

MINUTES OF SPECIAL BOARD MEETING
Non-Flood Protection Asset Management Authority
Monday, March 04, 2019 – 10:30 a.m.

The Special Board Meeting of the Non-Flood Protection Asset Management Authority (Authority) was held on Monday, March 4, 2019 at the Lakefront Airport Terminal Building, 2nd Floor Conference Center, 6001 Stars and Stripes Blvd., New Orleans, Louisiana, after due legal notice of the meeting was send to each Board member and the news media and posted.

Chair Heaton called the meeting to order at 10:05 a.m. Mr. Bruno led in the pledge of allegiance. The roll was called by Mr. Metzger and a quorum was present.

PRESENT:

Wilma Heaton, Chair
Eugene J. Green, Jr., Vice Chair
Roy Arrigo, Commissioner
Stanley P. Brien, Commissioner
Sean Bruno, Commissioner
Leila Eames, Commissioner
Bob Romero, Commissioner
Dawn E. Hebert, Commissioner
Carla Major, Commissioner
Pat Meadowcroft, Commissioner
Anthony Wayne Richard, Commissioner
Robert Watters, Commissioner

ABSENT:

Thomas G. Fierke, Secretary
Chris Morvant, Commissioner
William Settoon, Jr., Commissioner
Rodger Wheaton, Commissioner

ALSO PRESENT:

Gerry Metzger, Legal Counsel

OPENING COMMENTS:

Chair Heaton thanked the Commissioners for their attendance. She explained that this Special Board meeting was required due to the urgency of an employee issue for which a decision must be made by Friday. Additional counsel is needed to provide advice on the issue; however, the Authority is unable to hire an attorney without a resolution of the Board, which must be submitted to the Attorney General for approval.

MOTION TO ADOPT AGENDA:

A motion was offered by Commissioner Meadowcroft, seconded by Commissioner Watters, and unanimously adopted to adopt the agenda as presented.

PUBLIC COMMENTS:

None.

NEW BUSINESS:

- a) Motion to authorize the Executive Director to engage Kim Boyle and Harry Rosenberg of Phelps Dunbar Law Firm to represent the Management Authority in Civil Service matters.**

The motion to authorize the Executive Director to engage Kim Boyle and Harry Rosenberg of Phelps Dunbar Law Firm to represent the Management Authority in Civil

Service matters was offered by Commissioner Meadowcroft and seconded by Commissioner Watters.

Commissioner Eames asked would the engagement of Ms. Boyle be in conjunction with the attorneys already representing the Authority. Chair Heaton replied, yes. She explained that she had an in depth discussion with Michelle Craig during which Ms. Craig was advised that the Authority would be engaging additional co-counsel with whom she had already spoken and with whom she will work. Therefore, Ms. Craig is well aware of this action. She noted that the additional help would be appreciated because of the complexity of the issue.

Commissioner Hebert inquired about the discussion with Civil Service on Friday, March 1st. Chair Heaton explained that Civil Service's view of the issue on Friday had changed from its view at the meeting on Thursday, February 28th. Authority staff contacted Civil Service for information on its options. She pointed out that the Commissioners should realize that the Authority was asking advice from an agency that ruled against it and did not allow a hearing. This is the reason for seeking additional legal advice.

Commissioner Majors stated that when Civil Service staff came to New Orleans and met with the Human Resource (HR) Committee and other members of the Board, they were clear that the Authority did not give an opportunity to appeal based on the fact that the letter itself cancelled it out. The Authority's letter dated November 26, 2018, informed Don Robertson that he was being terminated on November 13, 2018. Based on this letter, there was no way that the Authority could win the case. Civil Service staff stated that the Authority was not given a hearing because they knew that it could not win the case. The date of the letter caused the Authority not to have an opportunity to appeal. She asked, if Ms. Boyle's legal assistance is needed only to win this case, why does the term of the contract end in March, 2020?

Chair Heaton responded that the last time that the former Orleans Levee Board had a case of this magnitude, it went on for years. Therefore, a one-year term was used, which is the usual term in standard legal contracts.

Commissioner Majors stated that she thought that the Legal Committee had given its approval for the case to be settled. She asked the reason for engaging additional legal assistance.

Commissioner Arrigo advised that he is a member of the both the HR and Legal Committees, and wished to address the question. He stated that in his opinion the Authority clearly needs a second set of eyes to look at this issue. The HR Committee at its November 8, 2018, meeting adopted a motion to terminate this employee. The Authority had a number of people attend the November 8th HR Committee meeting, including the employee's attorney, other people who were very familiar with Human Resources, and someone who at the meeting supposedly representing the Authority, and the path was missed. Civil Service staff when they attended a subsequent HR Committee meeting and coached and instructed the Authority about this issue painted the picture that the path was Civil Service 101 and that there was nothing unique about the circumstance, but it was missed. He stressed that all the people attending the November 8th meeting missed it. Therefore, some missteps had taken place while the Authority's current counsel was providing guidance; therefore, a second set of eyes is needed.

Commissioner Majors admitted that there had been some missteps; however, she pointed out that the Authority had hired an HR consultant that did not catch the missteps before the letter went out. Chair Heaton noted that the HR consultant had thirty-five years of experience. Commissioner Major stated that she was having difficulty understanding, let alone accepting, this, and that she had a real issue with this situation.

Commissioner Arrigo asked Commissioner Majors was she opposed to having a second set on eyes on this issue. Commissioner Majors responded, yes.

Commissioner Hebert asked, according to the attorneys, how long might the case go on? Chair Heaton responded that she did not think that the length of the case could be

determined by the attorneys. Ms. Craig is briefing the attorneys. The Authority is unsure at this time about what it will end up doing; however, it is the Authority's fiduciary responsibility to position itself to settle or conclude this issue in the best possible way. The employee's attorney has not been cooperative with the Authority's attorney. Ms. Craig would like to see this issue end as soon as possible. Therefore, the Authority is trying to position itself to obtain more information about its options. The proposed legal firm has taken employment issues all the way to the U.S. Supreme Court. The Authority does not think this is necessary and will not be spending outrageous amounts on lawyers. However, the Authority must make some decisions in a very short period of time and would receive the best advice possible with assistance of Ms. Boyle. She anticipated that by the next Board meeting the Authority should have a good course of action to ratify.

Commissioner Watters stated that this issue is complicated by the fact that if the Authority does not have an appeal in place, its ability to settle is severely impacted. The Authority cannot give away money without cause. Therefore, as long as an attorney is willing to state that there are grounds for appeal, the Authority must appeal to simply keep the case alive.

Commissioner Romero pointed out there had been some concern that there had been no response from Mr. Robertson's attorney after a number of calls by the Authority's attorney (Ms. Craig). Therefore, it appeared that additional help was needed. The Authority has three business days to appeal; however, it appears that an appeal will not be successful. Therefore, the question becomes, should the Authority settle; however, the Authority's current attorney has not been able to get Mr. Robertson's attorney to reply. The last option is for the Authority to do nothing and see what happens; however, this is not an alternative that is wanted by the Authority.

Chair Heaton clarified that the engagement of additional counsel does not replace Ms. Craig. It complements Ms. Craig.

Commissioner Eames stated that she had not attended the Committee meetings; however, it sounded as though the Authority is not happy with Ms. Craig's services and that someone is being brought in with more experience in this area.

Chair Heaton explained that the Board members have a fiduciary responsibility to do what is best for the Authority. This case could potentially cost the Authority not just tens of thousands of dollars, but hundreds of thousands of dollars. Ms. Craig has done the best she could with what she had to work with from the case she was presented. She stated that she spoke at length with Ms. Craig on Thursday evening after the Board meeting. Ms. Craig represented that she had no problem getting the extra help from an employment specialist. This case is not cut and dry, otherwise Ms. Craig would have already settled it. It is a very difficult case for a lot of reasons, which is what Ms. Craig said from day one. Chair Heaton reiterated that the Board has a fiduciary responsibility to bring in the best in order to get the best advice. The attorneys will complement Ms. Craig, who knows the background. Ms. Craig can bring the lawyers up to speed and will be at the table. Chair Heaton stated that she did not mind paying for two attorneys in a case that could potentially result in hundreds of thousands of dollars of exposure. Ms. Craig has the background and Ms. Boyle can take it to another level.

Commissioner Bruno agreed with the statement made by Chair Heaton. He explained that the Sheriff's office has a team of attorneys, and when certain cases come up, attorneys who specialize in the appropriate specific fields are used. He commented that Ms. Craig is a very accomplished attorney and can handle many of the Authority's needs; however, someone with more experience may be needed in this particular case.

Commissioner Richard commented that his appreciation is that after the vote to move forward with a settlement, Ms. Craig made attempts to contact the employee's attorney and these attempts fell on deaf ears. He asked if the additional counsel is being retained for this appeal only, could not the term of the engagement be on an as needed basis ending at the conclusion of the issue in lieu of a one year period.

Mr. Metzger explained that the resolution provides that the attorneys would only work on an as needed basis. A fixed term was included in the resolution because the Attorney General would be looking for a term. The term cannot be open ended. The attorneys would work only if called upon for services and would be paid only for the work that they do. Chair Heaton added that the contract is a standard form used by the Authority. She stated that she was only trying to position the Board in the best way possible for the good of the Authority.

Commissioner Richard referred to the letter dated February 22, 2018 from Civil Service (received by the Authority on February 25th) mandating that the Authority rehire Mr. Robertson. He asked would the Authority be appealing the mandate. Chair Heaton responded that the next appeal would be to the Civil Service Commission; however, the Authority must have its attorneys look at this case before taking this action. The following step would be the First Circuit Court. If the Authority does not appeal, then it would be left with no option. The appeal must be submitted by Friday.

Commissioner Arrigo stated that the Board would prefer to settle; however, it cannot settle if the Authority does not submit an appeal.

Commissioner Watters noted that the Civil Service Decision awarded attorney fees in the amount of \$1,800. Therefore, it may well be that the Authority is not getting a response because the attorney's ability to bill has been shut off by the judgment. If the Authority appeals, the attorney may try to obtain another allotment of attorney fees, which will encourage him to communicate. Therefore, the only chance of settling this case is to file an appeal.

Commissioner Herbert asked where would the funding come from to pay for the additional attorneys. Chair Heaton responded that the funding will come from the Legal budget. The budget is tight, but the Authority has no other choice. Commissioner Herbert asked, what is the difference between the costs of the additional attorneys versus the cost of the settlement? Several Commissioners responded simultaneously that the difference cannot be determined because a settlement has not been reached. Commissioner Watters pointed out that if an appeal is not filed, the Authority cannot accept a settlement after Friday. The Authority offered to settle, however, the employee's attorney did not respond.

Chair Heaton stressed that the Authority has only three working days in which to file an appeal. The appeal must be filed within fifteen working days (Saturday, March 9) of the date of the letter from Civil Service (February 22, 2019).

Commissioner Romero noted that the longer that the employee's attorney does not respond, the meter keeps running on the employee's salary.

Commissioner Arrigo pointed out that up to this point, not only has the Authority not received a response from the employee's attorney, the Authority has not made a request in writing, so it cannot show that it tried to settle. Commissioner Major stated that an attorney does not have to receive an offer in writing to respond. She stated that the attorney just did not respond. This attorney is known for not responding.

Commissioner Eames stated that she would like to have heard Ms. Craig's view on this matter. She commented that she understood the urgency of this situation and that Ms. Boyle is an outstanding attorney.

Commissioner Major commented about a joint Legal-HR Committee meeting that was to be held after the Board met. Chair Heaton explained that the Legal Committee called an emergency meeting and invited all HR Committee members. Commissioner Arrigo added that he sent out the notice for the meeting. Commissioner Major stated that she was not comfortable with the way this matter was being handled.

Commissioner Richard asked the reason the Board did not go into executive session prior to a vote on the motion. Chair Heaton explained that the Legal Committee had an extensive executive session and that she respected their conclusion because of the time constraint.

Chair Heaton called for the vote on the motion. The result of the vote was unclear; therefore, a motion was offered and seconded for a roll call vote on the motion.

Commissioner Romero pointed out that the resolution provides the option that should Ms. Craig need assistance, these two attorneys with Phelps, Dunbar are experienced and have agreed to make themselves available. The legal fees for the attorneys are set by the Attorney General.

The Board voted unanimously in favor of a roll call vote on the motion to engage the additional attorneys on an as needed basis.

Mr. Metzger conducted the roll call vote on the motion with Commissioners Eames, Watters, Bruno, Arrigo, Meadowcroft, Green, Heaton, Romero and Brien voting yea, and Commissioners Richard, Major and Hebert voting nay.

MOTION: 01-030419
RESOLUTION: 01-030419
BY: CHAIR HEATON
SECOND BY: COMMISSIONER WATTERS

March 4, 2019

RESOLUTION

WHEREAS, the Non-Flood Protection Asset Management Authority (“Management Authority”) is a political subdivision of the State of Louisiana and the governing authority of the non-flood protection assets of the Orleans Levee District (“District”);

WHEREAS, occasions arise when the Management Authority requires professional legal services in connection with Louisiana Civil Service and other employment matters;

WHEREAS, the Legal Committee of the Management Authority at its meeting held on February 28, 2019 moved to recommend to the Management Authority adoption of a resolution to authorize the Executive Director of the Management Authority to enter into a professional legal service contract with Harry Rosenberg and Kim M. Boyle of the Law Firm of Phelps Dunbar, for a term of one (1) year, effective on March 4, 2019, and ending on March 3, 2020, with hourly rates for attorney fees for special counsel, paralegal services and law clerk services as provided in the Maximum Hourly Fee Schedule of the Office of the Louisiana Attorney General as set forth below:

\$225.00	Per hour for attorneys having experience of ten years or more in the practice of law
\$175.00	Per hour for attorneys having experience of five to ten years in the practice of law
\$150.00	Per hour for attorneys having experience of three or five years in the practice of law
\$125.00	Per hour for attorneys having experience of less than three years in the practice of law
\$ 60.00	Per hour for paralegal services
\$ 40.00	Per hour for law clerk services

WHEREAS, Louisiana Revised Statutes Title 42, Section 263 (Amended by Acts 1979, No. 78, §1; Acts 1982, No. 570, §2) provides that no state board, including levee boards, (unless excluded under the statute), shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid; and, the resolution then shall be subject to the approval of the Attorney General and, if approved by him, shall be spread upon the minutes of the body and published in the official journal of the parish;

WHEREAS, the Management Authority hereby declares that a real necessity exist to engage professional legal services for civil service matters by special counsel for the

Management Authority because of pending civil service proceedings involving the Management Authority and the need for professional legal advice on Louisiana Civil Service and other employment matters;

WHEREAS, Harry Rosenberg and Kim M. Boyle of the Law Firm of Phelps Dunbar are licensed attorneys in the State of Louisiana and have extensive experience with civil service and other employment matters;

WHEREAS, the Management Authority resolved that it was in the best interest of the District to approve a professional legal service contract to provide legal services on an as need basis with Harry Rosenberg and Kim M. Boyle of the Law Firm of Phelps Dunbar, for a term of one (1) year, effective March 4, 2019 and ending on March 3, 2020, with hourly rates for attorney fees, paralegals and law clerks in accordance with the maximum hourly rates authorized by the office of the Attorney General for special counsel, paralegals and law clerks, subject to the approval of this Resolution by the Louisiana Attorney General's Office.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Non-Flood Protection Asset Management Authority hereby approves and authorizes the Executive Director of the Non-Flood Protection Asset Management Authority to enter into a professional legal service contract with Harry Rosenberg and Kim M. Boyle of the Law Firm of Phelps Dunbar to provide legal services in connection with Louisiana Civil Service and employment matters, on an as needed basis, for a term of one (1) year, effective March 4, 2019 and ending on March 3, 2020, with hourly rates for attorney fees, paralegal fees and law clerk fees in accordance with the maximum hourly rates authorized by the office of the Louisiana Attorney General for special counsel, as set forth above, subject to the approval of this Resolution by the Office of the Attorney General of the State of Louisiana, as required under Louisiana Revised Statutes Title 42, Section 263.

BE IT FURTHER HEREBY RESOLVED, that the Management Authority's Chairman or Executive Director be and is hereby authorized to sign any and all documents necessary to carry out the above.

YEAS: Arrigo, Brien, Bruno, Eames, Green, Heaton, Meadowcroft, Romero and Watters

NAYS: Herbert, Major and Richard

ABSTAIN: None

ABSENT: Fierke, Morvant, Settoon and Wheaton

Commissioner Green offered a motion, which was seconded by Commissioner Watters and unanimously adopted, for the Board to convene in executive session to discuss the item listed on the agenda: Don J. Robertson, Jr. vs. Non-Flood Protection Asset Management Authority (Docket No. S-18500).

The Board returned from executive session and a motion was offered by Commissioner Meadowcroft, seconded by Commissioner Arrigo and unanimously adopted, for the Board to reconvene in regular session.

Commissioner Arrigo stated that no decisions were made by the Board while in executive session. He reminded everyone that executive sessions are confidential.

There was no further business; therefore, the meeting was adjourned.