
HUMAN RIGHTS COMMISSION

City and County of San Francisco

Edwin M. Lee, Mayor

Special Meeting Minutes

Friday, September 16, 2011

3:00 pm

City Hall Room #416

1 Dr. Carlton B. Goodlett Place

ROSTER OF COMMISSIONERS

Michael Sweet, *Chair*

Douglas Chan, *Vice Chair*

Cecilia Chung

Sheryl Davis

Faye Woo Lee

Todd Mavis

Nazly Mohajer

Michael Pappas

Thomas Pier

Theresa Sparks, Executive Director

1. Order of Business

A. Call to Order and Roll Call

Commissioner Sweet called the meeting to order at 3:06pm. A quorum was present:

Commissioner Chan
Commissioner Chung
Commissioner Davis
Commissioner Lee
Commissioner Mavis
Commissioner Mohajer
Commissioner Pier
Commissioner Sweet

Staff Present:

Boris Delepine, Theresa Sparks

Public Comment on Items Not on the Agenda:

There was no public comment on this agenda item.

2. Discussion and Approval of Settlement Agreement between Cowhey Pacific Drilling, Vortex Marine and the Human Rights Commission

A. Director Sparks began by presenting an overview of the agreement and what led to the agreement. She highlighted that: the HRC's staff conducted a thorough investigation which resulted first in an appeal by Cowhey, and ultimately in the commencement of a hearing. During the due diligence process, the Commission received some additional information and a second set of findings were issued. At that point, the Commission appointed a 3-person panel that heard the appeal. Thereafter, the panel went into deliberations, which have been going on since March. Since then, the HRC staff, Director and, at times, City attorneys, have discussed how the matter can be settled. The agreement before the Commission tonight is the 11th or 12th draft.

At this point, the Director stated that she believes that agreeing to the terms of the agreement proposed tonight is the optimal solution for a number of reasons, including: 1) The HRC's legal costs have exceeded the agency's limit for the year, and she believes that if a settlement is not reached and the case goes to trial, there would be additional significant costs incurred; 2) During a portion of the deliberations, investigation and hearing, Cowhey was unable to bid on projects and had a limited ability to receive projects, which resulted in a type of "penalty phase" to the company and that further Commission action would produce limited results; 3) Vortex Marine, a third party to the agreement, in showing good faith, has agreed not only to enter into this settlement agreement as well, and has already employed 2 City Build graduates for over 2 months now, they did so without any requirement under the Local Hire Ordinance. Given all of this, from the perspective of the City, she believes it is in the best interest of the City to settle the issue.

Commissioner Mohajer stressed the importance of the integrity of the LBE program, and emphasized the prohibition of the use of LBE pass throughs in the Ordinance. In recognition of the fact that Cohwey and Vortex showed

good faith in hiring local residents through CityBuild to remedy the problem, she moved to approve and accept the agreement and asked for a commitment from Mr. Cowhey to participate in the local business and local hiring programs in the future. Commissioner Lee seconded the motion.

Commissioner Pier expressed concern that the original litigation involved Cowhey and the City and that the agreement is between Cowhey, the City and a non-party, Vortex, and to his reading of the agreement, in consideration of resolving the issue, Vortex is going to, or has, or will hire City-Build employees. His concern is that if we were all to wake up tomorrow and Vortex decided to fire the 2 employees, it's not clear what the City's remedy would be, given that the agreement indicates that the City doesn't have jurisdiction over the matter.

Director Sparks mentioned that in previous drafts of the agreement, liquidated damages were considered as a remedy, as was to reinstitute charges. In all of those cases, negotiations failed. She added that there is no remedy, but that this is a good faith agreement and that's where the negotiations ended up.

Ron Flynn, City attorney, clarified that through this agreement, the City would essentially be entering into a new contract (with Cowhey and Vortex) and that the remedy available to the City would be breach of contract. There are both monetary damages and administrative (or non-monetary) damages that flow from that remedy. So, the Commission would have to decide whether to institute a breach of contract action against Vortex.

Commissioner Davis stated that the possibility of jobs is huge within the community she lives in and sees, and so the idea that 2 individuals have already been hired, with a possibility that more will be hired is a big asset.

Commissioner Lee asked what Cowhey has done for the City. Director Sparks stated that Cowhey claims that they have already sustained substantial losses during this matter and have, as a result, already suffered.

Mr. Losh, Cowhey's attorney, stated that Cowhey has been in business for 35 years in San Francisco and has been a union contractor that entire time and has been a small business and has traditionally hired local individuals who hire out of the local halls. He added that it is his hope, and Mr. Cowhey's hope, that they will be able to continue with this practice.

The motion to approve the settlement agreement was then voted on:

In favor: Sweet, Chan, Davis, Lee, Mavis, Mohajer

Not in favor: Pier

Absent: Chung, Pappas

The motion carried.

Public Comment on this Agenda Item

There was no public comment on this agenda item.

3. Adjournment

A motion to adjourn was made by Commissioner Chan at 3:37pm and was seconded by Commissioner Mavis.