



**NORTHWEST BERGEN COUNTY
UTILITIES AUTHORITY**

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**NORTHWEST BERGEN COUNTY UTILITIES AUTHORITY
MINUTES**

SPECIAL MEETING – MAY 17, 2011

1. Meeting was called to Order by the Chairman at 7:00 p.m
2. The Chairman read the statement in compliance with C.231, PL 1975.
3. Roll Call: The following Commissioners were present: Chewcaskie, Dachnowicz, Kasparian, Kelaher, Plumley, Rotonda, Shafron and Dator.
4. Salute to the Flag was led by the Chairman.
5. Chairman's remarks. We will be considering the resolutions on the agenda to rescind Resolution #38-2011 for General Counsel and a Resolution to appoint a General Counsel for 2011.
6. Discussion on the Resolutions:

Resolution #55-2011 - Authorization to Rescind Resolution #38-2011 - Retention of General Counsel for 2011. The Chairman asked for any questions or comments on this resolution. Commissioner Chewcaskie asked the Executive Director if typically this is what we have done in the past, rescinding by virtue of the Executive's veto. The Executive Director responded that that is what the resolution states. He wrote the resolution based on resolutions we had adopted previously referencing the County Executives right to veto. Commissioner Kasparian wanted to know if an attorney checked the resolution and was advised that it was not reviewed by an attorney but was copied from past resolutions that were prepared by an attorney.

The Chairman asked for further comments on this resolution. Commissioner Plumley wanted clarification that Resolution #55 would rescind Resolution #38 and we are doing this at the request of the County Executive. The Chairman noted that everything was correct but it was not at the request of the County Executive. Resolution #38 was vetoed by the County Executive and now we are rescinding that original one so that we can go to the next resolution which is to appoint a general counsel. The problem is we don't have any legal counsel and it is important that we have legal counsel to go forward. We cannot keep bouncing this back and forth. This is the reason a special meeting was called, and he thanked everyone for coming. If we don't do something now we would be into another two weeks without counsel and then another ten days after that and it would keep going. The opinion is that we cannot have holdover appointments and that is what Doug Bern would be at this time, a holdover appointment. One of the problems we have is that we have an opinion from the County Counsel's office that there is no such thing and what sense does a veto make if you can just keep holding people over. We shouldn't have to rely on the County Counsel's office for our legal advice and we should have our own attorney giving us advice under the laws of authorities.

Commissioner Shafron wanted to know if the County Counsel's office has given us an opinion in writing on that issue. The Chairman noted that he pressured for an opinion this afternoon and received one. Commissioner Kasparian wanted to know if we have an opinion to the contrary from anybody. Commissioner Shafron was under the impression that when somebody is the prior professional and is in limbo because we twice approved the resolution appointing them and they have been vetoed that they can continue in that position subject to being paid on a basis for the work they do in the interim until they are actually appointed. This is his understanding but has not seen anything in writing for either scenario.

The Chairman wanted to know how a holdover would be paid; on the same basis and rate as they were before or \$150 an hour or some other number. They were previously paid on a retainer no matter how much or how little work they performed.

Commissioner Chewcaskie noted that with respect to the holdover status we all may have a difference of opinion but we do not have an official legal opinion which we can act upon. His personal opinion from reading the statute establishing the powers of the County Executive, the County Executive has the authority to veto minutes and under that statute it indicates that once the minutes are vetoed it is as if the action of that body which minutes were vetoed was a nullity, as if it did not occur. However, that is what it says. If you look at it what the effect is with respect to an appointment, professional contract,

there is really no case law on it. This is his personal opinion based upon reading the statute. If that is what the statute says, basically, the resolution which we are rescinding #38 has already been rescinded. This is just a confirmation of the action. By having this resolution at least you have a record of what happened. He would like to have something in writing from counsel, whatever the counsel may be, on what the effect now is. He does not want to authorize paying somebody that is not approved. All that he sees Reso.#55 doing is confirming that action. If it is going to move the discussion forward he has no problem moving Resolution #55 for further discussion or action.

Commissioner Kasparian stated that setting aside the debate about whether or not it is appropriate or inappropriate legally to pay a professional holdover that has been vetoed by County Executive, we find ourselves in the position where we have twice voted in favor of Kaufman & Bern to be our counsel and twice it has been vetoed. It is clear and has been expressed directly to the Chairman that the Kaufman & Bern firm is never going to be accepted. We can argue all day long about whether or not it is appropriate for the Authority to continue using them on a holdover basis but he suspects that what will happen is we will get a written opinion from the County Counsel's office that will say we cannot. We could probably get a confirmation by outside counsel if we want. We will find that we will continue operating without a counsel which is not acceptable and will be setting ourselves up for failure. This is a tough spot and the fact that they suggested Leon Sokol as an acceptable attorney in terms of someone they would not veto is a good compromise to the extent that Leon is a team player and a very competent attorney.

Commissioner Shafron feels that the history is important because when our professional who has served for eight years without an issue was approved in a resolution and submitted to the County, the sole reason for the veto was that no amount of money was included in the resolution. We fixed that issue and a resolution was submitted indicating the amount of money they would be paid was \$60,000. The veto message to that basically says that the County Executive agrees that \$60,000 is a reasonable amount of money to be paid for this job. He doesn't feel this will go on forever and that if the firm we have appointed twice is approved in another resolution, that the County Executive's office will approve it.

Commissioner Kasparian wanted to know if anyone at the County Executive's office has indicated this because they have said directly to the Chairman that it will never happen.

Commissioner Shafron thinks that what we are talking about is whether the counsel this authority chose as their professional is going to be rejected forever. He thinks that is not

going to be the case and in fact the Bergen County Utilities Authority has now been vetoed three times and they are going to resolve this issue about who will be appointed. He doesn't feel that we are going to be dealing with this forever and he knows that the County Executives office is excellent and he knows that they want to do what is right for the County and continue to do that. He is confident that the County Executive will allow us to continue to function and will approve whatever professionals or any action and there are no issues.

Commissioner Kasparian stated he is basing everything on what has been told directly to our Chairman not on conjecture. He feels the reasoning for their vetoes are ridiculous. We got vetoed based upon a political agenda, it had nothing to do with the criteria for selecting a bonafide and qualified attorney to represent this authority. Commissioner Shafron is sure the County Execs office does not agree to that and that there are legitimate reasons why they vetoed them.

The Chairman stated as far as Resolution #55 there seems to be an opinion that we do not need this but if we do need it than we should vote on it. It does provide a record but if we take the premise that the minutes were vetoed therefore we don't have counsel than we don't really need Resolution #55 we can go right into Resolution #56 to appoint another counsel. He understands Commissioner Chewcaskie's opinion that this gives us a record of what happened to Resolution #38.

Commissioner Kasparian felt it might make some Commissioners more comfortable if we hired outside counsel just for the simple purpose of providing us with a written opinions to whether or not we can continue to operate with Kaufman & Bern as our attorney in light of the fact that they have been twice vetoed by the County Exec. If we can get a written opinion either way, then maybe we can make a more educated decision as a body as to what is appropriate.

Commissioner Shafron agrees but he doesn't think that is the issue that we are here tonight about. He doesn't think it is whether any firm can continue ad infinitum without being appointed. He doesn't think anyone would give us an opinion that says that person can continue without being appointed. He thinks that the reason for the special meeting tonight was because the Chairman properly expressed his concern that we needed to get moving on this because we need a counsel. His point was that he doesn't think that this is going to go on indefinitely and feels that a counsel will be appointed and the issue of whether to appoint somebody else, at this point, can be resolved. The issue whether or not you can pay a person while we wait to decide who to appoint is the issue that resolves

why we are here tonight. He received notice on the special meeting that we had a resolution on tonight for the appointment of a general counsel and the Chairman properly explained why he called the meeting at the beginning of this meeting and why this resolution is being proposed. It is only addressing the concern that the vice chairman and chairman raised that we need to appoint somebody else tonight because we need a counsel now and we cannot continue for another two weeks or a month without counsel.

The Vice-Chairman pointed out that we are not paying Kaufman & Bern at this time.

Commissioner Chewcaskie voiced his concern that logically if you look at it, that the concern of paying a holdover does not exist if Resolution #56 is adopted. Therefore, you have a new general counsel assuming that it is not vetoed. If Resolution #56 is not adopted we have discussed at the Operating Committee meeting that certain things need to be done and we have instructed the Executive Director that Doug Bern can do it on a per hour basis because it had to be done. If that is the case and #56 doesn't pass then he has a concern about how we deal with this in the future because we do not want to be told we are doing something wrong if we approve a payment for services that we know was specifically authorized and are reasonable under the circumstances. If there is not a vote on #56 or not an affirmative vote we can certainly wait for an opinion from an outside counsel. We have hired other attorney's here and he recommends approaching Eric Bernstein, whose appointment was not vetoed, for an opinion.

The only outstanding invoice we have for Doug Bern is for the Audit letter which refers to the 2010 Audit. Although the letter was written in 2011 it is for the 2010 Audit which is a requirement by the Auditor in order to release the audit. Mr. Bern was paid for January and February 2011 according to his previous contract which was not renewed. In addition he was specifically retained to handle the Franklin Lakes matter, which also was not vetoed. We have the grey area in which he was authorized to provide limited services that he should be submitting a bill for which will have to be reviewed in terms of the amount and if it is reasonable.

Commissioner Rotonda appreciated the Vice-Chairman and Commissioner Shafron's remarks but feels we are talking around the problem. It is obvious that we are trying to accept the county execs wishes. It seems obvious that she wishes to appoint Leon Sokol. He feels this is a political situation and that a precedent is being established. You have an attorney who served this board for eight years with no marks against him. He doesn't believe in the infallibility of the County Executive and she may be a very good County

Executive and wonders if the previous County Executive dictated to this. He feels it is silly for the board to proceed and we should at least interview Mr. Sokol.

The Chairman pointed out that we received RFQ's and reviewed all firms qualified. We cannot go back now to find out if they are qualified.

Commissioner Rotonda feels we shouldn't just jump into this. Tomorrow is another day and in a couple of years things could change. If we have an emergency we hire an attorney. We have to operate. The problem is that just by doing exactly as we are told by this County Administrator in this year we are establishing a precedent and he has a difficult time doing that. He has to know more about Leon Sokol. Whoever we vote for he doesn't feel his party affiliation should matter.

The Chairman stated that the Operating Committee made a recommendation to have Sokol, Behort & Fiorenzo as our counsel. It went for an informal request of the County Executives office to see if it would be vetoed or not and we were advised that it was fine. After the first veto we went back out and requested new RFQ's and at that point Leon Sokol decided to submit his qualifications. He was the counsel to the senate for several years. He is well qualified and the Operation Committee decided to go with him for a variety of reasons and it was only after we made that decision that we heard informally from the County Executive's office that it would be an acceptable choice.

Commissioner Chewcaskie's first question was whether we vote on reso.#55. He would like to vote on it to create a record for the Authority. Commissioner Chewcaskie moved the resolution for the purpose that at least when you look at the Authority records it confirms that this action was vetoed. Commissioner Shafron agreed with him, that if the sole purpose of reso.#55 is to memorialize the veto by the County Exec's Office then he would vote for it. The operative clause is the resolved clause that says "the Authority hereby voids and rescinds Resolution 38-2011" and he would add language consistent with the Bergen County Executive's Veto and move Resolution #55 as amended. Seconded by Commissioner Plumley. All commissioners present voted in favor of the resolution except Commissioner Rotonda who voted no.

Resolution #56-2011. - Appointment of General Counsel for 2011. This resolution is identical to Resolution #38 with the exception of the change of the name of the firm and individual within that firm. This was reviewed by the firm of Sokol, Behot and Fiorenzo. Commissioner Chewcaskie noted that the resolution states that it is for a one year period and questioned when we have our reorganization meeting. He was informed that the

reorganization meeting is every February. Executive Director stated that the reason for a one year term was to avoid this kind of a situation should we get into a problem February of next year that it would than allow us under the law to carry the firm. Commissioner Chewcaskie feels it would be appropriate for the board to appoint any professionals awarded contracts when it reorganizes. That is why he doesn't like to see a resolution go beyond that which would bind the future board. The resolution was amended to read: "for a period commencing on the date of this resolution, until Feb. 28, 2012". The resolution was moved by Commissioner Kasparian, seconded by Commissioner Dator as amended. A roll call vote was taken: Commissioners voting yes: Chewcaskie, Kasparian, Plumley and Dator. Commissioners voting no: Dachnowicz, Kelaher, Rotonda and Shafron. The Resolution did not pass.

Chairman asked for a Motion to retain outside counsel to give us a legal opinion on appointment of counsel. It was decided to retain Eric Bernstein who is already our labor counsel and based upon his qualifications he would have the ability to render an opinion within the scope of his existing contract.

The question to be asked is what is the effect of vetoed professional providing additional services as requested by the Authority and is the Authority authorized to pay for such services if they are performed.


Motion #2 to retain Eric Bernstein to render an opinion on the effect of vetoed professional providing additional services as requested by the Authority and the Authority's authorization to pay for such services if they are performed was offered by Commissioner Chewcaskie and seconded by Commissioner Kasparian. All Commissioners present voted in favor of motion #2.

Motion #1 to accept the 41st Annual Report as prepared by T&M Associates. The Annual Report was discussed at the last operating committee meeting. It was completed but was not available for distribution at the last regular meeting. We have received both the summary and full annual report in the form as expressed by each of the Commissioners. Motion was offered by Commissioner Chewcaskie, seconded by Commissioner Shafron. All Commissioners present voted in favor of accepting the 41st Annual Report.

7. Public Comments. There was no public present.

8. Vote on the Resolutions and Motions. This was already covered.

9. Adjournment. Motion to adjourn was made by Comm. Kasparian, seconded by Comm. Kelaher. All Commissioners present voted to adjourn at 7:40 p.m.


Madeline Thumudo
Madeline Thumudo, Secretary