

**CITY OF RICHMOND, CA
HUMAN RESOURCES MANAGEMENT DEPT.**

PERSONNEL BOARD
REGULAR MEETING

CITY COUNCIL CHAMBERS
440 CIVIC CENTER PLAZA
RICHMOND, CA 94804

**AUGUST 22, 2013
MINUTES**

The meeting was called to order by Vice Chairperson Brown at 5:00 p.m.

1. ROLL CALL:

Present: David A. Brown, Vice Chair
Vicki Winston
McKinley Williams
Yvonne Nair

Absent: Elaine Merriweather, Chair

2. APPROVAL OF MINUTES:

a. Regular Meeting of May 23, 2013

Boardmember Winston made a motion to approve the minutes of May 23, 2013; Boardmember Nair seconded the motion, Item was approved by the following vote: AYES: Boardmember Nair, Boardmember Williams, and Boardmember Winston, Boardmember Brown. NOES: None. ABSENT: Boardmember Merriweather.

b. Regular Meeting of June 27, 2013

Vice Chair Brown called for public comment.

Jacqueline McBride: After reading the June minutes, she was reminded of what occurred at the last meeting in regards to the appeals process. She read the last sentence of Item F, Article 13 relating to the Board taking action and the requirement for a majority vote of the Board. She also cited the item that a departing member should stay in place until a replacement is seated. She voiced concern over such misinterpretations of the Charter that affect the morale of employees.

Vice Chair Brown recognized that Ms. McBride disagrees with the advice the Board was given but not necessarily with the accuracy of the minutes.

PERSONNEL BOARD MINUTES

August 22, 2013

Page 2

Boardmember Nair made a motion to approve the minutes of June 27, 2013; Boardmember Williams seconded the motion.

Boardmember Winston acknowledged and voiced appreciation for Ms. McBride's comments; however, she said the Board would be unable to function if all members were required to be present or in place. While on the Planning Commission, at one point there were several vacancies and would not have a quorum or have been able to have taken a vote had they waited until vacancies were filled. Regardless of the City Charter, a member cannot be required to stay when they have indicated they can no longer serve on the Board.

Boardmember Nair commented that there was a lot of pressure to hold meetings when she first came onto the Board.

VOTE: The minutes of June 27, 2013 were approved by the following vote: AYES: Boardmember Nair, Boardmember Williams, and Boardmember Winston, Boardmember Brown
NOES: None. ABSENT: Boardmember Merriweather.

Ms. McBride asked the Board if she could provide further comment. Vice Chair Brown said he would not re-open public comment and suggested Ms. McBride speak under Public Forum.

3. PUBLIC COMMENT:

Jacqueline McBride: Referred to Item 2b and said she was exclusively referring to appeals that are heard by the Board and not the business the Board handles on a monthly basis, and she asked that the minutes reflect this. She understands that there almost will never be a time when all members are able to be present, but the Charter dictates that appeals require a majority. Also, mistreatment of public servants is a civil rights violation.

4. COMMUNICATIONS:

a) Consideration of Workplace Bullying Policy

Ms. Stephenson reported that at the last meeting the Board requested information, such as examples of policies and a survey of what other jurisdictions are doing. At that time, the Board was to decide what it would like to do in terms of proceeding forward with either creating a Workplace Bullying Policy or providing direction to staff.

Vice Chair Brown noted that the Board received a number of items and a staff report on a Workplace Bullying Policy which he presumes is also available to the public. He called for public comment.

Pamela Hampton: Workplace bullying is similar to schoolyard bullying. Someone uses unreasonable behavior to achieve their end goals. They are not always physical but resort to gossiping and meanness. She requested an appeal

PERSONNEL BOARD MINUTES

August 22, 2013

Page 3

investigation addressing the recent unjust termination of her employment with the City of Richmond. Because of the timing and specific Charter language she asked that the item be agendaized for the September 2013 meeting and asked that Lisa Stephenson and Bruce Soublet to recuse themselves from the due process. She is preparing for the process by submitting her list of witnesses for subpoena in this matter.

Vivien Feyer:

Vivien states that she currently chairs Richmond Human Rights and Human Relations Commission (HRHRC). There have been many concerns about workplace bullying that have come before the Commission since early in the year by both residents and employees. The HRHRC held two special meetings on the topic of bullying in June and July and hopes the Board and the public will have access to written documentation of both the public comment during those meetings and the Commission's actions, resolutions and recommendations. They passed three resolutions and have other items still under consideration. One resolution supported the enactment of the Healthy Workplace Bill, one was on the detrimental impact of workplace bullying, and one supported the creation of a whistleblower policy in the City of Richmond. They also met with the City manager about revising General Order 33, Richmond's policy against workplace harassment, and they are discussing an employee survey on workplace bullying and the possible formation of an ethics commission.

Boardmember Nair said the harassment policy she received did not have a strong component on bullying. She asked and confirmed with Ms. Stephenson if harassment is only for protected categories. She asked what happens to individuals who are being harassed or bullied who are not in these categories. Ms. Stephenson stated that the incidents would be investigated, it would not be harassment or hostile work environment as defined by the law, but the incident could be another type of violation.

Boardmember Nair said she thinks this is where the gap is. Complaints from various employees indicate that investigations would only be conducted if they are liked or supported. Ms. Stephenson said they investigate everything. She would welcome any cases that have not been investigated, but comments from other jurisdictions indicate that Richmond over-investigates as compared to other jurisdictions.

Vice Chair Brown noted that bullying and harassment are sometimes used interchangeably and used in an imprecise manner. He does not want to adopt an imprecise rule using imprecise terms, and he asked if Ms. Stephenson perceived if there was something missing in the Richmond workplace environment that does not give HR the opportunity to investigate complaints that could be fixed by adopting another policy. Ms. Stephenson said frequently people do not understand the legal term "harassment" or "hostile work environment" and will file a complaint under harassment. The investigation frequently reflects that it is not harassment as defined by the law. Other investigations will show that certain actions did occur and HR deals with those

PERSONNEL BOARD MINUTES

August 22, 2013

Page 4

through the personnel process as a discipline or other action. Most, if not all, complaints are investigated and the lack of a specific policy does not prevent an investigation and/or discipline.

Boardmember Nair said if it is something that falls outside of existing policies, she asked how HR corrects it. This is where she could see that it could be considered unfair, depending upon the person. Ms. Stephenson said generally they look at the behavior and what has occurred. Not everything can be legislated. There can never be a policy that includes everything every City employee must follow, but certain acts can occur which are inappropriate and the employee should be disciplined. Whether there is a bullying or harassment policy or not, it would be unacceptable. The City does not have a policy that states one should not steal but if this happens, it will be a problem.

Boardmember Winston said she has worked for other public jurisdictions and they definitely have policies against theft. She sees a gap. In a previous hearing she witnessed a former employee who was extremely disrespectful, condescending and rather negative about another employee and she was very surprised. If the person felt comfortable enough to do this in a hearing process, she questioned what that person would do behind closed doors. Ms. Stephenson said she thinks this is what should be discussed—how to proceed.

Boardmember Winston said she would like to know how best to proceed because policies normally come from a Board or the City Council where they could be initiated by the City Manager. Ms. Stephenson noted that depending upon how the Board wishes HR to proceed. Any policy would go to the City Manager. Assuming he is supportive of the recommendation, it would go to all six unions and would be subject to meet and confer.

Vice Chair Brown noted that Ms. Feyer indicated that the HRHRC has spent a great deal of time and effort in hearing public comment on the matter and he suggested taking advantage of the work they have done. Perhaps the Board could continue the matter for a couple of months to see what is produced in the way of a final report. The Board could then create a final policy. Since the materials provided included with the agenda reflect no known policies in Alameda or Contra Costa County, it would be beneficial to await their (HRHRC) study and then reconsider the matter.

Boardmember Nair supported including additional (?) documentation but she believes the Board should proceed with reviewing the materials provided, including the definitions of workforce bullying. She believes that the Board should move forward immediately, as there are employees struggling. Boardmember Nair has documented comments made by employees who have shared their experiences with her and if the Board were to hear these statements, the Board would understand the urgency of a policy. Vice Chair Brown suggested she share this information.

Boardmember Nair said the items where employees were afraid to speak up regarding workforce bullying include:

PERSONNEL BOARD MINUTES

August 22, 2013

Page 5

- Creating false poor performance reports and attendance reports to support the claim that the employee's performance is substandard;
- Recruiting co-workers to create false reports to support the substandard performance claim when management finds the performance reports to be false;
- Recruiting co-workers to go to the union with claims the employees are working out of classification;
- Criticizing employees' use of paid time off even though it is well within the City standards;
- Awarding, retracting or forcing employees to work overtime on special assignments according to whether they like the employee, forcing undesired overtime to employees they do not like, and removing and canceling overtime from employees they do not like;
- Awarding training to employees they like, advising;
- Threatening co-workers not to communicate with the employee unless it is to advise the employee of a negative performance;
- Retaliation against any employee who does not participate in the false report in order to communicate with the employee; and
- Openly gossiping and making up stories about employees' financial situation like specific material items, dating, sexual history, family partner or what the employee does on their personal time.

Boardmember Nair said she thinks it is important to move forward, given the feeling of the employees and lack of morale in the work environment.

Vice Chair Brown said the things that cause the most concern he categorized as "favoritism" either positive or negative; threats and retaliation, and with respect to the creation of false reports this is a question of fact—what is false or what someone thinks of false. He asked if the City has a whistleblower policy, and Ms. Stephenson said no; the City simply follows the law. Vice Chair Brown asked to agendaize a reference to what the law says about whistleblower situations and Mr. Soublet agreed to provide statutory references.

Boardmember Winston said she feels the work on the HRHRC would be beneficial. She thanked personnel for checking the other jurisdictions in various counties. She supported drafting a policy. Ms. Stephenson noted that in order to meet both concerns, staff can work on a draft and when the additional information is received, the Board may find things it would like to incorporate or change.

Vice Chair Brown said he did not believe the information provided specifically addressed what the Board is discussing, especially in the employment context. He asked if staff could look statewide and determine if there is an example anywhere in California of a workplace bullying policy. Mr. Soublet said staff can use the League of California Cities' resources of its member cities to obtain bullying policies. Boardmember Winston suggested it not be limited to cities only, and referred to www.workplacebullies.org which has some broad definitions that could be used.

PERSONNEL BOARD MINUTES

August 22, 2013

Page 6

Vice Chair Brown said he did not look at the material provided by Boardmember Nair via email for fear it would violate the Brown Act. He felt it would be instructive to look at resources and determine if there is something to utilize so as not to reinvent the wheel.

Boardmember Winston requested a draft of a policy the Board could review rather than raw data and Boardmember Nair supported this direction to staff.

Boardmember Williams asked for feedback, participation and buy-in from the public and from employees. There did not seem to be a focus outside of harassment which surprised him. He is concerned that it has taken so long to get to this point, given the allowance of the situation to permeate. Ms. Stephenson said she believes a lot depends on which employees you speak to. Workplace bullying is a relatively new area and this is why other cities do not have policies on point. Policies or lack thereof has never hampered the City's ability to investigate and discipline an employee that has been affected. She believes this is a new area of policy creation, given cyclical natures of the workplace.

Vice Chair Brown asked Ms. Stephenson if she thought she had the resources to provide a draft by the next meeting, and Ms. Stephenson said she can attempt to compile the draft for the next meeting. Vice Chair Brown said while it was initially his thought to wait for the HRHRC to publish its findings, if staff has the resources to do it, he suggested moving forward on bringing the draft policy to the next meeting which will also bring the public into the discussion. Ms. Stephenson confirmed with the Board that the following be provided by the next meeting:

- Whistleblower statute;
- Take a state-wide sampling of cities and counties;
- Review www.workplacebullying.org and obtain samples from that website; and
- Bring forward a draft policy for discussion purposes on the next Board agenda for future adoption by the City Council and inclusion in the Employee Handbook

Boardmember Nair said the City has a diverse employee population. Having policies that fill gaps create a fair playing field as opposed to gaps where people may feel disenfranchised, not being heard, or resentful, feeling there is unfairness and persecution. She is happy the Board is doing this as this will alleviate stress from employees and they will feel they are valued for the work they do.

Vice Chair Brown said it is valuable to review this but was not sure they will ever be able to legislate human interaction that is universally respectful and dignified. There are many poor examples in the City, but perhaps as a Board they can lead the way where other Boards, Commissions or Councils have failed to do so. He would also invite any members of the audience that wish to submit materials for Ms. Stephenson to review for inclusion in such a policy.

5. UNFINISHED BUSINESS:

PERSONNEL BOARD MINUTES

August 22, 2013

Page 7

Vice Chair Brown called for public comment.

Pamela Hampton: Reiterated the fact that she had sent an email to the Board earlier in the day asked that they check their email regarding her sensitive issue of termination.

Boardmember Winston asked staff if there are timeframes with which the City will need to adhere to in addressing the matter. Ms. Stephenson said there are and she confirmed that the need to go to Executive Session was premature at this time. Mr. Soublet agreed and said there is an entire process under the MOU and until such time, he agreed it would be premature for the Board to consider it at this time.

Vice Chair Brown confirmed it was the Board's charge to hear an appeal from a grievance and recognized staff's comments.

Boardmember Nair questioned if there was an update on the Retreat for Brown Act training and Ms. Stephenson said she will double-check with the City Clerk on its status.

6. CONSIDERATION OF PROBLEMS AND REPORTS:

Vice Chair Brown called for public comment.

Jacqueline McBride: She stated the Charter states that appeals are to be heard by five Boardmembers. This is an outstanding problem, as when there is a 2-2 vote, the appeal is denied, and someone needs to be in the middle for a fair vote. Under Article 13, this Board is responsible for all 10 pages of the Article and she asked that the Board follow its responsibilities.

Angela Cox: She stated that she is a 28 year employee and resident of Richmond. She is happy that the Board has decided to undertake a policy on Workplace Bullying and said she has watched the Library go from being the most pleasant place to work to one that has pitted co-worker against co-worker. She watched a two-tier management of employees develop for those who are favored and those who are not. She has watched penalties for different actions, has seen one co-worker follow the process to file a grievance when she was being harassed, have her representative at the table with HR and only when she had legitimate reasons for redress or relief, she was marginalized. Her talents to the City have gone wanting. She said employees are desperate for help. Regarding the whistleblowing policy, she attended a conference in San Francisco where she met people from various jurisdictions throughout the state and the statute is weak. Remedies are virtually non-existent. They run their course of statute of limitations and then the person who blows the whistle is further harassed.

PERSONNEL BOARD MINUTES

August 22, 2013

Page 8

While the Board spends a lot of time and energy on the policy, this will be the end result.

Vice Chair Brown questioned Boardmember Winston and asked her if this was what she had in mind in terms of the agenda. Boardmember Winston said when the Board has a Retreat that it be made clear that it is not just about the Brown Act but what is the purpose of Item 5, Item 6 and how things get agendized on the agenda and whether items are agendized properly. When Item 4 was discussed, it became a communication and this is where assistance is needed.

Ms. Stephenson said the Board was thinking of holding a Retreat in the end of October, early November, and in the meantime, she suggested the Boardmembers let her know of additional items for the Retreat.

Vice Chair Brown said he is hearing that the Board needs to know what the process is, how things get agendized and how the Board can bring items to the agenda, how employees can bring items to the agenda and how that works so that the Board feels more comfortable. He said he does not have a clear understanding of how anything gets agendized except what staff puts on it. Mr. Stephenson said the last time Boardmember Nair had some items, she emailed her and this can be discussed, but she asked that Boardmembers simply email her.

Boardmember Winston said she wanted to know exactly what the items entail, whether they are discussion, action or other types of items, and when employees can make public comments. Mr. Soublet suggested the Board review the procedures and protocols adopted last September which detailed how meetings would be run and how items are agendized. If those are not clear, he asked to send an email to Ms. Stephenson and indicate which areas are not clear.

Boardmember Nair asked for an explanation of the Charter, stating that it seems to be a difference of opinion by people. She asked who the clear authority is on translation of the Charter, especially when it comes to grievances and the process. Ms. Stephenson said she could discuss this with the City Attorney in terms of possibly clarifying the language or the process used in interpreting the language.

Vice Chair Brown said this causes problems with what has been alluded to, which is the role of the City Attorney and the HR Department. He thinks the Board needs to be independent of the City Attorney. The Board can listen and consider what the City Attorney's opinion is, but also what the Board believes it states or means. If it does not make sense, the Board needs to voice it does not feel comfortable and may get outside counsel. Ms. Stephenson noted that she often relies on what has been done historically. She gave an example of the number of members during an appeal hearing. This was not her interpretation, but it is the way it has been handled. If it is wrong, the Board may interpret it differently. Vice Chair Brown disagreed with the statement that it is necessarily right to do something because it is the way it has always been done.

7. ADJOURNMENT:

PERSONNEL BOARD MINUTES

August 22, 2013

Page 9

The meeting was adjourned at 5:52 p.m.

Respectfully submitted,

LISA STEPHENSON
ACTING /HUMAN RESOURCES MGMT.
DIRECTOR