

CITY OF MANISTEE HOUSING COMMISSION

Work Session
March 8, 2010

A work session to review and update the Administrative Personnel Policy was held on Monday, March 8, 2010 in the Manistee Housing Commission Office Conference Room at 4:00 p.m.

Members Present: President Dale Priester, Vice-President Doug Parkes, Treasurer Elbert Purdom, Commissioner Donna Korzeniewski and Commissioner Harvey Good.

Members Absent: None

Also Present: George Saylor, CMHC Attorney, Clinton McKinven-Copus, Executive Director/Commission Secretary, Brandon Jensen, Deputy Director/Project Manager and Lorna Perski, Housing Coordinator.

Clint provided a draft copy of the City of Manistee Housing Commission Employee Policy Manual and a copy of a letter from George Saylor of Gockerman, Wilson, Saylor & Hesslin, P.C., Attorneys at Law. George's letter included comments regarding items in the proposed City of Manistee Housing Commission Equal Employment Opportunity and Affirmative Action Plan, Employment Application and proposed City of Manistee Housing Commission Employee Policy Manual. Clint forwarded George's letter to our consultant who is working on the new policies. George's questions are in black and the consultant's responses are in red on the letter. The consultant is with the Nelrod Consortium which is a recognized group that works with HUD Policies. They reviewed our current Personnel Policy to see if it was in line with what we needed for HUD and updated anything that was necessary. For the EEOC and Affirmative Action we fall under Federal Agency Guidelines. We can have the Affirmative Action Policy within our Personnel Policy or separate, but HUD wants us to have one. Another Policy is FMLA which most employers of our size are not subject to, however, we are public employees and because we are public we are subject to FMLA. These are some of the things you will see in George's questions, and the consultants responses. George began walking through his points in the letter:

- Non-union employees are at-will employees. George said that if we are granting employees certain benefits and establishing certain procedures that an employer has to follow when they are discharging an employee, or dealing with an employee in any matter, can that employee then go back and look at this policy manual and say it wasn't followed in my case. Some of the language says that the commission will consider employees past behavior and their contributions to the agency when considering dismissal. George also felt that with a policy of this length the potential for a wrongful termination suit is heightened. He said the limited increase in the risk of this policy is outweighed by the benefit of attracting and retaining good employees, since they can address issues with the employer. Some of the items in the policy are required because of HUD. Typically if a client of George's has nine employees, he would try to talk them out of a policy this long. He would instead have them sign a one piece document which says they are an at-will employee and they could be terminated for any reason or no reason at all.

- The EEOC and the American with Disabilities Act are rights that everyone has, and if you violate them you will get sued whether it is in the policy or not. We are more concerned about what is not spelled out in the law. As far as overall drafting it was a very good job. Some things in the draft have been changed. It is not ambiguous where there can be multiple meanings.
- On the first page was George's philosophical question. Saying you are not going to discriminate against any individual regardless of race, gender, etc. and then saying later that you may adopt a policy that allows you to do that. Clint said that there is a good question at the bottom of George's comments. Do we have to go back and review our hiring for prior discrimination? The consultant did not answer that question, or the question of whether we have to submit our Affirmative Action Policy to the Civil Rights Commission. George said he believes that is required, but there may be some exemption for HUD. If an employer is going to adopt a policy that says I am going to prefer someone who is African American we would need to find out if there was any past discrimination first.
- George talked about some changes to the language regarding convictions for driving under the influence in Michigan in the Employment Application. George said that in an employment application you do not want to ask questions that are discriminatory, you want to stay away from them. If you have an Affirmative Action Policy do we want to have that identified in the employment application or not. It could be a separate page with the application. We don't need to worry about that now, unless we had past discrimination. Donna asked if this was a standard HUD Employment Application. Clint said that the consultant told him that he should have an Employment Application on file for everyone that is employed according to HUD Regulation. He does for maintenance, but has only resume's for administration.
- George asked Clint how much we want to include in the policy as benefits or rights when people are at will employees. The more you have in here the greater the danger is that someone will say that they have been wrongfully terminated.
- On page 4 of the letter it addresses the Sexual Harassment Policy and General Harassment Policy. These policies are needed and there was no problem with them. The Drug and Alcohol testing section is on page 8 of Policy Manual. It talks about testing, and says that when a person's alcohol level reaches .04% we can fire them. George's question is why would you allow them to work with any alcohol level, the .04% should be 0. The better policy is a no tolerance policy. All drugs also list termination at a certain percentage level in the employee's system. We should be able to say to an employee that there are concerns and that they need to submit to a urine test. That is good to have in this manual, but the rest should be zero tolerance unless they are prescription drugs. The consultant said that these numbers are considered a zero tolerance policy. Clint said he told her they actually need to be zero. Donna asked if someone has to be trained in reasonable suspicion before you can tell someone that they need to submit to a drug test. She said at the school that she had to get trained and train the employees as well. George said that there is a section on reasonable suspicion. George said he would check to see if there is some kind of education required for employees. Donna said that a person could say that they didn't know they couldn't drink last night because there would still be some alcohol in their system the today.

- In Section 3, paragraph H on page 12 there is a description of a 90-day training/evaluation period. The language in this section concerns George. While the various documents the employee receives indicate that all employees are "at-will" employees, this section seems to describe a probationary employee. Since all employees are "at-will" employees, he is not sure why you need any type of evaluation period. What does the employee get, is it harder to get rid of the employee after the probationary period. Clint said that during this time the employee does not accumulate vacation time, sick time, etc. George said that could be in a simple paragraph and leave out the rest of this section. George sees some risk in this section of the policy. The consultant said in response that this section could be dropped. George also said that the policy said that people that are discharged may be considered for reemployment, does this mean that we would do that first before hiring anyone else to fill the position. Clint said that we would just follow the same procedures we do with all other applicants. Would someone feel that they could make a claim if they were not reviewed before a new person was hired. George said he thought this section would not be required.
- Section 3, sub-section N and subsection O on performance evaluation and discipline of employees. Section 1c on page 23 we could get rid of according to the consultant. George said we shouldn't have to demonstrate anything before discharging an employee. The policy says that for whatever reason we fired you, we are going to keep it confidential. George feels that should be removed from the policy. Under Termination Section on Page 24 before you discharge someone for any reason consideration should be given to their length of employment and contributions to the agency. The consultant says objectivity is the key and this is not objective. There are questions we need to ask the consultant. Clint said that he told George that HUD never fires anyone they only reassign them. The board said that we should strike this section. Clint said that in striking these sections he will first check to make sure HUD does not require any of these provisions be in the policy. In general with the discharge and termination section George's major concern is that setting a policy requires you to follow it. If you are prepared to follow all of these procedures, that is fine. The consultant said that when these policies are informal or unpublished it can subject the agency to exposure to liability for breach of implied contract, promissory estoppels and other claims if they're not consistent, fair and applied uniformly. That is the claim that an employee through words or written document has a contract of employment. The consultant said by having it in writing you can uniformly apply the rules. The board said they should have language that said the board could make a final determination on a case if the employee is not satisfied with the director's determination when terminating them.
- Under section 5 Financial Compensation. This requires undertaking studies to determine if our compensation is in line with agencies of a similar nature. Clint said we get the studies through Nelrod. The consultant said HUD no longer requires the salary studies but Clint has to do them every couple years to be in compliance with HUD. Donna asked why we need to put it in the policy anyway, even if we do check it out. Clint said we should eliminate this in the policy and he will do the studies anyway. He feels we should have a section on overtime, comp time, etc. in the policy. Clint said there is language in the CFR that the wages need to be in line with other Housing Authorities. Doug said that it is fine that we do the study, but it still doesn't need to be

in the policy. Clint said maybe we should take the travel part of the policy out and use that alone or make it a separate policy, HUD is picky about this policy.

- Section 6 describes employee benefits and leave. FMLA usually only applies to employers with 50 or more employees. The consultant said public agencies are subject to the FMLA Act. We fall under the city and under the state in some instances, so we probably are subject. Clint said one of the items that we discussed and removed when we reviewed the existing policy, she had put back into the policy. One of the items is on page 46, the voting leave. If you can't get to vote during non-working time we have to give them time to go vote during work hours. The only reason this would be necessary is if you are working overtime on that day. Clint will ask her if it needs to be in the policy if not they will remove it.
- George asked if we have an Administrative Leave Policy. Clint said it is on Page 41, and he has trouble getting everyone to take their vacations. Item 3c page 48 addresses carried over vacation which cannot accrue to more than 30 days, anything over that would be lost.
- George asked why we have a section on Worker's Compensation. Donna said that should be in there so people are informed. Donna said there should be a form that says you have received, read the policy and understand it. George said that he doesn't understand why you would have to notify anyone that they can apply for Unemployment Benefits either. We should remove this if possible.
- George asked if everyone read the Educational Assistance Program. Clint said this is a new introduction to our policy and is probably not a requirement so it could come out of the policy. George said that if we deny it to anyone, they could say you have denied it to them but not everyone. Donna said that we should use the word "shall" when saying that Sick Leave shall (Not should) be used along with FMLA Leave.

George wants to ask the consultant some more questions, and Clint will have the updated version on the agenda at the next meeting to see if the board wants to adopt the policy at that point. We have items such as computer use and grooming in the policy. Doug said that stand alone policies could be created for some of these items, which would be better than including them in the Personnel Policy.

There were no additional policy issues to discuss, the work session adjourned at 5:10 p.m.



Dale Priester
Commission President



Clinton McKinven-Copus
Executive Director
Commission Secretary