended revisions to the involuntary separation entitlements for MPE staff by the end of Q3 2008.

5.1.2.3 Discipline of non-union employees

There is an established policy in place for disciplining managers but its level of understanding and the amount of training received by managers with respect to it appears to be limited. The problem is that when a bad situation arises, there is little willingness by anyone to speak out to confront the person whose behaviour is questionable.

More to the point, disciplining managers is rare – as managers are held to a higher standard than other employees about what is or is not acceptable behaviour. The vast

majority of managers understand this. The message is that managers can behave with impunity. It is imperative that managers know that there are consequences for their actions, and that the current feeling that nothing will ever be done is changed.

The observation is that there is in fact a policy but no evidence of it being applied or well understood when dealing with the more senior management employees based on interviews of management employees and case review.

That said, when dismissing a MPE employee, the manager in question has to either provide cause for the termination or dismiss the employee without cause. When dismissing an employee without cause, the terms of the contract have to be followed. There is no doubt that issues relating to managing managers is far more complicated and requires additional training and instruction to better deal with problem cases. Furthermore, the support and direction of senior management is critical to creating the right culture and environment to foster the correct responsiveness from its managers.

Further, while the City has a very strong code of conduct, there does not appear to be any assurances that newly employed managers are briefed on their own personal obligations under it other than it being appended to the original letter of offer. Interviews have elicited responses that suggest that in many cases, it is even assumed that management level employees are familiar with the contents of the document. Management interviews suggest that when internal issues arise, such as unacceptable behaviour, there is unwillingness by some senior levels of management to do anything about it until the only option is termination.

This is not a healthy workplace environment for middle managers or the staff they supervise.

There is a lack of an effective and established progressive discipline process for managers and MPE employees. The City's discipline policy and procedure should apply to all employees of the City of Ottawa and the perceived reluctance of senior management to act, contributes unfavourably to the ability to support "with cause" determinations and be successful in litigation.

Recommendation 4

That a more robust discipline policy be developed that deals specifically with progressive discipline for non-unionized and managerial employees that stresses the importance of timely and prompt correction of unacceptable behaviour by management at all levels. Possible inclusions include a process similar to the current "last chance agreements" used with union employees who have had specific behaviour identified and subsequently submit to corrective measures at the risk of termination.

Management Response

Management agrees with this recommendation.

Management believes the current discipline policy is sufficient to meet the needs highlighted in the audit. Labour Relations will supplement it with a disciplinary procedure document, outlining specific steps to be followed when discipline is necessary for non-unionized City staff, by the end of Q3 2008.

Recommendation 5

That training for “managing managers” be developed and offered to senior decision makers at the City.

Management Response

Management agrees with this recommendation.

Labour Relations will develop a training program for senior decision-makers on the “management of managers” by the end of Q3 2008. Training will be offered commencing in Q4 2008

5.1.2.4 Termination of non-unionized employees

As stated previously, case file review and management interviews suggests that when internal issues arise, there is unwillingness by some senior levels of management to do anything about it until it is too late, and the only option is termination. This is not a healthy workplace environment for middle managers or the staff they supervise and does not promote an effective and empowered work force to deal effectively with issues as they arise in the best interests of the City. There has been significant media attention to payouts to employees who are dismissed from the City and there is a perception that employees who are terminated by the City always end up getting a hefty settlement. This strongly undermines managers’ willingness to act.

As stated earlier, the City, with advice from Employee Services and Legal Services, must be more vigilant in clearly establishing what is unacceptable behaviour for managers, ensuring that unacceptable behaviour is clearly documented to file, and that the required steps are followed to ensure that poor behaviour is dealt with in a fashion that is consistent with common law standards in order to avoid the prohibitive costs of decisions overturned in mid course or through litigation and the resulting embarrassment and impact on the psyche of line managers’ confidence.

It is important to recognize that Labour Relations and Legal Services are responsible for providing advice to individual managers who bear, or ought to bear, the responsibility for discipline or termination decisions that they make. The City’s position is that the responsibility for those decisions, however, must rest squarely on the party who is responsible for making the final decision. The underlying assumption to all of the recommendations in this audit is that this accountability must remain squarely in the purview of the manager who is responsible for the day to day operations of his/her

business area. Employee Services and Legal Services should not be responsible for making the final employment/labour related decisions: they are responsible for providing support and advice to managers so that the managers can make the complete assessment based on their unique work environment and come to a resolution which is best for their particular circumstances. The role of functional groups is to keep a larger City-wide reference in mind and avoid precedents which would undermine other departments. The final accountability and responsibility for discipline decisions lies with line management. Having said so, any organization needs to have the checks and balances in place to ensure that the right decisions are made and can be ultimately defended.

Having said so, there is a that strong perception amongst managers that issues are often ignored, facts not fully investigated and documented or options not fully explored in the interests of political concerns and/or management expediency to sweep the problem away with inappropriate decisions being made at great cost to the City. In many instances, the recommendations from Labour Relations and Legal Services are sought but in the end, their views are set aside by the operational managers. This lack of role clarity is the subject of much discussion and malaise within the City at large. Managers interviewed in Labour Relations and Legal Services raised several cases in support of their concerns. Most of these involve terminations for cause, which were overturned indicating fundamental flaws in the analysis, documentation and decision making at the outset, where substantial cost was incurred or damages awarded to the plaintiff employee. Fundamentally, the key message arising from these interviews and case reviews, is that there is a need for a more robust decision making and accountability process required involving all key stakeholders to minimize the liabilities which could have potentially been avoided.

While there are not always perfect answers when attempting to balance the interests of employees and employers in matters of great complexity, we found examples of termination cases that highlighted areas for improvement in dealing with these matters at the outset and/or, at a minimum, complement such actions with the right communication strategies to position these appropriately to both the internal and external audiences.

Recommendation 6

That the City develop a procedure for dealing with terminations for cause and involuntary separations that provides for a more robust decision making and accountability process to ensure that decisions of this nature are made with the involvement of all key stakeholders and subject matter experts (Labour Relations and Legal Services) to minimize liabilities in such cases. Elements of the procedure should deal with investigation, option analysis and implementation aspects of termination decisions to ensure the veracity of evidence and substantiation of decisions and, that the proper communication strategies are in place to mitigate

unnecessary public exposure and to avoid undermining managers' overall confidence to take action. This procedure should also provide a mechanism in the event of disagreement between the key stakeholders to escalate resolution up to the City Manager if necessary, to ensure that views are duly considered and factored into the final decision.

Management Response

Management agrees with this recommendation.

Although a formal procedure does not currently exist, such investigations, consultations, option analysis and substantiation of decisions occur now for terminations for cause and involuntary separations. Labour Relations, in consultation with Legal Services, will develop a formal procedure to be followed when terminating non-union personnel that includes: investigation, option analysis, implementation aspects of termination decisions, and an escalation mechanism in the event of disagreement between key stakeholders. This procedure will be completed by the end of Q3 2008.

5.2 Labour Relations –Unionized employees

The City of Ottawa employs approximately 14,000 employees who are deemed to be unionized and governed by the terms and conditions of their respective collective agreements. These employees are divided into 13 bargaining units or collective agreements defined by the nature of the work they perform for the City. They are broken down into the following bargaining groups:

Figure 3: Number of Employees per Bargaining Units

Bargaining Units	# of Members
ATU 1760	189
ATU 279	1,912
CIPP	1,464
CUPE 503 inside/outside	5,804
CUPE 503 Library	675
CUPE 503 PT REC & 7Cult	2,889
CUPE 5500 (3) agreements	130
IATSE	99
OPFFA (Fire)	926
Total	14,088

As stated earlier, the role of Labour Relations in this complex unionized environment is to provide subject matter expertise to managers in the form of advice and knowledge of the labour law rules under the collective agreements and federal/provincial statutes. Generally, they have two ongoing obligations to their clients, the managers: provide

support for grievances which affect departments and provide timely advice to allow managers to manage effectively their unionized workforce and make appropriate decisions including disciplinary actions.

The allocation of work within the Labour Relations Division is essentially based on file responsibility. The 11 Labour Relations Consultants, including two Senior Labour Relations Consultants and the Manager of Labour Relations, Human Rights & Employment Equity have specific responsibility for departments and are charged with responding to the LR issues in these departments as they arise. Currently, all labour relations staff meet weekly to ensure a fair distribution of the existing workload, and when one area becomes particularly active, a decision is taken to temporarily shift responsibilities or to provide support to any given LRC who may be over-burdened because of recent union activity. There is no formula for ascertaining when that shift occurs - it is entirely at the discretion of management.

5.2.1 Centre of Expertise

The City utilizes a Centre of Expertise approach to service delivery, which is essentially to provide a single point of service for a large number of clients with similar business needs in order to achieve savings and efficiencies as opposed to a more decentralized approach

The centralized service delivery model has required a shift in thinking for most managers - many of whom had previously been accustomed to on-site and highly personalised service from an integrated member of their management team who was responsible for labour relations. Generally, managers are satisfied with the quality of the work and advice they receive from the Centre of Expertise. More often than not, however, the delivery of timely advice and the immediate availability of LRCs to deal with issues on the spot are more important than the delivery of excellent advice post-facto.

The level of resourcing in Labour Relations has remained at 14 FTEs through the period of 2004-2007 with limited turnover. The average years of service for the group is 10 and only three employees have less than four years of service

It is clear that managers have a level of expertise in the day to day labour issues that affect their departments, and it is clear from interviews and file review that this is in no small part to the regular interaction between them and their respective LRCs. As such, managers are adequately trained to respond to rudimentary labour issues as they arise. Truly unique or complex instances, however, require immediate and professional responses to avoid compounding a problem as it arises.

Some managers have expressed concern that the final authority to make decisions does not rest with them. While they are told by LRCs that they are responsible for decisions,

the advice they are provided (often from senior Labour Relations managers) is not clear or well defined in terms of providing justification/rationale for the advice that is being provided. They feel that they are, in fact, being given an order. Ultimately, there must not be unjustified pressure on managers to follow Labour Relations' advice if managers are responsible for the result of the decision.

One example was raised in a branch where limited options were provided for dealing with a discipline issue.

The grievor was given a letter of discipline on March 9, 2006 for inappropriate use of email and Internet for personal reasons during working hours. The grievor had been using the City's email to promote a business scheme sent to 25 City of Ottawa employees and 10 external e-mail correspondents. Line management wanted to suspend the employee for three days for criminal activity, but Labour Relations would only support a written warning since the activity in their opinion was not criminal in nature and the penalties imposed in similar situations are in line with a progressive discipline model. However, the Office of the Auditor General obtained a legal opinion indicating that the activity was in fact illegal and the matter was referred by management to the police authorities who in the end did not pursue criminal charges. The same individual was later suspended five days for inappropriate conduct and use of the Internet.

This kind of influence compromises managers' ability to maintain control of their own workplace environments and instil discipline, for when it is over-ruled, the message very quickly percolates back to the peers of the disciplined. If managers cannot stand by the decisions they make they will be powerless to make the decisions in the future.

The bottom line is that many managers believe that some of their labour issues could be largely avoided if they had more timely access to their Labour Relations Consultants. Managers can make decisions confidently when they have access to timely advice.

They currently appear to act differently and not necessarily in the best interest of the City (overly cautious, overly aggressive) when they don't have access to more timely advice for issues. Another risk and frustration is the fact that the managers feel left out in the decision making process and are advised of settlements after the fact when they are left to pick up the pieces and live with the implications.

Recommendation 7

That the City undertake a review of the allocation of labour relations resources and service delivery model to provide the flexibility to respond to changing needs within the operation and provide consistent and responsive service levels across the whole operation. Clients must be made aware of who their Labour Relations Consultants are, and their alternates in a crisis.

Management Response

Management agrees with this recommendation.

The allocation of labour relations resources is ongoing given the limited number of resources available and high service demands. Pending Council approval of the 2008 budget, two additional senior labour relations resources will be allocated to the branch.

Labour Relations conducted a formal review of the allocation of resources and the service delivery model in February 2008, with the goal of providing more flexibility in responding to changing needs and in providing a consistent and responsive service to all clients.

A process will be in place by the end of Q2 2008 for communicating to clients who their assigned Labour Relations Consultant and alternate(s) are.

Recommendation 8

That Labour Relations, Legal Services and their clients enter into “service level agreements” that specifically detail who is responsible for making decisions, preparing documentation, responses, attendance at meetings and arbitration, regular reporting on status and resolution of grievances with performance indicators.

Management Response

Management agrees with this recommendation.

This recommendation has already been largely clarified through revisions made to the Delegation of Authority By-law (in April 2007).

Labour Relations and Legal Services will issue a joint memorandum to all of their clients outlining their roles and responsibilities regarding decision-making authority, by Q3 2008.

Recommendation 9

That in instances where Labour Relations or Legal Services are involved, to settle a matter or overrule a decision made by a director/manager, steps be taken to involve the line manager in the decision making process prior to final determination; and that in instances of disagreement there be a means to escalate the matter to the appropriate level for impartial determination in the best interests of the City to avoid unfounded matters proceeding indefinitely.

Management Response

Management agrees with this recommendation, in principle.

While management agrees in principle with the recommendation, it should be noted that the line manager is involved throughout the decision-making process and may consult with the department head and City Manager at any time. It should be noted

that the delegation of authority, as specified in By-Law 2005-503, ultimately determines the final authority to make a decision on labour relations matters.

5.2.2 Roles and Responsibilities – Legal Services and Labour Relations

Managers feel that there is limited involvement of Legal Services before a grievance escalates to a full-scale arbitration unless the issue is so unique or serious to warrant immediate consultation with Legal Services. Some managers have complained that prior to arbitration they do not get an opportunity to sit down as a group with their LRC and Legal Counsel in preparation of the strategy and hearing of the grievance at arbitration. There is significant concern about the roles that Labour Relations and Legal Services play as a grievance file develops.

There is no doubt that this is an issue of jurisdiction and will not easily be resolved. Interviews with managers note that while role determination between the two sectors has been demarcated they have often witnessed tension between the two branches in finalizing arbitration strategy. Hopefully, as a result of the new delegations of authority dated April 27, 2007 this will alleviate some of the pressure.

Employee Services remains a Centre of Expertise and it should remain the focus point of all issues relating to grievances and employee discipline. Managers are also able to convene a “Case Management” meeting for particularly important discipline incidents that will obviously have legal implications beyond the purview of Labour Relations.

Clients have expressed a very serious level of frustration with going through the entire grievance process only to have the position, strategy and expected result completely change when Legal Services is involved prior to arbitration in order to effectuate a settlement. The vast majority of those surveyed indicate that they would prefer to have counsel involved at the outset to establish a strategy that remains consistent and avoids wasting resources at the last minute when the strategy changes. Allowing Legal Services to participate at an early stage would provide continuity throughout the process in the event the issue is arbitrated.

Client interviews suggest that at times Legal Services do not necessarily understand the personal dynamics and that Legal Services’ perceived tendency to settle too quickly will have an adverse impact on management’s ability to manage. Interviews also elicited the fact that some managers rely on personal relationships to circumvent the system to get advice on matters they believe require further advice – while this may be “how the world works” it shouldn’t be incumbent on managers to establish relationships with their peers when the process should have continuity across the board.

Other managers have lamented that Legal Services does not consult with them prior to arbitrations, relying entirely on the “grievance summary” prepared for them by the LRC.

The most important risk is the waste of time and human resource allocations that could be avoided. While Employee Services remains a Centre of Expertise, ultimately many issues may warrant the timely involvement of Legal Services to avoid the unnecessary expense. It is also very important that strategy be consistent from the outset to guarantee a unified front with the parties on the other side of the table. By working together from the outset, the unions will not think that the managers/labour relations consultants are weakened when the grievance escalates to the level of arbitration. The corollary is also true, early involvement may cement a good strategy in place and provide managers and LRCs with applied vigour to defend a position and be more successful in the administration and litigation of labour relations matters.

Recommendation 10

That whenever a discipline incident leads to a grievance, Employee Services prepare a brief synopsis of the issue to consult with Legal Services at this very early stage. Legal Services may be able to provide insight into the strategy to avoid what may be needless wrangling or to identify the ingredients to success.

Management Response

Management disagrees with this recommendation.

Labour Relations staff settle the majority of grievances on discipline issues prior to arbitration. Therefore, management believes it would be an ineffective use of resources to prepare a synopsis and consult with Legal Services routinely on grieved disciplinary matters.

To maximize the value of Legal Services' contribution, Legal Services will be consulted on all significant disciplinary matters (i.e., dismissal) prior to the discipline being meted.

Recommendation 11

That whenever arbitration is scheduled, the affected manager, the Labour Relations Consultant and a representative of Legal Services be required as a matter of internal discipline policy, to convene a meeting immediately to review the issues which are the subject of the arbitration. As a result of this meeting, all three parties will agree on a course of action for the arbitration, and the client (manager) will be versed in settlement options and benefits in advance of the hearing - with all three parties committing to a course of action and helping to foster cohesive management resolve.

Management Response

Management agrees with the first part of this recommendation that preparation for arbitration be undertaken with the involvement of line management, Labour Relations and Legal Services in order to review the issues and all possible options for resolution.

However, management disagrees with the second part of this recommendation. Matters arising from the arbitration process properly reside in Legal Services under the Delegation of Authority By-law and should continue to be within their mandate as part of their role as a Centre of Expertise and the City's representative for all litigation matters.

Recommendation 12

That Employee Services provide a memorandum to all of their clients that clearly outlines the responsibilities of Legal Services, Employee Services and the client with regard to seeking advice, grievances and arbitrations.

Management Response

Management agrees with this recommendation.

As noted under recommendation 8, Labour Relations and Legal Services will issue a joint memorandum to all of their clients outlining their roles and responsibilities regarding decision-making authority, by Q3 2008.

5.2.3 Grievance Administration - General

It is important to understand that grievances usually originate from the union or employees. After hearing the employee's views, the manager or director can agree with the union, uphold the decision made or work towards an agreeable settlement/resolution of the issue. Grievances are not limited to discipline incidents and can include focus on issues that are specific to an individual (overtime calculations) or a group, which aggregates a series of employees with the same specific issue (i.e., class of employees denied a shift premium). In all cases - the grievance procedure is designed to be a systematic approach for resolving disputes as quickly as possible.

The grievance procedure begins when an employee or the union takes issue with an instance of discipline, interpretation, or policy. Individual employees first contact their immediate supervisor to file a complaint. If the complaint is not addressed to their satisfaction at this point they contact their union representative to initiate a grievance in writing under the collective agreement between the union and the City. Labour Relations, upon receipt of a written grievance, forwards it to the responsible hearing manager, who is responsible for convening the meeting within the established timelines in the collective agreement. The process does require a significant amount of time-consuming coordination between all parties, and extensions are often agreed to by the parties. Individuals hearing step one grievances are invited to consult with Labour Relations. Responses to grievances can be delivered immediately following the meeting, but this is neither recommended nor widely practiced by City managers. Responses are in writing, addressed to the union, and copied to the Labour Relations Unit.

Step 2 grievances, require the attendance of a Labour Relations Consultant. It is a more formal meeting to review the step 1 decision and to formally hear the grievance, thereby gathering further information and reviewing options for remedy and resolution.

Settlements can be effected at any time in the process. Managers are encouraged to settle grievances on their merits. When effecting a settlement, managers are warned to consider the impact a proposed settlement will have and to discuss it with Labour Relations. In the event a settlement is reached, Labour Relations is responsible for drafting the Minutes of Settlement. They are to be signed and dated by all parties, including the grievor.

The final step (step 2 or step 3 depending upon the specific collective agreement) is similar in nature and process to the earlier steps but involves a more Senior Management representative who hears the grievance, reviews all the facts and circumstances and issues the Employer's final decision. Once the decision at the final step is rendered it can be "appealed" to an arbitrator under the collective agreements for a binding and final decision. While not a court of law, it is an administrative tribunal, where witnesses are cross-examined under oath, and formal arguments supporting the views of the parties are made to a single arbitrator or tribunal as applicable. Labour Relations receives the notice of referral to arbitration from the union and refers same to Legal Services who assumes responsibility from this stage on. Labour Relations provides information and recommendations, including cost, likelihood of success, and precedent setting implications in determining whether or not to settle or pursue the case. The City and the union agree to have matters heard by a single arbitrator or a tribunal (comprised of a management nominee, a union nominee and a third person agreed upon by the parties to preside over proceedings). In the event the parties cannot agree on their preferences for arbitration, they can request the applicable provincial or federal labour authorities appoint one. The City uses a mix of single and tripartite boards and also uses an expedited mediation/arbitration process to deal with less complex issues in the interests of time and money. Rosters of pre-approved arbitrators are also in place with some unions to cut down on the time and effort involved in scheduling arbitration matters.

Policy Grievances:

At times, grievances do not stem from management actions but originate in a matter of general interest regarding the interpretation or a term in the collective agreement. While individual employees are not named in the grievance, they may stand to benefit if the union is successful in the grievance. In 2006, the union initiated 114 Policy Grievances.

5.2.3.1 Grievance Administration-Timeliness

The City's overall experience in the administration of grievances through the grievance procedure is consistently untimely and not in keeping with the provisions of the collective agreement and good labour relations practices.

All 13 collective agreements that the City must adhere to prescribe an internal grievance process for the hearing and settlement of grievances which involves a stipulated desire, in every collective agreement, to resolve grievances as quickly as possible through a review and decision making process escalating between two or three steps of responsibility (called grievance steps) which vary only slightly from one agreement to the other. All agreements stipulate that once the internal grievance process is exhausted and in the event the parties are not in agreement, the unresolved matters may be referred to binding arbitration.

The grievance procedures in all collective agreements prescribe time lines for the hearing of grievances at the first, second and third steps, if applicable, which is typically 14 calendar days, and the procedures also specify the number of calendar days after the hearing, typically 14, within which the employer must provide a written response. Some collective agreements such as CUPE 503 have two steps and only 10 days to hear and 10 days to respond in writing.

In about all of 30 sample grievances reviewed, the administration of grievances through the grievance procedure was consistently untimely and not in keeping with the provisions of the collective agreement. In fact, in most instances, the timelines for dealing with grievances were two to three times longer than those stipulated in the collective agreements. Many files reviewed contained references from the union indicating that they had not received responses from the employer and were escalating the matter to the next step of the grievance procedure. One grievance in particular was filed on April 26, 2006. The union did not get a response from the employer, and advised the employer on July 12, 2006 that they were referring the grievance to the next level. Again, no response was provided, and once again the union wrote to the employer on January 3, 2007 saying that since they did not get a response, they were referring the case to arbitration.

The main reason for the delays appears to be the culture within the City's overall labour relations environment that does not seem to see the urgency and benefits of dealing with matters expeditiously in keeping with the provisions of the collective agreement.

Both parties to the collective agreement should share the desire to resolve matters expeditiously. In fairness to the employer the union must share responsibility for this situation equally.

There are implications associated to timeliness, completeness of files and performance reporting, as we will see later in this report, on the overall effectiveness of the labour relations practices and the ability to uphold the interests of the City successfully, not to mention the interest of the employees and managers involved. It can be very frustrating to them to see matters go unresolved indefinitely without often understanding why. It is also critical to have complete and comprehensive files available to successfully

defend management decisions in arbitration; otherwise, chances of success are compromised as evidenced in the City's arbitration experience. Incomplete files and protracted handling of files is ultimately expensive in terms of resourcing costs, employee confidence and arbitration costs.

Recommendation 13

That the necessary steps be undertaken to communicate to all involved, including the union, the importance of respecting the time limits in the collective agreement and that the necessary steps be implemented to track and improve upon the time lines to processing grievances from start to finish.

Management Response

Management agrees with this recommendation.

Management has instituted a tracking mechanism with prompts, which reminds labour relations consultants of grievance timelines while grievances are in process. In addition, at the recently concluded negotiations with CUPE 503 Inside/Outside, an agreement was reached to extend the timelines for handling grievances. Previous timelines were unrealistic and there was a lack of resources available for handling grievances on the part of both the City and the union.

5.2.3.2 Grievance Administration - Documentation

Many of the 30 sample grievance files reviewed had limited traceability, missing documentation, background information and incident notes, or were simply difficult to understand. Such situations makes it extremely difficult as time passes or as files are transferred to other stakeholders to fully understand, defend or resolve matters effectively and in the best interest of everyone. Whether files are closed or are proceeding to arbitration it would be good practice to deal with all files in the same and comprehensive manner.

Recommendation 14

That standards be developed to ensure that all necessary documentation is gathered and placed in grievance files from the outset including incident notes and all related information; and that a grievance summary be included in all files and updated as a file progresses through the grievance procedure and that proper training be provided to support consistent and complete documentation practices.

Management Response

Management agrees with this recommendation.

A process has been instituted and documented. As well, training has been provided on file maintenance. Grievance summaries will be provided on all grievances that are referred to Step II of the grievance process. However, if a grievance was settled at Step I of the grievance process, a summary would not be necessary.

5.2.3.3 Grievance Administration- Reporting

The Labour Relations Division maintains overall statistics of grievances by department and the status of these within the grievance/arbitration process. However, these do not provide any insight into the overall effectiveness of labour relations practices within the City in terms of win, loss or draw as a measure of performance. Some may argue that by its very nature, labour relations is not about winning or losing, but is about avoiding conflicts and obtaining a mutually satisfactory result for both parties and to preserve the relationship between the employer and the employees. That having been said, there must still exist both quantifiable and qualitative means to measure the effectiveness of labour relations practices and their impact on the overall objectives of the City. There are different means to do so in terms of focus groups, surveys, etc., but nothing speaks more clearly than quantifiable measures such as actual outcomes and results.

Figure 4 reflects the total number of grievances received in 2006, where these are at in the grievance steps or arbitration as of December 31, 2006, and the total number closed.

Figure 4: Grievance Summary- 2006

Department	Total Grievances received by Department	Step 1	Step 2	Step 3	Arbitration	Resolved	Withdrawn
Community & Protective Services	151	18	24		37	45	27
Corporate Services	61	3	18	2	9	16	13
Planning & Growth Management*	20		15			3	2
Public Works & Services	319	33	104	14	38	71	59
City Total	551	54	161	16	84	135	101

* 2006 structure (PWS includes Transit Services which was transferred to Planning, Transit and the Environment in 2007)

Of 551 grievances submitted in 2006, 236 were resolved in the same year, leaving in our opinion an inordinate number of 315 active grievances to be carried forward into the next year. Of these 315 outstanding grievances, 18 remain seized by the arbitration board, 110 are held in abeyance pending arbitration decisions, 84 are awaiting an arbitration hearing, and 103 are at different levels of the grievance process. The average time to process a grievance from submission through arbitration can extend to close to two years. Such delays and the time lag in processing grievances may serve to compromise the opportunity to resolve matters and the ability to successfully resolve or defend the interests of the original decision.

Furthermore, the statistics do not provide an overview of performance or success in dealing with grievances in terms of win, loss or draw which is a requisite requirement to assess the overall effectiveness of labour relations practices in most organizations.

Based on external comparisons, it would not appear that the incidence of grievances at the City of Ottawa is high in relation to other similar organizations given the size and complexity of its unionized workforce. Furthermore, based on the Human Resources Benchmarking Network HRBN, the City of Ottawa "Final Step" Grievance Rate (# Final Step grievances received/ #average union employees) was 1.36% in a 2007 Survey against a Municipal Sector average of 2.59%.

Recommendation 15

That changes be incorporated in the statistics that are maintained to include a measure of overall performance in terms of grievances completed/closed/settled successfully or unsuccessfully to provide a means of assessing overall effectiveness.

Management Response

Management agrees with this recommendation.

Management agrees that statistics should be maintained to provide a measure of overall performance. Statistics are kept regarding completed, closed and settled grievances. Additional statistics regarding successful or unsuccessful conclusion will be developed by Q3 2008.

However, management cautions that statistics about successful or unsuccessful settlement of grievances is subjective and is, subsequently, hard to define and may not provide a meaningful performance measure to assess overall effectiveness of grievance handling.

5.2.4 Labour Relations Training

City policies and procedures in the labour relations field seem comprehensive (e.g., Managing in a Unionized Environment, Attendance Management Program, Workforce Adjustment, Guide to Grievance and Arbitration Procedures, Interpretation Bulletins, etc.) and training documentation reviewed indicates that LR related training is conducted on regular basis and attendance to same is well tracked.

However, many managers interviewed expressed concerns that since amalgamation, training updates and client outreach have dropped off significantly. Some managers feel that the larger purpose behind the advice they receive is not effectively explained. Since the onus rests on them to make the final decision, it is imperative that they understand the complete rationale behind the advice which they are provided. To that end, many have asked for a form of "summary" for discipline advice that is given across the City with a listing of the factors that were involved with the decision. It is

understood that LRCs meet regularly to discuss their files, but there is little evidence that their discussions are shared more broadly.

An alternative requested by some managers is to generate a table for “similar” discipline incidents and distribute it on a quarterly basis. Managers remember receiving a monthly four page newsletter from a private firm, which detailed: a) evolving issues b) new cases c) precedents and d) similar fact patterns and scales. Managers note that LR will infrequently issue memorandums of clarification or Interpretation Bulletins for very specific issues, but feel that more needs to be done in this area.

There was significant desire for additional training and updates on developments in the labour relations field. A review of the amount of training available and the list of attendees suggests that regular training is made available, but many interviewed stated that there should be more diverse training available, while understanding that the focus of training has to remain squarely on ensuring that new management hires have the management training required to manage in a unionized environment. It has been suggested that a schedule be created for “refresher” training, as some managers have not had the training for several years. The bottom line is that managers require information to make the best decisions for their organization.

It would appear that inasmuch as training is made available, it may not be accessible to everyone because of conflicting work priorities and an individual’s opportunity to attend. While managers were aware of an established schedule for new training activities, the simple truth is that their existence does not guarantee attendance. While training may be made available, it must be complimented with a needs analysis to target individuals and their specific requirements for any training to be successful.

Recommendation 16

That a needs analysis or survey of all managers and directors be conducted to ensure that future training seminars are in line with client needs for additional new training, refreshers, on such matters as discipline, workforce adjustment, Code of Conduct, etc.

Management Response

Management agrees with this recommendation.

In order to ascertain training needs and design additional training for management staff, Employee Services will conduct a survey of all managers and directors, by the end of Q4 2008.

Recommendation 17

That a summary of internal discipline jurisprudence briefly outlining the facts, conclusion and quantum of discipline imposed be maintained and circulated semi-annually to inform managers and assist them in their decision making.

Management Response

Management agrees with this recommendation.

A summary of internal disciplinary jurisprudence will be added to the next Labour Relations, Human Rights & Employment Equity Bulletin, which is published twice a year, in order to provide guidance to line managers when imposing discipline. The next bulletin will be published in Spring 2008.

5.2.5 Grievance and Arbitration Results

In order to determine if the City is effectively enforcing its rights under the collective agreements in a cost effective manner, a sample of 30 grievances and 26 arbitration cases were reviewed.

The overall conclusion is that the City, based on its track record, is not very successful in upholding the employer's position through the grievance procedure and especially at arbitration. For example, of 30 grievances reviewed 16 were settled or closed in favour of the union/employee, 9 in favour of the employer and 5 are still outstanding or unresolved. Of 26 arbitration decisions reviewed, 21 were won by the union or employee and only 5 by the employer.

Similarly to Labour Relations, Legal Services does not maintain statistics that would provide an overview of performance or success in dealing with arbitration cases in terms of win, loss or draw which is a requisite requirement to assess the overall effectiveness of labour relations practices in most organizations.

There are many factors that influence the City's less than favourable experience some of which are within the control of the Labour Relations and Legal Services groups and managers. Such factors include; file preparation, documentation, assessment of merits, preparation and attendance and presentation at arbitration.

Others are more difficult for Labour Relations and Legal Services to control; insistence of line managers to proceed at all cost, political desire to proceed at all costs to set an example, changing priorities, availability and quality of arbitrators, the insistence or preference of some unions to arbitrate as opposed to trying to resolve matters short of arbitration, etc.

There are also cases where the decision at the outset was flawed or could not be defended and should have been resolved at the first instance. Many were costly and protracted cases with significant implications for managers and employees involved. Of the five arbitration cases reviewed involving the termination of an employee for cause, four of these were overturned by arbitrators with reinstatement with some involving full retroactivity for wages lost.

Others, for example the case of the Ottawa Professional Firefighters Association and The City of Ottawa regarding the Police or Criminal Record Check Policy have merits but the evidence presented in support of the employer's position fell substantially short of the compelling employer interest in demanding an ongoing security check, as might for example be justified in highly sensitive police or airport services. In the arbitrator's words: "On what basis can it be argued that a firefighter who visits a classroom needs criminal security clearance to do so when the teacher who occupies that same classroom is held to that standard only by extraordinary and specific legislation" (See e.g., The Education Act-O. Reg. 521/01).

The process of selecting and appointing single or three-party arbitration appears to function reasonably well and achieves in most cases objective outcomes notwithstanding the inherent complexities of the arbitration business and its competing interests. There are exceptions and the City has had to deal with certain of these arbitrators, but generally speaking the arbitrators on the City's roster are reputable and effective.

The main reasons for the City's less than successful experience can be attributed to the fundamental merits of each case at the outset, the documentation and preparation as well as the insistence and current ability of some managers to have their matters go the distance for different reasons including political agendas. Some cases are not properly researched and documented. The inherent delays in the procedures compound the ability to deal effectively with issues and hamper results. The delineation of roles, responsibilities and accountabilities for grievance arbitration matters contributes to matters escalating without rigorous review of the merits of each case.

The credibility of the City and confidence of managers to act, be supported and successful is clearly undermined by such results, particularly in termination cases where their personal credibility is on the line. The perception that the union always wins is not a healthy sign for managers trying to manage the City's resources effectively. The amount of resourcing costs and time involved is certainly not being used effectively if too many issues are allowed to proceed unsuccessfully.

On a separate note, managers raised an issue relating to the exclusion of Fire Platoon Chiefs and Divisional Chiefs. Labour Relations have undertaken the necessary steps to seek their exclusion. The Fire Protection and Prevention Act (S.O. 1997) specifically lays out the size/managers outside of the bargaining unit, and provides a safety valve for cities which have recently amalgamated.

Many of the recommendations already raised to in this report would contribute favourably to a more positive experience.

Recommendation 18

That the ultimate decision to proceed with matters be a joint decision between the parties concerned (Line Manager, Labour Relations, Legal Services) and that there be a mechanism (i.e., City Manager or delegate) to resolve differences between these parties in the event of disagreement for the interests of the whole and that such decisions be thoroughly documented to avoid having cases proceed to arbitration unnecessarily.

Management Response

Management disagrees with this recommendation.

Management agrees that the line manager should be involved throughout the decision-making process and should have the option of consulting with the department head and the City Manager at any time. This is the process that currently exists. However, management does not agree that a mechanism is necessary for the resolution of disputes.

In April 2007, the City Manager sub-delegated legal matters under the Delegation of Authority By-Law to the City Solicitor, including arbitrations. In addition, he sub-delegated various labour relations matters to the Director of Employee Services, including grievances.

In light of the fact that the grievance and arbitration processes are governed largely by the Ontario Labour Relations Act, it would be impractical to meet the requirements of recommendation 18, whereby: “the ultimate decision to proceed with matters be a joint decision between the parties concerned (Line Manager, LS, LR)”. The decisions made at the grievance level are within the jurisdiction of the Director of Employee Services in consensus with operating departments.

Conversely, when a matter has been referred to arbitration, Legal Services is the clear lead and, in the traditional legal model, undertakes such arbitrations with the clear direction of the operating department. This is true even where arbitrations arise from a policy grievance, at which time Legal Services would look to Labour Relations for direction/instruction.

Recommendation 19

That statistics on arbitration cases, wins, losses, draws and costs be implemented to facilitate overall performance measurement.

Management Response

Management agrees with this recommendation.

Consistent with recommendation 15, management cautions that categorizing arbitration awards, as a “win, loss or draw” may not provide meaningful performance measures to assess overall effectiveness of grievance and arbitration handling.

Legal Services will develop statistics related to arbitrations for their branch's performance measurements by Q3 2008.

5.3 Collective Bargaining Process

The City is currently party to 13 collective agreements that govern the employment conditions of the overwhelming majority of the employees at the City (approximately 14,000 unionized employees). When those agreements expire, they remain in force by operation of law until one of the parties initiates the bargaining process. When the City was amalgamated, the various municipal entities were party to over 40 collective agreements, which have since been integrated and streamlined for consistency.

As a matter of policy, the City does not initiate negotiations. When the City receives a notice to bargain from an affected union under the collective bargaining unit, a very thorough and deliberate process begins to collect information from all of the managers who are affected by the contract to which the notice to bargain applies.

Managers are asked to provide a running summary of the concepts and problems they encounter as a result of the current contract terms – this provides the operational orientation for the first set of intra-management discussions. After the notice to bargain has been issued, labour relations coordinate and collate a “management survey” of all affected stakeholders. These surveys are the first and most important step to establishing the City's position for the upcoming round.

From that survey, the operational team, comprised of the senior negotiator, a research officer, the Labour Relation Consultant, and a handful of affected managers, pull together the first set of bargaining proposals. The team is selected by the directors responsible for the affected departments in an attempt to put together a team which are familiar with each affected sub-group to best gauge the overall affect on each department. The approach is comprehensive, and requires the involvement of Payroll to discuss implementation and affect on systems while Compensation considers the cost of each proposal. These proposals are reviewed and signed off on by the Labour Relations Manager before they are exchanged as draft proposals. The draft proposals are assumed to reflect the views of the upper echelons of management and the orientation in which the corporation wishes to proceed.

The starting point for negotiations is always the existing agreement. While there is a concerted effort to ensure as much internal consistency between the various agreements, this is not always easily achieved. The first meetings are generally “paper exchanges”.

After the union positions are received and priced, the team has to work to establish their priorities for the bargaining mandate. These priorities are based on cost benefit analysis, impact on the Corporation, trends in labour law/negotiations, precedents in

other jurisdictions and, finally, the chance that the City would be successful if the issue was to become the object of a binding arbitration. After the establishment of priorities, the team finalizes its mandate and presents it to the Corporate Services and Economic Development Committee (CSEDC) of Council for approval. In the most recent round of bargaining the Mayor and City Manager were delegated the authority to approve the collective bargaining mandate. After the mandate request is approved formal negotiations can begin.

The style of negotiations (e.g., traditional, participative, interest based) is strongly influenced by elements such as the approach taken by the union counterparts as well as the quality and level of the relationship with the union. The first issues dealt with are the “non-monetary” issues, in hopes of resolving “minor” issues prior to the larger, and more expensive, issues are resolved.

As impasses are identified in the bargaining units with a strike/lockout provision (i.e., ATU 279, CUPE 503 Library, CUPE 5500 (3)) a conciliator is brought into the process. If following negotiations with the assistance of the conciliator there is still no agreement achieved, staff would seek a revised mandate and, if obtained, return to the table for further negotiations. If a lockout mandate were obtained at that time staff would proceed with the lockout or in the alternative deal with the strike action and implications. The last major disruption was in 1997.

When an impasse is reached in bargaining units with a binding arbitration provision (i.e., CUPE 503 Inside/Outside, CIPP, CUPE 503 Part-time Recreation and Culture, OPFFA, ATU 1760 and IATSE) the outstanding matters are referred to arbitration. If the union is agreeable the arbitration panel may assist by acting as mediators prior to the actual arbitration hearing and final determination. This mediation usually results in the reduction of the number of issues going forward to hearing.

Once reached, a tentative agreement is subject to union and political ratification.

5.3.1 Collective Bargaining Mandate & Strategy & Results

In order to determine if the City is effectively protecting its rights and interests in negotiating new collective agreements, we reviewed the collective bargaining process in place, interviewed key stakeholders, analysed the preparation and development of mandates and strategies, researched comparator data and practices and, measured the outcomes of negotiation to support the following assessment and observations.

Collective Bargaining mandates at the City are not driven and developed by long term strategic plan objectives but more bottom-up, operational and budget oriented. The approach to collective bargaining over the last few years has been focused on a short-term basis and concentrated since amalgamation to integrating and streamlining all the variances from previous municipal agreements with excellent results. It is more of a

bottom-up process of identifying the issues from an operational perspective and rolling these into a mandate, which encompasses the reality of City finances, ability to pay and comparator municipalities. Most recently, the Mayor has provided verbal strategic direction with respect to the upcoming rounds of collective bargaining.

While the focus on resolving operational issues is important it is imperative that the collective bargaining mandate and strategy be derived from longer term assumptions such as the 20/20 vision or strategic framework and objectives of the organization to pave the way for business transformation, build greater flexibility and capabilities within the collective agreements in order to respond to the longer term needs in terms of alternative service delivery, outsourcing, business transformation, P3 opportunities, etc. Given the challenges the City is facing from a budgetary perspective and the 20/20 vision, can the City continue to approach collective bargaining as it has traditionally on a narrow and short-term basis?

The current agreements are very restrictive in terms of contracting out for example and provide generous and competitive terms and conditions of employment, which can be a burden to sustain. The mandate for collective bargaining must be drawn from a strategic perspective and address the longer-term objectives of the City. Otherwise the good intentions or desires will not be successfully achieved. Undoubtedly, this will require a more strategic and comprehensive approach, which cannot be achieved without the full support and commitment of Council. However, a recent example in the municipal world speaks to the broader outlook and strong determination to effect change at considerable financial and political risk. The municipality of Vancouver took an 84-day strike to achieve its goal and obtain a five-year agreement as well as an Olympic Partnership to ensure labour peace and services for the most momentous event the City will host in 2010. Effectuating substantial change at collective bargaining in a municipal environment requires a comprehensive strategy and strong resolution and commitment from both the Executive Management and City Council.

Interestingly enough, the City of Ottawa is the only municipality in Canada that has binding arbitration instead of strike/lockout for its largest unions (excluding Police and Fire). Binding arbitration cannot be changed unilaterally; it must be bargained out of an agreement. According to those interviewed binding arbitration provides more stability and has allowed the City to remain competitive with its comparator groups. There are pros and cons to this argument, which may be worthy of more consideration. Binding arbitration is certainly not the best means of controlling one's destiny and setting best practices; it is at best a "follow the pack" strategy. Binding arbitration is a delicate catch 22 that can appear to provide a sense of security (no strike) on the one hand but can also bring devastating results on the other and usually does not provide the remedies sought.

In terms of assessing if the City is effectively protecting its rights and the interests of management in negotiating new collective agreements one could conclude that the City has maintained its place amongst others in terms of its external comparator group.

The most direct measure for external comparison is “what the City has given up.” As compared to numerous Ontario jurisdictions, the bargaining teams have been effective in limiting salary increases; often the most important and expensive change to any agreement. A cross section of settlements from various municipalities as reflected in figure 5 below illustrates that, over time, the City has been squarely in the median range (intra-province) when negotiating salary increases for CUPE 503 unionized employees.

Figure 5: 2001-2006 Settlements - Comparison to Other Ontario Municipalities

Municipality	2001	2002	2003	2004	2005	2006
City of Brampton	2.00%				3.00%	3.00%
City of Burlington #1	2.00%	4.00%	2.00%	2.50%	3.00%	2.95%
City of Burlington #2	2.50%	3.50%	2.00%	2.50%	3.00%	2.95%
City of Hamilton	2.00%	2.00%	4.38%	2.75%	2.75%	2.70%
City of Kitchener		3.89%	3.45%	3.00%	3.00%	3.00%
City of London						3.00%
City of Mississauga					3.00%	3.00%
City of Sudbury #1	2.00%	3.00%	3.00%	3.00%	3.25%	3.25%
City of Sudbury #2	2.00%	3.00%	3.00%	3.00%	3.25%	3.25%
City of Toronto #1	3.20%	3.00%	3.00%	3.00%	2.75%	3.01%
City of Toronto #2	3.20%	3.00%	3.00%	3.00%	2.73%	2.99%
City of Windsor #1					2.97%	3.01%
City of Windsor #2					2.99%	3.00%
Average	2.36%	3.17%	2.98%	2.84%	2.97%	3.01%

City of Ottawa **2.50%** **2.75%** **3.00%** **3.00%** **3.00%** **3.00%**

Another performance measure that can be used to evaluate effectiveness is to compare the mandates obtained by Council against the results of collective bargaining agreement. A review of the reports to Council summarizing the outcomes for collective bargaining negotiations show that the City negotiators obtained settlements within the approved mandate for all contracts negotiated in the last few years. The in camera reports detailed each specific mandate request, and explained precisely how much each concession would cost the City over the life of the contract.

A third measure of effectiveness that can be used is to review the non-monetary provisions (e.g., Management Rights, Job Security, Contracting-out) contained in the City's collective agreement and assess their suitability or flexibility to allow for the implementation of change. Can these provisions adequately facilitate the current and future business transformation needs of the City which is battling with major spending cuts, looking at changing the way it delivers its programs and services while trying to hold the line on taxes? Using this measure one would conclude that the current provisions contained in most if not all agreements are very restrictive and do not provide the flexibility to effectuate meaningful change.

In conclusion, settlements are generally in line with comparator groups but the flexibility to deal strategically, innovatively and dynamically with the environment is stifled and unattainable at great cost and resources to taxpayers. The current approach fosters a culture of comparison as opposed to leading edge practices in keeping with the strategic goals of the City. The end result is that the City may incur substantial costs in payroll, benefits and other very limiting normative clauses (e.g., contracting-out), which effectively make it nearly impossible to address Council's business transformation priorities.

Recommendation 20

That the City adopt a more strategic approach and longer term outlook to collective bargaining in keeping with its vision and long term objectives as confirmed and approved by Council and that there be a process in place to secure and maintain the commitment of Council to the stated mandate.

Management Response

Management agrees with this recommendation.

Council has been, and will continue to be consulted, prior to negotiations taking place to determine the most appropriate strategic approach for negotiations at the time. The consultation will include the strategic direction for both the current and upcoming rounds of negotiations.

Recommendation 21

That the current collective agreements be reviewed to identify impediments to achieving the City's vision and mid-term objectives, and that related bargaining strategies be developed to address shortcomings to change and flexibility.

Management Response

Management agrees with this recommendation.

With each round of collective bargaining, proposals are formulated in support of the City's vision and objectives, in order to negotiate the removal of impediments to achieving those objectives. The removal of these impediments is contingent upon successful negotiations.

Recommendation 22

That the strategy for the upcoming round(s) of collective bargaining in 2008 and potential implications be well understood by Council and well supported with the right strategies, action plans and resources to manage the process and its inherent challenges.

Management Response

Management agrees with this recommendation.

Presentation of the 2008 bargaining strategy was made to Council in November 2007.

Temporary resources have been provided to assist in achieving the objectives outlined in this strategy. As the duration of the upcoming agreements are finalized, a review of staffing needs will be undertaken. If increased permanent staffing is required, a report will be submitted to Council requesting additional resources in 2009.

6 CONCLUSION

The City's existing severances are considered excessive in the cases of unsuitable hires and short-term employees.

The City needs to review its disciplinary processes, practices and training as they pertain to the management cadre to deal effectively with internal issues when they arise such as unacceptable behaviour within the management ranks or dealing with unsuitable new hires to avoid unnecessary cost and litigation and, to foster a supportive and transparent environment for managers to deal effectively with unacceptable behaviour.

The City needs to establish a more robust decision making process and accountability process to deal effectively with terminations for cause and involuntary separations to ensure substantiation of decisions to minimize the liabilities that might otherwise be faced by the City.

The City needs to improve the administration of the grievance process as well as its arbitration and litigation track record, in keeping with good labour practices in order to measure its success rate and to ensure that it is effectively protecting its rights in a cost effective manner.

Management needs to provide to Council for approval a stronger framework and expectations for collective bargaining negotiations by establishing a clearly defined strategy that addresses the City's long-term objectives and future fiscal responsibilities.

7 ACKNOWLEDGEMENT

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.