

MINUTES OF THE MANAGEMENT COMMITTEE MEETING
OF THE METROPOLITAN SERVICE DISTRICT

February 19, 1987

Committee Members Present: Councilors Tanya Collier, Tom DeJardin (alternate), Jim Gardner, Gary Hansen, Sharron Kelley, and David Knowles (alternate)

Committee Member Absent: Councilor Larry Cooper

Other Councilors Present: Councilor Corky Kirkpatrick

Also Present: Executive Officer Rena Cusma

Staff Present: Eleanore Baxendale, Chuck Stoudt, Dick Engstrom, Neil McFarlane, Don Cox, Sylvia Smith, Randy Boose, Donald Carlson, Janet Schaeffer, Jim Shoemake, Jennifer Sims, Jill Hinckley, Ed Stuhr, Darlene Badrick, Debbie Allmeyer, Cathy Vandehey, Cathy Thomas, Dave Luneke and Ray Barker

Chairman Gardner called the meeting to order at 5:30 p.m. He noted that four regular members and two alternate members were present and that only five members would be allowed to vote on any one issue. Alternate members would vote in the absence of regular members. He also announced Item 3 would be considered after Item 1 in order to accommodate the Executive Officer's schedule.

1. Consideration of Minutes

Motion: Councilor DeJardin moved to approved the minutes of January 15 and 22, 1987. Councilor Kelley seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, DeJardin (alternate), Gardner, Hansen and Kelley.

Absent: Councilors Cooper and Knowles (alternate)

The motion carried and the minutes were approved.

3. Review of the Executive Officer's Current and Planned Transition Staffing, Programs and Budget

Executive Officer Cusma referred the Committee to staff's written report contained in the agenda packet and offered to answer questions about the report. The report contained the following documents: 1) Memo to Presiding Officer Waker from Executive Officer Cusma regarding transition activities and dated February 17, 1987, with budget information regarding transition personnel and contracting attached; 2) memo to the Executive Officer from Randy Boose, Personnel Officer, regarding transition activities and dated February 17, 1987; 3) memo (legal opinion) to Randy Boose from Eleanore Baxendale, General Counsel, regarding Council confirmation of positions and dated February 17, 1987; and 4) letter (legal opinion) to Randy Boose from Jonathan Harnish, Attorney, regarding Council confirmation of temporary appointments and dated February 19, 1987.

Discussion Regarding Temporary/Provisional Employment Status. Councilor Kelley referred to a legal opinion addressed to Randy Boose, Personnel Officer, from Jonathan T. Harnish of Bullard, Korshoj, Smith & Jernstedt, dated February 19, 1987. She asked Mr. Boose if that opinion would have been given if temporary employees were subject to the same open hiring process as regular employees. She said it appeared the opinion was in conflict with Ms. Baxendale's opinion on the same subject dated February 17, 1987.

Mr. Boose responded that because the two opinions appeared to be somewhat conflicting and because he had not had an opportunity to discuss the opinions with the Executive Officer, he could not address Councilor Kelley's question. He noted when transition hirings were taking place, he had discussed with Dick Engstrom, Acting Deputy Executive Officer, the fact he thought it necessary to get a legal opinion regarding whether temporary appointments to key positions required Council confirmation. Mr. Boose said the opinion was not requested because of the need to get people into positions. He said he would carry out the opinion deemed binding.

Councilor Kelley asked Mr. Boose to review the current Personnel Rules regarding temporary appointments. Mr. Boose explained the practice during the last year and one-half he had been Personnel Officer was to fill regular positions in the budget on a temporary basis. These appointments, he said, could be done by a competitive selection process or by appointment. He confirmed temporary employees could be hired for an initial six months and the six month employment period could be extended another six months by the Executive Officer. At the end of temporary employment, the employee would have to either vacate the position or be hired permanently by an open, competitive recruitment process.

Chairman Gardner noted Ms. Baxendale's opinion had determined past employment practices were not entirely correct. She had determined, he said, that employees appointed to open, vacant positions should have more properly been called "provisional" employees rather than "temporary" employees. Mr. Boose said Ms. Baxendale's opinion made sense to him. However, because no opinion had been rendered on the matter in the past, the practices he had outlined earlier had been followed.

In response to Councilor Collier's question, Mr. Boose explained that until the recent transition of Executive Officers, there had been no case of a employee being appointed as a temporary to a position requiring Council confirmation.

Councilor Collier thought it reasonable to require confirmation of temporary employees in key positions because of the policy-making nature of those positions.

Councilor Kelley was concerned that under the current Personnel Rules, a temporary employee in a key position could serve for up to twelve months without Council confirmation and without having gone through a competitive hiring process. She was concerned the best, most qualified people be appointed to key positions.

Referring to the budget information provided by staff on transition personnel, Councilor Kelley requested staff provide information about the budget impact of transition personnel and from which budget extra expenses would be paid. She requested the information be provided in a format that related to the budget. Executive Officer Cusma agreed to provide the written information.

Chairman Gardner referred to Ms. Baxendale's legal opinion and her definitions for "provisional" and "temporary" employees. He thought Metro's Code explained the term "temporary employee" satisfactorily, but interpretation of that term had been faulty. Now that it was understood a temporary employee could not be hired to fill a budgeted, line item position, that practice should not occur again, he said.

Executive Officer Cusma explained she concurred with the opinion rendered by Mr. Harnish and she planned on working within the current personnel system. She also explained before recruitment efforts for certain positions would begin, she would recommend reorganization.

Councilor Hansen suggested the Acting Deputy Executive Officer be confirmed by the Council as soon as possible. The Executive Officer said she thought it was understood the Council wished to exempt that position from the Personnel Rules and confirmation process. She

said if that was not now the Council's desire, she would follow the established personnel process.

Councilor Hansen said because Personnel Rules were already in place, the Council could not ignore those Rules pending possible reorganization.

The Executive Officer explained she was following the process worked out in meetings of the Transition Committee and she was trying to follow the existing Personnel Rules.

Chairman Gardner said he had not read Mr. Harnish's legal opinion since the Committee had received it just before meeting time. He noted, however, Ms. Baxendale's opinion defined a provisional employee as one appointed to fill a vacant, budgeted position until such time as a regular employee could be recruited and hired for that same position. He also noted Ms. Baxendale thought confirmation was required for all employees, be they permanent or provisional, whose positions required Council confirmation. Chairman Gardner was concerned about the status of Mr. Harnish's opinion when the Council had already received a legal opinion on the same subject from Ms. Baxendale, the Council-confirmed Metro General Counsel.

Councilor DeJardin recommended the Committee conduct a work session on transition issues since the Committee had not had sufficient time to read and evaluate Mr. Harnish's opinion.

After discussion on the subject of the interpretation of Mr. Harnish's and Ms. Baxendale's opinions, Ms. Baxendale explained Mr. Harnish had advised that an employee temporarily filling a vacant key position did not require confirmation. Confirmation would instead take place when the permanent employee was hired for that position.

Discussion continued on the status of transition employees, whether employees filling key positions should be confirmed, and whether the Executive had commenced a competitive recruitment process to fill key positions with permanent employees. Executive Officer Cusma again explained she thought the Deputy Executive Officer position should be exempt from the Personnel Rules and Council confirmation process. She said she had not begun recruiting a permanent IRC Administrator because of impending reorganization of that department. Regarding the Solid Waste Director position, she wanted to settle the matter of Mr. Durig's employment contract before recruitment efforts commenced. The Executive Officer said she was not sure she agreed with the opinion that provisional employees required Council confirmation. After further questioning from Councilor Knowles, Executive Officer Cusma said she would consider the possibility of offering key transition employees for Council confirmation although she said she had not seen that practice occur anywhere else.

Chairman Gardner advised the Committee to be precise in defining "temporary" and "provisional" employees. Based on Ms. Baxendale's opinion, he explained a temporary employee was one hired for a special project not budgeted as a line item position. A temporary employee could serve for six months. The Executive Officer could extend employment another six months. A temporary employee could serve no longer than one year. The Chairman explained a provisional employee, however, was hired for no longer than 90 days to fill a vacant, budgeted line item position while recruitment for a permanent employee to fill that position took place. The 90-day provisional employment period could be extended by the Council granting a waiver of the Personnel Rules. He agreed with Ms. Baxendale's opinion that provisional employees should be confirmed by the Council.

The Executive Officer affirmed that all transition hirings had complied with the personnel ordinances.

Chairman Gardner recalled during the Transition Committee meetings between Councilors and the Executive, the Council had discussed offering to exempt the Deputy Executive Officer from the Personnel Rules. He assumed because the Executive had not accepted that offer, the issue was no longer on the table.

Councilor Knowles said he thought the Deputy Executive Officer position should be exempt but until such time as the Personnel Rules were amended, the current Rules should be followed.

A discussion followed regarding both the Council's and Executive's desire to move ahead with hiring permanent staff for key positions and the Executive's desire to accomplish personnel administration according to the Personnel Rules.

Personal Services Contracting Issues

Chairman Gardner asked Ed Stuhr, the Grants/Contracts Officer, to answer questions regarding a personal services contract with Ray Phelps in the amount of \$8,000. The Executive Officer had contracted Mr. Phelps to determine whether Metro should undergo a performance audit process. Chairman Gardner first asked Mr. Stuhr if he thought Mr. Phelps was performing work related to the contract terms.

Mr. Stuhr responded his reply was based on memory since he did not have a copy of the contract. He said the major part of Mr. Phelps' work had related to the history of Metro's contract compliance which would be the first step to determining whether a performance audit was necessary.

Chairman Gardner asked Mr. Stuhr if he thought Mr. Phelps' work

investigating whether landfill employees had received wood from a Metro contractor related to the terms of Mr. Phelps' contract. Mr. Stuhr said he could not answer that question. Executive Officer Cusma reported she believed the work was in compliance with the terms of Mr. Phelps' contract.

Chairman Gardner asked Mr. Boose, Personnel Officer, if he thought Mr. Phelps fit the definition of an individual contractor or an employee. Mr. Boose said he had raised the same question and in his opinion, had determined Mr. Phelps was performing work classified as individual contractor.

Chairman Gardner asked the Executive to explain Mr. Phelps' current status. Executive Officer Cusma responded Mr. Phelps' contract had expired ten days ago and that the contract had been initiated under contract ordinance provisions. Dick Engstrom, Acting Deputy Executive Officer added that Mr. Phelps' contract expired February 9, 1987. Staff were exploring the possibility of hiring Mr. Phelps as a temporary Sr. Analyst to complete work related to the feasibility of a performance audit process for the agency, he said.

In response to Chairman Gardner's question, Mr. Engstrom clarified the Executive wished to hire Mr. Phelps as a provisional rather than a temporary employee.

Chairman Gardner asked whether staff had found any evidence that three competitive proposals had been solicited for the Phelps' contract. Mr. Boose said the Grants/Contracts Officer had reported there was no evidence of same.

Chairman Gardner asked if an internal review process was required before the \$8,000 contract could be signed. Mr. Boose said such a process was required.

At the Chairman's request, Mr. Stuhr reviewed the established procedure for entering into an \$8,000 personal services contract. The process, he explained, should include: 1) solicitation of at least three proposals -- preferably written; 2) copies of correspondence from the project manager informing those not selected of their status; 3) no obligation to accept the lowest bid because personal services contracts were exempt from the public bid process; and 4) proof of internal review including signoffs from the Finance & Administration Director and the Deputy Executive Officer or the Executive Officer. Mr. Stuhr reported the contract sum had not been paid to Mr. Phelps due to lack of proper documentation and because the contract had been signed prior to appropriate review.

Executive Officer Cusma said when the contract was initiated, she was told it could be let as a sole source provider contract and she had assumed the contract was of that type.

Chairman Gardner asked if the Executive Officer had solicited staff's opinions about the contracting process. Mr. Engstrom responded the Executive's staff had initial discussions with the Contract Officer.

Councilor Knowles asked if someone inside the Metro organization had advised the contract was a sole source contract. Executive Officer Cusma said someone had given her that information but she did not know who that person was.

Councilor Collier asked Mr. Engstrom to explain how Mr. Phelps' services would be budgeted in the future. Mr. Engstrom said Mr. Phelps could be hired as a Senior Analyst and the salary could be paid from funds saved from the vacant Legislative Liaison position. He said the matter was under initial discussion.

Chairman Gardner asked if Mr. Phelps had completed the contract scope of work. The Executive Officer said the work was substantially completed and she would forward a recommendation to the Council regarding his findings. The report would cover contract compliance, bidding and other areas. She said the findings could conclude a performance audit not be conducted.

In response to the Chairman's question, Executive Officer Cusma explained Mr. Phelps future duties would include a continued review of procedures and recommendations of how to "clean things up." One recommendation could include hiring a purchasing agent, she said.

Chairman Gardner said he was puzzled why that task would not be completed via another contract. The Executive said she would look into that possibility.

Councilor asked if there were problems relating to paying Mr. Phelps for the contract work because of apparent breeches in procedure. Mr. Boose acknowledged problems did exist. Ms. Baxendale added that Don Carlson, Finance & Administration Director, had called the non-payment problem to her attention and she would soon recommend a course of action.

Chairman Gardner asked the Executive to confirm whether the omission of soliciting three competitive proposals for the contract could not be remedied. The Executive confirmed the problem could not be remedied and was indeed a moot point.

Summary Discussion

After discussion of budget issues, Chairman Gardner requested the Executive work with Jennifer Sims, Management Services Director, to provide Ray Barker complete information regarding how transition

related expenses were impacting the budget. The Executive again stated that no expenses had exceeded budgeted amounts. Ms. Sims further explained how savings from unfilled positions and programs were being used to finance severance pay and other transition costs.

Councilor Knowles announced he and Councilor DeJardin would have to leave the meeting because of other obligations. He said he had read the One Percent for Art staff report and recommended approval of the program.

Councilor DeJardin explained he would also have to leave the meeting and said he supported staff's recommendations on the One Percent for Art Program. However, the Councilor said he was uncomfortable with the way the transition of Executive Officers had been proceeding. He was concerned the Executive had not garnered staff and Council support for her changes. He also thought the circumstances surrounding Mr. Phelps' contract were equal to the circumstances surrounding Dan Durig's unemployment. He said the staff, Council and Executive had to work as a team and was disappointed the Executive had not operated in that manner even though she had initially promised the Council she would.

Legal Issues

The Committee started to summarize their points of concurrence. It was agreed the Acting Deputy Executive Officer position required Council confirmation. The discussion then returned to the fact two legal opinions has been rendered on whether temporary or provisional employees required Council confirmation. Dick Engstrom said he had called Mr. Harnish at the Executive Officer's request and asked him to prepare the opinion now before the Committee.

Councilor Collier recommended not accepting Mr. Harnish's opinion because Ms. Baxendale was Metro's attorney and had been confirmed by the Council. She said the Council had never before requested a second opinion and the Council needed to establish a policy regarding outside legal opinions.

Chairman Gardner agreed with Councilor Collier. He explained the Council had asked Mr. Harnish to render one legal opinion on another matter in the past but had not requested Mr. Harnish offer an opinion on the matter now before the Committee. He acknowledged the dilemma of the Executive accepting a legal interpretation different from the Council.

Councilor Collier pointed out the Council had hired Mr. Harnish's services on one occasion when it would have been in clear conflict of interest for Ms. Baxendale to render an opinion. This situation, she pointed out, was not in conflict with Ms. Baxendale's interests and no second opinion should be accepted.

Executive Officer Cusma announced she had to leave the meeting due to a prior engagement. Councilor Hansen asked whether the Council should assume future severance offers would be similar to those given employees already terminated. The Executive said the Council should not make any assumptions at this time.

Chairman Gardner said he wanted to have a Management Committee work session at 3:00 p.m., February 26, 1987, in order to complete the Committee's work regarding transition issues. He said the Committee would not present their report to the Council until after that work session.

2. Consideration of Metro's Proposed One Percent for Art Program

As noted under discussion of item 1 above, before leaving the meeting, Councilors Knowles and DeJardin said they supported staff's recommendations regarding the One Percent for Art Ordinance and Resolution.

Neil McFarlane, Public Facilities Analyst, presented staff's report as included in the written agenda materials. He reviewed the issues not resolved by the Council including: 1) Relationship of placement of art to Metro facilities, 2) point during the planning process at which a construction project could be declared exempt from the art program, 3) clarification of the Council's role in the program, 4) timing of formation of advisory committee; 5) advisory committee membership, and 6) timing of community input. He said staff's recommendations for redrafting the One Percent for Art Ordinance and Resolution addressed those six areas of concern. Mr. McFarlane suggested the Committee forward their recommendations for final Council consideration and adoption on March 12, 1987.

In response to Councilor Kelley's question, Mr. McFarlane explained the Council could decide not to include art in a construction project by adoption of an ordinance to exempt a specific construction project from the art program.

Motion: Councilor Hansen moved, seconded by Councilor Collier, to approve staff's draft of Ordinance No. 87-215 and Resolution No. 87-717 submitted to the February 19 Management Committee for adoption by the full Council.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Gardner, Hansen and Kelley

Absent: Councilors Cooper, DeJardin (alternate) and Knowles (alternate)

The motion carried.

4. Consideration of Budget for the Council General Account

Ray Barker, Councilor Assistant, reported the draft budget was being submitted to the Committee for review in compliance with the Council's guidelines. The Presiding Officer had concurred with the recommended budget, he said. Mr. Barker also reported the Council Clerk, formerly budgeted under Executive Management, would be transferred to the Council's budget. Related expenses would also be added to the budget when that transfer occurred.

Councilor Hansen said he had no problem with funds allocated to each line item but suggested the Committee postpone a recommendation until the outcome of legislation to restructure Metro was known. One possible outcome of the legislation, he said, would be that the Council would want to increase its staff and budget.

Motion: Councilor Kelley moved, seconded by Councilor Collier, to delay consideration of agenda items 4 and 5 until the March 19, 1987, Management Committee meeting.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Gardner, Hansen and Kelley

Absent: Councilors Cooper, DeJardin (alternate) and Knowles (alternate)

The motion carried. Councilor Hansen requested Mr. Barker poll Councilors regarding an appropriate amount for a per diem increase.

5. Consideration of Resolution No. 87-737, for the Purpose of Amending Resolution No. 87-541, Establishing Guidelines for Councilor Per Diem and Expenses

At the end of considering agenda item 4 above, motion carried (Kelley/Collier) to postpone consideration of this item until March 19, 1987.

There being no further business, the meeting was adjourned at 7:25 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council