

Memo

To: Howard Woolley, City Administrator
From: Jamie Plosia, Esq.
Date: November 9, 2007
Re: Employee Complaint Issue

Please accept this memo as an analysis of a complaint made to the City by Julie Acerra that the City has inappropriately paid CFO Ron Mehlhorn for the sick and vacation days he has accumulated in his long tenure as a City employee. Ms. Acerra is also alleging that Mr. Mehlhorn is attempting to "double dip" by being paid for those accumulated days prior to his retirement, and by attempting at the time of his retirement to be paid again for those days.

Briefly, the facts are as follows:

1. Mr. Mehlhorn's Employment Contract, dated July of 2006, runs from July 1, 2006 to June 30, 2010. The Contract was approved by the City at a public meeting on July 25, 2006 by way of a Resolution of the City Council authorizing the Mayor to execute the contract on behalf of the City. See Exhibit A attached.

2. Section V(B) of the 7/06 Contract provides that Mr. Mehlhorn may request to be paid for up to 200 accumulated sick and vacation days per year. The express purpose of this provision is "to reduce [Mr. Mehlhorn's] unused and compensable accrued sick and vacation days during the term of this contract".

3. The form of the Contract was approved by this office.

4. Between July and September of 2006, Mr. Mehlhorn asked Aide to the Mayor Mike Muscillo if his request for reimbursement for unused sick and vacation days could be processed through Mike's office. Mike discussed this request with the Mayor, who approved the request. Our office was aware of the request and the Mayor's approval.

5. Consequently, and consistent with the Contract and the provisions explained in paragraph 4 above, Mr. Mehlhorn requested, through Mr. Muscillo, to be paid for 200 sick days. (we assume this request was to be paid 200 accumulated sick and/or vacation days, consistent with the Contract). See Exhibit B attached. Mr. Muscillo again spoke with the Mayor, who approved the request. Again, our office was advised of the request and the Mayor's approval. As a result, the monies were paid to Mr. Mehlhorn. A record of the payments was made in the Finance Office and in Mr. Muscillo's office.

6. In January of 2007, essentially the same request was made (this being a new contract year) by Mr. Mehlhorn, with the same outcome as described in paragraph 6. See Exhibit C attached.

7. Payment for this accrued time is of value to the City, because Mr. Mehlhorn is being paid at his current rate of pay (not the future higher rate of pay, as would be the case if he were paid for this time at the time of his future departure from the City's employ).

8. Perhaps due to an oversight on the part of the City Administration, the Personnel Department, headed by Ms. Acerra, did not receive notice of these payments to Mr. Mehlhorn for accumulated unused time. As a result, Personnel did not reduce in its records the number of accumulated unused sick and vacation days which Mr. Mehlhorn had "on their books". However, Mr. Muscillo's office did in fact reduce Mr. Mehlhorn's entitlement to unused sick and vacation days by keeping a record of the days for which Mr. Mehlhorn had been paid consistent with Section V(B) of his Contract.

9. There are numerous records in the Finance Office (of which Mr. Mehlhorn is the Department Head) evidencing the above-described payments to Mr. Mehlhorn.

10. At some point Ms. Acerra learned that these payments had been made to Mr. Mehlhorn, and expressed the concerns set forth above. When she did so to Mr. Woolley, the City Administrator explained the facts to her (as enumerated above), and also explained that, although Personnel had not been informed of these payments, the City (in Mr. Muscillo's office) had a record of the payments, and there was no evidence whatsoever that Mr. Mehlhorn was attempting (or would in the future attempt) to be paid twice for his accumulated time. In fact, quite the opposite conclusion was inevitable given the wealth of records (both in Mr. Muscillo's office and in the Finance Office)

that the monies for some 400 days had already been paid by the City to Mr. Mehlhorn. At the conclusion of the discussion between Ms. Acerra and the Administrator, Mr. Woolley assumed that the matter was concluded – Ms. Acerra in her payroll records could reduce Mr. Mehlhorn's accumulated sick and vacation days by 400 days, and that Ms. Acerra understood the accepted Mr. Woolley's explanation.

11. For whatever reason, however, apparently Ms. Acerra was not satisfied with the information provided to her by Mr. Woolley. Later that same day (October 4, 2007), Ms. Acerra went to the Police Department and spoke with Police Captain Antonucci about the issue. Ms. Acerra, in an agitated state, told Captain Antonucci that, in her opinion, Mr. Mehlhorn was "stealing" money from the City. Ms. Acerra proceeded immediately thereafter to Lt. Sama's office, and made the same allegations of criminal wrongdoing to Lt. Sama. Ms. Acerra also informed Lt. Sama that she had contacted a Special Agent with the FBI. Lt. Sama indicated that there was probably a "contractual" explanation for the Mehlhorn payment (a statement which, of course, turned out to be precisely correct).

12. The next day – October 5, 2007 – Captain Antonucci spoke with Police Director Bill Richards about Ms. Acerra's allegations. The Director immediately thereafter spoke with Mr. Woolley, who confirmed to the Director that the payments to Mr. Mehlhorn had in fact been made in precise compliance with a provision in Mr. Mehlhorn's contract (which contract had been approved by the Mayor and Council). On that same date Director in turn conveyed this specific information to Lt. Sama. On that same date, after the aforementioned events, Ms. Acerra returned to Lt. Sama's office, and again stridently and insistently presented to him her claims of criminal

misconduct. She also told Lt. Sama that she was "frightened", and demanded that the Lieutenant drive her to the FBI office. Lt. Sama calmly explained to Ms. Acerra the information the Director had only a short time before conveyed to him, but Ms. Acerra was not mollified but remained adamant and agitated. Lt. Sama declined to drive her to the FBI office.

With respect to Ms. Acerra's allegations, it is obvious that they are without merit. Mr. Mehlhorn's Contract, approved by the Council in public and signed by the Mayor, provided for a "paydown" at a maximum of 200 days per year for his accumulated sick and vacation days. Mr. Mehlhorn requested to exercise that option through Mr. Muscillo, who sought and received approval for the payment from the Mayor (with the knowledge and approval of the City's labor counsel). A record of the payments exists in both Mr. Muscillo's office and Mr. Mehlhorn's office, and both of Mrs. Muscillo's memos regarding these payments were copied on the City's Personnel Department. Thus, the payments were properly made, and a record made of the payment.

Because, for whatever reason, Ms. Acerra's office apparently did not receive notice of the "paydown" payments to Mr. Mehlhorn, Ms. Acerra was unaware of the payments and the concomitant need to reduce Mr. Mehlhorn's accumulated sick and vacation days. Thus, her initial inquiry to Mr. Woolley was appropriate. What made no logical sense thereafter, however, was her pursuit of the issue with the Police Department after the matter was explained to her by Mr. Woolley and her possible pursuit of the matter with the FBI after the facts had been explained to her at length both by Mr. Woolley and Lt. Sama.

There is a concern with Ms. Acerra's reaction to this and a prior situation involving a City police officer. Accordingly, I suggest that Ms. Acerra be made aware of the services of the City's EAP Counselor. In addition, we recommend that the City Administrator speak with Ms. Acerra about the City's chain of command and the impropriety of confidential information in the Personnel Department being discussed with other City employees outside of that Department.

Cc: Mayor Adam Schneider

Julie Acerra, Personnel