Public Employees for Environmental Responsibility
PEER
Protecting Employees Who Protect The Environment

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Charles J. Willoughby
Inspector General
District of Columbia
717 14th Street, NW, 5th Floor
Washington, DC 20005

February 27, 2014

Dear General Willoughby:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to urge your review of what appear to be systemic and continuing violations of the "Jobs for D.C. Residents Amendment Act of 2007" (D.C. Law 17-108, § 101, 54 DCR 10993; Mar. 25, 2009, D.C. Law 17-353, § 223(a), 56 DCR 1117), and its implementing regulations and guidelines.

In the course of my organization assisting applicants for employment in D.C. government positions, we discovered that the Gray administration engages in policies which functionally nullify the legal requirement that: bona fide D.C. residents may be awarded a 10-point "residency preference" on a scale of 100 points at the time of application for a position in the Career Service filled through a competitive merit system process, and that D.C. residents be selected over non-D.C. residents within the same categorical ranking.

In order to circumvent this resident preference, we have seen agencies undertake these two distinct practices:

1. Apparently contrary to the practice before D.C. Law 17-108, and remaining unchanged by the new law, D.C. residency preference points are not added to an applicant's score until *after* the Certification lists are tallied, creating the categorical rankings of "highly qualified," "well qualified," and "qualified." The result is that District residents lose the opportunity to move into a higher category based on the preference points, which would greatly increase their chances of being interviewed and selected for jobs. Within categories, hiring managers have no obligation to favor any candidate over another regardless of the number of points they might have, or whether

they are at the top or bottom of the respective category. Thus contrary to the letter and intent of D.C. Law 17-108 (and similar preceding laws and regulations) the additional points added after the categorical rankings are meaningless.

2. After Certification lists have been tallied, non-resident applicants in the same ranking category are selected over other candidates with a residency preference, in clear violation of the regulation implementing this aspect of the District's residency preference. (6 DCMR B301.9)

The combination of these two practices works to functionally nullify the D.C. resident preference mandate by both preventing District residents from using their preference points to enter the highest possible selection-eligible pool of candidates and, then even when they are ranked highly enough to be considered for a position without the benefit of their preference points, non-resident are regularly selected ahead of them. Further, it is our understanding that the District government employs the same nullifying practices with respect to the mandatory award of five preference points to veterans for city job applicants with military experience.

In a December 17, 2013 Alternative Dispute Resolution session for an employee grievance for a District resident city job applicant represented by PEER, representatives of the District of Columbia Human Resources Department verbally confirmed that these practices regularly occur, and defended the addition of preference points after the categorical rankings as appropriate. They further defended the selection of non-residents over residents in the same category as an exercise of a "waiver" process permitted by HR implementing guidelines, despite being rejected by the D.C. Council and in contradiction to HR regulations approved by Council. When asked to produce the justification for waiving the District residency preference in the case of our client, PEER counsel was informed that this material would be forthcoming, but as of this date it has not been received.

By letter dated January 7, 2014, PEER Senior Counsel Paula Dinerstein formally asked the Deputy General Counsel for the Department of Human Resources, Office of the Attorney General, for the authority supporting the claimed ability to hire a candidate without a residency preference when a candidate in the same categorical ranking with a residency preference is available, including any standards or guidelines for granting a waiver of residency preference requirements. In that letter, we also asked for authority that permits or requires that residency points be added after categorical rankings are established. We have yet to receive a reply to this letter.

Thus, we believe that this Administration has flouted the spirit and letter of laws dating back thirty-five years to D.C. Law 2-139, the District of Columbia Government Comprehensive Merit Personnel Act of 1978, intended to help D.C. residents become District government employees. We respectfully request that your office undertake an investigation to ascertain –

- The existence of any internal city directives countermanding the apparent prior practice of applying preference points *before* the tallying of categorical rankings, and instead, applying the preference points after the rankings are completed;

- The legal authority for the selection of non-D.C. residents over D.C. residents within the same categorical ranking;

- The extent of these practices so as to determine whether all or most bona fide District resident applicants were denied their proper preference or whether these improper practices and waivers are employed inconsistently; and

- Whether selective application of these practices and waivers has been made to tilt the process to impede hiring of politically disfavored applicants or to enable the inappropriate selection of politically favored applicants.

We urge you to undertake this inquiry which affects the integrity of the District's merit system selection process. Please contact if you are interested in receiving the material we have assembled supporting this request.

Sincerely,

Jeff Ruch
Executive Director