



METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205

(503) 222-3671

MSD BOARD MANAGMENT COMMITTEE

FEBRUARY 15, 1978

12:00 Noon

A G E N D A

- I. HAL MARKOWITZ PERSONNEL MATTER (REFERRED TO THE MANAGEMENT COMMITTEE BY THE BOARD)

- II. PERSONAL SERVICES SELECTION PROCEDURE

- III. OTHER BUSINESS

MSD BOARD MANAGEMENT COMMITTEE

February 15, 1978

MEMBERS PRESENT

Sidney Bartels, Chairman
Connie McCready

STAFF & ADVISORS PRESENT

Dean Gisvold
Charles C. Kemper
Warren Iliff
A. McKay Rich
John Wight
Jean Woodman

I. HAL MARKOWITZ PERSONNEL MATTER

The committee met to consider a letter sent to each of the MSD Board members by Phillips Coughlin Buell Stoloff & Black, Attorneys for Hal Markowitz, requesting a resolution to action against MSD over the dismissal of Dr. Markowitz. Mr. Gisvold was present to provide his opinion on MSD's position in the matter, stating that nothing existed in Dr. Markowitz's personnel file to warrant disciplinary action of firing. The Personnel Manual procedure for layoffs for lack of work require that a comperable position or other available positions be offered to and this was not done.

There was some discussion on solutions ranging from a cash settlement to rehiring of Dr. Markowitz, and of the remaining staff members still involved in the Behavioral Engineering Program. Mr. Gisvold stated that MSD's position was weak in that A. McKay Rich had been assigned as acting Director of the Research Department, the position eliminated which resulted in Dr. Markowitz's layoff. There was also some discussion on allowing Dr. Markowitz access to the research data collected during his tenure of employment with the Zoo, and the possibility that he might be retained to catalogue and organize this information.

MSD Management Committee
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A decision was not made, and the Committee agreed to meet again during lunch on February 24, 1978, to continue the discussion.

II. PERSONAL SERVICES SELECTION PROCEDURE

The Committee members considered the attached Administrative Procedure No. 7 to be used as a state required selection process for personal services contracts. It was agreed to bring the procedure before the Board on the 24th of February for action.

The meeting adjourned at 1:50 P.M.

PHILLIPS, COUGHLIN, BUELL, STOLOFF & BLACK

ATTORNEYS AT LAW

THIRTEENTH FLOOR - WILLAMETTE CENTER TOWER
121 S. W. SALMON STREET
PORTLAND, OREGON 97204

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(503) 226-5700

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DAVID N. HOBSON
STUART W. GATES
HOWARD M. DUPUY, JR.
CHARLES E. MCGINNIS
DALE M. HERMANN
LARRY D. MILNER
MERRILL G. EMERICK
J. CHRISTIAN EDWARDS
GREGORY H. BAUM
ROBERT W. HAINES
SUSAN E. ERTLE

February 8, 1978

RECEIVED
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METRO SERVICE DISTRICT

Counselman Sid Bartels
21440 SE Stark
Gresham, OR 97030

Dear Counselman Bartels:

This office represents Dr. Hal Markowitz.

As you are undoubtedly aware, on January 24, 1978, Mr. Warren Iliff, by letter, attempted to terminate Dr. Markowitz's employment as Director of Education and Research at the Washington Park Zoo, and gave him until 5:00 p.m. that evening to remove all of his personal property from the Zoo premises. Dr. Markowitz's termination at that time and in that manner can most charitably be described as unreasonable, arbitrary and vindictive, contrary to Dr. Markowitz's understanding as to the terms of his employment, and in violation of MSD's own rules.

Dr. Markowitz has always been under the impression that his employment was for the budget year and that if the Director decided to terminate his services, he would be notified in January to allow him adequate time to wind down his responsibilities and to find another position. This understanding was, in fact, spelled out in Dr. Markowitz's only written contract which was for a three year period from July 1, 1973. Although he has no written contract at this time with such expressed provision, his position was budgeted until the end of June, 1978.

The attempt to classify Dr. Markowitz's January 24, 1978, termination as a "lay-off" under Article 2, Section 2.6 of the MSD rules in order to avoid a contested hearings procedure required by Article 3, Section 3.1.7 of your rules, is totally dishonest. The lay-off provision applies only in situations where "there are changes in duties in the organization, lack of work or lack of funds ..." None of these conditions, in fact, existed at the time of Dr. Markowitz's

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Counselman Sid Bartels
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termination on January 24, 1978. Dr. Markowitz had many duties as Director of Education and Research, not relating to behavioral engineering and the winding down of the Behavioral Engineering Program will in itself take several months. Dr. Markowitz's position was not abolished and, in fact, an acting Director of Education and Research was immediately appointed, even assuming Dr. Markowitz's job and all its responsibilities were totally abolished, which is definitely not the case, your rules require that every reasonable effort be made to integrate your employees in to another position. Obviously no such attempt was made because the truth is that Dr. Markowitz, and in Mr. Iliff's own words of January 24, 1978, to the news media, was "fired." Yet, he was not given the benefit of a contested hearing as is required by your own rules.

There is no question about the Board's power to make changes in the program and personnel if done according to your own rules and procedures and, hopefully, in an equitable manner. Dr. Markowitz's termination meets neither of these criterias. As a result, in our opinion, Dr. Markowitz should be able to recover damages in a court of law against the MSD for this illegal termination. In addition, based on the above information and certain additional information, we believe Dr. Markowitz has a strong cause of action against Mr. Iliff personally for illegal termination and will be able to recover both general and punitive damages.

The purpose of this letter is to try to resolve any possible action against the MSD without litigation. On behalf of Dr. Markowitz, we formally request that he be reinstated as Director of Education and Research until the end of the budget year, or in the alternative, if the Board feels that the firing was for a valid reason, that he be given a contested hearing before an impartial hearings examiner.

We look forward to your response.

Thank you.

Very truly yours,

Dale M. Hermann

DMH:ram
cc: Mr. Chuck Kemper
Mr. Warren Iliff

MAP 7

METROPOLITAN SERVICE DISTRICT
ADMINISTRATIVE PROCEDURE

TITLE: PERSONAL SERVICES SELECTION

DESCRIPTION: A PROCEDURE TO BE FOLLOWED IN SELECTION OF A PERSONAL SERVICE (INCLUDING ARCHITECTURAL AND ENGINEERING SERVICES)

POLICY

STATEMENT: THE MSD WILL RETAIN PERSONAL SERVICES (INCLUDING ARCHITECTURAL AND ENGINEERING SERVICES) ON THE BASIS OF DEMONSTRATED COMPETANCE AND QUALIFICATIONS AND NEGOTIATE FEES FOR SUCH CONTRACTS AT FAIR AND REASONABLE PRICES

PROCEUDRE:

1. Personal services contracts are for services that are not normally performed by the MSD division staffs and will not require continuous supervision by MSD staff personnel. Examples of services that may be performed under personal services contracts are: consultants for economics, drafting, engineering, architects; special photography; legislative liaison, public relations; professional advice on retainer; etc.
2. For personal service contracts \$500 or less the division director shall justify in writing the need for the proposed contractor. This justification shall include a description

of the contractors capabilities in performing designated work tasks.

3. For personal services contracts between \$501 and \$5,000, the following process shall be used:
 - a) At least three potential contractors shall be solicited for proposals from a list of potential contractors that is maintained by the Administrative Division. Care should be taken to solicit proposals from different contractors for each project on the basis of demonstrated competence and qualifications.
 - b) Solicitation shall be done by letter and proposals shall be in writing. It is MSD's responsibility to define clearly the task or project to be undertaken and MSD shall reserve the right to reject any or all proposals for any reason.
 - c) Evaluation shall utilize Attachment "A" or its equivalent and may as an option require oral presentations. Simple records should be maintained to quantify and justify selection. The objective is highest quality of work for most reasonable price. The quality of the proposal may be more important than cost.
 - d) Notification of selection and rejection shall be made in writing by the division director.
 - e) Personal services contract shall be submitted for review by legal counsel pursuant to MAP 51.
4. In the case of consultants, i.e., architect or engineers, under retainer, specific design projects for fees up to \$5,000 may be added to the retainer contract as an amendment. However, the contract amendment shall have MSD Board approval (see MAP 51 regarding contract procedures).

5. For personal services contracts in excess of \$5,000, an evaluation of proposals from potential contractors shall be performed as follows:
- a) A notice shall be posted in (at least) the Daily Journal of Commerce requesting proposals for the project. In addition, three to five potential contractors shall be notified in writing that the MSD is requesting proposals. The request for proposals shall specifically define the scope of tasks to be performed. MSD has the right to reject any or all proposals for any reason.
 - b) Evaluations of proposals shall use Attachment "A" or its equivalent and shall require oral interviews of at least the three finalists. The evaluation team shall consist of three to five people with members required to evaluate each potential contractor.
 - c) After evaluation is complete, the selection team shall recommend a contractor by ranking the finalists to the division director who will make final selection.
 - d) Notifications of selection and rejection shall be made in writing by the division director.
 - e) The personal services contract shall be submitted for review by legal counsel pursuant to MAP 51.

DATE: _____

APPROVAL: _____

ATTACHMENT A

NAME OF FIRM: _____

Please score the consulting firm on a scale from low 5 to high 1 as you feel his performance rates on the following list of items:

WEIGHTED POINTS = Factor Times Score

Criteria	1	2	3	4	5	Factor	Weighted Points
1. Demonstrated competence in this type of work							
2. Background and experience of firm's staff members who would be assigned to the job							
3. Approach to the accomplishment of a project							
4. Size of job in relation to firm size							
5. Availability							
6. Ability to perform the work locally							
7. Ability of contractor to supply all of the major disciplines necessary to perform the work							
8. Consultants present work volume							

EVALUATION TEAM MEMBER _____