

CITY OF DURHAM

To: Thomas J. Bonfield, City Manager
From: W. Bowman Ferguson, Deputy City Manager
Regina Youngblood, Human Resources Director
Don Greeley, Director of Water Management
Date: January 12, 2016
Re: Administration Response to Durham Human Relations Commission Report

On November 2, 2015, the Human Relations Commission came before the City Council to present a report titled "Recommendations for Water Management Department." The City Council received the report and referred it to the City Manager for review and response. The report contains nine recommendations or requests, most of which advocate for revisions to existing city policies and/or practices. This memorandum addresses and responds to each recommendation.

1. *"[The Human Relations Commission] recommends that the Water Management Department recruit and prepare internal candidates within the Water Management for supervisory positions within the Water Management Department. When supervisory or management positions become available within the Water Management Department, the Water Management Department should first open the position to Water Management internal candidates only, prior to searching externally. The Water Management Department should recruit and prepare internal candidates for supervisory positions using a combination of training techniques, including work release for professional development or credentialing, on-the-job experience and coaching from mentors and peers. It should also make a concerted effort to build interest in the supervisory roles, addressing the barriers that might prevent individuals from pursuing this career path. These efforts may encourage increased diversity within management. "*

Response:

Currently, when there are internal candidates within Water Management, non-entry level positions through mid-management level positions are advertised internally. The department advertises senior level positions externally to help attract a diverse applicant pool. Since 2010 the department has had 137 internal promotions of which 56.2% (77) were African-American, 39.4% (54) were white, 3.7% (5) were Hispanic and 0.7% (1) were other minorities.

The department has several internal training programs/opportunities designed to help prepare internal candidates for supervisory positions. These programs are:

1. Core Leadership
2. Advanced Leadership
3. University of Water Management
4. How to Interview (added Fall 2015)

Core and Advanced Leadership Training

These two courses were developed in collaboration with Continuing Education staff at Durham Tech and were designed to supplement the City's Supervisory Training courses. In addition to filling gaps in existing City training, these courses are tailored to the specific issues and concerns within Water Management department. The instructor for these courses is an organizational development consultant with Durham Tech.

The Core Leadership course consists of 5 half day trainings which cover the following modules:

1. Building Trust Under Pressure
2. Hallmarks of Supervisory Success
3. Providing Constructive Feedback
4. Developing Team Agility
5. Resolving Conflicts within Your Team Plus People Map

Offered at least two times each year, this course is also provided for new supervisors as well as those employees who are interested in becoming supervisors. Thus far 144 employees have completed the 8 classes held.

The Advanced Leadership course also consists of 5 half day training events covering the following modules:

1. Developing Others
2. Addressing Emotions at Work
3. Delegating for Shared Success
4. Correcting Performance Problems
5. Activating Change

The only prerequisite to attend this course is that employees must have completed the Core Leadership program. This course is offered on demand; to date there have been 2 sessions and a total of 44 employees have completed the course.

University of Water Management (UWM)

UWM is open to all department employees and other City employees interested in learning about how the department delivers water and sewer services to Durham residents. This training consists of 11 half day sessions covering all aspects of the department. Presentations and facility tours are given to help our employees better understand the importance of their role in the delivery of services. Another benefit is the enhanced communication fostered between co-workers in their divisions and throughout the department. UWM is offered in the spring and fall of each year and our seventeenth class graduated on December 15th.

How to Interview training

Based on feedback from employees, a two-part training session was offered in the fall of 2015 on a first-come, first-serve basis to help employees better prepare for the interview process. The training covered various aspects which included helping candidates understand the nuances of promoting their strengths, knowledge and abilities during the interview process. Additionally, the training covered basic interviewing do's and don'ts and

putting ones' best foot forward beginning with the application process and addressed topics such as appearance and body language. Instructors shared what interviewers are looking for and covered typical questions that would likely be asked during an interview. The department anticipates offering this training a minimum of once per year.

Certification Training

The Department is committed to training and retaining employees for the highly specialized positions that required certification. A majority of positions within the department require state certification. There are many different types of certification including plant operations (water and wastewater), distribution and collections systems, cross connection, meter testing and maintenance. Obtaining state certification requires various combinations of knowledge and experience and requires passing an exam. In addition, to maintain certification employees must earn professional development hours annually. Classes and exams are offered three times during the year at various locations across the state. The department sends employees to the schools and training events and pays for exam fees. The department encourages all employees to attain the highest level possible and a number of employees currently have multiple certifications.

Utility Management Training

The department has hosted two sessions of the Public Utilities and Waterworks Management Institute (15 employees each time) and one session of the Advanced Institute (20 employees). Attendance is not restricted to those in supervisory positions; employees that have completed Core Leadership and Advanced Leadership are welcomed to attend. These intense 3 ½ day courses provide 20 continuing education hours and focuses on utility (water and sewer operations) management as well as employee development. These courses are sponsored by the NC American Water Works Association – Water Environment Association and are conducted by nationally respected facilitators.

2. *“The City Council should actively reach out to and encourage females to apply to and work in the Water Management Department. Appendix 2 from the January 2, 2015 Memo from R. Youngblood indicates that only 15% of the Water Management Department is female, and this is significantly less than the overall demographics of the city employee workforce which is 26%.”*

Response:

In order to improve the diversity of applicant pool the department has worked with Human Resources Department staff to improve its diversity recruitment strategy. The department will be working closely with the Talent Management & Acquisition Manager in Human Resources to establish a recruitment plan for advertised positions. The recruitment plan will include expanding the number of websites on which positions are posted, as well as expanding the list of professional organizations (Society of Women Engineers, Association of Women in Science, IM Diversity, etc.) contacted. For certain positions, professional recruiting agencies may also be used.

The water and wastewater industry has traditionally been male dominated and Water Management's applicant pool has been consistent with the industry trend. The

department's two largest divisions, Water & Sewer Maintenance and Plant Engineering and Maintenance, makeup 58% (192 of 333 FTEs) of Water Management and have only rarely had women applicants for positions within these divisions. Recently, the department has seen a slight increase in female candidates for plant operator positions. Two women operators were recently hired, bringing the total to three women operators. Plant operations comprise 20% (66 of 333 FTEs) of Water Management.

3." *[The Human Relations Commission] recommends Racial Equity training for Water Department employees in management positions. [The Human Relations Commission] recommends there be accountability and performance measure developed and implemented to measure the effectiveness of the Racial Equity training. City Council shall work with the city manager to ensure the training took place and require a data report of the demographics of the Water Management Department to be shared one year from receiving this report. "*

Response:

As a result of the City of Durham's own review of Water Management, the City's Human Resources Department recommended unconscious bias training for all Water Management employees. We believe that this training will be sufficient to respond to the HRC's recommendation.

On June 19, 2015, the City of Durham issued and advertised a Request for Qualifications (RFQ) for Unconscious Bias Training. On November 2, 2015, the Durham City Council granted approval for the City Manager to execute a services contract with JJA Consultants, a company who has previously completed similar consulting work for a Water Department in the District of Columbia.

JJA Consultants will provide unconscious bias training for all employees in Water Management. Additionally they will conduct separate unconscious bias sessions for supervisors to explain how bias could impact decisions related to hiring, promotions, discipline and performance.

A kickoff meeting with JJA Consultants is scheduled for January 2016. The information gathering and training covered by this engagement will take place over approximately four months.

This will be a required training for all Water Management employees. Human Resources, with assistance from the consultants, will track course completion. A report of the demographic makeup of the Water Management Department can be shared at any time upon request. Water Management employees who fail to complete this required training will be subject to disciplinary action.

The Human Resources Department will work with JJA to develop a training module that can be replicated for delivery to new hires in Water Management as well as for other departments and new hire populations. Additionally, all City of Durham employees are required to take Diversity and Inclusion training every three years.

The City of Durham has an Equal Employment Policy and an Anti-Harassment Policy to guard against discrimination and retaliation for reporting acts of discrimination and harassment.

All employees, regardless of their positions, are covered by and are expected to comply with these policies and to take appropriate measures to ensure that prohibited conduct does not occur. Any employee who feels subjected to unlawful harassment in the workplace is obligated to promptly report this information in accordance with the procedures provided in policy.

4. *"In addition to reviewing proposed disciplinary actions by the Water Management Department, [The Human Relations Commission] recommends that the Human Resources Department also review hiring and promotion decisions by the Water Management Department (including a review of the racial and gender make-up of the applicant pool)."*

Response:

All new employee and promotional hires are already routed through and approved by Human Resources. Ethnicity and Gender information for the applicant pool is captured and collected in the applicant tracking system and viewable only by Human Resources. The ethnic categories are: American Indian or Alaskan Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, White or Caucasian, Multi-Racial, Other, Unknown. Analysis comparing new hires and promotions to the applicant pool and talent pool is completed periodically on a citywide basis. Any concerns resulting from this review are provided to the City Manager.

A copy of Water Management's Diversity Recruitment Plan is attached.

5. *"[The Human Relations Commission] recommends that the City develop an Employee Forum. Twelve years ago, the town of Chapel Hill created an advisory committee to the Town Manager consisting of supervisory and non-supervisory employees elected by their peers. The purpose of this committee, known as the Employee Forum, is to 1) identify ways to recognize individual worth and uniqueness of each employee; 2) identify ways for the Town to value diversity; 3) identify ways for all employees to provide input to the Town administration and provide a forum for that communication; 4) encourage a sense of community among all Town employees; and 5) assist in the communication of issues and activities affecting employees. The Forum meets monthly and has proportional representation from every department, and has issued policy statements on issues affecting employees. [The Human Relations Commission] believe that the development of a similar Forum in Durham could encourage and provide increased and consistent channels of communication between the City administration and the employees of each department. [The Human Relations Commission] hope it would also provide employees with an avenue to report job-related concerns without fear of retaliation by raising it with their elected departmental representatives. [The Human Relations Commission] hope also that such a group could build community and relationships across Departments, and provide a constructive space to raise and address issues affecting employees. More information about Chapel Hill's Employee Forum can be found here: <http://townhall.townofchapelhill.org/eforum/Files/home/purpose.htm>."*

Response:

There are many opportunities for input and engagement already afforded to City of Durham employees, including but not limited to:

- Biennial Employee Satisfaction Survey
- The Employee Relations function of the Human Resources Department

- City Manager “brown-bag” lunch meetings with any interested employee
- The Diversity Council

Additionally, the City Manager periodically meets with representatives of the City Workers Union (UE 150) to discuss items of concern.

In the case of Water Management in particular, Human Resources staff and The Deputy City Manager for Operations attended meetings with Water Management Leadership and all Water Management staff to deliver the results of the Human Resources Discipline Analysis and to discuss next steps in implementing corrective actions. Also, seven different focus group sessions were conducted by Human Resources to obtain input from Water Management employees following the recent allegations. Ultimately 44 Water Management employees chose to participate.

6. *“[The Human Relations Commission] recommends that the City increase the scope and accessibility of its grievance policy. The current Durham City grievance policy has narrowed the actions that can be grieved from its prior policy to a smaller subset of disciplinary actions. The City does provide other channels to address allegations of discrimination and sexual harassment, but this involves a separate process making it more difficult for employees to navigate. In contrast, other local jurisdictions provide more streamlined procedures allowing for an employee to grieve discrimination, retaliation, harassment, and other concerns involving working conditions or practices all through one process. Consolidating the complaint processes across areas within one document would make the process easier for employees. Past policies in Durham did this. Broadening the scope of the grievance policy to include other complaints, such as written reprimands and acts of harassment, will provide a more equitable process.”*

Response:

The Human Resources Department has reviewed best practices for the grievance and discipline policy. The department employs an experienced Employee Relations Analyst, with over ten years of experience in assessing best practices. He has consulted with various municipalities, state agencies, and UNC-Chapel Hill School of Government guidance. The current grievance process uses best practices within municipalities. City grievance policies as far back as 1998 were similar in scope. The City rightfully makes a distinction between a grievance and a complaint. This is a common practice amongst neighboring municipalities and other municipalities across the state.

The City currently provides the option for employees to make a complaint based on discrimination, retaliation and harassment using the City’s Anti-Harassment Policy (HRM 708). Grievances can be filed if an employee has been suspended, demoted or terminated (Per HRM 322).

Since May 2013, 34 grievances have been filed citywide, not including open grievances and grievances that were withdrawn. The employee hearing panel has recommended overturning or modifying the department’s initial disciplinary action 12 times. Of those 12 recommendations, six (6) have been rejected by the City Manager in favor of upholding the department’s decision. Of the 22 times that the hearing panel recommended sustaining the decision of the department, the City Manager overturned their decision three (3) times in favor of the employee. There is no evidence to support the claims of former Water

Management employees that the City Manager overturned the hearing panels' decisions in their cases.

Human Resources began a technical review process of Water Management written reprimands, demotions, suspensions, or terminations in December 2014. From December 2014 through November 2015 there have been 47 technical reviews. Of the reviews, 23 (49%) have been written warnings, 17 (36%) have been suspensions, and 7 (15%) have been terminations. Two demotions were also included in the suspension action. The largest number of disciplinary infractions has been at-fault accidents at 38%. No irregularities have been identified. To date there has been no inconsistent application of discipline by race or gender.

A copy of the December 2015 report is attached.

All managers and supervisors are encouraged to utilize a coaching and counseling method before instituting progressive discipline. Coaching and counseling is an informal method of providing feedback on performance. This method is also used to acknowledge positive contributions by the employee. Coaching and counseling is not discipline.

7. *"The City Council should examine the office of the City Manager's current ability to overturn the hearing officer's panel's recommendation arising from a grievance hearing and research best practices by other jurisdictions."*

Response:

Most municipalities allow for the City Manager or the Chief Executive to exercise ultimate authority over personnel and disciplinary decisions. This is a best practice. Not only do many surrounding municipalities utilize this model, the UNC School of Government in their best practices trainings have reiterated and confirmed that having the Chief Executive be the final decision maker is best practice. See response to recommendation number six (above) for recent results regarding the Manager's exercising of this authority.

8. *"The City Council should examine the implementation of its drug testing policy, particularly the portion of the policy based on reasonable suspicion due to racial disparities."*

Response:

There is no data that supports any racial disparity in the City's drug testing policy. The City of Durham has four types of drug testing for all current employees: random; reasonable suspicion; post vehicular or equipment/machine accident; and pre-employment (including promotion, transfer and demotion testing).

Random Testing

The random testing pools are comprised of Commercial Driver's License (CDL) holders and employees in health safety-sensitive positions. Monthly, the City is required by the Department of Transportation to randomly test CDL holders and in addition, the City provides a third party vendor a list of all other eligible employees. The third party vendor creates a statistically random sample of the eligible population to test.

Reasonable Suspicion Testing

Testing for reasonable suspicion only occurs after a supervisor completes the approved form detailing the justification for testing and presenting it to the department head or designee for approval. The Alcohol & Controlled Substance Reasonable Suspicion Checklist for Testing is comprised of factors including behavior changes, smell of alcohol or marijuana, and absenteeism.

Based on information provided by the City's vendor, over the last two years, 10 City of Durham employees from various departments were sent for reasonable suspicion testing. Five (5) resulted in a positive test. Four individuals were terminated as a direct result of Reasonable Suspicion Testing, two minorities and two non-minorities.

One individual, a minority, received discipline of 24 hours of leave without pay. This discipline was appropriate as it was related to a positive Breath Alcohol Content (BAC) test in the range of .02 to .039.

For the past two years Water Management employees comprised 30% (3) of the employees who were sent for reasonable suspicion testing. Two of the three employees had a positive result.

Post-Accident Testing

The Department of Transportation requires that all CDL holders be sent for drug and alcohol testing after an accident. Non-CDL holders are sent for testing if:

1. They are operating a vehicle/equipment and determined to be at fault for an accident involving personal injury or property;
2. If they failed to use appropriate safety equipment or procedures; or
3. When a supervisor or police officer suspects drug or alcohol may have contributed to the accident.

For the past two years, based on information provided by the City's vendor, 377 City of Durham employees from various departments were sent for post-accident testing. Seven (7) resulted in a positive test. Six of those positive results were drug related and one was alcohol related. Of those employees that had a positive result, six were minorities and one was a non-minority.

Water Management employees comprised 16% (62) of the employees sent for post-accident testing. Two employees from Water Management were terminated based on a positive result from the post-accident testing.

Pre-Employment Testing

Employees designated to be promoted, demoted or transferred receive a substance abuse test as outlined in the City's pre-employment procedures.

9. “[The Human Relations Commission] requests that the Human Resources Department provide a report to the HRC on the status and outcomes of the steps that it noted it would take beginning in December 2014.”

Response:

In December 2014, the Human Resources Department made four recommendations to address the concerns brought by the Durham City Workers’ Union:

- Conduct focus groups with Water Management staff to clarify employee concerns.
- Institute a technical review process, whereby the Human Resources Department will review proposed discipline (written and above) to ensure consistency across the City.
- Retain a consultant to develop and deliver bias training that will address identified issues within Water Management.
- Review discipline data on a regular basis to identify potential issues quickly.

Updates on these recommendations are below:

Focus Groups (Completed)

The primary goal of the focus groups was to obtain feedback and input from non-management employees and supervisors regarding how they perceive the Water Management department in terms of discipline, bias, and hiring. The initial goal was to have 60 employees (40 non-supervisors and 20 supervisory employees) participate in the focus groups. Several recruiting efforts were made, including visits by HR staff to the PWOC and Mist Lake facilities, flyers informing employees to contact the HR Employee Relations Coordinator if they would like to participate, and direct appeals to a randomly chosen representative sample of employees. Ultimately, 44 employees participated in seven different focus group sessions. A final report from the focus groups was sent to the City of Durham Executive Team and Water Management Director Don Greeley on June 15, 2015.

Technical Reviews (Ongoing)

Human Resources began a technical review process of Water Management written reprimands, demotions, suspensions, or terminations in December 2014. From December 2014 through November 2015 there have been 47 technical reviews. Of the reviews, 23 (49%) have been written warnings, 17 (36%) have been suspensions, and 7 (15%) have been terminations. Two demotions were also included in the suspension action. The largest number of disciplinary infractions has been at-fault accidents at 38%. No irregularities have been identified. To date there has been no inconsistent application of discipline by race or gender.

A copy of the December 2015 Water Management Monthly Discipline report is attached.

Bias Training (Continuing)

Please see the response to recommendation number four, above.

Monthly Discipline Reviews (Ongoing)

Monthly reports have been provided to Water Management Director, Don Greeley and the City’s Executive Team. The monthly reports outline the disciplinary actions taken each month, note any issues that may be trending, and monitor application of discipline for

consistency. To date there has been no inconsistent application of discipline by race or gender.

A copy of the December 2015 Water Management Monthly Discipline report is attached.

Acknowledgement

The Department of Water Management and City Administration take these concerns and all employees concerns related to fairness, equity, and working conditions very seriously and are committed to continuing to work with employees. Additionally, we would like to thank the HRC for their recommendations and the time they have devoted over the last 18 months. The Department of Water Management and the Human Resources Department are prepared to discuss these responses in more detail at your request.

Attachments: ***Department of Water Management Diversity Recruitment
Water Management Monthly Discipline Report (December 2014- December 2015)***