

SOUND TRANSIT CEO CONTRACT SUBCOMMITTEE MEETING

Summary Minutes**November 5, 2018**

CALL TO ORDER

The meeting was called to order at 2:16 p.m. by Vice Chair Marchione, in the Ruth Fisher Boardroom, 401 South Jackson Street, Seattle, Washington.

ROLL CALL

Chair

(P) *Dave Somers, Snohomish County Executive*

Subcommittee Members

(P) *Nancy Backus, City of Auburn Mayor*

(A) *John Marchione, City of Redmond Mayor*

(A) *Victoria Woodards, City of Tacoma Mayor (participated in discussions via teleconference)*

Katie Flores, Board Administrator, announced that there was not a quorum of the Subcommittee present at roll call.

CHAIR REPORT

Chair Somers announced that there was not a quorum of the Subcommittee present, but the members would hear the reports listed on the agenda. He stated that no action would be taken because of the lack of quorum.

He invited Boardmember Woodards to participate in the discussion, even though the subcommittee was not able to vote to allow her participation to count towards a quorum.

OPENING REMARKS

Chair Somers stated that at the October Board meeting, the Board took an action directing him to form a subcommittee to discuss renewing and amending the employment agreement with Peter Rogoff to serve as chief executive officer of Sound Transit. His goal for the subcommittee is to work quickly in order to present a proposal to the Board by November 15, 2018. He stated that the subcommittee would receive information on some of the main components of a new contract to continue to employ Peter Rogoff as Sound Transit Chief Executive Officer.

Chair Somers advised that Steve Winterbauer, external legal counsel, would be participating in the meeting by phone.

Chair Somers shared his view on key elements of the CEO's contract. Given the enormous work ahead for the agency to execute ST2 and ST3 and manage the increased ridership each year, he believes compensation should be targeted around market pay. This would ensure the CEO is being paid a competitive wage while maintaining fiscal responsibility to the voters. He would like the Board to consider a term of three years with three, one-year options, which would take the contract through 2024. By 2024, the majority of ST2 projects will be operating and the Lynnwood Link Extension is expected to be completed. He would like to see the CEO's performance and annual base salary be aligned to the existing agency process. This would work to ensure a pay for performance methodology for base pay increases in the future and align the CEO's compensation with the staff he leads.

CEO CONTRACT DISCUSSION

Briefing on Market Study of CEO Compensation

Julie Honeywell, Chief Human Resources Officer, provided the report beginning with the labor market. The current U.S. unemployment rate is at 3.5 percent, which is the lowest jobless rate since December 1969. From a talent perspective, this means there is increased competition from both the private and public sector, putting pressure on organizations to increase wages to attract and retain talent.

Sound Transit's compensation methodology works to ensure pay is at market rate. Overall, the agency's program works to attract, motivate, and retain highly qualified employees; provide competitive salaries; promote internal equity; reward contributions and achievement by aligning pay with performance; and steward responsible spending of tax-payer dollars.

The market study methodology is done by gathering a variety of market reference points on comparable roles. A market average is established by collecting data for comparable positions in the labor market and developing a market composite value from these data points. The CEO compensation study was completed looking at the market using reputable compensation surveys and reaching out to other transit agencies. Cost of living adjustments were applied to the data to ensure that the result is a valid comparison of compensation. The conclusion is that the market base pay for the CEO position is around \$363,754.

Briefing on Agency Performance Management Process

Ms. Honeywell provided an overview of the performance management process. Employees establish performance goals and measures at the beginning of the year. Performance monitoring takes place throughout the year and the process ends with the performance assessment where an overall rating is established. The process works to ensure that pay is established by a merit pay increase that is aligned to the performance rating. Sound Transit has a five-rating scale; as the performance level increases, so does the merit percentage increase.

Chair Somers asked if the rating would be based on the performance measures and goals established by the Board. Ms. Honeywell confirmed that this was correct.

Boardmember Backus asked if this merit is in addition to a cost of living. Ms. Honeywell responded that the agency does not give cost of living increases; pay is based on performance.

The staff recommendation is to consider aligning the CEO's pay to the agency process for two reasons: (1) it aligns base salary increases with an overall performance assessment and (2) it aligns the CEO performance and salary process with the rest of the agency.

Briefing on Draft Contract Language

Steve Winterbauer, external legal counsel, provided information on the draft contract and detailed changes. He commented on the global approach and highlighted some specific provisions. On the global approach, he recommends Sound Transit move away from the existing form of the CEO contract and go to a more detailed approach to the contract. The draft contract retains 75 percent of the provisions that were already in place.

Section 1. Position/Duties.

Mr. Winterbauer explained that this section has a more detailed description of the CEO's responsibilities than the existing contract. Collectively, the language is intended to stress the significance of the issues

Mr. Winterbauer was responsible for investigating in the past. This will be tied back to the definition of cause for discharge in the contract.

Section 2. Term

This language is intended to meet the desires of Sound Transit and the CEO by having a specified term followed up with the opportunity for automatic renewals in one-year increments. If the Board goes forward with this approach, it is important to calendar the deadlines for exercising the right for nonrenewal. As it is drafted, if the Board wishes not to renew, that right needs to be exercised at least 90 days before the end of the term. If a party fails to do this, it will automatically renew for an additional year.

Section 6. Termination/Resignation

This language states that Sound Transit can fire the CEO with or without cause. If with cause, the CEO is not entitled to severance pay; if without cause, the CEO would be entitled to severance provided he signs a release of claim. This is balanced out in the contract by extending a similar right to the CEO allowing him to resign with or without cause. This section outlines the circumstances where the CEO can resign and still collect severance. The Board/agency has to breach its own contractual obligation to the CEO in some material fashion or unilaterally reduce his pay or benefit to a material degree. The section also includes a connection to the duties language requiring the CEO to follow EEO policies.

Section 7. Severance

Mr. Winterbauer stated that the current contract provides for the shorter of one year's severance or the remainder of the contract term. If the CEO were fired without cause during the three-year contract, he would receive one year's severance. If the CEO were fired without cause during year three, he would be paid out the remainder of the current contract, not the full year. One of the issues going forward is whether, and to what degree, the CEO would get severance in the event of nonrenewal. As drafted, nonrenewal is not a triggering event, so there would be no obligation to pay severance.

Section 13. Attorneys' Fees/Venue/Jurisdiction

Mr. Winterbauer is recommending Sound Transit remove the mandatory arbitration provision that is in the current contract.

Chair Somers asked if the balance of the draft contract is consistent with the current contract. Mr. Winterbauer confirmed this and mentioned that he added a few things to give Sound Transit greater protection.

Discussion on Desired Contract Elements

Chair Somers stated that at the Board's direction, he has been working with Vice Chairs Lucas and Marchione on this issue since the September 2018 Board meeting. The general parameters they identified included (1) having the compensation being at market average; (2) that the new contract be three-years with three, one-year options to get to 2024; and (3) that the CEO position follow the same performance review process/schedule as the agency employees.

Boardmember Woodards asked if the Board were to approve a cost of living adjustment for agency staff, would the CEO get this as well. Chair Somers stated that this would be a Board decision.

Next Steps

Chair Somers advised that he would discuss the proposed changes with CEO Rogoff. The CEO Contract Subcommittee is scheduled to meet on Thursday, November 8, 2018. He asked that the other members of the subcommittee let him know if they have further questions or comments prior to the meeting.

Boardmember Backus asked if language at the end of section 1 would restrict the CEO from doing nonprofit or charitable work. Mr. Winterbauer replied that it isn't quite that specific, but is trying to get across that as a general rule that the CEO can do charitable or community service work provided it is not interfering with his performance or responsibilities. Beyond that, the Board needs to know about anything else that might be an extracurricular activity beforehand and the Board must approve it before it is pursued.

Boardmember Backus asked about political activities. Mr. Winterbauer replied that that would fall within the scope of needing prior approval. Mr. Winterbauer commented that it is intended to be broad to restrict political or quasi-political activity that the Board views as adverse to Sound Transit's current or future interests or image. Boardmember Backus expressed a concern that the contract may restrict the CEO's ability to contribute to a political cause or candidate if there was a potential conflict with the politics of the current Board Chair or Executive Committee.

Chair Somers stated that this entire section refers to CEO's entire working time, effort, and skill. Since it is a contract, he does not feel the Board can restrict somebody from making a financial donation of their own money to a candidate of their choosing. Mr. Winterbauer stated that the area could be looked at further.

Chair Somers reminded the subcommittee that the full Board has the authority to authorize the contract and make amendments. He would like to present the Board with a document that is in line with the expectations that will serve the agency and the region well and protects the agency and the CEO.

NEXT MEETING

Thursday, November 8, 2018
4:00 p.m. to 5:00 p.m.
Ruth Fisher Boardroom

ADJOURN

The meeting adjourned at 3:16 p.m.

Dave Somers
Board Chair

ATTEST:

Kathryn Flores
Board Administrator

APPROVED on _____, JE