

MINUTES OF THE SPECIAL MEETING
OF THE
BOARD OF DIRECTORS
OF THE
EL TORO WATER DISTRICT
August 20, 2020

President Monin called the meeting of the Board of Directors of the ELTORO WATER DISTRICT to order via Zoom at 7:30 o'clock a.m. on August 20, 2020 at the El Toro Water District Administrative Offices, 24251 Los Alisos Boulevard, Lake Forest, California.

Vice President Gaskins led in the Pledge of Allegiance to the flag.

Present at today's meeting were Committee Members MARK MONIN, MIKE GASKINS, JOSE F. VERGARA, KATHRYN FRESHLEY, and KAY HAVENS.

Also present were DENNIS P. CAFFERTY, General Manager/Secretary, JUDY CIMORELL, Human Resources Manager, RORY HARNISCH, Project Engineer, GILBERT J. GRANITO, General Counsel, and POLLY WELSCH, Recording Secretary.

Oral Communications - Public Comments

President Monin stated that at this time members of the public may address the Board or they may reserve this opportunity with regards to an item on the agenda, until the Board discusses said item later in today's meeting.

Mr. Cafferty stated that this meeting is being recorded.

Items Received Too Late To Be Agendized

President Monin asked if there are any items received too late to be agendized. Mr. Cafferty replied no.

Revisions to Employee Handbook

Mr. Cafferty stated that we will be reviewing the redline sections of the handbook. He further stated that most of the changes are updates that were made to make things consistent with our current practice and policies, or changes to keep up with current law.

Mr. Cafferty stated that we will also be discussing the performance evaluation process which is included in the handbook.

Director Havens stated that she was impressed by the use of resources sited in the agenda. Mr. Cafferty replied that Ms. Cimorell provided a lot of input to make sure we had a comprehensive update to the handbook.

Revisions to Employee Handbook – Section II – Hiring & Employment

Director Vergara asked about the work schedule, stating that the handbook reflects a 30-minute break for a meal, and a 60-minute break for a meal, are these offered as individual choices. Mr. Cafferty explained that the work schedules and breaks are determined by departments and based on how the work is conducted.

Mr. Cafferty stated that most of the Operations departments has been working the same schedules. He further stated that current start, lunch, and stop times are staggered to avoid employee congregation during the pandemic.

Mr. Cafferty stated that changes made were to provide detail to what we are already doing. He further stated that in the staff memo we did point out that there are a number of changes not included in the redline because they were typographical.

Vice President Gaskins stated that the work schedules listed in the handbook are 9 hour days, yet we have a 4/10 work week which is not included in the handbook. Mr. Cafferty replied that we will add a description of the 4/10 work week schedule to this section.

Vice President Gaskins stated that the flex schedule of the 9/80 plan shows 8 9-hour days, and 1 8-hour day with the work week starting in the middle of the 8-hour day and yet there is no 8-hour day here in this section of the handbook. Mr. Cafferty replied that we will add a sentence that says that the 8-hour day ends 60-minutes earlier.

Director Vergara asked if the Fair Labor Standards Act states this. Vice President Gaskins answered yes.

Mr. Cafferty stated that the Alternative work week language was cleaned up to make the sentences consistent with each other.

Vice President Gaskins asked if an employee's schedule is going to be changed, how much notice is given to the employee. Mr. Cafferty replied that outside of the office most schedules remain as they were, and if a change is needed, the employee would be given as much notice as possible.

Ms. Cimorell stated that in order to make this change, would we need to go back to the employees and have an additional vote? Vice President Gaskins replied no, it's a change within an existing work schedules framework.

Mr. Cafferty stated that the Emergency work schedule section, which was added in March when the pandemic began, was reviewed by our labor counsel. He further stated that the specific reference to 12-hour shifts constrained our flexibility in dealing with other types of emergencies. Mr. Cafferty stated that they removed the reference to 12-hours and left it to say that a modified work week will vary by department and will comply with the labor laws.

Revisions to Employee Handbook – Section III - Wages

Mr. Cafferty stated that another change that was made is in the section on overtime, adding language which states that in the event of an emergency, we will deviate from our typical overtime policy. He further stated that the normal overtime policy states that if more than 9 hours are worked in a day, employees get paid time and a half. Mr. Cafferty stated that if someone is assigned a 12-hour day there would be no overtime pay in this assigned emergency work schedule, which complies with the FLSA.

Director Vergara asked on the timekeeping section, what happens if an employee works more hours than expected. Vice President Gaskins stated that there is no provision for "flex time", as it is not authorized by the FLSA. Ms. Cimorell stated that this is why any overtime has to be pre-approved.

Director Freshley asked what happened to the definitions of exempt employees and non-exempt employees. Ms. Cimorell replied that these

definitions are included in the handbook, along with part-time and full-time. Mr. Cafferty stated that the first section of the timekeeping refers to exempt employees.

Director Freshley stated that there needs to be language that explains to the employee whether their position is exempt or non-exempt. Mr. Cafferty stated that every employee is told when they are hired what their position is.

Ms. Cimorell stated that the definition of exempt and non-exempt are included in the handbook. She further stated that the employee is also given a copy of their job description.

Mr. Cafferty stated that the only change in the Time Keeping Requirements section was adding the requirement that timecards are to be filled out every day and not at the end of the payroll period.

Mr. Cafferty stated that there were two changes made to the on-call standby pay section; the first is that the handbook used to say that all on-call employees were required to carry a pager, which was updated to a cell phone. He further stated that the on-call employees get paid \$350 a week as a stipend to be on-call, which the Board approved but the handbook had not been modified.

Director Vergara asked if the District paid for the pagers, and do we pay for the cell phones and cell phone service. Mr. Cafferty replied yes the District pays for the cell phones and service, and in any week there could be 4 employees on-call, which consist of a primary on-call person who responds to customers and alarms during the week. He further stated that in addition we have a secondary on-call person who is a Supervisor that backs up the primary

on-call person. Mr. Cafferty stated that we have an on-call person at the Plant and in Collections. He further stated that if an employee chooses to use their personal cell phone for company business, they are given a certain amount to cover the business related expenses.

Director Havens stated that during some emergencies, cell service goes down, and what other options does the District have. Mr. Cafferty replied that the District has a two-way radio system, and a system called Gets that provides priority access to cell towers for first responders. He further stated that we also have a separate radio system with WEROC. Ms. Cimorell stated that we also have an emergency broadcast system through WEROC.

Vice President Gaskins stated that on page 4, in the middle of the page it states that employees must record their time whenever they leave work, and he feels it should say the work site.

Vice President Gaskins stated that on page 6, it is clarified that the leave is based on a "rolling year" which is appropriate, but it doesn't specify that the rolling year starts on the first day of use of the leave. Ms. Cimorell replied that it is listed in the entire leave policy.

Revisions to Employee Handbook – Section IV – Leaves of Absence

Mr. Cafferty stated that a change was made to the Pregnancy/Child Birth/Related Conditions section and Baby Bonding section. He further stated that a section was added for employers with less than 50 employees, it is notification of eligibility for up to 12 weeks of baby bonding and applies to all employees.

Vice President Gaskins complemented Ms. Cimorell on working this language into the handbook.

Mr. Cafferty stated that the Health and Benefit section had a minor change regarding if an employee is off on leave, they are still responsible to pay their share of our Medical plan premium.

Vice President Gaskins stated that on page 9, Substitution of Paid Leave, the language stating whether to use leave or not is ambiguous. He asked how the decision is made, and suggested that the language be changed to allow employees to choose to use accrued leave as long as a certain amount of hours are kept on the books. Ms. Cimorell replied that there are certain times when an employer can require an employee to use leave time and there are certain places where an employer can't require an employee to use leave time.

Mr. Cafferty stated that the Paid Family Leave was changed from 6 weeks to 8 weeks due to a change in the law.

Mr. Cafferty stated that the change in the Volunteer Civil Service Personnel Leave was simply removing a redundant sentence.

Director Vergara asked on the Leave Donation Program, in order to donate sick or vacation hours to another employee, does the law allow specifically to donate to a particular employee, or does it go into a pool. Ms. Cimorell replied that it is not a law, but the District considers it a good will donation to help fellow employees if they have exhausted their vacation and leave hours, and we don't use a pool, but donate to a specific employee.

Vice President Gaskins asked that if the person doesn't use all of the donated hours, do they revert back to the donor? Mr. Cafferty replied yes, any unused hours donated that are not used by the recipient will be returned to the donor. Ms. Cimorell stated that there is a maximum number of hours that can be donated.

Revisions to Employee Handbook – Section V - Benefits

Mr. Cafferty stated that in the Vacation Carryover section explains that employees can accrue a certain amount of vacation hours, and if they go beyond this number, the District buys the vacation excess hours back so that we don't have someone accumulating a large amount of vacation hours so that when they terminate gets paid out at a much higher salary. He further stated that the District requires that the employees use a certain amount of vacation hours in order to get the payout for a portion of the vacation. Mr. Cafferty stated that a sentence was added that allows for exceptions to be approved by the General Manager, such as during this pandemic period.

Mr. Cafferty stated that the Kin Care section was removed because it already exists in the Sick Leave policy where it states who is eligible for Sick Leave.

Mr. Cafferty stated that the Holidays section was updated to include the Veterans Day holiday, which the Board approved previously.

Mr. Cafferty stated that the Retiree Medical Plan was deleted entirely and re-written. He further stated that the important thing to note is that there are no changes. Mr. Cafferty stated that when the document was written there were 4

Tiers, and the first Tier was defined as Retirees already retired as of April 1, 2001, and we have nobody in this Tier, so we eliminated that Tier. He further stated that Tier 2 referred to employees hired prior to April 1, 2001, and Tier 3 referred to employees hired between April 1, 2001 and June 1, 2008. There was also a section that referred to what was common to these two Tiers, so we combined them into 1 Tier.

Mr. Cafferty stated that Tier 1 applies to employees who retire after the age of 55 and have been with the District for at least 10 years. He further stated that in this Tier the spouse is covered and until the employee is Medicare eligible at age 65, ETWD is the primary, but once they become Medicare eligible, they sign up for Medicare which becomes the primary with ETWD as the supplement and the premium we pay is lower. Mr. Cafferty stated that the health care premiums have a specific class for those who are in Medicare which is lower than the rest of the employees.

Mr. Cafferty stated that previously there was a Tier 4 which was for employees hired after June 1, 2008, which was when the Board determined that it wanted to make changes going forward. He further stated Tier 4 has been replaced as Tier 2 which reflects the eligibility requirements showing age 60 as the retirement age and a 20 year employment history, and no longer includes the spouse.

Vice President Gaskins stated that if an employee doesn't have 20 years with the District, the District doesn't participate in their supplemental plan. Mr. Cafferty replied that is correct.

Director Freshley asked how many employees are in Tier 4. Mr. Cafferty replied that there are a growing number of employees hired after June 1, 2008 who are now in Tier 2.

Director Havens asked if we can legally change an old Tier 1 to a new Tier 1. Mr. Granito responded that this question is best posted to our labor counsel, but as our General Counsel, he feels it is clearly understood the way it is set forth. He further suggested adding a paragraph to this section explaining that there is no change, it's simply cleaning up the language to make it clearer.

Mr. Cafferty stated that at the end of the Retiree Medical section, there is a paragraph that we changed the title because it referred to medical coverage for terminated employees, and the intent is to say that if you are terminated you are not eligible for medical coverage.

Mr. Cafferty stated that in the Education section the only change made was a word that referred to original grades and receipts which was changed to official.

Director Vergara asked about the Education training and reimbursement; it says once the employee has completed the course with a passing grade of C or better, but we exclude Masters Degree, unless approved by the General Manager. He further stated that we may want to have flexibility in case the requirement for a Masters Degree is a passing grade of B or better.

Ms. Cimorell stated that the Lactation policy needed to be updated per the law.

Director Vergara asked if a man feeding the baby could be considered covered under this Lactation policy. Ms. Cimorell replied that she feels it is for lactating and not separately feeding.

Revisions to Employee Handbook – Section VI – Management/Employee Relations

Mr. Cafferty stated that our practice has been that when an employee is promoted they get a compensation adjustment.

Mr. Cafferty stated that the Compensation Plan explains the newly hired employees evaluation period, and the performance-based compensation pool program. He further stated that the first step in this program is to create the budget for the merit pool.

Mr. Cafferty stated that the whole program is based on allocating a pool of money that is approved by the Board as part of the budget process. He further stated that we start with a merit component of 3% and add the CPI component which is based on the Bureau of Labor Statistics for Urban Wage and Clerical Workers for the local area and the number is the annual average in January of the previous year, which was 3.2%.

Mr. Cafferty stated that our standard practice would have been to add the 3.2% CPI to our 3% merit component, but this year in the effort to reduce the budget we decided to reduce the number to 2.2%, for a total merit pool of 5.2%. He further stated that to be eligible for a raise one must at least score on their performance review an average score equivalent to what's defined in the review form as Meets Expectations.

Mr. Cafferty stated that if an employee fails to meet expectations in all categories of their performance review, they will not get an increase. He further stated that if you meet the eligibility requirements then the minimum raise is equivalent to the CPI component.

Director Freshley asked if we have an employee who has not performed, they should not receive the CPI component. Mr. Cafferty replied that this is correct.

Director Vergara suggested adding the language of Minimum Merit Salary Increase to the title of this section. Mr. Cafferty agreed.

Director Havens stated that Meets Expectations, are all of our expectations able to be measured quantifiably, and are they objectives and not subjectives. Mr. Cafferty replied that it is not possible to avoid subjectives.

Mr. Cafferty stated that an allocation table is then created that ties the performance review scores to a merit increase that ranges from the minimum to the maximum, which in this year would go from 2.2% to 8.2%. He further stated that his expectation is that if applied it would be over budget, so will likely squeeze down the 8.2% until the total allocation of the pool is within the budgeted pool. Mr. Cafferty stated that all salary adjustments associated with this program are implemented in January.

Mr. Cafferty stated that the next section is the Top of Range Program. He further stated that employees will still have to meet the merit eligibility requirements, and if the merit increase puts them over the salary range, we cap

the salary at the top of the range, and the balance is issued as a lump sum top of the range award.

Director Vergara asked if this process is legal. Mr. Granito replied yes, the process has been reviewed by our labor counsel.

Vice President Gaskins stated that the salary matrix itself is determined annually by applying the CPI to the matrix. Mr. Cafferty replied yes, each year after approval of the budget all salary ranges are increased by the amount of the CPI component.

Mr. Cafferty stated that new employees will go through a 6-month evaluation period and at the end of this period are eligible for a compensation adjustment of perhaps 3%.

Mr. Cafferty stated that there are two parts to the performance evaluation form. He further stated that there is a separate addendum for Supervisors that have a higher level of responsibility.

Mr. Cafferty stated that the total scores are based on a weighted average for the department heads.

Director Vergara asked to hear the 7 categories that are evaluated. Mr. Cafferty replied that they are: Job Knowledge, Quality, Attendance/Punctuality, Interpersonal Skills, Communication, Adaptability, and Dependability.

Mr. Cafferty stated that the review forms are provided to supervisors in October and the employees are reviewed in November or December with a January implementation date for the merit increases. He further stated that the Human Resources Manager and the General Manager review all evaluations and

may meet with a Supervisor to discuss any evaluations that they feel need additional review.

Director Freshley asked on page 37 of the salary review schedules and range adjustments, the last sentence, she suggests adding the word "position" to the salary range language. Mr. Cafferty noted this suggestion.

Mr. Cafferty stated that the Expense Account Policy section changed to be consistent to the Board adopted Expense policy which now requires itemized receipts for all meals.

Revisions to Employee Handbook – Section VIII – Employee Conduct

Mr. Cafferty stated that the section on Employee Conduct, the Department of Transportation set of requirements which was an addendum to our employee handbook which impacts only a certain group of employees and periodically changes, so rather than include it in the handbook we are removing it and it now is a stand-alone policy for our Commercial drivers as necessary.

Mr. Cafferty stated that the section on Conducting Personal Business allows for performing personal business on break periods.

Mr. Cafferty stated that the section on Dress Codes removed reference to Casual Fridays.

Revisions to Employee Handbook – Section IX – Safety and Health

Mr. Cafferty stated that in the Safety and Health section changes include attendance of Safety and Health trainings, a Safety Procedures manual, the number of people on the Safety Committee, and changes in how often they meet.

Mr. Cafferty stated that in the Workplace Violence section the reference to our Emergency Response Plan was referenced.

Revisions to Employee Handbook – Section XI – Confirmation of Receipt

Mr. Cafferty stated that in the Confirmation of Receipt section was in the handbook twice, so one was removed.

Revisions to Employee Handbook – Section XII – DOT Policy Addendum

Mr. Cafferty stated that the Department of Transportation addendum was removed as it will be a standalone policy.

President Monin asked if we could approve the handbook today with the suggested modifications, or would the Board prefer to see another redline and adopt the handbook at a later date. Vice President Gaskins stated that he would prefer to see another redline. Director Havens stated that some introductory wording was going to be added to the Expectations clause, explaining the multi-tiered process, and the 5 subjective measures.

Vice President Gaskins stated that on page 7, Public Employees and Private Employees, California has a state labor code that employers are required to follow, except that because of lobbying primarily by the league of cities long ago, public employees are exempted from the California state labor law. He further stated that the state labor laws don't apply unless the section of the code specifically states that it does. He then stated that Wage Order 9 has to do with meal and rest breaks for transportation drivers and states that all employees are "at will".

Vice President Gaskins stated that this section does not say that it applies to Public employees, and so this “at will employment” language from the labor code is not accurate. He further stated that he spoke with our General Manager who spoke with two different labor attorneys who offered their opinions.

Vice President Gaskins suggested removing the “at will” statement from the handbook.

Director Vergara asked if the District has no authority to terminate an employee “at will”, what will be the process. Vice President Gaskins replied that the District has followed a discipline procedure in a fair manner using due process, but the handbook does not include a grievance procedure.

Mr. Granito suggested that staff confer with our labor counsel to see if it is legally compliant and necessary to be in our handbook. Mr. Cafferty stated that staff has spoken with our labor counsel who suggested leaving the “at will” language in the handbook.

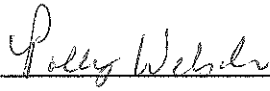
President Monin suggested that we invite the labor counsel to a meeting where we discuss further the “at will” language and our disciplinary procedures.

Director Freshley stated that her understanding of the reason “at will” was created is so companies can terminate an employee without the employee perceiving through previous communication guarantee of employment.

Adjournment

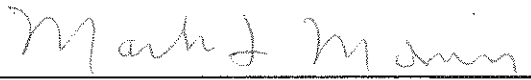
There being no further business to come before the Board, the meeting was adjourned at 10:35 a.m.

Respectfully submitted,



POLLY WELSCH
Recording Secretary

APPROVED:



MARK L. MONIN, President of
the El Toro Water District and the
Board of Directors thereof



DENNIS P. CAFFERTY, Secretary
of the El Toro Water District and
the Board of Directors thereof

