

**PERSONNEL, LEGISLATIVE AND PUBLIC AFFAIRS
SUBCOMMITTEE MEETING**

February 6, 2007

7:00 p.m.

AGENDA

Personnel, Legislative and Public Affairs Subcommittee:

John Schwope, Chairperson
Fred Conley, Vice Chairperson
Dick Connealy
Rick Kolowski
Rich Tesar

Alternate Members: Tim Fowler
David Klug

Staff Liaison: Emmett Egr
Christine Jacobsen

1. Meeting Called to Order – Vice-Chairperson Fred Conley
2. Notification of Open Meetings Act Posting and Announcement of Meeting Procedure – Vice-Chairperson Fred Thompson
3. Quorum Call
4. Adoption of Agenda
5. Proof of Publication of Meeting Notice
6. Review and Recommendation(s) on Amendments to P-MRNRD Employee Manual – John Winkler and Randy Stevenson, Baird Holms
7. Review and Recommendation(s) on P-MRNRD Wage and Salary Administration Program for 2007 –Pat Teer
 - a. Wage and Salary Pay Ranges (Midpoints)
 - b. Wage and Salary Administration Guide (“n” Factor – 1%)
8. Legislative Update – John Winkler
9. Update on NARD Insurance Reserve Assessment – John Winkler
10. Adjourn

MEMORANDUM

TO: Personnel, Legislative and Public Affairs Subcommittee

SUBJECT: Recommended Amendments to P-MRNRD Sick Leave and Annual Leave

DATE: January 30, 2007

FROM: John Winkler, General Manager

In light of the recent Nebraska Supreme Court ruling in the Roseland v. Strategic Staff Management, Inc case, I have asked Randy Stevenson, Baird Holm, to take a look at the District's annual leave and sick leave policies to make sure that we are in compliance. A copy of Mr. Stevenson's opinion is attached for your review.

Annual Leave: The current P-MRNRD policy states that, "no more than thirty days of annual leave may be carried over into the next calendar year on December 31st. This most likely violates Nebraska law because this would be a forfeiture of earned vacation/wages if an employee had over 30 days of annual leave on December 31st. Mr. Stevenson has suggested that the following be added to the policy:

"Employee may carry-over all unused annual leave days into the next calendar year; however, no employee will continue to accrue annual leave once he or she has accumulated 53 days of annual leave.

I am also suggesting that a clarification for extended paid annual leave which would require GM approval be changed from "2 weeks" to "10 consecutive working days."

Sick Leave: The current P-MRNRD policy states that, "no allowance will be granted for accrued but unused sick leave upon separation from employment," and that, "this leave may only be used in the case of actual sickness and/or for actual, necessary visits to doctors or dentists." Mr. Stevenson states that while the Nebraska Department of Labor would likely tell a separating employee that the District should pay him or her all unused sick leave, it is his belief that a court should conclude that the employee is not due such payment because the employee did not meet the "conditions stipulated." In other words, if the employee is not sick, the necessary prerequisite to receive payment is not met. There is no precedent in Nebraska case law regarding the payment of unused sick leave upon separation when it is clear that the sick leave is only payable if the employee is actually sick. Attached is an Omaha World Herald article regarding four former Douglas County employees who are suing the Douglas County to be reimbursed for unused sick leave. Needless to say, we will be closely monitoring this case. In the meantime, it is suggested that the following be added to the policy to bolster the District's position that sick leave is not payable unless an employee is actually sick:

"Sick leave is neither an earned benefit that has independent cash value, nor a form of deferred compensation. Rather, it is an income protection program only for those employees who, while employed by the District are absent from work due to the reasons stated in this policy. Therefore, conversion of sick leave accruals to pay in lieu of sick leave is not permitted. Likewise, no sick leave benefits are paid upon termination of employment for any reason."

Mr. Stevenson also mentioned the possibility of the District looking at steps to reduce our current maximum accrual level of 180 days and the possibility of a one-time buy back of sick leave to limit the District's exposure. Mr. Stevenson has advised to wait to address these issues. Two bills (LB255 and LB271) have been introduced into the Legislature regarding sick leave. If one of these bills passes in its current form, it may eliminate the potential exposure that the District might have.

I have attached an article from Baird Holm Labor & Employment Law Alert – Unused Accrued Vacation? Pay Up!, regarding the Roseland v. Strategic Staff Management ruling for your review.

Randy Stevenson will be at the PLPA to answer any questions you might have.

It is Management's recommendation that the PLPA Subcommittee recommend to the Board that the following amendments to the District's annual leave and sick leave be approved:

ANNUAL LEAVE/VACATIONS:

Vacations must be earned before they can be taken. Vacations will be considered "earned" only to the extent that vacation time has been accrued according to the following schedule, and all conditions for using vacation have been met. The employee's date of hire will be the eligibility date for determining the amount of vacation earned.

Each full-time employee shall accrue annual leave bi-weekly at the following rates:

0 through 5 years of service -- 13 working days per year

6 through 10 years of service -- 18 working days per year

11 years of service or greater -- 23 working days per year

Employees may carry-over all unused annual leave days into the next calendar year; however, no employee will continue to accrue annual leave once he or she has accumulated 53 days of annual leave. ~~No more than thirty (30) days of annual leave may be carried over into the next calendar year on December 31.~~

No annual leave can be taken during the first six (6) months of employment.

All annual leave shall be scheduled in advance and taken at a time that is agreeable to the employee and your Supervisor. Any paid vacation more than ~~two weeks~~ **10 consecutive working days** in duration will require a minimum of ninety (90) days notice and approval of the General Manager.

Annual leave is accrued on a bi-weekly basis and an employee may not take more time than that which he/she has already accrued and have available at the time annual leave is taken.

Employees will be paid for all accrued but unused vacation upon termination from employment.

Part-time employees will accrue annual leave on a pro-rata basis according to average hours worked. Temporary employees are not eligible for annual leave.

SICK LEAVE:

Each full time employee will accrue one and one-half (1-1/2) days per month sick leave. This leave may only be used in the case of actual sickness and/or for actual, necessary visits to doctors or dentists.

It is the purpose and intent of this plan to provide for eligible employees when they suffer the misfortune of an extended illness or disability. Therefore, to avoid possible abuse of this benefit, a physician's statement will be required by the District as verification of illness or accident, before sick leave benefits are paid when an employee has been absent for three (3) consecutive working days. Sick leave pay benefits for work related injury/accidents will be coordinated with Worker's Compensation benefits received by the employee.

The General Manager has the authority, in his discretion, to permit an employee to utilize sick leave to tend to the needs of his/her spouse and "immediate family." The term "immediate family" is defined to include spouse, children and parents of the employee and children and parents of employee's spouse. The use of sick leave for this purpose will require approval by the General Manager. An example of approved sick leave under this situation would be where an employee's spouse is ill and children require attention until other adequate arrangements can be made. The illness of a spouse requiring a doctor's attention would be a second example.

Accrued but unused sick leave may be carried forward from year to year, up to a cumulative total of 180 days. For those employees who have over 180 days of accumulated sick leave, their cap will be set at the amount of accumulated sick leave as of June 30, 1994. If an employee whose cap is over 180 days drops below 180 days of sick leave as of June 30th of any given year, that employee's cap would be re-established at 180 days.

Sick leave is neither an earned benefit that has independent cash value, nor a form of deferred compensation. Rather, it is an income protection program only for those employees who, while employed by the District, are absent from work due to the reasons stated in this policy. Therefore, conversion of sick leave accruals to pay in lieu of sick leave is not permitted. Likewise, no sick leave benefits are paid upon termination of employment for any reason. ~~No pay allowance will be granted for accrued but unused sick leave upon separation from employment.~~

Abuse of this sick leave policy may result in loss of the sick leave benefit and/or discharge.

Part-time and temporary employees are not eligible for sick leave.

MEMORANDUM

TO: Personnel, Legislative and Public Affairs Subcommittee

SUBJECT: Recommended Revisions to P-MRNRD Wage and Salary Administration Program

- a. Pay Range Revisions (Midpoints)
- b. Adjustment Guide Revisions ("n" Factor)

DATE: January 24, 2007

FROM: John Winkler, General Manager

The P-MRNRD Wage and Salary Administration Program, as outlined in the Directors Policy Manual, requires the General Manager to provide recommendations to the Personnel, Legislative and Public Affairs Subcommittee for revisions in the Wage and Salary Pay Ranges (midpoints) and revisions in the Adjustment Guide ("n" factor) to be used for calendar year 2007. The PLPA Subcommittee is to review this information and make recommendations to the Board for consideration and action.

Base data from the Omaha job market is used to determine the recommended midpoint values and the "n" factor. The base data is taken from the 2006 Nebraska State Salary Survey (dated, November, 2006), which is prepared by the Nebraska Department of Personnel. The P-MRNRD is a participant in this survey. The "n" factor for CY 2006 was 3.1%.

a. Pay Range Revisions (Midpoints): Attached is the following information used to determine suggested midpoints for CY 2007:

1. Spreadsheet showing the midpoints using base data from the 2006 State Salary Survey. Approximately 180 benchmark positions in the Omaha area are used to calculate the updates.
2. Regression calculation used to determine the proposed P-MRNRD payline and midpoints for calendar year 2007.
3. Chart showing the proposed P-MRNRD payline (the straight line) and the midpoints.
4. Chart showing the current (2006) and proposed pay ranges for calendar year 2007. The red numbers are the proposed numbers for CY2007. The numbers in the middle box (yellow) are the midpoints. Please note that pay ranges vary from -2.6% for Salary Grade 2 through 2.0% for Salary Grade 5. The average increase in midpoint is **1.0%**, which is the proposed "n" factor for CY 2007. The GM recommends that the midpoints for SG 2 and 3 (showing negative numbers) remain at CY 2006 levels.

RECOMMENDATION: It is recommended that the wage and salary pay ranges for SG 2 and 3 remain at CY 2006 levels and that pay ranges for SG 4 through SG 21 be adjusted to the proposed ranges, as presented, and that the changes be effective January 1, 2007.

b. Adjustment Guide Revisions ("n" Factor): The Wage and Salary Administration Program provides an example wage and salary increase guide which includes three factors- evaluation period, adjustment factor, and annual pay range change. A copy of the example guide is attached. The second Adjustment Guide shows the proposed Adjustment Factors for calendar year 2007, using 1% as the "n" factor to compute Adjustment Factors. The Adjustment Factors for last year (2006) are also shown.

RECOMMENDATION: **It is recommended that an "n" Factor of 1.0% (average increase in midpoint values) be used to compute Adjustment Factors for Calendar Year 2007 and that the resulting Adjustment Guide be effective January 1, 2007.**

If these recommendations are adopted, the estimated dollar impact on base salaries for calendar year 2007 (January 1, 2007 through December 31, 2007), would be approximately \$42,000.

Attached is a chart showing the history of the Wage and Salary Administration Program for calendar year 2007 through 1982 and cost of living adjustments made from 1981 through 1973. Also attached for your review is a copy of the proposed P-MRNRD Wage and Salary Administration Program for 2007.

Agenda Item 8

Legislative Update – See Attachment No. 8

Agenda Item 9

NARD Insurance Reserve Assessment – See Attachment No.9