BART Employment and Assignment of Relatives Policy Not Violated

Office of the Inspector General

Investigation Results

An employee in a supervisory position works in the same unit as a close relative in a subordinate position in the same facility, but who works on a different shift. Although the subordinate employee has the potential to be supervised by the close relative when working overtime, this was not a violation of the District's Employment and Assignment of Relatives procedure because the language in the Service Employees International Union (SEIU), Local 1021, collective bargaining agreement, which applies to both employees, takes precedence over the District's procedure. The Employment and Assignment of Relatives procedure does not apply when its provisions conflict with any provision of an applicable collective bargaining agreement. The SEIU collective bargaining agreement, provides everyone a right to apply to a position to move upwards in the organization. There was no violation of the collective bargaining agreement when one of the two employees was promoted into the supervisory position.

Management Response to Findings and Conclusions

The Office of the General Manager agrees with the Office of the Inspector General's findings and conclusions. There are no recommendations with this report.

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Providing independent oversight of the District's use of revenue.

Background

The District's Employment and Assignment of Relatives procedure defines a "close relative" as a "parent, child, brother or sister." Although the procedure does not allow close relatives to work in the same department, division, or facility under certain circumstances, it is not applicable when its provisions conflict with any provision of an applicable collective bargaining agreement.

The employees alleged to be in violation of the Employment and Assignment of Relatives procedure are close relatives under the definition in the procedure and are both covered under the SEIU, Local 1021, collective bargaining agreement. One of the employees is in a foreworker position, and the other works in the same facility. The SEIU collective bargaining agreement requires the Foreworker Evaluation Committee (FEC) "to consider all bids of qualified applicants previously screened against the Foreworker qualifications specifications." It does not allow the District to reverse the FEC's recommendations except for just cause or unless it is clearly demonstrated that the FEC has abused its wide discretion to make selections among applicants. The collective bargaining agreement also says that all employees are eligible to bid on open positions, within the criteria established in the agreement. The agreement does not prohibit close relatives from bidding on open positions that would result in their working in the same department, division, or facility, or in a supervisory-subordinate relationship.

Key Findings and Investigation

The District's Employment and Assignment of Relatives procedure does not apply to the two employees in this situation because the language in the SEIU collective bargaining agreement prevails. An employee works in a foreworker position in the same unit where a close relative works in a subordinate position. The foreworker was promoted into that position after undergoing the process prescribed in the collective bargaining agreement and achieving the highest score from the Foreworker Evaluation Committee. Our discussions with the president of SEIU and BART's Director of Labor Relations for Administration confirmed that the SEIU collective bargaining agreement takes precedence over the District's Employment and Assignment of Relatives procedure. The complaint also alleged that when the second of the two employees was hired, the employees made a verbal agreement with management that neither of the close relatives would apply for a supervisory position. Because verbal agreements are not binding, the language in the collective bargaining agreement still prevails.

Office of the Inspector General received a complaint alleging that two employees who work in the same department and facility are in violation of the District's nepotism policy because they are close relatives. Although the two employees work different shifts, the complainant alleged that there are situations when the one of the employees may supervise the other when the other is required to work overtime. We launched an investigation to determine if the District's Employment and Assignment of Relatives procedure was violated when one of the two employees was promoted into a foreworker position.