

A REVIEW AND ANALYSIS OF LOS ANGELES COUNTY'S HUMAN RESOURCES AND CIVIL SERVICE COMMISSION PROCESSES

NOVEMBER 2010

THE LOS ANGELES COUNTY CITIZENS' ECONOMY AND EFFICIENCY COMMISSION

Chair

Isaac Diaz Barcelona, 5TH District

Vice Chair

Chun Y. Lee, 2nd District

Chair Emeritus

Robert H. Philibosian, 4th District

Civil Service Task Force

Freda Hinsche Otto, Co-Chair, 4th District
Jeffrey Cox, Co-Chair, 2008-09 Foreperson Civil Grand Jury

Jonathan S. Fuhrman, 1st District

Roman Padilla, 1st District

Janice Kamenir-Reznik, 3rd District

William J. Petak, 4th District

Solon C. Soteras, 5th District

Commissioners

Fred Balderrama, 2nd District

Hope J. Boonshaft, 3rd District

Robert Cole, 2nd District

Alan Glassman, 3rd District

Ron Ikejiri, 2nd District

Arne Kalm, 5th District

Bradley H. Mindlin, 3rd District

Adam Murray, 1st District

Royal F. Oakes, 5th District

Executive Director

Edward Eng

Administrative Assistant

Aisha Pittmon

The mission of the Commission is to examine any function of County government at the request of the Board of Supervisors, on its own initiative, or as suggested by others, and to submit recommendations to the Board which will improve local government economy, efficiency, and effectiveness.

Chair November 4, 2010

Isaac Diaz Barcelona

Vice Chair Honorable Gloria Molina, Chair
Supervisor, First District
Chun Y. Lee Kenneth Hahn Hall of Administration
500 West Temple Street, Suite 856
Chair Emeritus Los Angeles, CA 90012

Robert H. Philibosian

Commissioners Dear Chairperson Molina:

Fred Balderrama

Hope J. Boonschaft

Robert Cole On November 24, 2009 on a motion by Supervisor Antonovich, the Board of Supervisors requested the
Jonathan S. Fuhrman Citizens' Economy and Efficiency Commission (Commission) to "...work with stakeholders in a review
Alan M. Glassman of the current Civil Service System and Human Resource Management practices, to recommend ways to
Ronald K. Ikejiri improve efficiencies in our system..."

Arne Kalm

Edward McIntyre

Bradley H. Mindlin

Adam Murray

Royal F. Oakes

Freda Hinsche Otto

Roman Padilla

William J. Petak

Janice Reznik

Solon C. Soteras

In response to the Board's request, the Commission has gathered and analyzed primary and secondary data from a wide range of stakeholders and sought expert opinions of similar jurisdictions and academic researchers over the course of nearly a year.

Executive Director

The attached report entitled, *A Review and Analysis of Los Angeles County's Human Resources and Civil Service Commission Processes*, is hereby submitted. During the course of our review, the Commission observed that there have been previous reports prepared by County staff and outside consultants that address some of the same issues raised in our Report; many of which remained unresolved. On the other hand, we found that much progress has been made toward implementing operational efficiencies.

Edward Eng

To ensure continued progress, the Commission is submitting these findings and recommendations for the Board's review.

The Commission would like to acknowledge the cooperation and candid feedback of County management and Civil Service Commission personnel. We also appreciate the opportunity to present this Report to your Board and stand ready to assist your Board in the implementation of these recommendations. As with our previous reports, we will update the Board of Supervisors in approximately nine (9) months with a status of the Report's recommendations.

With Warmest Regards,

Isaac Diaz Barcelona
Chairperson

C: Each Member of the Board
Chiefs of Staff, Board Offices
Sachi Hamai, Executive Officer, Board of Supervisors
William T Fujioka, CEO
Brence Culp, Chief Deputy CEO
Deputy CEOs
Department Heads
Each Economy and Efficiency Commissioner

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE COMMISSION CHARGE AND SCOPE OF WORK	2
III. METHODOLOGY	2
IV. STRUCTURE OF COUNTY CIVIL SERVICE AND PERSONNEL SYSTEM	3
V. FINDINGS AND RECOMMENDATIONS	4
A. Human Resources Processes	5
Finding 1. The processes for hiring employees -- from defining positions, to job postings, to testing, to list management, and, finally, to hiring -- are far too slow, which impede efficiency and economy, and impair optimal hiring decisions.	5
Recommendation 1: That the Board of Supervisors direct the Department of Human Resources to expeditiously implement those improvements in the hiring processes that have been identified in the recent Human Resources Study.	5
Finding 2.1: The scoring systems on promotional exams lean too heavily toward seniority and narrowly-defined experience within the County system, which often results in promotion of a more senior, but less qualified, person.	5
Finding 2.2: The banding process is inefficient and ineffective and often stymies Departments' ability to hire the best candidates.	6
Recommendation 2: That the Board of Supervisors instruct the Director of Human Resources to enlarge the size of Band 1 in most competitive examinations.	6
Finding 3: The probationary period of 6 months for new employees (other than law enforcement) is not long enough to allow for adequate assessment of performance in certain job categories.	7
Recommendation 3: That the Board of Supervisors instruct the Director of Human Resources to take full advantage of the authority to extend the probationary period for new hires from 6 months up to one year where appropriate, based upon specific job duties and responsibilities.	7

Finding 4.1: The Appraisal of Promotability (AP) seems to fail regularly to identify the best candidates for promotions, is inconsistently applied, is inordinately time-consuming and is a source of dissatisfaction among managers and employees. 7

Finding 4.2: The Performance Evaluation process fails to assist employees in their career planning, fails adequately to inform managers of the employee's readiness for the next job, and does not foster open communication between employees and their managers. 8

Recommendation 4: That the Board of Supervisors instruct the Director of Human Resources to eliminate APs and replace them with a modified Performance Evaluation that includes a self assessment, an assessment of employee readiness for promotion, and specific recommendations for employees both to improve current job performance and better to equip themselves for future promotions. 8

Finding 5: Performance Evaluations (PE's) do not effectively identify inferior performance or areas needing improvement, at least in part because managers appear reluctant to tell employees that they need to improve or to initiate disciplinary action. 8

Recommendation 5: That the Board of Supervisors instruct the Director of the Human Resources to enhance the existing training programs for managers and supervisors on the appropriate use of Performance Evaluations, with particular attention paid to the process for identifying, documenting and tracking poor performance. 9

B. Civil Service Commission Processes 9

Finding 6: The appeal process is burdensomely long, often taking years for cases to resolve, which adversely impacts both employees and management. In addition, after a hearing is granted, it takes, on average, over one year for the hearing to occur. 10

Recommendation 6a: That the Civil Service Commission adopt the amendments they proposed in 2009 to their Procedural Rules, in particular ensuring that hearings commence expeditiously after appointing a Hearing Officer. 11

Recommendation 6b: That the Civil Service Commission further amend their Procedural Rules to limit continuances for both appellants and County management. 11

Finding 7: After the Commission issues a *Proposed Decision*, it can take three to six months to issue a *Final Decision*. Other jurisdictions do not use *Proposed Decisions* but issue *Final Decisions* upon first consideration of a Hearing Officer's report, which shortens the appeal process substantially. 11

Recommendation 7: That the Board of Supervisors amend Civil Service Rule 4.13 to eliminate the requirement for a *Proposed Decision*, thereby allowing the Civil Service Commission to issue a *Final Decision* immediately upon considering a Hearing Officer's report. 12

Finding 8: Pre-hearing conferences are seldom held, even though, under Civil Service Rule 4.17, they are required no less than 10 days prior to an appeal's first hearing. This represents a squandered opportunity to move the case forward more expeditiously or even to settle the case. 12

Recommendation 8: That the Board of Supervisors amend Rule 4.17 to require a Pre-hearing settlement conference to be held at least 10 days prior to any hearing, thereby encouraging both sides to reach an expedited settlement. 12

Finding 9: The volume of open cases is significantly increased by the large number of discretionary appeals filed. 12

Recommendation 9a: That the Board of Supervisors amend the Civil Service Rules to limit the Commission's jurisdiction to appeals involving discharges, demotions, or suspensions in excess of 5 days and eliminate all discretionary appeals. 14

Recommendation 9b: That the Board of Supervisors direct the Department of Human Resources, in consultation with Employee Advocates, to create appropriate appeal processes that provide employees with a forum for a fair consideration of their claims in discretionary cases not involving discharges, demotions, or suspension in excess of 5 days. 14

Finding 10: There is no formal process for tracking and evaluating Hearing Officers as to their timeliness, effectiveness and efficiency in resolving cases, thereby making it difficult to ascertain accountability and to properly evaluate and improve the appeal processes. Moreover, there is no systematic process for eliminating poorly performing Hearing Officers. 14

Recommendation 10a: That the Civil Service Commission set clear standards and expectations on the performance of the Hearing Officers, and that the Commission establish a system to evaluate and track Hearing Officers' performance against those standards. 15

Recommendation 10b: That the Board of Supervisors direct the Executive Officer, in concert with the Civil Service Commission, to develop a process to either eliminate poorly performing Hearing Officers or identify them for non-renewal when the contract term is up. 15

Finding 11: The process by which Hearing Officers are selected is perceived to discourage decisive rulings, as Hearing Officers may seek to accommodate all parties lest they jeopardize future employment. 15

Recommendation 11: That the Board of Supervisors direct the Executive Officer, in concert with the Civil Service Commission, to review the administration and operation of the current master contract for Hearing Officers and the method by which Hearing Officers are selected and consider adopting an alternative procedure, including the use of in-house Hearing Officers. 16

Finding 12: There is no consistency among the disciplinary guidelines used by various County Departments; this inconsistency can result in a lack of parity and equity in administering discipline. 16

Recommendation 12: That the Board of Supervisors instruct the Director of Human Resources to accelerate completion of their efforts to create a baseline set of disciplinary guidelines that all Departments adopt, allowing Department-specific modifications where necessary and recognizing the need for a supplemental set of guidelines for peace officers and related personnel. 17

Finding 13: No single office has oversight of all County advocacy before the Civil Service Commission, which deprives the County of efficiencies on many levels, including but not limited to, effective risk management, shared learning, and informed participation in the Civil Service appeals process. 17

Recommendation 13: That the Board of Supervisors centralize all County representation before the Civil Service Commission under DHR's Advocacy Group, with DHR either directly representing the County or overseeing individual Departments as they handle specialized cases. 18

Finding 14: The Civil Service Commission does not attempt to ensure consistency when deciding appeals making it difficult for managers to understand and predict the potential outcomes of hearings. 18

Recommendation 14: That the Board of Supervisors instruct the Director of the Department of Human Resources to develop a database of prior rulings by the Civil Service Commission as a reference for Departments. 18

Finding 15: The Civil Service Commission has the authority under Civil Service Rules to sustain, overturn or modify personnel actions based on the recommendations of the Hearing Officer and on their own judgment after hearing a case. This authority to reduce or substantially change a personnel action many times had a detrimental effect on personnel management in Departments. 18

Recommendation 15: That the Board of Supervisors amend the Civil Service Rules to limit the authority of the Commission to either sustain or overturn personnel actions, or accept settlements which are agreed upon by both parties. 19

VII. CONCLUSION	21
VIII. ACKNOWLEDGEMENT	22
IX. APPENDICES	
A. Methodology Detail	23
B. Online-Employee Survey	25
C. Department Head Interview Questions	29
D. Timeline Analysis of Sample Cases	30
X. REFERENCES	33

I. INTRODUCTION

The concept of a civil service system arose in reaction to abuses of the spoils system, which rewarded political supporters with government jobs. While any new administration needed people in public positions who would support and administer its policies, the spoils system, when allowed to run rampant, led to the appointment of obviously unqualified individuals, often resulting at best in inefficiency and dysfunction and at worst in outright corruption.

The U.S. Congress enacted, in 1883, the Pendleton Civil Service Act to "regulate and improve the civil service of the United States." California, in 1913 during the Hiram Johnson Progressive era, adopted its own Civil Service Act. That same year, Los Angeles County adopted its charter, with Article IX focusing entirely on Civil Service. That article mandated the County to recruit, select, retain, and advance employees based on merit; further, it required the County to protect workers "against coercion for political purposes" and also to prohibit workers from "using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office."

With the advent of the labor movement and public sector unions, the civil service structure evolved to co-exist with collective bargaining agreements. Those agreements sometimes duplicated and sometimes enhanced the rights and protections employees enjoyed under the civil service rules.

The Civil Service System also evolved in response to the civil rights movement. While the system had originally focused on preventing favoritism and political manipulation, the civil rights movement led to a broader perspective -- the need to protect workers from discrimination, overt or unintentional, based on race, color, ethnicity, gender, or national origin. One result of this new focus was to look more closely at the criteria used to judge merit; seemingly objective criteria, which nonetheless had disparate impacts on protected classes, were no longer acceptable.

This perspective unquestionably has had beneficial effects. Los Angeles County now has an incredibly diverse workforce, values that diversity, and has opened its doors to historically underrepresented segments of our population.

Some would argue, however, that in its quest for absolutely objective criteria, the County system has compromised its methods of assessing employee performance, which are, by their nature, inherently subjective assessments by management. Interestingly, the original 1913 Charter explicitly includes the goal of "retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected."

As the County falls under ever greater pressure to operate efficiently, effectively, and in a way that provides exceptional customer service, some question whether our current Civil Service System and personnel rules allow

County management the discretion and

authority needed to meet that responsibility. For example, many decisions weigh tenure or time in grade, which are inherently objective criteria, far more heavily than management assessments of employee productivity or performance, which are inherently subjective. Many questions arise with respect to such decision making, to wit: Should not performance and productivity be at the core of management decisions on hiring, promotion, and layoffs? But if they are, how then are employees adequately protected from arbitrary or capricious actions by management which the Civil Service System was designed to prevent? Where is the appropriate balance?

II. THE COMMISSION CHARGE AND SCOPE OF WORK

On November 24, 2009, Supervisor Antonovich moved to direct the Citizen's Economy and Efficiency Commission (Commission) to review the "current Civil Service System and Human Resource Management practices and recommend ways to improve efficiencies in the system." This motion, seconded by Supervisor Knabe, was unanimously approved by the Board. The Commission delegated this study to a Task Force of seven Commissioners, assisted by the Commission's Executive Director.

The Task Force adopted a Scope of Work that narrowed the objectives of the study in what was obviously a very large and complicated area. It was understood by the Task Force members at the onset of the study that this report would serve as a review of the Civil Service System and personnel management practices and that future, more detailed studies may evolve from the findings.

The two objectives of this study are:

- I. To identify major areas of concern where the Civil Service System is in urgent need of reform, and to identify specific issues, the resolution of which could have significant impact on improving County operations.
- II. To provide recommendations which can substantively improve the operation of the Los Angeles County Civil Service System.

III. METHODOLOGY

To undertake this review, the Civil Service Task Force (CSTF) adopted a work plan aimed at identifying areas of major concern that prevented efficient and effective employee management created undue delays in management processes or resulted in excessive expense to the County. The level of input necessary to complete the assignment required the CSTF to initiate a dialog with a wide range of stakeholders and seek expert opinions of similar jurisdictions and academic researchers over the course of nearly a year. Additionally, data from an on-line survey distributed to all County employees supplemented stakeholder interviews. A complete list of the sources of information used in the compilation of this report is available in Appendix A.

IV. STRUCTURE OF COUNTY CIVIL SERVICE AND PERSONNEL SYSTEMS

Article IX of the Los Angeles County Charter mandates a civil service system that ensures the County has a "productive, efficient, stable, and representative work force." The Charter directs the County to recruit, select, retain and advance employees "on the basis of their relative ability, knowledge, and skills relevant to the work to be performed." Virtually all County employees are covered by Civil Service, including sworn officers. Those exempted include: the Board of Supervisors and their appointed deputies; elected and appointed Department heads, Chief Deputies, and their direct reports; and the Chief Executive Officer, the Chief Deputy, and the Deputy CEO's.

The Civil Service System is administered by the Department of Human Resources (DHR) pursuant to the Civil Service Rules (hereafter, Rules), established by ordinance by the Board of Supervisors (and last substantively amended in 1988). These twenty-six rules lay out, in substantial detail, the operational procedures ensuring that equal opportunity

and merit drive the County's personnel system. Modifying the rules requires negotiations with County bargaining units, as well as approval by the Board of Supervisors. Over the last 20 years, several efforts were launched to update these Rules, in particular to conform them to developing federal and state labor law; none of these efforts led to any modifications or updates.

Under the Rules, employees may appeal to the Civil Service Commission (hereafter CSC) adverse personnel actions they believe were based on "race, color, religion, sex, physical handicap, medical condition, marital status, age, national origin or citizenship, ancestry, political opinions or affiliations, organizational membership or affiliation, or other non-merit factors..." (Rule 25). (Indeed, even applicants not yet hired by the County, and probationary employees, may also file appeals to the CSC.) A set of Procedural Rules, adopted by the CSC, supplement the Civil Service Rules and provide detailed guidance on how the Commission handles appeals.

The CSC consists of five members, serving four-year terms, with one Commissioner appointed by each Supervisor. The CSC is a quasi-judicial body, independent from the County; Commissioners can be removed only by a four-fifths vote of the Board of Supervisors, only for cause, and only after a public hearing. It is the only County Commission explicitly mandated by the Charter, thus giving it unique status within County government.

The other key elements governing the County's personnel practices are the classification ordinance, which specifies in minute detail the job duties and necessary skills of each of the approximately 2,400 different jobs within the County; the salary ordinance, which sets salary ranges for those classifications; and the collective bargaining agreements with the various represented employee groups. Overlaid atop all of this are federal and state statutes protecting both private and public-sector employees in areas stretching from discrimination and pay equity to job safety.

V. FINDINGS AND RECOMMENDATIONS

Members of the Task Force interviewed Board offices, union representatives and Department representatives about their most pressing concerns related to personnel management, and several common concerns quickly became evident.

Many of those interviewed believed that too many employees who had genuinely and seriously violated County policies were, nonetheless, being returned to the workplace by the CSC. Senior managers asserted they were losing too many appeals before the CSC, those losses were not justified, and those losses were substantially impacting their ability to manage their departments. Many examples were cited of specific cases which bore this out. But underlying those specific cases, however newsworthy they might be, were broader concerns.

County residents are expecting and demanding effective, efficient, and customer-friendly service. The Board hence is holding senior managers accountable for delivering that quality of service. Yet, questions repeatedly arose as to whether our current personnel systems are effective in meeting such expectations. For example, do the current personnel systems handcuff managers by constraining them from hiring the best employees, promoting the right people, administering discipline fairly and appropriately, and discharging those who violate the rules or cannot meet increasingly demanding standards? Can County managers work more effectively while still protecting employees from arbitrary, capricious or non-merit based personnel actions?

A thorough analysis of the County's classification, recruitment, and selection systems was recently completed by DHR, the results of which are contained in the Human Resources Study ^[1]. The Task Force used that study as a resource, and the Commission strongly commends DHR for moving aggressively to modernize and expedite these processes.

This analysis, rather than duplicating efforts, reinforces key findings, where appropriate, and adds perspectives not found in the Human Resources Study. It first addresses personnel practices in hiring and, particularly, in promotion and evaluation of current employees; then it considers how the CSC functions within the County's disciplinary process. The goal is both to suggest some immediate changes that can be easily implemented, as well as to identify areas that may be ripe for more detailed review or where changes may take longer to effect.

A. Human Resources Processes

Finding 1: The processes for hiring employees -- from defining positions, to job postings, to testing, to list management, and, finally, to hiring -- are far too slow, which impede efficiency and economy, and impair optimal hiring decisions.

All Department Heads and Union leaders interviewed felt the current hiring system imposed unacceptable delays. Comments expressed were: “the process slows everything down”; “Can’t get quality employees in a timely fashion”; “Too process-oriented with long timelines attached to each step. There is a huge opportunity cost associated with each step of the process.”; and, “Everyone complains about the timeliness of things... The application process moves too slow, filing positions takes too long ... you lose good people in a good economy.” These findings match closely those of the Human Resources Study, which was recently adopted by the Board of Supervisors, and they underline the importance of moving aggressively on many of the recommendations from that report.

But despite serious obstacles (i.e., such as slow processes, a byzantine classification system) most managers noted they are able to hire the people they want, at least recently. This, however, may reflect more on our distressed economy than on the efficacy of our hiring systems, and therefore do not indicate that the problem is resolved.

Recommendation 1: That the Board of Supervisors direct the Department of Human Resources to expeditiously implement those improvements in the hiring processes that have been identified in the recent Human Resources Study.

Finding 2.1: The scoring systems on promotional exams lean too heavily toward seniority and narrowly-defined experience within the County system, which often results in promotion of a more senior, but less qualified, person.

Among the criteria used in considering candidates for promotion, seniority is the most objective, but it may also be the most troublesome. Department Heads argued that time in grade alone is often not the best indicator of readiness for a more senior position, yet it often dominates the scoring systems for promotional examinations. “The scoring system is too seniority-based, and favors internal candidates,” said one Department Head. Another stated, “The system values County experience more than competence and skills.” Similarly, a Union leader noted, “The system is geared to longevity. It is structured that way. You don’t have a whole lot of people coming in in their mid-careers.” Further, managers suggested the County typically takes an excessively narrow approach in defining “equivalent experience” that may substitute for time in a qualifying County position. In the on-line employee survey, opinion was equally divided as to whether employees felt the Civil Service examination process identifies candidates who are well qualified to perform their jobs ^[2].

But beyond specific complaints relating to geography, specialized skills or stale lists, there seemed a more general concern that County testing processes were not identifying the best candidates. As one Union leader stated, “We don’t believe the County is getting the best people in the right positions through this process because there is not a clear definition, of the type of skills needed in a particular position.” This could stem from the distorting effects of seniority, from poorly constructed exams, from inappropriate weighting of exam elements, or from failing closely to involve the hiring departments in the entire recruitment process. (The Human Resources Study highlighted the importance of tightly involving client departments in the exam pre-planning process as an important reform. Further, DHR is actively working to match specific skills and abilities to job descriptions and performance evaluations, which may lead to more predictive test designs.)

Finding 2.2: The banding process is inefficient and ineffective and often stymies Departments' ability to hire the best candidates.

Nearly all department heads felt that the band process is ineffective and fails to provide the flexibility needed to hire talented employees. In the current banding process, applicants are grouped into five "bands" based on their exam scores; all candidates in the top band must be offered positions before any applicant in the second band can be considered. One Department Head commented, "The banding process is a very exhaustive process; you have to go through everyone on the list regardless of geographical preferences." Others noted that County-wide lists for clerical or administrative positions often don't reflect specialized needs of some departments, like the Health Department or the District Attorney's Office. Additionally, managers noted that County-wide lists often are not current, although recent systems upgrades in DHR may relieve this problem.

In a perfect world, competitive exam scores would accurately rate applicants with the best candidates naturally falling in Band 1. But until departments have sufficient input in planning exams, and management evaluations are effectively reflected in those scores, managers may need some additional flexibility. The banding process is detailed in Civil Service Rule 11.01, but Section C, which specifies the band widths, appears to give the Director of Human Resources some flexibility. Expanding the number of applicants in Band 1 will allow more flexibility in hiring by including additional qualified candidates for positions.

Recommendation 2: That the Board of Supervisors instruct the Director of Human Resources to enlarge the size of Band 1 in most competitive examinations.

Finding 3: The probationary period of 6 months for new employees (other than law enforcement) is not long enough to allow for adequate assessment of performance in certain job categories.

Many Department Heads interviewed noted that the current six (6) month probationary period for non-sworn personnel is not long enough, in certain instances, appropriately to evaluate a new hire. As a result, many managers and supervisors rush through this period without adequate and frequent evaluation of job performance. Civil Service Rule 12.02A gives the Director of Human Resources the authority to set the probationary period anywhere from 6 months to one year for all classifications.

Recommendation 3: That the Board of Supervisors instruct the Director of Human Resources to take full advantage of the authority to extend the probationary period for new hires from 6 months up to one year where appropriate, based upon specific job duties and responsibilities.

Finding 4.1: The Appraisal of Promotability (AP) seems to fail regularly to identify the best candidates for promotions, is inconsistently applied, is inordinately time-consuming and is a source of dissatisfaction among managers and employees.

The Appraisal of Promotability (AP) is the standard process and form by which managers assess an employee's readiness to be promoted to a particular job. Uniformly, Department Heads believed the AP doesn't work for inter-departmental promotions; there is a common belief that other departments "game the system."^[3] As one Department Head stated, "Too many departments inflate their scores. The paper work from another department is just not trustworthy." Further, managers reported frequent, and lengthy, delays in getting AP's for applicants from other Departments, substantially delaying the process of certifying a promotional list. Several interviewees flatly urged that AP's be discontinued. One interviewee argued, "The process is too subjective. It is a big hole in the system. Abolishing it will save a lot of time and reduce the number of appeals (to the Civil Service Commission) greatly." A Union leader expressed similar sentiments: "The AP is too subjective, too heavily weighted, the process is too arbitrary." Another Union leader expanded on the subject: "The AP process does not work for employees. The AP is simply a projection of how you would perform in the next job; it undermines and destroys the value of the performance evaluation in terms of someone planning a career."

When promotional opportunities were restricted to applicants within a single department, the AP process appeared to work more effectively. The Task Force found several examples of best practices: Department managers met as a team, normalizing the AP's from individual managers (thereby eliminating disparities from "easy" or "tough" graders); the team reached collective decisions ranking employees; individual managers then provided feedback to applicants on their scores and relative rankings, giving applicants a chance to question their scores. In those departments, virtually no one appealed the scores or promotional decisions. This was not the case, however, in inter-departmental promotions.

Finding 4.2: The Performance Evaluation process fails to assist employees in their career planning, fails adequately to inform managers of the employee's readiness for the next job, and does not foster open communication between employees and their managers.

The County's Performance Evaluation (PE) assesses how well employees perform their current job. Department Heads noted, however, that, unlike the typical private sector approach, it does not start with a self-evaluation or assessment, nor does it ask employees to outline their career goals. While the PE allows management to specify areas where the employee can improve his or her skills for the current job, it does not outline how the employee can grow into their next job, nor does it assess their readiness for their next job.

The process results in one-way communication from managers to employees. One Department Head characterized the general view of many others by stating, "The system does not provide adequate information to employees that they can use for career development." One Union leader urged that the "Performance Evaluation process needs to be more developmental. It is currently viewed by employees as a disciplinary tool for managers." A new Performance Evaluation system is now being introduced by DHR, and it incorporates several of these enhancements.

Recommendation 4: That the Board of Supervisors instruct the Director of Human Resources to eliminate APs and replace them with a modified Performance Evaluation that includes a self assessment, an assessment of employee readiness for promotion, and specific recommendations for employees both to improve current job performance and also better to equip themselves for future promotions.

Finding 5: Performance Evaluations (PE's) do not effectively identify inferior performance or areas needing improvement, at least in part because managers appear reluctant to tell employees that they need to improve or to initiate disciplinary action.

The Task Force inferred that managers and supervisors are reluctant to tell staff members when job performance falls short or when improvement is needed. If managers are unwilling or unable to track and document unacceptable behaviors, their ability to impose disciplinary action is undermined. Over time, it appears to have become an institutional norm to inflate ratings. One Department Head stated, "The current Performance Evaluation process tends to encourage managers and department heads to evaluate employees as 'competent' or 'outstanding' when they may be neither." Another Department Head commented, "You can't change an employee to 'needs improvement' in the 11th hour with limited documentation." However, a Union leader argued that "Management has the authority to discipline right on the spot but is reluctant to do so. You cannot expect to have a system that is fair when you have untimely discipline."

Department Heads expressed frustration with the amount of documentation required to discipline an employee. Additionally, they noted that the substantial documentary burden for "Needs Improvement" ratings can be exacerbated by the high number of direct reports for whom first line supervisors are responsible, creating a heavy burden on monitoring, counseling, and documenting employee actions. In contrast, a Union leader asserted, "The system is there for managers to give constructive negative feedback, but to get rid of employees is a totally different process. Managers have inflated ideas on what it takes to get rid of employees; they tend to overestimate their burden."

Interestingly, when asked in the employee survey, employees generally did not share the same concerns. When asked in the survey if they think that "In my Department, supervisors generally avoid administering discipline because they

think it is too risky or difficult", employees were split – an equal number agreed as disagreed. When asked if their department initiated disciplinary actions in a timely manner, slightly more disagreed than agreed. However, when asked if steps are taken to deal with poor performers in their own work unit, substantially more agreed than disagreed.

Despite this, it is clear that the end result of failing to identify poor performance or to document unacceptable behavior is a costly and time consuming disciplinary process that often lacks substantiation and can result in poor outcomes for the employee, the Departments and the County.

Recommendation 5: That the Board of Supervisors instruct the Director of Human Resources to enhance the existing training programs for managers and supervisors on the appropriate use of Performance Evaluations, with particular attention paid to the process for identifying, documenting and tracking poor performance.

B. Civil Service Commission Processes

Employees may appeal adverse personnel actions to the Civil Service Commission when they believe those actions were based on "race, color, religion, sex, physical handicap, medical condition, marital status, age, national origin or citizenship, ancestry, political opinions or affiliations, organizational membership or affiliation, or other non-merit factors..."^[4]. In the appeal process, appellants must provide specific facts and reasons they believe those actions were based on one or more of the above-mentioned factors.

The Commission's Procedural Rules require that hearings be granted on all appeals related to suspensions more than five days and on all discharges or demotions. Other cases related to promotion, performance evaluation or hiring are heard at the discretion of the CSC and thus are considered "discretionary appeals."

When an appeal is filed, the CSC first conducts a review to consider if there is sufficient evidence to warrant a hearing. If not, a hearing is denied and the appeal dismissed outright. If there is sufficient evidence, a Hearing Officer, in disciplinary cases, is tasked with determining if the grounds for discipline, as alleged in the Department's formal notice, are valid, if the discipline is authorized by County policy, and if the discipline imposed is appropriate. The burden of proof, in these cases, falls to management. In discretionary cases, such as appeals of AP ratings, the Hearing Officer also conduct a review of the facts of the case, but the burden of proof falls on the employee.

Hearing Officers provide written findings of fact, conclusions of law, and a recommendation to sustain, overturn, or modify management actions. The CSC reviews each case taking into account the recommendation of the Hearing Officer and adopts a *Proposed Decision* to which either party then may file objections with cause. At a subsequent meeting, the CSC either overrules those objections and certifies a *Final Decision*, or it sustains the objections and adopts a new *Proposed Decision*, to which each party may object anew.

Finding 6: The appeal process is burdensomely long, often taking years for cases to resolve, which adversely impacts both employees and management. In addition, after a hearing is granted, it takes, on average, over one year for the hearing to occur.

A consistent complaint heard from Department managers and Board offices was that it can take years to resolve Civil Service appeals, and that lengthy delays in obtaining a final resolution create a demoralizing climate for County managers and employees alike. One Department Head commented, "There are too many incentives and [too much] flexibility for employees and Departments to drag out cases. We cannot keep trying cases forever." A Union leader said, "It takes too long to resolve a case. Commonly, it takes two years or more to get a final decision from the Commission." Department Heads complained it is impossible to link discipline to offending behaviors when such long delays in resolving appeals are common.

Appeals that are granted hearings take, on average, nearly two years to resolve (see Appendix D for an analysis of 25

recent cases). Particularly noteworthy is that after the Commission granted a hearing, a full year passed, on average, before the first hearing was held. Not surprisingly, given these delays, the Commission has 442 open and pending cases.

The CSC indicated that delays in holding hearings were typically caused by scheduling issues, a lack of meeting space in County facilities in which to hold hearings, and continuance requests from both the appellant and the County. As one Hearing Officer commented, "We need new rules to limit the number of continuances requested by both parties. Both sides appeared to take the hearing process very lightly."

Some improvements have been made in the timeliness of hearings with the implementation of a new scheduling system. Nonetheless, Department Heads and Union representatives both complain that the appeal process is not working well. As one Union leader commented, "It is a timeliness issue. The appeals process is ineffective. There is a long delay to solve any kind of problem by the Commission."

The CSC, in March, 2009, proposed amending their Procedural Rules to require that hearings commence within 45 business days of designating a Hearing Officer. That rule change is still pending. A broad range of interviewees feared that 45 business days was too tight a timeframe within which to schedule hearings. That is a decision best left to the CSC; the critical point, however, is that a binding timeframe be established that will dramatically reduce the current delays within the process.

Recommendation 6a: That the Civil Service Commission adopt the amendments they proposed in 2009 to their Procedural Rules, in particular ensuring that hearings commence expeditiously after appointing a Hearing Officer.

Recommendation 6b: That the Civil Service Commission further amend their Procedural Rules to limit continuances for both appellants and County management.

Finding 7: After the Commission issues a *Proposed Decision*, it can take three to six months to issue a *Final Decision*. Other jurisdictions do not use *Proposed Decisions* but issue *Final Decisions* upon first consideration of a Hearing Officer's report, which shortens the appeal process substantially.

Civil Service Rules 4.13(B) and (D) require the Commission, after receiving a Hearing Officer's findings of fact, conclusions of law, and recommendations, and after holding a public hearing, to issue a *Proposed Decision*, to which either party may object, before reaching a *Final Decision*. This process adds, on average, over three months and sometimes much more to the time to final resolution. (The case timelines in Appendix D illustrate these delays in 25 recent cases.)

Other jurisdictions, including the Civil Service Commissions in the City of Los Angeles, the County of San Francisco, and the County of San Diego, take final action when first reviewing a Hearing Officer's report and holding a public hearing. This approach allows all parties to receive Hearing Officer's reports with proposed recommendations for action well before they are argued and either party can still file objections in writing and/or appear in person at the Commission meeting when the appeal is considered and before the final decision is rendered.

Recommendation 7: That the Board of Supervisors amend Civil Service Rule 4.13 to eliminate the requirement for a *Proposed Decision*, thereby allowing the Civil Service Commission to issue a *Final Decision* immediately upon considering a Hearing Officer's report.

Finding 8: Pre-hearing conferences are seldom held, even though, under Civil Service Rule 4.17, they are required no less than 10 days prior to an appeal's first hearing. This represents a squandered opportunity to move the case forward more expeditiously or even to settle the case.

Despite Rule 4.17, Pre-hearing conferences are virtually never held. That may, in part, be because, as one Hearing

Officer noted, they would serve little purpose. The original aim -- to establish the specific facts or issues in contention before the hearing commences -- is no longer necessary because the CSC effectively delineates the scope of the hearing when it accepts the appeal.

However, both employees and management would benefit if this Pre-hearing Conference was transformed into a settlement conference. That approach has proven quite valuable within the judicial system by encouraging early settlements and expediting the resolution of civil cases. These Pre-hearing conferences could then serve to facilitate early resolution of disputes, to the benefit of both parties, and ultimately reduce the number of cases heard by the Commission.

Recommendation 8: That the Board of Supervisors amend Rule 4.17 to eliminate the requirement that a Pre-hearing conference be held no less than 10 days prior to an appeal's first hearing, and instead require a Pre-hearing settlement conference to be held at least 10 days prior to any hearing, thereby encouraging both sides to reach an expedited settlement.

Finding 9: The volume of open cases is significantly increased by the large number of discretionary appeals.

Rule 4.03(A) requires the CSC to grant a hearing in cases involving discharges, reductions in grade, and suspensions over 5 days (presuming the employee presents sufficient facts in support of the appeal). In other cases, such as appealing AP scores, the CSC has discretion in whether or not it will grant hearings.

Also, while Rule 25 enumerates an exceptionally broad range of "non-merit" factors that may constitute grounds for appeals before the CSC, the Employee Relations Commission (ERCOM) and the Office of Affirmative Action Appeals (OAAC) are both chartered to handle many of these same types of cases. Appeals that are heard before either of these bodies should not also be eligible for a hearing before the CSC.

Department Heads asserted that the CSC grants hearings on too many discretionary appeals. Comments ranged from, "The Commission goes outside its mandate and never stops to say this is not within our jurisdiction. As a result, employees appeal everything," to "The Commission appeared to have taken on all cases without evaluation. They are very generous in granting hearings. Even probationers are granted automatic hearings." Another Department Head complained, "There is no stated policy on what they would hear or not; essentially, the Commission hears everything. The Commission could deny but chooses not to. They grant hearings even when there is obviously a lack of facts."

In contrast, County Counsel believes the CSC does not take on all cases and that the review process is appropriately guided by legal principles. The CSC echoed that sentiment and noted that, while they review every appropriate appeal that is filed, they seldom grant hearings on discretionary cases.

Further, from the CSC's perspective, employees are not well served by the DHR Appeals Unit. They report that employees perceive the standard form letter that is issued by the DHR Appeals Unit when an appeal is denied as dismissive and even condescending. They argue the Commission may be the only forum where employees who feel unfairly treated can state their case in person, get a fair and empathetic hearing, and leave satisfied, even if their appeal is denied.

Additionally, the standard form letter employees receive from the DHR Appeals Unit seems to encourage employees to appeal to the CSC if their appeal is denied by DHR. In reality, there is every incentive for employees to appeal actions that impact them adversely in as much as there is no cost to the employee and no downside if they lose the appeal.

Data provided by the CSC staff shows that 273 discretionary appeals were filed with the CSC in 2008 and 223 in 2009 (approximately 47% of all appeals filed). CSC members reviewed each of these appeal requests. Of these, only 6 discretionary hearings were granted in 2008 and 4 in 2009. There are, however, 40 discretionary appeals still pending, some dating back to mid-2009 with many continued repeatedly. Apparently, settlement negotiations continue on these cases, but the Commission's willingness to continue such cases adds to managers' perceptions that the CSC accepts all

appeals, regardless of merit. Additionally, the need to review all discretionary cases that are filed, even though a very small percentage actually go to hearing, adds significantly to the caseload of the CSC and results in delays in hearing of mandatory cases.

Other jurisdictions, such as the City of Los Angeles, refer such discretionary appeals to Department management and then to central HR, but do not permit appeals to their Civil Service Commissions. Adopting a similar approach would reduce the Commission's workload, freeing resources to focus on mandatory open cases. But it becomes critical that the County simultaneously improve the DHR Appeals Unit processes to ensure employees can personally present their case and receive a fair and empathetic hearing, as DHR would become the court of last resort on these issues county-wide.

Recommendation 9a: That the Board of Supervisors amend the Civil Service Rules to limit the Commission's jurisdiction to appeals involving discharges, demotions, or suspensions in excess of 5 days and eliminate all discretionary appeals.

Recommendation 9b: That the Board of Supervisors direct the Department of Human Resources, in consultation with Employee Advocates, to create appropriate appeal processes that provide employees with a forum for a fair consideration of their claims in discretionary cases not involving discharges, demotions, or suspension in excess of 5 days.

Finding 10: There is no formal process for tracking and evaluating Hearing Officers as to their timeliness, effectiveness and efficiency in resolving cases, thereby making it difficult to ascertain accountability and to properly evaluate and improve the appeal processes. Moreover, there is no systematic process for eliminating poorly performing Hearing Officers.

The CSC, through its training manual, annual training session and internal procedures, sets certain expectations for Hearing Officers. Reports prepared by Hearing Officers in the cases they are assigned are mandated to include findings of fact, conclusions of law, and recommendations. CSC procedures require that reports be submitted within thirty days of the conclusion of hearings. Based upon the nature of the appeal, Hearing Officers are expected to cap the number of days of hearings and seek prior approval from the Executive Director of the CSC before exceeding those limits. Similarly, billable days are appropriately limited.

No formal system for evaluating and tracking how well Hearing Officers meet these expectations or for evaluating the quality of their work. Interviewees report that some Hearing Officers have performed poorly, submitted inadequate reports, or otherwise failed to meet expectations, yet those Hearing Officers continue to receive assignments. Further, although expectations are established for the number of hearing days, no expectations are set as to the calendar period over which those hearings can stretch, so there is no pressure on Hearing Officers to push the appeal to an expeditious conclusion.

Even more troubling, as one Board office noted, are instances where Hearing Officers use incorrect standards as to the admissibility of evidence. This can and has led to erroneous findings of fact and recommendations and places a tremendous financial and time burden on the CSC to remedy this failure. Consequently, the role and influence of the Hearing Officer is elevated, which makes assuring the quality of the Hearing Officers of paramount importance.

Additionally, the process by which Hearing Officer contracts are renewed – or terminated – appears murky. Interviewees seemed unclear as to their ability or authority to recommend when Hearing Officer contracts be extended or when a particular Hearing Officer be dropped from the Master Panel. The CSC Executive Director has indicated he would discontinue calling on Hearing Officers who perform poorly, but there was general agreement among Department Heads, CSC staff and Commissioners, and Union representatives that a more explicit process and structure is needed.

Recommendation 10a: That the Civil Service Commission set clear standards and expectations on the performance of Hearing Officers, and that the Commission establish a system to evaluate and track Hearing Officers' performance against those standards.

Recommendation 10b: That the Board of Supervisors direct the Executive Officer, in concert with the Civil Service Commission, to develop a process to either eliminate poorly performing Hearing Officers or identify them for non-renewal when the contract term is up.

Finding 11: The process by which Hearing Officers are selected is perceived to discourage decisive rulings, as Hearing Officers may seek to accommodate all parties lest they jeopardize future employment.

In the current process to select Hearing Officers, the CSC staff proposes three names to the two parties involved in the appeal – management and the employee -- and each side may strike one name from the list. This "scratch-off system" was implemented in 1991 under the CSC Procedural Rules; prior to that, a rotational list was maintained, with the Hearing Officer next in line being assigned to the next case that came up.

Interviewees from management, labor, and the CSC voiced concerns that the current selection method pushes Hearing Officers away from making a just decision and recommend appropriate discipline based upon the facts before them; rather it is perceived that they seek middle ground so as not to offend either side. If a Hearing Officer was perceived to be “pro-labor” or “pro-management” in their previous cases, they would run the risk of being stricken from the list by either the appellant or management and the Hearing Officer would lose future employment opportunities.

A "next in line" system, similar to that used by the Office of Affirmative Action Compliance, might eliminate that concern. However, equally strong concerns were voiced that the "next in line" system eliminates the ability to strike biased or less competent Hearing Officers. Further, more complex cases might require a greater depth of experience, and a "next in line" system similarly could prevent the choice of a more experienced Hearing Officer.

Other jurisdictions use a variety of approaches attempting to balance the need to protect both parties from potentially biased or less competent Hearing Officers with the need to protect Hearing Officers from potential pressures affecting future employment opportunities. Thus, while the County's current system appears less than ideal, further study must be undertaken to identify a system that better serves the County and its employees.

The CSC is currently exploring the use of in-house Hearing Officers instead of the current contract system.

Recommendation 11: That the Board of Supervisors direct the Executive Officer, in concert with the Civil Service Commission, to review the method by which Hearing Officers are selected and consider adopting an alternative procedure, including the use of in-house Hearing Officers.

Finding 12: There is no consistency among the disciplinary guidelines used by various County Departments; this inconsistency can result in a lack of parity and equity in administering discipline.

Departments, particularly larger ones with geographically dispersed offices and functions, struggle to ensure that disciplinary actions are consistent and equitable. In the absence of centralized guidance from the County, several departments have had to develop their own internal guidelines to standardize the types of discipline meted out in similar situations (sometimes borrowing from what other departments have already done).

As a result of this, the CSC has had no guidelines to follow as it makes its determinations. Thus, it may impose one penalty on one employee and a different penalty on another employee with a similar offense. These actions have created frustration among Department heads who are confounded as to what the ultimate disciplinary action may be since the CSC does not adhere to any precedent that may have been previously set. As one Department Head stated, “Department of Human Resources (DHR) is not providing central core functions; as a result, you end up with 37

departments doing different things.” Another Department Head commented, “Without guidance, individual departments are left with creating their own rules for use in implementing penalties.”

Several Board Offices also perceived a lack of centralized DHR leadership on disciplinary guidelines. One Board Office commented, “Let DHR develop the policies, but empower individual Departments to implement them.” In fact, DHR is actively working toward a set of standards appropriate for County-wide implementation, borrowing where appropriate from existing Departmental guidelines. Having a standardized set of guidelines may also assist the CSC in validating the appropriateness of Departmental disciplinary actions and arriving at decisions that are equitable.

Recommendation 12: That the Board of Supervisors instruct the Director of Human Resources to accelerate completion of their efforts to create a baseline set of disciplinary guidelines that all Departments adopt, allowing Department-specific modifications where necessary and recognizing the need for a supplemental set of guidelines for peace officers and related personnel.

Finding 13: No single office has oversight of all County advocacy before the Civil Service Commission, which deprives the County of efficiencies on many levels, including but not limited to, effective risk management, shared learning, and informed participation in the Civil Service appeals process.

In appeals before the CSC, employees can be represented by an Advocate (a private attorney or one provided by their bargaining unit). Departments also are represented by Advocates; smaller Departments typically take advantage of DHR's centralized Advocacy Group, while larger Departments have dedicated personnel or hire outside attorneys. Department Heads using DHR's Advocacy Group were unanimous in their praise; they were highly satisfied with both the professionalism of the group and the successful results in Commission hearings. This example of a shared-services model appears to be working exceptionally well.

However, larger Departments mostly utilize their own in-house Advocates. This leads, as one Department Head remarked, to “a lack of uniformity and consistency with the process throughout Departments.”

This decentralized structure means no single office has the specific task of conducting all of the County's interactions with the CSC. There is no one official to whom the Board or County executives can turn for information on the entire range of County cases pending before the CSC. From a risk management perspective, and from the perspective of learning from one's errors and improving internal practices, this gap is troubling. While the Civil Service Commission itself might be the logical locus for this reporting, that might not be practicable since, as some would argue, the Commission's quasi-judicial independence makes it neither accountable to, nor subject to direction from, the Board of Supervisors.

Centralizing responsibility for all County actions before the CSC within DHR will enable DHR to report periodically on case loads, backlogs, and the rate at which management actions are sustained by the Commission. (Large Departments, like the Sheriff, might still have dedicated in-house Advocates, so long as DHR gains visibility into their workload and can effectively share best practices with those personnel.) It will also enhance the County's risk management capacity, and better equip the County to learn from mistakes and disseminate that learning among senior County leadership.

Additionally, the CSC has noted that one significant source of delay in resolving appeals is the frequency with which continuances are requested by County Advocates. Having a larger pool of Advocates under centralized management should enable the County to better control the number of continuances, thereby expediting the appeals process.

Recommendation 13: That the Board of Supervisors centralize all County representation before the Civil Service Commission under DHR's Advocacy Group, with DHR either directly representing the County or overseeing individual Departments as they handle specialized cases.

Finding 14: The Civil Service Commission does not attempt to ensure consistency when deciding appeals making it difficult for managers to understand and predict the potential outcomes of hearings.

There was a broad consensus among interviewees that, while the County should impose similar levels of discipline for similar offenses, there is in fact a lack of consistent application of standards by the CSC and, consequently, no consistent outcomes. One Union leader commented, "The decisions by the Commission appeared arbitrary. There is no citable precedent for the rulings." One Department Head stated, "The problem is inconsistent rulings. You never know what to expect from the Commission."

The Commission has argued that it must review each appeal on its individual merits, and that comparison of one case to others would be both inaccurate and inappropriate. However, the entire judicial system is based upon the premise that, while each case is decided individually, a system of case law and precedents helps ensure consistency and fairness of outcomes.

Recommendation 14: That the Board of Supervisors instruct the Director of the Department of Human Resources to develop a database of prior rulings by the Civil Service Commission as a reference for Departments, Hearing Officers, and the Commission.

Finding 15: The Civil Service Commission has the authority under Civil Service Rules to sustain, overturn or modify personnel actions based on the recommendations of the Hearing Officer and on their own judgment after hearing a case. This authority to reduce or substantially change a personnel action many times had a detrimental effect on personnel management in Departments.

Currently, arriving at a judgment in a case before the CSC is a two-step process. Civil Service Procedures require Hearing Officers to make recommendations to the Commission. The CSC then reviews the facts of the case, reviews the recommendations of the Hearing Officer, listens to both parties in a formal hearing and then enters a ruling that either sustains, overturns or modifies the personnel action.

As a court of last resort, it is the responsibility of the CSC to uphold or overturn a personnel action based on the facts of the case. However, the ability of Hearing Officers and the CSC to modify an action (such as reducing a suspension from 15 days to 10 days) as a way of seeking compromise often frustrates Department managers and undermines the disciplinary process. Because no standards exist for disciplinary action and the CSC and Hearing Officers often seek compromise solutions, rulings by the CSC seem random and unpredictable. In particular, Department Heads and Board Offices took great exception to several cases in which Hearing Officers recommended a discharge be reduced to a 30-day suspension and the employee returned to work after an extended absence of up to one or two years, despite egregious conduct. Additionally, managers believed that disciplinary actions were often futile because the County always lost cases before the CSC.

The Task Force explored this concern by reviewing the disposition of all cases, discretionary and mandatory, filed with the Commission between 2008 and 2010. In these cases, County management was sustained in 92% of cases filed in 2008, in 97% of the cases filed in 2009, and in all cases filed in 2010 (although few of those 2010 cases had been finally resolved when this data was compiled). Many of these cases were resolved by settlement or reviewed and dismissed as not meriting a hearing before the CSC. Looking at the 41 cases that went to hearings and were resolved in the first six months of 2010, the CSC overturned or modified management actions in 41% of the appeals. Similarly, the CSC announced 79 *Proposed Decisions* during that time, of which 37% would modify or overturn departmental actions.

The Los Angeles City Civil Service Commission, by contrast, either sustains or overturns a recommendation from the Hearing Officer, but may not modify disciplinary decisions. This "up or down" ruling on cases is often accompanied by a series of negotiations between representatives of management and the employee to arrive at an equitable pronouncement of a decision. The decision, once rendered, is final.

The CSC cautioned against adopting an "all-or-nothing" rule arguing that they needed the ability to calibrate the

discipline to the number and severity of allegations through the fact-finding process. More generally, they believed their ability to modify disciplinary actions was a better way of protecting the interests of both management and employees. However, with the adoption of several of the recommendations proposed in this report, these concerns would be addressed.

Recommendation 15: That the Board of Supervisors amend the Civil Service Rules to limit the authority of the Commission to either sustain or overturn personnel actions, or accept settlements which are agreed upon by both parties.

VI. BROADER PERSPECTIVES

Underlying this detailed review lie broader questions about the applicability of Civil Service rules and procedures to the modern municipal workforce. Do the myriad federal and state statutory protections for workers, supplemented by collective bargaining agreements, make the Civil Service structure entirely redundant?

The Task Force did not try to resolve this conundrum. Senior County managers were, however, asked for a bottom-line assessment: overall, is the system working?

Most Department Heads replied that the system worked adequately, but that the rules were too complex and inflexible, resulting in delays in many areas and requiring great effort to discipline or remove poor performers. As one Department Head commented, "There is flexibility in the system; rules are umbrella statements and not procedures. The problem is more with the bureaucratic structure, not rules... The structural problems lead to administrative nightmares." Further, one elected Department Head supported the ongoing importance of the Civil Service System by noting that, as recently as the 1980's, it was Civil Service protections that prevented a number of employees from being purged from a Department in an act of political retaliation.

On the other hand, several managers argued that the Civil Service system has outlived its usefulness and was adopted at a time when employees did not have the protections they have today. Asserting the system was beyond repair, one Department Head concisely remarked, "Blow it up."

Other jurisdictions have tried, in a wholesale way, to reform their Civil Service structures. Texas essentially abolished civil service protections for state employees by changing to an "at-will" employment policy, decentralizing personnel functions, and adopting, in principle, "pay for performance" policies. Georgia, in 1996, enacted "Georgia Gain", under which all new employees would be "at-will", with no civil service protection, seniority rights, or formal appeal rights. They also decentralized HR authority to individual agencies. Notably, both Texas and Georgia are right-to-work states with weak organized labor forces, unlike California. Florida, in 2001, moved 16,000 management and supervisory positions out of civil service to an "at-will" status, eliminated bumping rights, and allowed agencies to use "sound discretion", as opposed to the tougher standard of "just cause", as the basis for disciplining or discharging employees.

Did these reforms lead to substantive improvements in operational efficiency or effectiveness? The answer is unclear. Academics following these reform efforts point to difficulties like the lack of baselines or clear criteria to use as measures of operational efficiency. Professor Lloyd Nigro of Georgia State University, when asked if he thought Florida's reforms were working, responded: "There is no great evidence that it is working. There is however, no significant damage either. It is not any more effective today than under the old system." ^[5]

In assessing the success of Georgia's reforms, Governing Magazine reported that agencies seem to be hiring faster and

terminating low performers more quickly ^[6]. But a survey conducted by Professor Nigro revealed widespread disagreement among state employees as to whether or not the workforce was more productive or more responsive to the public, nor did employees believe their agencies now had more effective HR programs. Many believed promotions and pay increases were being given to favored employees and that performance standards were vague and arbitrary. When asked if Georgia's reforms were working, Professor Nigro responded, "It is difficult to assess due to a lack of efficiency and performance measures. But from my perspective, it did not work."

VII. CONCLUSION

Based on the findings of this Report, the opinions of a majority of those interviewed and the experience of other jurisdictions, the County's current system of resolving disputes related to employee disciplinary actions does not serve the interests of the employee or the County well. This Report suggests a number of ways both to improve personnel practices generally and also to facilitate a fair and equitable outcome of appeals before the Civil Service Commission. While each recommendation can stand on its own, the Task Force wants to emphasize strongly how interrelated these recommendations are.

For example, one desired outcome will be to reduce the number of open cases pending before the Civil Service Commission. This will happen, in part, as more cases are settled by mutual agreement of both parties. The pre-hearing settlement conference (Rec. 8) provides a forum to achieve such settlements; but without Recommendation 15, mandating an up or down decision by the CSC, there is less pressure on both parties to settle. Conversely, the settlement conferences, per Rec. 8, mitigate what some might consider the harshness of the up-or-down decision mandated by Rec. 15. Further, with County-wide guidelines (Rec. 12), there is less area for disagreement on the appropriateness of discipline, and with Rec. 14, both sides can better predict likely outcomes before the Commission.

Another desired outcome is to expedite the resolution of cases. Eliminating discretionary appeals (Rec. 9a) will reduce the overall workload; Rec. 6 will ensure hearings commence expeditiously; Rec. 8 may lead to a larger number of settlements (particularly as Rec. 15 eliminates the option of modified discipline, and Rec. 12 and 14 reduce the uncertainty and standardize expectations about levels of discipline); and Rec. 7 will shorten the time from hearing to Final Decision.

Thus, the Task Force believes, in this case, that the whole will be far greater than the sum of its individual parts.

In conclusion, the findings and recommendations of this report are not intended to solve all of the problems of the Civil Service System, nor in anyway to advocate its elimination. It is not intended to interfere with the rights of employees for fair and equitable treatment or to support the goals of management. Instead, this report is intended to understand the long evolution of Civil Service processes, rules and procedures that have changed over time to become the personnel management system now in operation in Los Angeles County, to take a fresh look at the operation of the system in LA County from an independent perspective, and finally, to make critical judgments and recommendations based on measured assessments, best practices and an overarching need for new efficiencies.

VIII. ACKNOWLEDGMENT

The Economy and Efficiency Commission gratefully acknowledges the substantial contributions of our respondents. These interviewees were generous with their time and candor. Their help has been instrumental in our efforts to craft recommendations that we hope will improve County government.

APPENDIX A

Methodology Detail

Internal: Los Angeles County Sources

1. The Task Force interviewed 27 Department Heads or Chief Deputies, often along with the Department's senior manager handling HR or Civil Service issues. This group covered large and small departments, spanning all five clusters in County government, with both appointed and elected Department Heads. The Task Force also interviewed the Director of Human Resources and senior DHR staff.
2. The Task Force interviewed the Chief Executive Officer and the Chief Deputy, as well as the Deputy CEO for Operations.
3. The Task Force interviewed each Board Office, talking with Board Deputies and sometimes with the Supervisors themselves.
4. The Task Force interviewed Union leadership; in particular, representatives from CCU, SEIU, and the Teamsters.
5. The Task Force interviewed the President of the Civil Service Commission and the Commission's Executive Director, and, on a separate occasion, two other Commissioners.
6. The Task Force reviewed and analyzed extensive data on recent Commission actions. The Task Force reviewed the minutes for all Commission meetings from January through June of 2010 and the Hearing Officer reports on the 25 most recently resolved appeals.
7. The Task Force conducted an on-line survey of all County employees – both line and management – asking for their perspectives on how the Civil Service system, and County personnel policies generally, were working for them.
8. The Task Force reviewed data on operational costs and expense data related to Civil Service Commission appeals and hearings.
9. The Task Force reviewed previous Los Angeles County studies, reports, proposed and enacted policies and procedures and recommendations relating to Civil Service and personnel practices, including the November 2009 Human Resources Study.
10. The Task Force interviewed a Hearing Officer with a long record of handling cases before the Civil Service Commission.

External: Sources Outside Los Angeles County

1. The Task Force interviewed the Chair and lead staff of the City of Los Angeles Civil Service Commission.
2. Task Force staff conducted telephone interviews with the Executive Directors of the San Diego and San Francisco County Civil Service Commissions.
3. Task Force staff and members surveyed the literature describing Civil Service reform efforts in other jurisdictions, both within California and in other states.
4. Task Force staff conducted telephone interviews with academic experts who had done extensive analysis and

written articles for professional journals on Civil Service reform efforts across the country.

5. Task Force staff and members conducted telephone interviews with Hearing Officers who work for both the County of Los Angeles as well as the City of Los Angeles.

APPENDIX B

LA County Civil Service System and Personnel Practices Survey

Disseminated to all LA County employees with access to on-line survey mechanisms on June 5, 2010 via LA County Survey Monkey

CSSPP Survey Questions:

1. Promotions in my work unit are based on merit.

Strongly Disagree
 Disagree
 Neutral
 Agree
 Strongly Agree

2. My performance evaluation takes into account the resource limitations and/or other work conditions that are beyond my control.

Strongly Disagree
 Disagree
 Neutral
 Agree
 Strongly Agree

3. The disciplinary methods used by my department are effective in correcting inappropriate behavior.

Strongly Disagree
 Disagree
 Neutral
 Agree
 Strongly Agree

4. My performance evaluation provides a fair assessment of the quality and quantity of my work.

Strongly Disagree
 Disagree
 Neutral
 Agree

 Strongly Agree

5. The Civil Service examination that I took for my current job covered the knowledge and skills that are most important for success in this job.

Strongly Disagree
 Disagree
 Neutral
 Agree
 Strongly Agree

6. The County has done a good job of keeping me informed of my status in Civil Service examinations.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

7. I have been given fair consideration for promotion.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

8. In my department, supervisors generally avoid administering discipline because they think it is too risky or difficult.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

9. What is the maximum amount of time that it should take to get your results on a Civil Service examination?

- Less than 1 month
- 1-2 months
- 3-4 months
- 5-6 months
- More than 6 months

10. The County does a good job of providing information on employment opportunities.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

11. In most cases, my department is able to recruit people with the job-related knowledge and skills needed to accomplish the department's goals.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

12. My performance evaluation helps me to understand what I need to do in order to meet or exceed the performance expectations for my job.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

13. The disciplinary methods used by my department are usually fair.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

14. The Appraisals of Promotability (APs) that I have received have fairly and accurately measured my ability to be successful in the higher level job.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

15. If I feel that I have been treated unfairly in a promotional process, I have been given an opportunity for a fair hearing of my concerns.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

16. I have competed in __ promotional examinations (Choose one of the following options).

- 0
- 1-2
- 3-4
- 5-6
- More than 6

17. My supervisor and I have helpful discussions about my work performance.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

18. I have usually received my Civil Service examination results in a reasonable amount of time.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

19. My department initiates disciplinary actions in a timely manner.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

20. Discipline appeals to the Civil Service Commission are resolved in a timely manner.

- Strongly Disagree

- Disagree
- Neutral
- Agree
- Strongly Agree

21. In my department, the Civil Service examination process identifies employees who are well qualified to perform their jobs.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

22. The Civil Service Commission gives employees a fair hearing on disciplinary matters.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

23. I have received an Appraisal of Promotability (AP) as part of a promotional examination.

- Yes
- No

24. If I feel that I have been treated unfairly, to which of the following would I go first?

- Direct Supervisor
- Department Management
- Union Representative
- Civil Service Commission
- None. No one would listen to me.

25. In my work unit, steps are taken to deal with poor performance who cannot or will not improve.

- Strongly Disagree
- Disagree
- Neutral
- Agree
- Strongly Agree

26. Have you gone through any of the following?

- Civil Service Commission
- Employee Relations Commission
- Both
- None

APPENDIX C

Department Head Interview Questions

General Questions:

1. What is your overall assessment of how the Civil Service System is working for you?

2. Give us your view of the major problem areas with the Civil Service System?

3. What would you most like to see changed about the Civil Service System?

-

Hiring

-

4. How has the Civil Service System helped or hindered your organization in hiring quality employees in a timely fashion?

5. Have you found the current system of classification of employees adequate for your needs? the term "classification" refers to an employee's official job title (with specific duties, responsibilities, and salary levels enumerated).

6. Are there specific changes that you would like to see that would assist your efforts in effective and timely hiring?

Retaining, Recognizing, Promoting Employees

7. How has the "classification" process helped or hindered your ability to retain and promote qualified employees?

8. What changes in the performance appraisal process would help you identify, promote, and reward high-performing employees?

9. From your perspective, assess the value of the "Appraisal of Promotability" form in facilitating the promotional process?

Holding Employees Accountable

10. What rule changes might enhance both the fairness of the disciplinary process as well as its efficiency?

11. Describe your organization's experience in pursuing cases before the Civil Service Commission? Are there things you would like to see changed to that process?

12. What is your Department's process for choosing representation before the Commission (DHR versus own representatives)? Are you satisfied with the quality and results of your representation?

13. In your experience, have Commission Hearing Officers demonstrated fairness, competence, and concern for timely resolution of cases?

APPENDIX D

Timeline Analysis of Recent Civil Service Commission Final Decisions

The Civil Service Commission provided the CSTF with Hearing Officer reports for the 25 most recent cases for which Final Decisions were rendered as of May, 2010. Using those reports and additional data from Civil Service Commission minutes, the CSTF developed a spreadsheet to track timelines for each of the cases.

Based upon this sample of 25 recently resolved cases, appeals which are granted hearings take, on average, nearly two years (717 days) to resolve after the hearing is granted. Further, the delay between granting a hearing and commencing the hearing averaged over 1 year (396 days).

Additionally, these timelines indicate an average of 104 days between adopting the first Proposed Decision and the Final Decision.

One case, 05-185, was delayed substantially while a criminal prosecution was pending. Eliminating this case from the averages had only a modest effect; the overall length of time for resolution drops to 676 days, from 717, and the time to commence a hearing drops from 396 days to 366 days.

APPENDIX D

Table-Spreadsheet here.

APPENDIX D

Index to Table 1-Timeline Analysis of Recent Civil Service Commission Final Decisions

- A. the case number for each case referenced;
- B. the date, or approximate date, of the incident that precipitated disciplinary action;
- C. the date, or approximate date, of the department letter imposing disciplinary action;
- D. the date on which the Civil Service Commission, at a regularly scheduled meeting, granted a hearing on the appeal;
- E. the date on which the hearing on that appeal commenced;
- F. the date on which the hearing on that appeal was completed;
- G. the date on which the hearing officer signed his or her report and recommendations to the Civil Service Commission;
- H. the date on which, at a regularly scheduled meeting, the Commission adopted its Proposed Decision on the appeal (or its original Proposed Decision, in those cases where more than one Proposed Decisions were adopted);
- I. the date on which, at a regularly scheduled meeting, the Commission adopted a Final Decision on the appeal;
- J. the Department administering the discipline;
- K. the disciplinary action proposed by the Department;
- L. the final action taken by the Commission, either to sustain the Department's action, to overturn (O/T) the Department's action, or to modify the Department's proposed action;
- M. a count of the calendar days between when a hearing was granted and a Final Decision was rendered;
- N. a count of the calendar days between when a hearing was granted and the first day on which that hearing commenced;
- O. a count of the calendar days between adopting the first (or only) Proposed Decision and the Final Decision.

*Table 1 was prepared by the Civil Service Task Force based on data provided by the Civil Service Commission staff. September, 2010

REFERENCES

Articles and Reports

Mahaffey, Cheryl, and Sandra M. Comrie. County of Los Angeles Human Resources Study. November 2009.

Walters, Jonathan. "Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences." Governing Magazine, October 2002.

Ginsburg, Philip A. "Civil Service Reform: Preserving the Promise of Government." City and County of San Francisco, Department of Human Resources. May 2005.

Interviews (Outside LA County)

Walters, Jonathan. Telephone Interview. 21 Dec. 2009.
Staff correspondent for Governing Magazine

Kellough, J. Edward. Telephone Interview. 6 Jan. 2010.
Professor and Department Head
Department of Public Administration and Policy School of Public and International Affairs
204 Baldwin Hall
University of Georgia

Nigro, Lloyd. Telephone Interview. 11 Jan. 2010.
Professor
Department of Public Administration and Urban Studies
Andrew Young School of Policy Studies
Georgia State University

Johnston, Jennifer. Telephone Interview. 6 April 2010
Chief of Policy, Human Resources
County and City of San Francisco

Sanchez, Anita. Telephone Interview. 9 August 2010
Executive Director
Civil Service Commission
County of San Diego

Zammery, Pat. Telephone Interview. 10 August 2010
Executive Director
Civil Service Commission
County of San Francisco

McClelland, Nancy. Personal Interview. 7 July 2010
President
Civil Service Commission
City of Los Angeles

Whidden, Bruce. Personal Interview. 7 July 2010
Executive Director
Civil Service Commission
City of Los Angeles

[1] "Assessment of Four Core Human Resources Systems: Recruitment, Selection, Classification, Compensation and Opportunities for Improvement." C.M. Consultants and Reward Strategy group, Inc., November 2009.

[2] An on-line questionnaire entitled "LA County Civil Service System and Personnel Practices Survey" was sent to all County employees with access to the County's Learning Management System on June 5, 2010. A copy of the survey is included as Appendix B.

[3] Some managers give all employees a uniformly high (95% or 100%) rating because they fear managers from other Departments are doing the same, and they did not want to disadvantage their own employees in promotional reviews. Also, some managers may give less competent employees undeservedly high ratings in hopes of losing those employees to other Departments and replacing them with better performing, or less problematic, employees.

[4] L.A. County Civil Service Rule 25

[5] Telephone interview conducted with Professor Lloyd Nigro on January 11, 2010.

[6] Governing Magazine, "Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences." October 2002. Pages 7-45.