

2491

ORDINANCE No. 114314

Law Department

**

COUNCIL BILL No. 107094

The City of

AN ORDINANCE relating to personnel hired for intermittent work; adding new definitions to the Personnel Ordinance and amending SMC 4.04.030 accordingly; adding to the Personnel Ordinance new sections to specify the method for calculating the hours limit on the employment of temporary workers and to deny Civil Service Commission jurisdiction to determine the existence of exemptions from Civil Service; reiterating the legislative authority's intention to exempt intermittents from the Civil Service System and amending SMC 4.13.020, accordingly, on a two-thirds vote of the City Council.

Honorable President:

Your Committee on _____

to which was referred the within Council report that we have considered the same

COMPTROLLER FILE No. _____

Introduced: DEC 27 1988	By: GALLE
Referred: DEC 27 1988	To: Finance + Personnel
Referred:	To:
Referred:	To:
Reported: JAN 9 1989	Second Reading: JAN 9 1989
Third Reading: JAN 9 1989	Signed: JAN 9 1989
Presented to Mayor: JAN 10 1989	Approved: JAN 12 1989
Returned to City Clerk: JAN 12 1989	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

JAN 10 1989

Vote

OK

Department

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

President:

Committee on _____

was referred the within Council Bill No. _____

we have considered the same and respectfully recommend that the same:

Vote 9-0

Committee Chair

CB 107094

ORDINANCE 114314

1
2
3 AN ORDINANCE relating to personnel hired for intermittent
4 work; adding new definitions to the Personnel Ordinance
5 and amending SMC 4.04.030 accordingly; adding to the
6 Personnel Ordinance new sections to specify the method
7 for calculating the hours limit on the employment of tem-
8 porary workers and to deny Civil Service Commission
9 jurisdiction to determine the existence of exemptions
10 from Civil Service; reiterating the legislative
11 authority's intention to exempt intermittents from the
12 Civil Service System and amending SMC 4.13.020,
13 accordingly, on a two-thirds vote of the City Council.

14
15 WHEREAS, on November 6, 1978, the City's legislative authority
16 enacted the Personnel Ordinance (Ordinance 107790), which
17 defined the term "temporary employee" in language that
18 included, among others, any person "appointed to fill a
19 temporary, emergency, or short-term need . . .," without
20 making reference to personnel hired as "intermittents,"
21 or for "intermittent" work; and

22
23 WHEREAS, on December 14, 1981, the City's legislative
24 authority amended the Personnel Ordinance by adopting
25 Council Bill 101627 (Ordinance 110302) on a vote of 7-0,
26 to delete the definition of "temporary employee" and add,
27 as SMC 4.04.030-27, a definition of "temporary worker,"
28 which definition specifically included:

"persons employed in seasonal or intermittent
positions and workers employed less than an
average of twenty hours per week during a
year....,"

and declared that all "temporary workers", as so defined,
were "exempt from the provisions of ... [the Personnel
Ordinance] except as specifically provided for ... "; and

WHEREAS, on December 14, 1981, the City's legislative
authority also enacted a new Exemptions Ordinance by
adopting Council Bill 102783 (Ordinance 110329) on a vote
of 6-1, which new legislation exempted, among others,
positions of employment "required to fill temporary,
emergency, and short-term needs ..." from the provisions
of SMC Ch. 4.04 and the Personnel Rules regarding examina-
tions, selection, discipline, termination, and appeals to
the Civil Service Commission, and thereby deprived the
Commission of jurisdiction over appeals by persons occupy-
ing positions collectively denominated "temporary workers"
(a term defined in the Personnel Ordinance as, and clearly
understood to include, personnel hired as "intermittents"
or to perform work on an "intermittent" basis); and

1 WHEREAS, on June 28, 1982, the City's legislative authority
2 repealed the former Exemptions Ordinance (Ordinance
3 110329) and enacted a new Exemptions Ordinance by adopting
4 Council Bill 103082 (Ordinance 110656) on a vote of 8-0,
5 which new legislation again exempted, among others, posi-
6 tions of employment "required to fill temporary,
7 emergency, and short-term needs ..." from the provisions
8 of SMC Ch. 4.04 and the Personnel Rules regarding examina-
9 tions, selection, discipline, termination, and appeals to
10 the Civil Service Commission, and thereby deprived the
11 Commission of jurisdiction over appeals by persons occupy-
12 ing positions collectively denominated "temporary workers"
13 (a term defined in the Personnel Ordinance as, and clearly
14 understood to include, personnel hired as "intermittents"
15 or to perform work on an "intermittent" basis); and

16 WHEREAS, on November 1, 1982, the City's legislative authority
17 amended the Personnel Ordinance by adopting Council Bill
18 103288 (Ordinance 110852) on a vote of 6-3, thereby renum-
19 bering the definition of "temporary worker" to become SMC
20 4.0-4.030-30, which definition specifically included

21 "persons employed in seasonal or intermittent
22 positions and workers employed less than an
23 average of twenty hours per week during a
24 year... ,"

25 and declared that all "temporary workers", as so defined,
26 were "exempt from the provisions of ... [the Personnel
27 Ordinance] except as specifically provided for ... "; and

28 WHEREAS, on May 16, 1983, the City's legislative authority
repealed the former Exemptions Ordinance (SMC Ch. 4.12
and Ordinance 110656) and enacted a new Exemptions
Ordinance by adopting Council Bill 103632 (Ordinance
111127) on a vote of 9-0, which new legislation again
exempted, among others, positions of employment "required
to fill temporary, emergency, and short-term needs ..."
from the provisions of SMC Ch. 4.04 and the Personnel
Rules regarding examinations, selection, discipline,
termination, and appeals to the Civil Service Commission,
and thereby deprived the Commission of jurisdiction over
appeals by persons occupying positions collectively denom-
inated "temporary workers" (a term defined in the
Personnel Ordinance as, and clearly understood to include,
personnel hired as "intermittents" or to perform work on
an "intermittent" basis); and

WHEREAS, on September 24, 1984, the City's legislative
authority repealed the former Exemptions Ordinance (SMC
4.13 and Ordinance 111127) and enacted a new Exemptions
Ordinance by adopting Council Bill 104361 (Ordinance
111929) on a vote of 8-0, which new legislation again
exempted, among others, positions of employment "required
to fill temporary, emergency, and short-term needs ..."
from the provisions of SMC Ch. 4.04 and the Personnel
Rules regarding examinations, selection, discipline,
termination, and appeals to the Civil Service Commission,

1 and thereby deprived the Commission of jurisdiction over
2 appeals by persons occupying positions collectively denom-
3 inated "temporary workers" (a term defined in the
4 Personnel Ordinance as, and clearly understood to include,
5 personnel hired as "intermittents" or to perform work on
6 an "intermittent" basis); and

7 WHEREAS, on December 23, 1985, the City's legislative
8 authority repealed the former Exemptions Ordinance (SMC
9 4.13 and Ordinance 111929) and enacted a new Exemptions
10 Ordinance by adopting Council Bill 105225 (Ordinance
11 112633) on a vote of 6-0, which new legislation again
12 exempted, among others, positions of employment "required
13 to fill temporary, emergency, and short-term needs ..."
14 from the provisions of SMC Ch. 4.04 and the Personnel
15 Rules regarding examinations, selection, discipline,
16 termination, and appeals to the Civil Service Commission,
17 and thereby deprived the Commission of jurisdiction over
18 appeals by persons occupying positions collectively denom-
19 inated "temporary workers" (a term defined in the
20 Personnel Ordinance as, and clearly understood to include,
21 personnel hired as "intermittents" or to perform work on
22 an "intermittent" basis); and

23 WHEREAS, on August 24, 1987, the City's legislative authority
24 repealed the former Exemptions Ordinance (SMC Ch. 4.12 and
25 Ordinance 112633) and enacted a new Exemptions Ordinance
26 by adopting Council Bill 106287 (Ordinance 113579) on a
27 vote of 6-0, which new legislation exempted, among others,
28 all positions of City employment "that are required to
fill temporary, emergency, or short-term needs including
but not limited to those occupied by ... temporary
workers," from the provisions of SMC Ch. 4.04 and the
Personnel Rules relating to examination, selection,
discipline, termination, and appeals to the Civil Service
Commission, and thereby continued the deprivation of Civil
Service Commission jurisdiction over appeals by personnel
hired as "intermittents" or to perform work on an
"intermittent" basis; and

WHEREAS, on October 31, 1988, in a Civil Service Commission
hearing on whether or not it had jurisdiction to hear an
appeal by a person hired as an intermittent laborer (In Re
the Matter of Flora Mitchell, No. 86-4-24), the Civil
Service Commission concluded that, because Ordinance
111929 did not "mention or use the word 'intermittent'",
and because the definition of "temporary worker" in the
1981 Personnel Ordinance Amendment did not define the word
"intermittent", as used therein, "the City Council did not
exempt 'intermittent' employees from Civil Service"; and

WHEREAS, said conclusion is inconsistent with the intentions
of the City's legislative authority since December 14,
1981, with respect to the definition of the term
"temporary worker"; and

1 WHEREAS, said conclusion ignores the specific intent of the
2 City's legislative authority to exempt from the Civil
3 Service System, generally, and specifically with respect
4 to the appellate jurisdiction of the Civil Service
5 Commission, every person on the City payroll who
6 works "on-call", or only on an "intermittent" basis, or
7 who occupies a position of employment that is only
8 required for a seasonal, temporary, emergency, or short-
9 term need, (which personnel have been defined, collec-
10 tively, as "temporary workers");

11 WHEREAS, the Civil Service Commission's October 31, 1988
12 Findings of Fact, Conclusions of Law and Order in the
13 hearing In Re the Matter of Flora Mitchell have caused
14 considerable confusion regarding the employment status of
15 many persons hired, from time to time, by The City of
16 Seattle; and

17 WHEREAS, City Charter Article IV, § 14, vests in the City
18 Council the power, by ordinance, "Third. To control the
19 finances ... of the City;" and "Fourteenth. To ordain,
20 establish, modify and abrogate from time to time, as the
21 needs of the City shall require, ... and to provide for
22 ... the duties and compensation of officers and
23 employees ..."; and

24 WHEREAS, City Charter Article XXII, § 5 provides that "[n]o
25 offices shall be created, nor shall any person be employed
26 in any capacity, nor shall any officer, clerk or employee
27 receive any salary or compensation for any service of any
28 kind, unless the same is specifically provided for or
authorized by law ...;" and

WHEREAS, the decision of the Civil Service Commission in the
appeal entitled In Re the Matter of Flora Mitchell has a
significant negative impact on not only the City's budget
but also the exclusive authority of the City's legislative
authority to create positions of employment for the City;
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Two new definitions "intermittent" and
"intermittent position" are hereby added to SMC 4.04.030, as
subsections -18 and -19 thereof, and SMC 4.04.030-18 through
31 are hereby amended as follows:

18. "Intermittent" means a temporary worker who is
scheduled to work only on an "on-call" basis, or intermit-
tently, and who has no guaranteed minimum number of hours of
employment.

19. "Intermittent position" means a position filled by
an intermittent.

1 20. "Layoff" means the discontinuation of employment
2 and suspension of pay of any regular or probationary employee
3 because of lack of work, of funds, or through reorganization.

4 ~~((19))~~ 21. "Pass-fail examination" means a test
5 qualifying applicants for placement on a register of those
6 eligible for appointment to a position.

7 ~~((20))~~ 22. "~~((Permanent))~~ part-time position" means a
8 position that has been designated as "part-time" in, and created
9 by, the annual budget or by another ordinance and that ((which))
10 requires an average of twenty (20) hours or more but less than
11 (40) hours of work per week during a year.

12 ~~((21))~~ 23. "Probationary employee" means an employee who
13 has appointed from a register but who has not completed a one
14 (1) year period of probationary employment.

15 ~~((22))~~ 24. "Provisional employee" means an employee who,
16 prior to January 1, 1979, was appointed for the purpose of
17 performing work in a position for which no register existed.

18 ~~((23))~~ 25. "Reduction" means the movement of an employee
19 from a higher position to a lower position, not for cause.

20 ~~((24))~~ 26. "Register" means a list of successful exami-
21 nees for a given position or class from which names may be
22 selected by the Director for certification and submission to
23 an appointing authority.

24 ~~((25))~~ 27. "Regular employee" means an employee who has
25 been appointed from a register and who has completed a one (1)
26 year probationary period of employment.

27 ~~((26))~~ 28. "Reinstatement" means reappointment of a regu-
28 lar employee from a reinstatement register to a position in a
class in which regular status was previously held.

1 ((27)) 29. "Seniority" means a regular employee's length
2 of continuous service in his or her present class or assign-
3 ment level and all higher classes or assignment levels since
4 original regular appointment to that class or assignment
5 level, including all periods of unpaid leave-of-absence or
6 suspension that are for less than fifteen (15) days.

7 ((28)) 30. "Separated" means the discontinuation of
8 employment of a temporary worker or interim employee, not for
9 cause.

10 ((29)) 31. "Suspension" means the temporary discon-
11 tinuation of an employee from employment for a specified
12 period for cause or pending determination of charges against
13 said employee, which charges could result in discharge or
14 demotion.

15 ((30)) 32. "Temporary worker" means a person who is
16 employed to fill a temporary, emergency or short-term need.
17 The term includes persons employed in seasonal or intermittent
18 positions and workers employed less than an average of twenty
19 (20) hours per week during a year. Except as may be provided
20 by ordinance or labor contract, temporary workers shall be
21 exempt from the provisions of this chapter (~~except as~~
22 ~~specifically provided for~~) and shall not be employed more
23 than 1040 hours in a year.

24 ((31)) 33. "Termination or discharge" means a separation
25 from employment for cause.

26 Section 2. A new section, SMC 4.04.125, is added to the
27 Personnel Ordinance and the Seattle Municipal Code as
28 follows:

1 SMC 4.04.125. Method for calculation of 1,040 hour
2 limitation on employment of temporary workers.

3 The "1,040 hours" limitation on the extent to which a
4 temporary worker may be employed in any year shall be calcu-
5 lated using a "twenty-six pay periods window" as follows:
6 The maximum number of hours that may be worked by a temporary
7 worker during any bi-weekly pay period shall be calculated by
8 subtracting from 1,040 hours, the cumulative number of
9 straight-time and over-time hours worked by such temporary
10 worker during the twenty-six bi-weekly pay periods preceding
11 the pay period for which the calculation is being made;
12 provided, that notwithstanding any other provision of this
13 chapter, temporary workers whose employment is governed by a
14 collective bargaining agreement with the City may be employed
15 for more than 1,040 in a year if such extended employment is
16 authorized in such agreement.

17 3. A new section, SMC 4.04.255, is added to the Personnel
18 Ordinance and the Seattle Municipal Code as follows:

19 SMC 4.04.255. Determinations regarding exemptions from
20 Civil Service.

21 Any question regarding whether the City's legislative
22 authority has made a particular position of employment exempt
23 from the Civil Service shall be determined solely by the
24 Personnel Director only by reference to pertinent annual City
25 Budgets and Exemption, Ordinances and the records of the
26 Personnel Department with respect to such position and the
27 occupant thereof; the Civil Service Commission shall have no
28 jurisdiction to determine such question.

 4. SMC 4.13.020 (§ 2 of Ordinance 113579) is amended as
 follows:

1 4.13.020 System-wide exemptions from the Civil Service
2 and Public Safety Civil Service Systems.

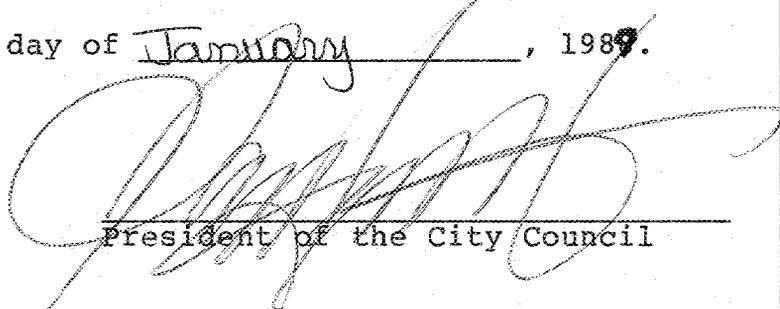
3 In addition to those positions exempted by statute, City
4 Charter, or other provisions of this chapter, all positions of
5 City employment, regardless of classification, that are
6 required to fill temporary, emergency, or short-term needs,
7 including but not limited to those occupied by Student
8 Accountants - Intermittent, Student Engineers and Student
9 Engineers - Intermittent, Municipal Government Interns,
10 Cooperative Interns, Youth Work Training Enrollees and Youth
11 Employment Enrollees - Summer, work study program enrollees,
12 interim employees, and temporary workers, including
13 intermittents, as defined in the Personnel Ordinance, are
14 hereby ((~~declared to be~~)) made exempt from ((~~compliance with~~))
15 the Civil Service; and all provisions regarding examination,
16 selection, discipline, termination, and appeals in the Seattle
17 Municipal Code((7)) Chapters 4.04 and 4.08 and the rules of the
18 Personnel Department, the Civil Service Commission, and the
19 Public Safety Civil Service Commission shall be inapplicable
20 to the occupants of all such exempt positions.

21 Section 5. Any act consistent with the authority and
22 prior to the effective date of this ordinance is ratified and
23 confirmed.

24 Section 6. This ordinance shall take effect and be in
25 force thirty days from and after its passage and approval, if
26 approved by the Mayor; otherwise it shall take effect at time
27 it shall become a law under the provisions of the City
28 Charter.

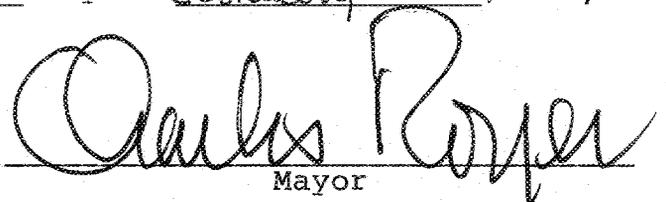
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Pursuant to the provisions of Article XVI, Section 3 of the City Charter, this ordinance has been passed by two-thirds vote of the City Council the 9th day of January, 1989, and signed by me in open session in authentication of its passage this 9th day of January, 1989.



President of the City Council

Approved by me this 12th day of January, 1989.



Mayor

Filed by me this 12th day of January, 1989.

ATTEST: Norward J. Brooks
City Comptroller and City Clerk

By: Theresa Dunbar
Deputy

(SEAL)

Published _____

MEMO TO FILE

ORDINANCE 114314
(Council Bill 107094)

The attached correspondence substantiates concern expressed by Michael T. Waske, Business Manager, IFPTE-Local 17, regarding the process by which the City Council enacted Ordinance 114314.

Mr. Waske's concerns were heard in open session of the Finance and Personnel Committee on Thursday, March 16, 1989. The issues raised were discussed, and Committee members concurred that they saw no reason to rescind Ordinance 114314.

Committee proceedings are documented on City Council tape recording number 1679, track 3. The meeting began at 9:35 am and ended at 11:50 am. Discussion of this issue began at approximately 11:15 am. The proceedings are also available on video tape for Channel 28.

Submitted by: Betty Curneen 
Council Assistant
Clerk to Finance and Personnel Committee

3/16/89

FILED
CITY OF SEATTLE
1989 MAR 16 PM 3:51
COMPTROLLER AND CITY CLERK

Seattle City Council



Sam Smith
President of the City Council
684-8800

George E. Benson
Chair
Environmental Management
Committee
684-8801

Virginia Galie
Chair
Finance and Personnel
Committee
684-8805

Paul Kraabel
Chair
Urban Redevelopment
Committee
684-8807

Jane Noland
Chair
Housing and Human
Services Committee
and Public Safety
Committee
684-8803

Norman B. Rice
Chair
Energy Committee
684-8806

Dolores Sibongwa
Chair
Parks and Public
Grounds
Committee
684-8802

Jim Street
Chair
Land Use and Community
Development Committee
684-8808

Jeanette Williams
Chair
Transportation
Committee
684-8804

February 28, 1989

Michael T. Waske
Business Manager
I.F.P.T.E., Local 17
2900 Eastlake Avenue E., Suite 300
Seattle, WA. 98102

Dear Mr. Waske:

Thank you for your recent letter regarding Ordinance 114314, in which you expressed concern about process. When the proposed legislation was introduced, both the Law Department and the Personnel Department recommended it be enacted expeditiously.

Based upon this and the fact that the issue of the inclusion of temporary workers, among others, in the Exemption Ordinance had been before the City Council on several different occasions since 1981 with the same result, i.e., temporary workers being exempted from Civil Service, we chose to be briefed in Labor Policy Committee, rerefer the proposal from Finance and Personnel Committee to Full Council, and act.

As you know, the essence of Ordinance 114314 does not change the longstanding intent of the City Council to exempt temporary workers from the Civil Service. These actions are a matter of public record and are summarized in the "whereas" provisions of Ordinance 114314.

In addition to making clear that temporary workers, including intermittents, are exempt from the Civil Service, Ordinance 114314 defines the word "intermittent" and prescribes the method for calculation of the 1040-hour limitation on employment of a temporary worker. These latter two issues were addressed because the Civil

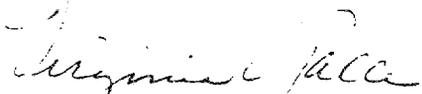
Michael T. Waske
Re: Ordinance 114314
February 28, 1989
Page Two

Service Commission recently found that the City had not formally defined the term intermittent and because there was a difference in how the Civil Service Commission, the Personnel Department, and the Seattle Center had calculated the 1040-hour limitation. Ordinance 114314 makes clear that the term temporary worker includes intermittents, how the 1040-hour limitation is to be calculated, and that temporary workers, including intermittents, are exempt from the Civil Service.

To be sure that Committee members have the benefit of your comments, I have scheduled this matter for discussion of possible reconsideration before the Finance and Personnel Committee on March 16 at 9:30 a.m.

In the meantime, there are a number of other matters to discuss and I look forward to our lunch on March 6, 11:45 a.m. at McCormick's.

Sincerely,



Virginia Galle, Chair
Finance and Personnel Committee

VG:bc



INTERNATIONAL
FEDERATION OF
PROFESSIONAL
AND
TECHNICAL
ENGINEERS

LOCAL NO. 17
AFL-CIO

2900 EAST LAKE AVENUE EAST
SUITE 300
SEATTLE, WA 98102
(206) 328-7321

February 9, 1989

The Honorable Virginia Galle
Chair, Finance and Personnel Committee
Seattle City Council
1106 Municipal Building
600 Fourth Avenue
Seattle, Washington 98104

RECEIVED

FEB 14 1989

VIRGINIA GALLE
SEATTLE CITY COUNCIL MEMBER

Dear Councilman Galle:

I am writing in regards to Ordinance No. 114314, passed on January 9, 1989. I'm appalled at the lack of sensitivity or courtesy the City Council has in passing an ordinance affecting the Seattle Civil Service Commission and City employees' rights without any public hearing or notice.

I note that you voted in favor of this ordinance, and it appears without raising any question or issue as to why it was not assigned to your committee or why there was no public hearing. I would remind you it was not that many years ago that I raised concerns with you about seeking commitments on legislation prior to scheduling the matter for public hearing. It appears you still have the same attitudes. I do not believe that you would treat the neighborhood interest in a similar manner and your failure to even notify the Seattle Civil Service Commission that you were passing an ordinance relating to one of their decisions is insulting.

I'm sure you listened intently to the City attorney's arguments and reasons as to why the decision was bad and why the City Council should adopt this ordinance. Where was your sense of fairness in hearing the rationale of the Civil Service Commission for their decision? Where was your sense of fairness to the affected employee, Flora Mitchell?

Councilman Sam Smith says that the ordinance did not change anything, only clarified it. Then I ask you and him, why did it have to be passed with such expediency and behind closed doors without seeing the light or scrutiny of the public or affected parties.

In closing, I find your actions insulting as a Civil Service Commissioner, as an employee representative, and as a citizen of the City of Seattle. I had thought we had long passed the days of passing legislation without the opportunity of input, but you have once again proven me wrong.

Sincerely,

Michael T. Waske
Business Manager

MTW:dc
opeiu8

February 9, 1989



INTERNATIONAL
FEDERATION OF
PROFESSIONAL
AND
TECHNICAL
ENGINEERS

LOCAL NO. 17
AFL-CIO

2900 EASTLAKE AVENUE EAST
SUITE 300
SEATTLE, WA 98102
(206) 328-7321

The Honorable Sam Smith
President, Seattle City Council
1106 Municipal Building
600 Fourth Avenue
Seattle, Washington 98104

Dear Councilman Smith:

As I stated to you in my telephone conversation earlier, I am appalled at the insensitivity and insulting actions of the Seattle City Council in adopting Ordinance No. 114314 without any public hearing or public notice. I find the adoption of that ordinance to be insulting to the Civil Service Commission because it dealt specifically with a recent decision but you did not give the Commission the opportunity for any input or dialogues as it related to that decision.

Furthermore, in the ordinance, you state that the purpose was to "Deny Civil Service Commission jurisdiction in determining the existence of exemptions from Civil Service." If you are taking action as it relates to the authority of the Civil Service Commission, why were we not allowed input?

Further you amended the Personnel Ordinance as it affects all City of Seattle employees. Why were they not given the opportunity for input in that decision?

The question also has to be asked, what about the rights of Flora Mitchell, the affected employee? Where was the concern for her input? Did you not want to hear from her because she was a minority or a woman?

You stated that the ordinance made no change, only clarifying it. Then I have to ask you the question, why were you reluctant to allow it to go to a public hearing or scrutiny of affected parties?

If the Council was concerned that the Civil Service Commission would act on other cases, I think that it would have been appropriate that the Council request the Commission to hold in abeyance hearings on the issue of intermittent employees until further clarification could be made.

As one of the longest serving Civil Service Commissioners in the history of the City of Seattle, I have never seen such discourteous, shoddy, cheapish, cowardly action from the City Council during my 9-year tenure.

As the duly elected employee representative on the Seattle Civil Service Commission and as the Business Manager of the largest City of Seattle employee union, I request that the City

The Honorable Sam Smith
February 9, 1989
Page 2

Council rescind Ordinance No. 114314 at the next Council meeting of the whole. It is quite apparent from your actions on this particular piece of legislation that there is not a necessity to hold a public hearing before you take action. If after you rescind the ordinance, the City Attorney's office or other parties are desirous of amending the ordinance for purposes of clarification, then it would be proper that the issue be assigned to committee for full disclosure and hearing.

I would remind you that it was not long ago that you refused City employees the opportunity to give input to the Council as it related to your desires to reduce the City health insurance program and cut benefits to injured workers. At the same time you willingly welcomed and paid for input from outside labor relations consultants and department heads on those issues.

I believe your actions demonstrate your lack of sensitivity to the interests of employees and a very unfair standard that you do not apply to the business community or neighborhood interests. I would be very surprised to hear that you would not allow public input or discussion on an issue affecting downtown business interests, but I have to admit that this is not the first time you have slammed the door in the face of the employees and their representatives and took action without a public hearing.

Once again I reiterate a request that you rescind Ordinance No. 114314 and after it is rescinded, hold a public hearing on the issue as you originally should have.

Sincerely,



Michael T. Waske
Business Manager

MTW:dc
opeiu8

LAW DEPARTMENT

THE CITY OF SEATTLE

CRIMINAL DIVISION
1055 DEXTER HORTON BLDG.
SEATTLE, WA 98104
(206) 684-7757

DOUGLAS N. JEWETT, CITY ATTORNEY
10TH FLOOR MUNICIPAL BUILDING
SEATTLE, WASHINGTON 98104
(206) 684-8200

UTILITIES DIVISION
1015 THIRD AVE., SUITE 902
SEATTLE, WA 98104
(206) 684-3528

December 21, 1988

The Honorable Sam Smith
President
City Council
The City of Seattle

RE: Proposed legislation dealing with intermittent work

Dear Councilman Smith:

On October 31, 1988, the Civil Service Commission entered Findings, Conclusions and a Decision in connection with an appeal brought by a person hired to do work at the Seattle Center on an intermittent basis. The Commission determined that it had jurisdiction to hear that intermittent's appeal and that the appellant was not a "temporary worker" (as all pertinent City records indicate), but, instead, a "permanent part time" employee. The Commission will consider the merits of the appellant's claims probably in early 1989. Before that hearing begins, we believe a strong legislative response to the Commission's decision on jurisdiction is required.

The Commission's decision is based upon a Civil Service Commission case decided in 1980, when the Personnel Ordinance and the Exemptions Ordinance contained different language than currently exists. It ignores a record of eight, separate legislative actions beginning December 14, 1981, in which the City Council repeatedly expressed its intention that "intermittents" or personnel hired to perform work for the City on an intermittent basis should be exempt from the Civil Service System and outside the appellate jurisdiction of the Civil Service Commission.

The proposed legislation transmitted with this letter sends a clear message to the Civil Service Commission that its decision to assume jurisdiction over an intermittent worker's appeal was inappropriate and inconsistent with the legislative authority's intention to exempt such personnel from the Civil Service System and Commission jurisdiction. It specifically responds to the Commission's reasoning by defining "intermittent" and "intermittent position". (The definitions of "permanent part time" and "temporary worker" are also updated, based upon Personnel

The Hon. Sam Smith, President
December 21, 1988
Page 2

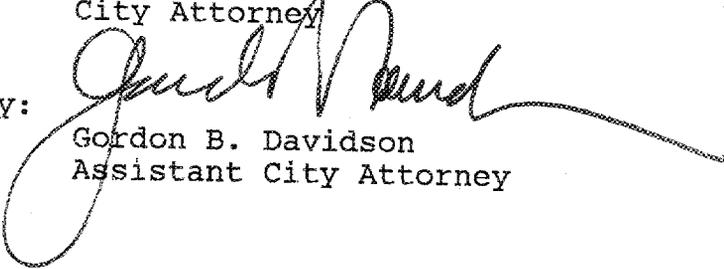
Department recommendations made in the light of the Civil Service Commission's decision and current needs of that department.) This proposed legislation also clarifies how City employing units are to calculate the limitation on the number of hours that a temporary worker may be employed in a year. (To date, employing units have been relying, in large part, on informal instructions from the Personnel Department, which the Civil Service Commission also ignored in the above-referenced appeal.) This proposed legislation recognizes that the Charter invests the City Council, and not the Civil Service Commission, with the power to exempt positions from the Civil Service System: a new section would be added to the Personnel Ordinance indicating that the Personnel Director, rather than the Commission, is responsible for resolving questions concerning whether an individual's position has been exempted from the Civil Service. Finally, this proposed legislation would modify the Exemptions Ordinance provision dealing with temporary workers to make even more explicit the legislative authority's intention that intermittents are exempt from the Civil Service System and outside the appellate jurisdiction of the Commission.

We recommend that the attached proposed legislation be enacted as soon as is possible.

Very truly yours,

Douglas N. Jewett
City Attorney

By:


Gordon B. Davidson
Assistant City Attorney

cc: Everett Rosmith

City of Seattle
Personnel Department

Everett S. Rosmith, Personnel Director
Charles Royer, Mayor

RECEIVED

JAN 04 1989



December 22, 1988

VIRGINIA GALLE
SEATTLE CITY COUNCIL MEMBER

TO: Sam Smith, President
Seattle City Council

FROM: Everett S. Rosmith
Personnel Director

ESR

SUBJECT: Proposed Legislation re Temporary Employment

You have received proposed legislation forwarded to you by the Law Department regarding the employment of temporary (intermittent) workers by the City of Seattle. This legislation, proposing to amend the Personnel Ordinance (SMC 4.04) and the Exemptions Ordinance (SMC 4.13), was drafted by the Law Department in direct response to conclusions recently drawn by the Civil Service Commission in deciding a jurisdictional question (Matter of Flora Mitchell) involving the appeal rights of a temporary (intermittent) Laborer at the Seattle Center.

We have reviewed the proposed legislation and have held detailed discussions with Assistant City Attorney Gordon Davidson, representatives of the Mayor's Office and of the Office of Management and Budget about the substance and appropriateness of the proposed legislation. We strongly support the legislation as proposed, and we agree with the position of the Law Department that we should move ahead quickly to enact these amendments to the Personnel Ordinance and the Exemptions Ordinance.

In the Matter of Flora Mitchell, the Civil Service Commission's conclusions were based upon precedent-setting interpretations of language of the Personnel Ordinance and Exemptions Ordinance, some of which language has been in effect for nearly ten years. Many of the conclusions reached are contrary to longstanding City policy specifically and are contrary to established civil service policy in general. Below are some of the implications of the conclusions reached by the Civil Service Commission in its split decision on this matter.

- A. A person can attain regular civil service status in the City without undergoing the selection process mandated by the City Charter and Personnel Ordinance by simply working more than 1040 hours in a twelve-month period. This decision could potentially lead to the creation of dozens of regular part-time positions in the City without the legislative approval of the City Council.

Council President Sam Smith
December 22, 1988
Page 2

- B. The Civil Service Commission equated the selection of temporary workers by a hiring department with the examination/certification/appointment process administered by the Personnel Director, in whom the City Charter, Article XVI, places sole authority for the administration of the personnel system.
- C. The Civil Service Commission effectively created a new kind of City worker called an "on-call" worker which the Commission distinguished as something different from an intermittent.
- D. The Civil Service Commission has granted appeal rights for temporary workers who are "intermittent," which action is contrary to the City's legislative authority.

We agree with the Law Department's position that these actions are clearly outside the jurisdiction of the Civil Service Commission. We believe that these actions jeopardize the City's ability to efficiently maintain and manage an effective work force and create a "back door" to the classified service which is contrary to the very nature of a civil service system.

We feel it is critical that the proposed amendments be adopted in order to remove any further questions regarding legislative intent, jurisdiction of the Civil Service Commission, or basic provisions for management of the work force, as related to temporary employment in the City. Therefore, we strongly recommend your favorable consideration of the proposed amendments to the Personnel Ordinance (SMC 4.04) and the Exemptions Ordinance (SMC 4.13).

ESR:rtp

cc: Councilmembers
Gordon Davidson
Claudia Ellsworth

City of Seattle

Executive Department-Office of Management and Budget

James P. Ritch, Director
Charles Royer, Mayor

December 21, 1988



COPY RECEIVED

DEC 21 1988

The Honorable Douglas Jewett
City Attorney
City of Seattle

Douglas N. Jewett
CITY ATTORNEY

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Law Department

SUBJECT: An ordinance relating to personnel hired for intermittent work; adding new definitions to the Personnel Ordinance and amending SMC 4.04.030 accordingly; adding to the Personnel Ordinance new sections to specify the method for calculating the hours limit on the employment of temporary workers and to deny Civil Service Commission jurisdiction to determine the existence of exemptions from Civil Service; reiterating the legislative authority's intention to exempt intermittents from the Civil Service System and amending SMC 4.13.020, accordingly, on a two-thirds vote of the City Council.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to the Law Department.

Sincerely,

Charles Royer
Mayor

by

James P. Ritch
JAMES P. RITCH
Budget Director

JR/ce/ncn

Enclosure

cc: Douglas N. Jewett, City Attorney

City of Seattle
ORDINANCE 113111

AN ORDINANCE relating to personnel hired for intermittent work; adding new definitions to the Personnel Ordinance and amending SMC 4.04.030 accordingly; adding to the Personnel Ordinance new sections to specify the method for calculating the hours limit on the employment of temporary workers and to deny Civil Service Commission jurisdiction to determine the existence of exemptions from Civil Service; reiterating the legislative authority's intention to exempt intermittents from the Civil Service System and amending SMC 4.13.020, accordingly, on a two-thirds vote of the City Council.

WHEREAS, on November 6, 1978, the City's legislative authority enacted the Personnel Ordinance (Ordinance 107790), which defined the term "temporary employee" in language that included, among others, any person "appointed to fill a temporary, emergency, or short-term need . . ." without making reference to personnel hired as "intermittents," or for "intermittent" work; and

WHEREAS, on December 14, 1981, the City's legislative authority amended the Personnel Ordinance by adopting Council Bill 101627 (Ordinance 110302) on a vote of 7-0, to delete the definition of "temporary employee" and add, as SMC 4.04.030-27, a definition of "temporary worker," which definition specifically included:

"persons employed in seasonal or intermittent positions and workers employed less than an average of twenty hours per week during a year. . . ."

and declared that all "temporary workers", as so defined, were "exempt from the provisions of . . . [the Personnel Ordinance] except as specifically provided for . . ."; and

WHEREAS, on December 14, 1981, the City's legislative authority also enacted a new Exemptions Ordinance by adopting Council Bill 102783 (Ordinance 110329) on a vote of 6-1, which new legislation exempted, among others, positions of employment "required to fill temporary, emergency, and short-term needs . . ." from the provisions of SMC Ch. 4.04 and the Personnel Rules regarding examinations, selection, discipline, termination, and appeals to the Civil Service Commission, and thereby deprived the Commission of jurisdiction over appeals by persons occupying positions collectively denominated "temporary workers" (a term defined in the Personnel Ordinance as, and clearly understood to include, personnel hired as "intermittents" or to perform work on an "intermittent" basis); and

WHEREAS, on June 28, 1982, the City's legislative authority repealed the former Exemptions Ordinance (Ordinance 110329) and enacted a new Exemptions Ordinance by adopting Council Bill 103082 (Ordinance 110654) on a vote of 8-0, which new legislation again exempted, among others, positions of employment "required to fill temporary, emergency, and short-term needs . . ." from the provisions of SMC Ch. 4.04 and the Personnel Rules regarding examinations, selection, discipline, termination, and appeals to the Civil Service Commission, and thereby deprived the Commission of jurisdiction over appeals by persons occupying positions collectively denominated "temporary workers" (a term defined in the Personnel Ordinance as, and clearly understood to include, personnel hired as "intermittents" or to perform work on an "intermittent" basis); and

WHEREAS, on November 1, 1982, the City's legislative authority amended the Personnel Ordinance by adopting Council Bill 103288 (Ordinance 110852) on a vote of 6-3, thereby renumbering the definition of "temporary worker" to become SMC 4.0-4.030-30, which definition specifically included

"persons employed in seasonal or intermittent positions and workers employed less than an average of twenty hours per week during a year. . . ."

and declared that all "temporary workers", as so defined, were "exempt from the provisions of . . . [the Personnel Ordinance] except as specifically provided for . . ."; and

WHEREAS, on May 16, 1983, the City's legislative authority repealed the former Exemptions Ordinance (SMC Ch. 4.12 and Ordinance 110656) and enacted a new Exemptions Ordinance by adopting Council Bill 103532 (Ordinance 111127) on a vote of 9-0, which new legislation again exempted, among others, positions of employment "required to fill temporary, emergency, and short-term needs . . ." from the provisions of SMC Ch. 4.04 and the Personnel Rules regarding examinations, selection, discipline, termination, and appeals to the Civil Service Commission, and thereby deprived the Commission of jurisdiction over appeals by persons occupying positions collectively denominated "temporary workers" (a term defined in the Personnel Ordinance as, and clearly understood to include, personnel hired as "intermittents" or to perform work on an "intermittent" basis); and

WHEREAS, on September 24, 1984, the City's legislative authority repealed the former Exemptions Ordinance (SMC 4.13 and Ordinance 111127) and enacted a new Exemptions Ordinance by adopting Council Bill 104361 (Ordinance 111929) on a vote of 8-0, which new legislation again exempted, among others, positions of employment "required to fill temporary, emergency, and short-term needs . . ." from the provisions of SMC Ch. 4.04 and the Personnel Rules regarding examinations, selection, discipline, termination, and appeals to the Civil Service Commission, and thereby deprived the Commission of jurisdiction over appeals by persons occupying positions collectively denominated "temporary workers" (a term defined in the Personnel Ordinance as, and clearly understood to include, personnel hired as "intermittents" or to perform work on an "intermittent" basis); and

WHEREAS, on August 24, 1987, the City's legislative authority repealed the former Exemptions Ordinance (SMC Ch. 4.12 and Ordinance 112633) and enacted a new Exemptions Ordinance by adopting Council Bill 106287 (Ordinance 113579) on a vote of 8-0, which new legislation exempted, among others, all positions of City employment "that are required to fill temporary, emergency, or short-term needs including but not limited to those occupied by . . . temporary workers," from the provisions of SMC Ch. 4.04 and the Personnel Rules relating to examination, selection, discipline, termination, and appeals to the Civil Service Commission, and thereby continued the deprivation of Civil Service Commission jurisdiction over appeals by personnel hired as "intermittents" or to perform work on an "intermittent" basis; and

WHEREAS, on October 31, 1988, in a Civil Service Commission hearing on whether or not it had jurisdiction to hear an appeal by a person hired as an intermittent laborer (In Re the Matter of Flora Mitchell, No. 86-4-24), the Civil Service Commission concluded that, because Ordinance 111929 did not "mention or use the word 'intermittent'", and because the definition of "temporary worker" in the 1981 Personnel Ordinance Amendment did not define the word "intermittent", as used therein, "the City Council did not exempt 'intermittent' employees from Civil Service"; and

WHEREAS, said conclusion is inconsistent with the intentions of the City's legislative authority since December 14, 1981, with respect to the definition of the term "temporary worker"; and

WHEREAS, said conclusion ignores the specific intent of the City's legislative authority to exempt from the Civil Service System, generally, and specifically with respect to the appellate jurisdiction of the Civil Service Commission, every person on the City payroll who works "on-call", or only on an "intermittent" basis, or who occupies a position of employment that is only required for a seasonal, temporary, emergency, or short-term need, (which personnel have been defined, collectively, as "temporary workers");

WHEREAS, the Civil Service Commission's October 31, 1988 Findings of Fact, Conclusions of Law and Order in the hearing In Re the Matter of Flora Mitchell have caused considerable confusion regarding the employment status of many persons hired, from time to time, by The City of Seattle; and

WHEREAS, City Charter Article IV, § 14, vests in the City Council the power, by ordinance, "Third. To control the finances . . . of the City;" and "Fourteenth. To ordain, establish, modify and abrogate from time to time, as the needs of the City shall require, . . . and to provide for . . . the duties and compensation of officers and employees . . ."; and

WHEREAS, City Charter Article XXII, § 5 provides that "[n]o offices shall be created, nor shall any person be employed in any capacity, nor shall any officer, clerk or employee receive any salary or compensation for any service of any kind, unless the same is specifically provided for or authorized by law . . ."; and

WHEREAS, the decision of the Civil Service Commission in the appeal entitled In Re the Matter of Flora Mitchell has a significant negative impact on not only the City's budget but also the exclusive authority of the City's legislative authority to create positions of employment for the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Two new definitions "intermittent" and "intermittent position" are hereby added to SMC 4.04.030, as

subsections -18 and -19 thereof, and SMC 4.04.030-18 through 31 are hereby amended as follows:

18. "Intermittent" means a temporary worker who is scheduled to work only on an "on-call" basis, or intermittently, and who has no guaranteed minimum number of hours of employment.

19. "Intermittent position" means a position filled by an intermittent.

20. "Layoff" means the discontinuation of employment and suspension of pay of any regular or probationary employee because of lack of work, of funds, or through reorganization.

((19)) 21. "Pass-fail examination" means a test qualifying applicants for placement on a register of those eligible for appointment to a position.

((20)) 22. "((Permanent)) part-time position" means a position that has been designated as "part-time" in, and created by, the annual budget or by another ordinance and that ((which)) requires an average of twenty (20) hours or more but less than (40) hours of work per week during a year.

STATE OF WASHINGTON - KING COUNTY

11425
City Clerk

—ss.

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

Ordinance No. 114316

was published on
01/26/89

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

Subscribed and sworn to before me on
1/26/89

Notary Public for the State of Washington,
residing in Seattle

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBERS OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Virginia Galle

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

