



**MINUTES**

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY  
SPECIAL MEETING OF THE BOARD OF DIRECTORS**

October 24, 2013 – 2:00 p.m.  
San Carlos Library Conference Room A/B

**1. Call to Order 2:05 PM**

Agency	Present	Absent	Agency	Present	Absent
Atherton		X	Menlo Park	X	
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo	X	
Foster City	X		County of San Mateo	X	
Hillsborough		X	West Bay Sanitary District	X	

**2. Public Comment**

Persons wishing to address the Board on matters NOT on the posted agenda may do so.

Each speaker is limited to two minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting.

If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time.

No general public comment.

**3. New Business:**

**A. Resolution Approving South Bay Recycling (SBR) Request to Use Subcontractors**

Executive Director McCarthy explained the issue, and noted that there is a provision in the SBR Operations agreement that the JPA Board must approve the use of any subcontractors. He noted there is a possibility of a work stoppage given the three collective bargaining agreements that have expired. SBR is requesting to use subcontractors in the event of a work stoppage. He explained that the JPA as the owner of the facility and the holder of the permits cannot allow any impairment to the facility, or the SBWMA would be in violation of those permits. He added that staff is recommending approval of SBR's request to use subcontractors on the explicit condition this approval would be for subcontractors only if there is labor unrest.

Chair Ira asked to hear from SBR.

Dwight Herring of South Bay Recycling noted he had been developing a contingency plan in the unlikely event of a labor disruption for approximately 6 months, and that the initial contingency plan was sent to the SBWMA on August 30<sup>th</sup>. He noted that the plan has been revised and updated since then, and continued to give a timeline for the process of how this resolution had come before the Board. He explained that last Thursday, he was told that he needed to submit a more formal request to use subcontractors in accordance with the Operating agreement. He added that they are negotiating in good faith, and they hoped to reach an agreement that was reasonable to both parties, and that their next negotiating meeting was scheduled for Nov. 12. He also added that under our Operations Agreement SBR is obligated to keep the facility running and in order to do that if there was a work stoppage SBR would need to hire subcontractors.

Member Olbert asked what the minimum amount of time would be between letting the subcontractors know SBR is hiring them and when they will show up.

Dwight Herring said 24 hours.

Chair Ira asked when did SBR realize the need for subcontractors in the contingency planning process, and why didn't you bring this request to the Board sooner.

Dwight Herring said that SBR has planned to use subcontractors in the event of a work stoppage throughout the contingency planning process, but thought the conversations with staff was sufficient notice, noting that the contract doesn't stipulate the request needs to be in writing. He added that he was just made aware last week that a more formal request needed to be made.

Member Slocum asked for the process of negotiations thus far to be described.

Dwight Herring noted that the first meeting was on October 1<sup>st</sup>. Local 350 requested a mediator, a week later the Federal Government was shut down so no mediator was available. We were asked to give them a series of dates that we would be available and the November 12<sup>th</sup> date is the first mutually available date.

Counsel Lanzone clarified that the contract does state that the request needs to be in writing.

Member Brownrigg and Member Slocum questioned why negotiations weren't started until 3 weeks before the contract expired, why not sooner.

Dwight Herring answered that he was given a set of dates by Local 350, and that was the first mutually available date.

Member Brownrigg asked if SBR has been in discussions with the unions about continuing the no strike/no lockout clause of the contract for some time, now that the contracts have expired.

Dwight Herring noted that he had sent a request for a 30 day contract extension which was refused, but in talking with Local 350 as long as meetings are scheduled and parties are negotiating in good faith there will be no work stoppage.

Member Ross asked how many additional employees would need to be brought on to run the facility.

Dwight Herring noted that it depends on the volume of tonnage that the facility is receiving, but fully

staffed would be 63.

Member Ross asked if there was a clause in the state violation regarding strikes, and if there is any case law from organizations that provide a similar service.

Executive Director McCarthy stated that he was not aware of any carve out related to labor unrest, but noted that there is emergency provisions for earthquakes, floods and things of that nature, but nothing related to strikes. He added that research could be done regarding the case law, but that the two strikes of recent memory were going into a private facility, not a publicly owned facility.

Member Ross asked if would be possible to draft a clause to prevent the no strike/no lockout clause from expiring in the future.

Executive Director McCarthy stated that the SBWMA Board is not party to the collective bargaining agreements so we can't negotiate them.

Member Ross noted that there was a comment that there could be additional costs to the rate payer in the event of a strike and asked if there was an estimate of what those costs would be.

Executive Director McCarthy stated there is no estimated cost, because it would depend on how much and for how long, but added that the cost would be considerable if we had to use another facility for disposal.

Member Olbert asked how long the training is before a new employee is considered fully trained, and if the pool of subcontractors is already trained.

Dwight Herring answered that new employees start in the lowest job classification and are trained for 5 to 7 days, adding that the higher the job classification the longer the training up to two weeks. He added that the subcontractors are already trained on the equipment; they would just need to learn our facility.

Member Wozniak asked why negotiations weren't started 6 months ago and why the first meeting wasn't set until 3 weeks before the contracts expired and now there is no protection.

Dwight Herring answered that the CBA stipulates that at a certain point which he believed was 60 or 90 days before the end of the contract, the parties can contact each other to begin negotiations. He noted that in late August SBR received notice from the CBA that they were ready to start negotiations, and the series of dates they were given the first mutually available date was October 1<sup>st</sup>.

Fran Dehn asked if we were waiving the use of subcontractors for the remainder of the contract.

Counsel Lanzone stated that it was being waived for the specific set of circumstances in the resolution, not forever.

#### Public Comment:

Robert Morales representing the Teamsters Union spoke in opposition of the resolution.

Member Brownrigg asked if extended the contract with respect to the no strike no lock out clause would make sense to all parties.

Robert Morales stated that the local doesn't believe in signing contract extensions, and as long as the employer is negotiating in good faith we keep negotiating as long as it takes.

Member Gauthier commented that the Board members were disappointed that there has been 90 days to begin the negotiations and yet both parties just began negotiating.

Robert Morales stated that they have been negotiating a lot of contracts, and the federal government shutdown leaving us without a federal mediator, and that is why there haven't been more dates.

Chair Ira asked if there was a strike vote taken with Recology.

Robert Morales said no, the negotiations are progressing.

Chair Ira noted the implications of SBR going on strike even if Recology has negotiated a contract, he added that having a strike vote draws a line in the sand and set a negative tone. He also added that our citizens end up paying the price, and the Boards point of view is we need to protect our citizens. He asked for some kind of assurance that there would not be a strike.

Robert Morales concluded that it is his intention to negotiate in good faith.

Shelly Kessler representing the San Mateo County Labor Council spoke in opposition of the resolution.

Member Wozniak asked why negotiations were started so late.

Shelly Kessler answered that she didn't know, but did know that the unions have been negotiating multiple contracts throughout San Mateo County and they may or may not have had time. She added that in the future when contingency plans are being developed to get in contact with her to begin things on a positive note.

Member Wozniak commented that she would feel a lot better voting no if the contract was extended.

Shelly Kessler reminded the Board that with all the other negotiations there were no contract extensions and there were no strikes.

Member Brownrigg asked if there were strike votes taken in those situations.

Shelly Kessler answered yes.

Member Brownrigg commented that it's difficult for this Board which is not party to the negotiations but is being asked to provide a possible resource, noting that he would feel better about voting no, if there could be a middle ground where notice was given before a strike.

Robert Morales spoke to this saying that a noticed strike is much less effective. He added that he is committed to negotiating in good faith, and committed to keeping the Executive Director abreast of the negotiations.

Member Carlton commented that she is disappointed by the late start, knowing that it takes time for even friendly negotiations to occur.

Vice Chair Frisella asked for clarification on the timing of how long it would take for operations to be functioning with subcontractors.

Dwight Herring answered that SBR would know when a strike is happening when we show up to work that day. It will take 24 hours for subcontractors to be available from Southern California. He added that minimal operations could happen for 1-2 days with subcontractors from Southern California, anything longer term we would need to bring in people from across the country. He also noted that this is a precautionary measure, but SBR has to do whatever it takes to keep the facility running because that is our obligation.

Vice Chair Frisella asked why it was important to vote on this resolution now, if SBR didn't know whether or not they needed subcontractors.

Counsel Lanzone added that a special meeting needs 24 hour notice assuming you can get a quorum together, and added that the resolution doesn't approve blanket subcontracting, only if necessary due to a work stoppage.

Executive Director McCarthy noted that the staff recommendation still holds that he didn't want to have to rely on rounding up a quorum with 24 hours' notice. He added that there is a state requirement to remove solid waste from our facility within 48 hours. If the solid waste cannot be moved there are penalties and fines starting at 48 hours and worst case scenario our permit could be revoked.

Member Olbert asked about the financial ramifications, and if liquidated damages could be enforced in this case.

Executive Director McCarthy answered yes; it is something staff would be monitoring as soon as labor unrest occurs.

Member Ross made a motion to approve SBR's request to use subcontractors.

Vice Chair Frisella seconded the motion.

#### Discussion:

Member Slocum commented that he would like to take Mr. Morales on his word even though no commitment was made one way or the other. He also added that the timing of a special meeting and the 24 hours it would take for subcontractors to get to the facility, the timing could work.

Member Brownrigg commented that it is a difficult situation but that he is not in support of the motion; he added that he is uncomfortable with the lack of commitment to provide early warning of a strike, and this Board has a responsibility to keep the facility open and he understands the Executive Director's concern on the issue. He suggested delaying the vote on this matter until mid-November to give the parties a chance to have their meeting, and give this Board a chance to reflect on progress.

Member Ross commented that a lack of preparation doesn't constitute an emergency, which was the reason for his motion. He added that after listening to Member Brownrigg's statement would like to withdraw his motion.

Member Brownrigg made a motion to table the decision no later than the November 21<sup>st</sup> meeting.

Member Slocum seconded the motion.

Discussion:

Chair Ira commented that the next negotiations are happening on November 12<sup>th</sup>. He gave the executive Director authorization to call an emergency board meeting as needed. He also reiterated that we would like some assurances related to a cooling off period.

Voice Vote: All in Favor 10-0-0-2

**4. Adjourn 3:21 PM**