

External Report Review Committee Minutes  
August 21, 2020 – 11 a.m.

Present: Chairman Eric Connolly; Committee Members Phil Barrett, Tara Gaston, Ed Kinowski, Bill Peck, Benny Zlotnick.

Chairman Connolly called the meeting to order and welcomed all in attendance.

Mr. Connolly said that Supervisor Kusnierz has withdrawn from the committee. They have a replacement committee member in mind but the appointment cannot take place until the Board of Supervisors meet.

**A motion was made by Mr. Zlotnick, seconded by Mr. Peck, to approve Mr. Connolly's appointment of Mr. Kinowski as Committee Vice Chair.**

Ms. Gaston asked if voting on the Vice Chair is a normal requirement. Mr. Connolly said that he was comfortable moving forward without a vote. Mr. Barrett said that in an effort to ensure the work of the committee is free to the greatest extent possible of any concerns from the public regarding bias or relationships that could be construed as problematic, he believes it should be stated that somebody who is a close family member of somebody on this committee, Mr. Kinowski is mentioned in the report and also works as number two in the HR Department. Mr. Connolly said that he saw that the last names were spelled the same but was not aware that it was a family member of Mr. Ed Kinowski.

Mr. Connolly said that he is comfortable with withdrawing the appointment and appointing Mr. Zlotnick as vice chair. Mr. Kinowski asked if Mr. Barrett was intimating that he not be on the committee at all. Mr. Barrett said that we need to make sure to the greatest extent possible that people won't misconstrue relationships. Mr. Barrett said that at this point, Mr. Kinowski's son is mentioned in the report and thinks there is definitely a potential issue there that people may express later. Mr. Kinowski said that if the committee members feel such, he does not have an issue with stepping down. Ms. Gaston said that for the purposes of any discussion regarding the HR Department, it would be appropriate for Mr. Kinowski to not be involved in those discussions or be part of the recommendations regarding that department. Mr. Peck said that to remove the appearance of impropriety it would be appropriate for Mr. Kinowski to step down. Mr. Connolly said that if Mr. Kinowski were to step down, that would leave five members on the committee until the next Board of Supervisors meeting. Mr. Barrett suggested that the Chairman could make two appointments, one on each side. Ms. Gaston said that the Rules of the Board indicates that the number of members for normal standing committees is seven members, but it does not say anything about the number of members on additional committees. Mr. Connolly suggested that Mr. Dorsey be reached out to, to get additional advice on the number of members on the committee. Mr. Connolly said that he spoke with Mr. Dorsey earlier in the week and in Mr. Connolly's opinion that because it is was a Resolution with named Supervisors, the Chairman wouldn't have the ability to just appoint replacements for those who withdraw. At this point they will move forward with 5 members and have two additional members put in place at the next Board of Supervisors meeting. Mr. Connolly said that this meeting is being recorded and any new members can catch up with the proceedings by watching the recording.

Mr. Connolly displayed his computer screen for the Zoom meeting participants and a discussion took place regarding the Committee Goals. The goals were agreed upon as follows:

Committee Goals: The committee will identify specific occurrences outlined in the external report for a labor attorney to evaluate. The committee will then receive recommendations regarding potential disciplinary actions.

Mr. Connolly brought it to the committee's attention that the PBA did file an Improper Practice Charge against the County – citing Tanner law. They are claiming that the increase and the decrease in pay was done illegally. Mr. Connolly said that the committee needs to be very careful, and would recommend that individuals are not named as the committee talks this over today. They don't want to defame anyone's character, they are simply looking over the details outlined in the report and outlining occurrences that they want a labor attorney to evaluate.

Mr. Connolly said that after reading the report he has come up five items in chronological order. Mr. Connolly said that he spoke with Jonathan Bernstein this morning and run the format by him. Mr. Bernstein agreed that this was a fair approach that wasn't going to increase the County's liability in any way. Mr. Peck cautioned that every step the committee takes is an opportunity to be legally challenged in one way or another and therefore urged the need to be careful. A discussion took place regarding the five items which were agreed upon as follows:

1. The report concludes that named officials informed County staff that their workers who showed up "in-person" would be paid time and a half before the Board of Supervisors (BOS) discussed and voted to form the COVID-19 Oversight Group (Resolution 84-2020)
2. Several named officials presented incorrect information to the BOS regarding other local municipalities paying time and a half to "in person" essential workers
3. Named officials improperly paid time and a half to several individuals whose pay is subject to legislative action and permissive referendum
4. Named officials appear to have violated open meetings law
5. Named officials failed to communicate effectively with the BOS, labor unions, and non-unionized employees regarding when time and a half would end

Mr. Connolly asked if any additional items needed to be added. Ms. Gaston said that one item she would like specifically called out, but believes can be encompassed into #5, is that the reason item #5 exists is because there were not appropriate policies and procedures in place.

Mr. Connolly said that Attorney Bernstein has worked with the County as the labor attorney and has had interactions with County officials. Mr. Connolly said that Mr. Barrett brought to his attention that the committee may want to have additional discussions on who the labor attorney is and whether the public would be satisfied with a labor attorney who has worked with the county in the past as far as the public perception goes. Mr. Connolly said that he has spoken with others regarding this, a high level executive and also Supervisor Tollisen, and both would not have concerns moving forward with Mr. Bernstein as the committee's consultant. Mr. Connolly said

that choosing another attorney would also delay the timeline of the Committee. Mr. Barrett said that it has nothing to do with the quality of the attorney's work but is concerned that even in the position of an attorney, it could be difficult when they have a long standing relationship working with the same people on a regular basis. Mr. Barrett said that one question that occurred at the last Board Meeting was if anybody, i.e. the Administration, speak with the labor attorney about some of the issues that arose in the report and were identified as problematic during this process and if so, what kind of advice did they get. Mr. Peck said that he believes Goldberg Segalla are well respected labor attorneys, and if there is an issue on an individual attorney within law firms, you can get another attorney within the firm. Mr. Connolly said that he also spoke with Attorney Van Vessem from Goldberg Segalla who seems to be familiar with situation. Mr. Zlotnick said that he is agreeable to having another person from the firm. Ms. Gaston said that she does not have a problem with Goldberg Segalla advising the committee because they are advising as to legal readings and legal consequences. Ms. Gaston said that it's up to us to decide whether disciplinary action is appropriate and they are only to advise us as to the legal consequences of it or the legal reading of some particular policy. Ms. Gaston said that if they were advising any named official in the process of this, and they are unable or unwilling to provide the Board of Supervisors with information as a client, then they should not be counsel. Mr. Barrett said that it has nothing to do with their expertise, experience and knowledge, it just has more to do with if it makes sense that this particular firm work on this topic, this subject, and with this committee. Ms. Gaston said that she believes it's appropriate for the committee to formulate the questions that they want answered. Other representation can be sought if entanglement issues pose a problem. Mr. Barrett said that it is something that can be discussed in executive session and is available to meet at any time to keep the process moving. Mr. Connolly asked Ms. Gaston to reach out to Attorney Bernstein to ask some of the questions that have been raised and to cc the rest of the committee on the email. Ms. Gaston agreed.

Mr. Barrett thanked Mr. Connolly for his work on this endeavor so far and looks forward to working with everyone on this matter and come to a conclusion as quickly as possible. Mr. Connolly said that he has an aggressive timeline and is hoping that it can be accomplished in three meetings. Mr. Connolly said that the date of the next meeting cannot be set until the labor attorney choice is settled, and then consulting with the labor attorney on how long they need to research the five items previously outlined. Mr. Connolly said that the second meeting will be mostly executive session so that the discussions will be protected under attorney client privilege and those mentioned in the report can be referred to by name. Once the second meeting has taken place, additional time will be given for the labor attorney to contemplate the conversations, refer to the external report and any relevant laws. Mr. Connolly said that the third meeting will be mostly executive session again, recommendations put forward and come out of executive session with the committee's consensus on any, if any, disciplinary actions that should come before the full Board of Supervisors meeting in September. It is Supervisor Connolly's intent to have the issue resolved by the end of the September Board of Supervisors meeting.

**On a motion made by Ms. Gaston, seconded by Mr. Barrett, the meeting was adjourned.**

Respectfully submitted,  
Therese Connolly  
Deputy Clerk of the Board