

METRO
CHARTER
COMMITTEE

P.O. Box 9236 • Portland • Oregon 97207
Phone 503-273-5570 • Fax 503-273-5554

March 12, 1992

Joanne McGilvra Hoyt
15445 NW Perimeter Drive
Beaverton, OR 97006

Dear Ms. Hoyt,

Thank you for your interest in the Metro Charter Committee. We would very much like to have the opportunity to talk with your PEO. It is still early in the process of the Charter Committee, however, and it would be difficult for me to commit any one person so far in advance of your October 27 meeting.

I will keep that date on the calendar, though, with the intention of finding the appropriate speaker to provide an explanation of the Charter and the process that has been used in writing it.

Once again, thank you again for your letter. I will contact you again in the months ahead.

Sincerely,

Janet Whitfield
Committee Administrator

JOANNE MCGILVRA HOYT

15445 N.W. Perimeter Drive

Beaverton, Oregon 97006

(503) 645-4708

March 3, 1992

Janet Whitfield
Committee Administrator
Charter Committee
METRO
PO Box 9236
Portland, OR 97207

Dear Ms. Whitfield,

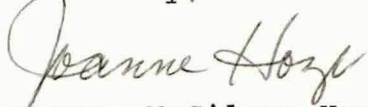
As Program Co-Chair for Chapter EG of PEO, I contacted Mary Tobias requesting a speaker on the METRO Charter for Tuesday, October 27, 1992. We agreed the request should be forwarded to you for a response.

Chapter EG meets in the evening at 7:30 p.m. in member's homes. The hostess on October 27, 1992 is Peggy McGaffey, 3900 SW Bridlemile Court, Portland, 97221, phone 223-2227. Closer to the date when you know if or whom can fill the request, I will provide a map to Peggy's home. We are a small group of 10 to 15 from Multnomah, Washington and Clackamas Counties.

If the speaker could talk for about 20 minutes followed by 10 minutes for questions on the Charter to be offered to the voters in November, it would be appreciated.

I realize at this point you may not have the voter education for adoption of the Charter planned. However, I would appreciate a response as early as it is practical. Thank you for your assistance.

Sincerely,



Joanne McGilvra Hoyt

*Mary said yes.
Ms. Hoyt informed.*

cc: Mary Tobias



TUALATIN VALLEY
ECONOMIC DEVELOPMENT CORPORATION

DATE: March 12, 1992
TO: Members, Metro Charter Committee
FROM: Mary L. Tobias
RE: March 5th Meeting

I have been greatly troubled since last week's meeting because of the insulting remarks I made toward the committee. I will not offer you any excuses -- my behavior was inexcusable. Indulgence in temper tantrums is unacceptable to us all and my behavior has caused me a great deal of personal distress.

Therefore, I offer each and everyone of you my sincere apologies. In addition, I pledge to you all that a personal outburst of that kind will not occur again.

Although there is no excuse for my behavior, I would like to try to explain some of my passion.

It seems to me that the people of Oregon, its governments and its traditional institutions are caught up in a time of great political, social and economic stress. There are tremendous pressures on all governments to prove their worth to the citizenry. At the same time, the tests of worth seem to be constantly changing and the proofs demanded appear to have no solid grounding. Within this climate of unrest, we are struggling to provide a governance document for a regional government that we all agree is needed.

It is my belief that if we are going to constitute this government through a home rule charter, then it is important to proceed in a way that reduces the stress on the existing system while moving toward maximum efficiency and communication between the regional government, the local governments and the citizenry. We also must deliver a document that takes seriously the concerns of the electorate.

I don't believe there can be any confusion in the minds of Oregonians that the electorate is seriously concerned about the "waste" of taxpayer money on "unnecessary" expenditures. The passage of Measure 5 and the governor's conversations with Oregonians have made this point crystal clear.

My outburst last week is directly related to these points. I am concerned that we are placing both the regional government and the local governments in an untenable position. In a time of continual pressures to cut costs, we are mandating a visioning process that will drive up the cost of government, and to many people will appear to be a duplication of effort and process. The government bashers will have been given another tool with which to attack and denigrate the system of government we are working so hard to improve and protect. The fact that the process was mandated by the Metro Charter Committee will be ignored or forgotten. Metro and its local government partners, in my opinion, will have become the victims of our good intentions.

Although this might sound overly dramatic, I have come to believe that our state and our nation are in the throes of an unnamed, and perhaps leaderless, political revolution. I am concerned that we are changing our political system without giving enough thought to what we are leaving behind or what we are planning to offer in its place.

It is my personal concern that everything the committee does in crafting this charter should be done with attention to the unrest we see around us everyday. The regional and local governments have come a long way toward building a solid base for regional coordination through our efforts. Some of the most forward thinking in the nation is going on within this Metro Charter process. We are working to build, not to tear down. But, the whole system of governance is much more fragile than many realize. I would just urge caution for all of our actions. In many ways, it is as though the glass blower has completed blowing the intricate house of seven gables and is now ready to snap it from the blowpipe. At this point, it is easy for the house to be misshapen or shattered through a careless action. I would not want that to happen to our region.

Please understand that I am very supportive of the work done by this committee in the last few weeks. I have intended from the beginning to be part of the process of developing a broad based, long lived Metro Charter. At this point, I can see nothing in our work that would cause me to feel that a document of this kind will not be forthcoming from this committee.

Again, I offer you my sincere apologies. I have a great deal of respect for each of you and it is my hope that our business and professional relationships have not been permanently damaged.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: April 2, 1992

To: Janet Whitfield, Committee Administrator
Metro Charter Committee

From: *LS*
Larry Shaw, Senior Assistant Counsel

Regarding: CHARTER PROVISION GUARANTEEING
Our file: 2.§7.A

Question: What are the ramifications of the following proposed Charter provision relating to Metro's ability to enter into contracts: "The regional government shall not enter into an agreement which would limit its ability to contract out."

Answer: The proposed Charter provision conflicts with the Public Employee Collective Bargaining Act for represented employees by prohibiting Metro from collective bargaining on a mandatory subject of bargaining. Therefore, it would be preempted by state law as to represented employees.

Discussion

The March 19, 1992, Charter Committee meeting minutes indicate that the purpose of this proposed Charter provision is " * * * to ensure that the government always has the ability to subcontract for services." The Tri-Met Union jurisdiction example seems to refer to an existing contract where the employer had not retained the right to subcontract for certain services. Restated by the Chair, the proposed Charter provision " * * * is a prohibition on inclusion of a provision which would restrict the prerogative of the government to contract out."

This is a situation similar to City of Roseburg v. Roseburg City Firefighters, 292 Or. 266, 639 P.2d 90 (1981). There the city was held to have refused to bargain by insisting on using its local collective bargaining ordinance provision on factfinding that differed from the Public Employee Collective Bargaining Act (PECBA) procedures. The city reasoned that its exercise of home rule authority in the enactment of its different bargaining rules was predominate over PECBA. The court upheld the Employment Relations Board (ERB) order finding that

Janet Whitfield
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the city violated state law because PECBA preempts conflicting local rules even those based on home rule.

The issue of management's right to "contract out" work currently being done by members of a collective bargaining unit is determined in the collective bargaining process. Public employees have the right to elect to be represented by a union. ORS 243.662. Once a unit is represented, the exclusive bargaining agent for either side can demand bargaining over all subjects referred to as "employment relations." This term includes " * * * other conditions of employment." ORS 243.650(7). This statutory phrase has been interpreted very broadly to make most subjects mandatory for bargaining. Salem Police Employees v. City of Salem, 308 Or. 383, 781 P.2d 335 (1989).

Therefore, for a represented group of employees, the proposed Charter provision has the effect of prohibiting good faith bargaining required by PECBA for this particular mandatory subject of bargaining. Since the local Charter provision conflicts with PECBA, it would be preempted by state law as to represented employees.

Unrepresented employees in the public sector normally do not have employment contracts. The problem identified in the Committee minutes' example as the purpose of the provision is a result of a bargained for provision in a union agreement. Therefore, the proposed Charter provision would have little practical effect in the case of unrepresented employees even though the provision would not be preempted by state law as to them.

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