



Hamilton

CITY OF HAMILTON

**CITY MANAGER'S OFFICE
Audit Services Division**

TO: Chair and Members Audit, Finance and Administration Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 10, 2012	
SUBJECT/REPORT NO: Audit Report 2011-10 - Human Resources (HR) - Grievance Processes (AUD12007) (City Wide)	
SUBMITTED BY: Ann Pekaruk Director, Audit Services City Manager's Office	PREPARED BY: Ann Pekaruk 905-546-2424 x4469
SIGNATURE:	

RECOMMENDATION

- (a) That Report AUD12007 respecting Audit Report 2011-10, Human Resources (HR) – Grievance Processes, be received;
- (b) That the Management Action Plans as detailed in Appendix “A” of Report AUD12007 be approved; and
- (c) That the City Manager be directed to instruct the appropriate staff to have the Management Action Plans (attached as Appendix “A” to Report AUD12007) implemented.

EXECUTIVE SUMMARY

The 2011 Internal Audit work plan approved by Council included an audit of HR – Grievance Processes. Procedures for the identification, documentation, investigation and final resolution of problems were reviewed as well as the administration and management of the processes and actions of HR. Related litigation costs were also analyzed.

The results of the audit are presented in a formal Audit Report (2011-10) containing observations, recommendations and management responses. Audit Report 2011-10 is attached as Appendix “A” to Report AUD12007.

Alternatives for Consideration – Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

- Financial:** Completeness and accuracy of reported cost information will enable Council and management to make informed strategic and operating decisions.
- Staffing:** The implementation of some of the recommendations will require staff resources who have been indicated as already heavily involved in the day-to-day operations.
- Legal:** Retention of adequate documentation and written proof of due diligence will support the City's defence should the grievance proceed to mediation, grievance or court.

HISTORICAL BACKGROUND (Chronology of events)

The audit was scheduled as part of the 2011 Internal Audit work plan approved by Council. The audit fieldwork was completed in January 2012. The results of this audit are attached as Appendix "A" of Report AUD12007.

The Audit, Finance and Administration Committee receives and approves final audit and review reports as part of its responsibilities for the oversight of governance and control.

POLICY IMPLICATIONS

- Collective Agreements
- Provincial legislation such as *Ontario Labour Relations Act, Employment Standards Act, 2000*
- Various corporate policies such as Code of Conduct for Employees, Work Accommodation Policy

RELEVANT CONSULTATION

Appendix "A" to Report AUD12007 includes action plans provided by management of Employee and Labour Relations, Human Resources Division of the City Manager's Office.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Within the Employee and Labour Relations section's mandate of providing strategies that support optimal employee and labour relations in a fiscally responsible manner, it provides a framework to support the identification, documentation and resolution of employee complaints and grievances in a prompt, fair, equitable, consistent and efficient manner.

Each City of Hamilton employee has the right to file complaints with their supervisor. Complaints arise due to a difference with respect to the interpretation, application, administration or alleged violation of a provision of a collective agreement, government labour laws, an agreed upon past practice or City rules, policies and procedures. If a unionized employee feels the complaint is not resolved to his/her satisfaction, the employee, through the union, has the right to file a written grievance with his/her department. The specific grievance process and related timelines are specified in each separate collective agreement. This audit assessed complaints and grievances received by Employee & Labour Relations for compliance with legislation, collective agreements, policies, procedures and guidelines.

In 2011 (January 1 to November 22), 534 grievances were filed as compared to 467 in 2010. By department, Public Works, then Community Services and Emergency Services account for 88% of the 534 grievances with overtime, discipline, wages and promotion issues (in this order) being the highest complaint categories.

As at November 22, 2011, the Labour Relations Information System (LRIS) indicated that of the 534 grievances filed in 2011, 402 were still active.

A formal Audit Report (2011-10) containing observations, recommendations and resulting management action plans was issued. Fourteen recommendations were included in Audit Report 2011-10 (attached as Appendix "A" of Report AUD12007). Some of the recommendations made are as follows:

- Creation of union-specific forms for grievance files to monitor deadlines.
- Summary of necessary documentation required for inclusion in grievance files.
- Development and collection of a form for grievances settled at the department level.
- Management and review of grievance information in LRIS.
- Reporting of complete costs (mediation, arbitration, legal counsel, settlements) related to grievances.
- Efficient use of technological resources to eliminate duplication of effort.

Management and staff have agreed to implement the recommendations. Specific action plans can be found in the attached Audit Report.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not applicable.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability,
3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development,
6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative and Respectful Organization

- ◆ An enabling work environment – respectful culture, well-being and safety, effective communication.

Financial Sustainability

- ◆ Delivery of municipal services and management of capital assets/liabilities in a sustainable, innovative and cost effective manner.

APPENDICES / SCHEDULES

Appendix “A” to Report AUD12007: Audit Report 2011-10

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**CITY OF HAMILTON
INTERNAL AUDIT REPORT 2011-10
HUMAN RESOURCES (HR) - GRIEVANCE PROCESSES**

#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
1.	<p><u>Grievance Deadlines</u></p> <p>Collective agreements outline timelines and deadlines which govern the grievance process. For instance, grievances must be filed within a specific number of days from the incident date giving rise to the issue for the grievance to be valid. Several deadlines may be associated with a single grievance depending on how far the grievance proceeds through the process.</p> <p>Deadlines were surpassed by both the Unions and City in 12 of 34 (35%) and 15 of 24 (44%) grievances tested, respectively. In several instances, the Union and City both surpassed deadlines for the same grievance. In all cases, no agreed upon extensions were documented in the files.</p> <p>Internal Audit could not assess actual timelines in 19 of 34 (56%) grievances tested due to not knowing the incident date or when correspondence was received from the Union as Labour Relations did not stamp or note the receipt date on the correspondence.</p> <p>In instances where the grievance date was noted by Labour Relations, it was the date on which the Union representative signed the grievance form rather than the receipt date. This skews the timeline monitoring.</p> <p>By not accurately monitoring deadlines, the City may incur settlement, legal, mediation and arbitration costs for grievances that should not have been entertained. Also, surpassed deadlines cannot be used as a defense in denying grievances in mediation and arbitration hearings.</p>	<p>That Labour Relations staff create union-specific forms for grievance files to monitor deadlines. This information can be used to assess the Section's performance in handling grievances.</p> <p>That Labour Relations staff record in the grievance file the date on which correspondence is received from Unions.</p>	<p>Agreed. Effective immediately, timeline extensions agreed to by the parties will be formalized, in writing, with a copy of such agreement to be included in the grievance and/or file.</p> <p>Agreed. Effective immediately, all grievance forms will be date stamped by Human Resources/Labour Relations (HR/LR) upon receipt. A copy of the date stamped documentation shall be kept in the grievance and/or arbitration file.</p> <p>While it is unlikely that the City would be at risk for incurring legal, mediation or arbitration costs as a result of surpassed timelines, it is agreed that tracking timelines would provide for a more efficient and tighter process.</p>

**HUMAN RESOURCES (HR) - GRIEVANCE PROCESSES
JANUARY 2012**

#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
2.	<p><u>Inadequate Documentation</u> Grievance documentation is not consistent, complete or sufficient in many cases.</p> <p>In 14 of 17 (82%) grievances tested that were heard or settled at the department level, files did not contain the department response, minutes or supporting documentation. Three of ten (30%) settled cases did not document the settlement terms. Three of five (60%) withdrawn grievances tested were not accompanied by a formal written withdrawal from the Union.</p> <p>Other examples of inadequate documentation were observed in selected files, the more pervasive ones being lack of:</p> <ul style="list-style-type: none"> • Witness and management statements and other evidence to support Labour Relations' position and prove adequate due diligence occurred; • Meeting minutes in the paper file; and • Requests from the Union to escalate the grievance through the process. 	<p>That Labour Relations create and distribute a form to all department staff which summarizes required information in regard to grievances settled at the department level. Labour Relations Officers should review and initial these forms before grievances are closed in the database.</p> <p>That Labour Relations determine necessary documentation that is required in a grievance file and communicate this as part of a procedure, guideline or checklist. Staff should then be trained in this regard.</p>	<p>Agreed. Effective Sept. 1, 2012, any grievances heard at Step 1 must be formally recorded on a form issued through Labour Relations (LR). Such forms will be developed and distributed to operating departments for completion at the Step 1 Level. The form will require the Manager to provide full details of the matter, including settlement details and associated costs (if any). These forms will be returned to Labour Relations for recording purposes only.</p> <p>Agreed. Effective Sept. 1, 2012, a "check-list" form will be implemented for all grievance files. This "check-list" will itemize all particulars to be included for proper completion of a grievance file. This form will also include entry of settlement related costs for said grievance and/or arbitration. Once reviewed and completed, the appropriate Labour Relations Officer (LRO) will sign-off on the grievance / arbitration file.</p>

**HUMAN RESOURCES (HR) - GRIEVANCE PROCESSES
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#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
2.	<p><u>Inadequate Documentation (Cont'd.)</u> Lack of monitoring at the department level increases the risk that grievances are not resolved in a consistent manner and unfavorable precedents are set which may result in higher settlement costs. Labour Relations may not identify training opportunities to assist departments in handling complaints and grievances.</p> <p>Documentation must be complete to support the City's defense should the grievance proceed to mediation or arbitration. It provides reference for future grievances and proves the City's compliance with collective agreement provisions.</p>		

**HUMAN RESOURCES (HR) - GRIEVANCE PROCESSES
JANUARY 2012**

#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
3.	<p><u>Inaccurate Database Information</u></p> <p>Grievance information compiled in the Labour Relations Information System (LRIS) database is not accurate.</p> <p>The level (i.e. department, Labour Relations, mediation, arbitration) or status (i.e. active, closed, settled, withdrawn) of grievances reported in LRIS was not accurate for 11 of 34 (32%) grievance files tested.</p> <p>In several instances, legal, mediation and arbitration costs were incorrectly classified as settlement costs, assigned to the wrong grievance file, inaccurately allocated between groups of grievances or not captured in LRIS, at all.</p> <p>LRIS automatically assigns the next sequential grievance number when a grievance is entered in the database. This application control provides assurance that information in the database is complete. Internal Audit discovered one sequential grievance number that was deleted in its entirety from the database. Although Labour Relations staff identified the grievance as a duplicate entry, circumventing application controls increases the risk that grievances in the database are not complete.</p> <p>Currently, information from LRIS is used to compile data reported to the General Issues Committee (GIC) on an annual basis. As a result, data contained within LRIS must be accurate to aid in strategic, operating and budgeting decision-making.</p>	<p>That Labour Relations develop a better process for entering and reviewing grievance information in LRIS. For example, Labour Relations Officers may be trained to enter information in LRIS which is reviewed by the Labour Relations Analyst when the grievance file is compiled.</p> <p>That Labour Relations work with PeopleSoft programmers to create a specific grievance category, level or status to capture erroneous or duplicate grievances rather than deleting the entire record from the database.</p>	<p>Agreed, in part. Effective immediately, all grievance files shall be housed in the "corporate" LR office. This will help avoid lag time in recording data into LRIS. Having the LROs enter information into LRIS is not recommended as this process may lead to inaccuracies and inconsistencies that will ultimately have an adverse impact on LR Reporting.</p> <p>Agreed. Effective immediately, a PeopleSoft program has been implemented that flags an "error" in the event there is an entry for the same grievance into LRIS. Consequently, there will no longer be any duplication of entries. As well, there will no longer be a need to delete (inaccurate) entries from the system.</p>

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#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
4.	<p><u>Training Workshop Availability</u></p> <p>The Labour Relations training initiative, <i>Essentials of Managing in a Unionized Workplace</i> was offered to non-unionized managers. This training program consists of the following five workshops:</p> <ul style="list-style-type: none"> • Introduction to Labour Relations (prerequisite for all other workshops); • Grievance Handling; • Investigations; • Performance Management and Progressive Discipline; and • Labour Management Meetings, Relationship Building and Negotiations. <p>Close to two years after the launch, training has yet to be extended to unionized managers.</p> <p>Fourteen workshops were held in 2010, consisting of nine introductory and five grievance handling sessions. The number of workshops decreased to one grievance handling and four performance management sessions in 2011. The introductory workshop was not offered in 2011. The investigations and negotiations courses are yet to be provided.</p> <p>There is no indication in Labour Relations' strategic or operational plans of an action plan to roll out training to all staff.</p> <p>Lack of training increases the risks of grievances not being handled correctly, resolved in a consistent manner and setting unfavorable precedents which may result in a higher number of grievances and settlement costs.</p>	<p>That Labour Relations develop a realistically achievable action plan to roll out <i>Essentials of Managing in a Unionized Workplace</i> training to all non-union and unionized supervisors and managers. The action plan should outline responsibility for accomplishing tasks, related timelines, performance measures and required resources.</p>	<p>Agreed. Implementation of final module of <i>Essentials of Managing in a Unionized Workplace</i> (Collective Bargaining and Attendance Management) will be introduced by Sept. 30, 2012. Effective Jan. 1, 2013, LR will offer a modified version of the Training Program (geared towards unionized managerial staff within C1041 union group). Overall completion of the secondary training program for all four modules is expected to be finalized by Dec.31, 2015. LR will continue with on-going delivery of the training program for all non-union management employees.</p>

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#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
5.	<p><u>Completeness and Accuracy of Reported Costs</u> The <i>Labour Relations Grievance Activity Reporting & Analysis</i> report presented to the GIC on August 9, 2011 reported costs incurred for mediators, arbitrators and legal counsel. However, in Internal Audit's testing, it was noted that grievance settlements paid to the grievor were not included as costs.</p> <p>The Labour Relations (LR) Cost Spreadsheet is used to accumulate legal, mediation and arbitration costs to be reported in the GIC report. Expenses of \$645,167 have been incurred for 2011. Approximately 48% of these costs do not specifically pertain to grievance activity. The more significant unrelated costs include fees associated with the Carpenters' litigation against and collective bargaining with the City and non-union termination fees. Only costs associated directly with grievance activity should be included in the GIC report.</p>	<p>That Labour Relations track all settlement costs in LRIS. This information should be included in the annual grievance activity reported to GIC.</p> <p>That Labour Relations include only costs associated with grievances in their annual GIC report.</p>	<p>Agreed. Once Step 1 forms are introduced by Sept. 1, 2012, all settlement costs will be included in the LRIS database. Such information will also be reported in an annual Grievance Activity Report to the General Issues Committee (GIC). As well, all settlement costs arising from grievances and/or arbitration activity shall be recorded and reported on an annual Grievance Activity Report to GIC.</p> <p>Agreed. All non-grievance and non-union related costs (e.g. legal expenses related to Carpenters' litigation and non-union terminations) will be recorded and reported on separately in an annual report to GIC.</p>

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#	OBSERVATIONS OF EXISTING SYSTEM	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
5.	<p><u>Completeness and Accuracy of Reported Costs (Cont'd.)</u></p> <p>Internal Audit also identified formula and calculation errors as well as invoices that were not captured in the LR Cost Spreadsheet. Even though these errors would be identified as part of the annual reconciliation with PeopleSoft, the identification and correction of errors is not timely.</p> <p>Cost information must be accurate and complete in order for management and Council to make informed strategic, operating and budgeting decisions throughout the year.</p>	<p>That Labour Relations reconcile grievance-related costs to those reported in PeopleSoft on at least a quarterly basis.</p>	<p>Agreed. However, the effort required to reconcile these two systems will be very time consuming and onerous. Changes are required to methods used in recording these costs in the PeopleSoft system in order to facilitate the reconciliation. Staff will design a system going forward that will reconcile the LRIS with the PeopleSoft system. Anticipated to be implemented by January, 2013.</p>
6.	<p><u>Inefficient Use of Resources</u></p> <p>Legal, mediation and arbitration costs are recorded in both LRIS and the LR Cost Spreadsheet by two different staff members. Information pertaining to the grievance, which is already inputted in LRIS, is manually entered again in the LR Cost Spreadsheet. LRIS has the ability to capture the same invoice details and notes which are manually entered into the LR Cost Spreadsheet.</p> <p>Recording all information in LRIS and building reports to extract this information for reporting and reconciliation purposes will eliminate duplication of effort and make more efficient use of human and technological resources.</p>	<p>That Labour Relations record all legal, mediation and arbitration cost information in LRIS and discontinue use of the LR Cost Spreadsheet.</p> <p>That Labour Relations work with Information Systems to develop an LRIS report to extract grievance and cost information required for reporting and reconciliation purposes.</p>	<p>Agreed. Effective immediately, use of the Excel spreadsheet recording for legal and arbitration expenses will be eliminated. Also see Management Action Plan #5 above.</p> <p>Agreed. Staff will immediately undertake a review of grievance and cost information to be included in the LRIS Report. All previously recorded grievance related costs on Excel spreadsheets will now be incorporated into LRIS.</p>

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#	<u>OBSERVATIONS OF EXISTING SYSTEM</u>	RECOMMENDATION FOR STRENGTHENING SYSTEM	MANAGEMENT ACTION PLAN
7.	<p><u>Goals and Performance Measures</u></p> <p>Labour Relations' overall objectives are to reduce grievances, improve labour relations and control costs. Labour Relations' strategic and operational plans do not contain a statement of objectives, specific goals, action plans or performance measures.</p> <p>In the <i>Labour Relations Grievance Activity Reporting & Analysis</i> report presented to the GIC on August 9, 2011, Labour Relations committed to working closely with operating departments as well as other human resources areas to determine effective strategies for better managing matters related to promotion, over-time and discipline, some of the major reasons for grievances. Although this goal was not explicitly communicated to staff, Labour Relations Officers provided evidence of activities throughout the year to try managing grievances within specific departments. These initiatives are not formally tracked or monitored. The ability to achieve and report on goals may be difficult if management does not track results.</p> <p>Goals, performance measures, monitoring and feedback are required to ensure Labour Relations initiatives are constructive and in line with the Corporate Strategic Plan.</p>	<p>That Labour Relations create specific strategic and operational goals to guide activities in the department. Goals should be supported by an action plan outlining responsibilities for accomplishing more specific tasks, related timelines, performance measures and required resources.</p> <p>That Labour Relations adopt additional performance measures that assess the effectiveness and efficiency of complaint and grievance handling. Measures that may be considered include:</p> <ul style="list-style-type: none"> • Number of active, withdrawn, settled and closed grievances as a percentage of grievances received; • Number of grievances settled by a department, Labour Relations, mediation and arbitration as a percentage of settled grievances; • Average length of time and legal / settlement costs incurred to settle grievances; • Number and percentage of employees trained in grievance processes; and • Percentage of participants who were satisfied with the quality of training provided. 	<p>Agreed. Operational specific recommendations and associated action plans from the LR Activity Report shall be included as a standing item on all monthly LR team meetings.</p> <p>Agreed, in part. Performance measures such as average time for closed files, settlement costs, training satisfaction ratings, percentage of training activity, etc. shall be incorporated, effective immediately.</p> <p>However, in many cases, grievances remain "dormant" since there has not been any request for further activity or action by the Union on a file. To draw attention for purposes of reporting settled and closed grievances may be ill advised as it may provoke unnecessary and costly litigation.</p>