

Mergers and Sharing Personnel:

What's a City To Do

League of California Cities 2016 Annual Conference | October 7, 2016

Presented by: Chief Wolfgang Knabe, Ann Ritzma, & Frances Rogers



CONSOLIDATING SERVICES IN LOCAL GOVERNMENT

Advantages

- Potential cost savings
- Potential revenue source for contractor agency
- Access to more resources
- Risk pooling
- Potential positive impacts on personnel

CONSOLIDATING SERVICES IN LOCAL GOVERNMENT

Disadvantages

- Reduction or loss in local control
- Difficult to "undo" change
- Potential negative impacts on personnel
- Service-providers may appear impersonal or inaccessible to public
- Cost savings may eventually go away, or may be less than anticipated due to unforeseen costs
- Potential for competing interests

CONSOLIDATION OPTIONS

Contract with Another Public Agency for Services

- Local entities may contract for public safety services
 - Charter agencies (Cal. Const. Art. 11 §§ 4 and 5)
 - Non-charter agencies (Gov. Code § 54981)

4 | LCW | LIEBERT CASSIDY WHITMORE

CONSOLIDATION OPTIONS

Contract with Private Sector for Services

- General law cities and counties with civil services systems prohibited from contracting with private sector, unless:
 - Contract is with a specially trained and experienced person, firm or corporation; and
 - Contract is for special services/ advice in financial, economic, accounting, engineering, legal or administrative matters (Gov. Code §§ 37103 and 53060); or
 - Contract is for service statutorily authorized to be contracted out.

5 | LCW | LIEBERT CASSIDY WHITMORE

CONSOLIDATION OPTIONS

Consolidate or Share Functions Between Agencies

- Dispatch, S.W.A.T.

Mutual Aid

- "In periods other than a state of war emergency, a state of emergency, or a local emergency, state agencies and political subdivisions have authority to exercise mutual aid powers in accordance with the Master Mutual Aid Agreement and local ordinances, resolutions, agreements, or plans therefor." (Gov. Code § 8617)

6 | LCW | LIEBERT CASSIDY WHITMORE

CONSOLIDATION OPTIONS

Joint Powers Authorities

- Two or more public agencies by agreement jointly exercise power common to contracting parties
- JPA becomes a public entity separate from the parties to agreement
- Includes authority to levy fee, assessment, or tax

7 | LCW | LIEBERT CASSIDY WHITMORE

CONSOLIDATION OPTIONS

Creation of Special Districts

- Community Services (Gov. Code § 61001)
- Fire Protection District Law of 1987 (Health & Safety Code § 13801-13803)
- Police Protection Districts (Unincorporated Towns) (Health & Safety Code § 20000, et seq.)
- Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code § 56010, et seq.)

8 | LCW | LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Review municipal codes and charters for any limitations

E.g. "The Chief of Police shall have command and control over the Police Department. The Chief shall enforce all laws and ordinances for the peace and safety of the city, and shall see that all orders and provisions of the council for these purposes are properly executed. The Chief shall have power to appoint such police officers as are authorized by ordinance, subject to the approval of the city manager. The Chief shall devote his entire time to the discharge of his official duties and shall not be absent from the city except under urgent need or in the performance of official duties, unless granted permission by the city manager. The Chief's office shall be kept open at all hours of the day and night, and either the Chief or a subordinate shall be in constant attendance."

9 | LCW | LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Meet and confer requirements under the MMBA?

- Is an MOU in effect?
- Does it prohibit implementation of any of the options under consideration?
- Are there applicable policies or employee relations rules in effect?

10 | LCW LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Meet and confer requirements under the MMBA?

- Are there MOU terms that could impact implementation?
 - ✓ E.g. "The Fire Department staffing requirement is thirteen (13) personnel per shift."
 - ✓ E.g. "The City will maintain a minimum staffing of Companies and Units as follows: A. Three-person engine companies (1 Captain, 1 Engineer, 1 Firefighter/ Paramedic); B. One (1) four-person truck company (1 Captain, 1 Engineer, 1 Firefighter and 1 Firefighter/Paramedic or 1 Captain, 1 Engineer, and 2 Firefighter/Paramedics)."

11 | LCW LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Collective Bargaining

- If displacing bargaining unit employees and decision is motivated by labor cost savings, then must negotiate regarding the decision and effects. (*Rialto Police Benefit Assn v. City of Rialto* (2007) 155 Cal.App.4th 1295.)
- If unmotivated by saving labor costs, then only required to negotiate effects through impasse.
 - Warning: Even if an agency is not legally required to negotiate over the decision to contract-out services, expect organized labor to seek to do so.

12 | LCW LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Topics for Impacts Bargaining

- Seniority carry over for vacation selection, shift bidding, and layoff
- Retirement benefits
- Scope of background check; what happens to those who fail background
- Severance period for those not hired by contractor agency / JPA
- Probationary period

13

[LCW] LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Topics for Impacts Bargaining

- Personnel file maintenance/custody
- Paid leave carry over or cash out
- Pending disciplinary actions
- Rank, special assignment and salary placement at new agency
- Badges, handguns, and sale of equipment/ option of employees to purchase

14

[LCW] LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Mandatory Background Investigations

- A peace officer must be "of good moral character, as determined by a thorough background investigation (Gov. Code § 1031(d))
- A public agency must enforce the criteria for peace officers in Gov. Code § 1031 prior to the time of hire or prior to transfer between agencies. (*Pitts v. City of Sacramento* (2006) 138 Cal.App.4th 853, 856, n. 4.)

15

[LCW] LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Disability Retirement

- Disability retirement by outgoing agency may be appropriate if officer cannot pass physical or psychological exam. (Gov. Code §§ 21153 and 31725)

16 | LCW | LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Public Safety Officers Procedural Bill of Rights Act and Firefighters Procedural Bill of Rights Act

- Gives peace officers and firefighters the right to review adverse comments in a background investigation conducted *after* offering employment. See *County of Riverside v. Madrigal* (2002) 27 Cal.4th 793.
- Gov. Code § 3305 (peace officer); Gov. Code § 3255 (fire fighters)

17 | LCW | LIEBERT CASSIDY WHITMORE

LABOR & EMPLOYMENT LAW CONSIDERATIONS

Leadership

- Impact on daily operations / discipline- who has the ability to give and enforce orders and/or respond to community needs
 - Designate a management representative from service provider to manage services for your agency and integrate with staff as a chief normally would
- Employment practices liability
 - Avoid Joint Employers Doctrine

18 | LCW | LIEBERT CASSIDY WHITMORE

PRACTICAL POINTERS

Questions and Considerations

- Maintaining a police or fire department at minimum staffing, with little or no opportunities for training and no salary or benefits increases eventually diminishes motivation, attitude and energy level.
- Will contracting portions of operations will provide sufficient financial savings, e.g. evidence processing; dispatching?
- Conduct a feasibility study regarding long and short term financial impacts as well as employee and community concerns. Actuarial study of pension and retiree health impacts recommended.

19 | LCW LIEBERT CASSIDY WHITMORE

PRACTICAL POINTERS

Manage Fear of Change Through Public Relations and Transparency

- Communicate early and often with affected stakeholders
 - Identify concerns of stakeholders
 - Identify forum(s) to discuss concerns. Comply with Brown Act (Gov. Code § 54950, et seq.)
 - Incremental implementation helps ease in stakeholders

20 | LCW LIEBERT CASSIDY WHITMORE

PRACTICAL POINTERS

Operational Issues

- Deployment, e.g. staffing levels, beats, etc.
- Specialized Units, e.g. gangs, narcotics, arson
- Uniforms, logos, patches - determine if/how communities will be identified
- Standardized training
- Standardized policies and procedures
- Chain of command

21 | LCW LIEBERT CASSIDY WHITMORE

PRACTICAL POINTERS

Act decisively

- Request proposals from your county, district, or neighboring agency
- Identify legal requirements for establishing/merging agencies
- Establish contractual language which addresses employment issues, e.g. indemnity for employment claims
- Set tight deadlines to avoid anxiety buildup in community and workforce

22

LCW LIEBERT CASSIDY WHITMORE

Thank You!

Wolfgang "Wolf" Knabe

Fire Chief, City of Fullerton
714.738.6506 | WKnabe@fullertonfire.org

Ann Ritzma

Human Resources Director, City of Foster City
650.286.3207 | aritzma@fostercity.org

Frances Rogers

Partner | San Diego Office
619.481.5905 | frogers@lcwlegal.com
www.lcwlegal.com/Frances-Rogers

23

LCW LIEBERT CASSIDY WHITMORE
