



Minutes

Special Meeting of the KID Board of Directors
Carl W. Petersen Board Room
Thursday, July 22, 2010, 2:00 p.m.

Call to Order: President Jaksch called the meeting to order in open session at 2:00 p.m. and District Manager Freeman called roll.

Directors Present:

John Jaksch, President
Gene Huffman, Vice President
David McKenzie, Director
Patrick McGuire, Director
John Pringle, Director

Staff Present:

Charles Freeman, District Manager
Brian Iller, District Counsel
Joetta Rupert, Real Estate Manager
Doris Fiske, Executive Assistant

Guest: Robert Schultz, Legal Counsel to Joetta Rupert

President Jaksch turned the meeting over to Mr. Iller.

Transcript of statements and discussion:

Mr. Iller: Pursuant to the Board's action on Tuesday meeting we're here today to hear from Ms. Rupert to respond to certain charges or complaints regarding her use of sick leave for time off to attend a trial at which she was a party.

We had scheduled this and noticed this as an executive session. At Ms. Rupert's action, however, she's entitled to have this as an open public meeting. She has, Mr. Robert Schultz, her attorney, who's here on her behalf today, has opted to, said that she has opted to exercise that right, so she will, she's requested that this occur in an open public meeting.

Mr. Jaksch: O.K.

Mr. Iller: So, we will not be going into executive session and, at this point, then, I guess we can ask Ms. Rupert to explain why she chose to take time off to attend a trial on a personal matter and use sick leave.

(Aside) I guess maybe stand at the podium so people can... As an open public meeting, this is being recorded and broadcast, I believe.

Ms. Fiske: It's not broadcast. It will be posted on line.

Mr. Iller: It's not being broadcast but will be posted on the web.

Ms. Rupert: Good morning, gentlemen. Good afternoon. I appreciate you calling this hearing today in order to give me the opportunity to explain this situation and clear up this misunderstanding.

My personal reputation is very important to me and I, with great sense of urgency, that I appreciate the fact that you're allowing me to be here, both professionally and personally.

I will let you know that I've made a few notes because I want to make certain that I'm getting the sequence of events for my explanation in the right order, so occasionally I will be referring to my written notes.

For the last seven years that I've been an employee here, I've strived to be my best in everything that I do for not just the Board, but the ratepayers, the other employees, everyone that's involved with KID. That's been very important to me.

I feel I've always been forthcoming and honest with the Board. If I knew something, you knew something. And I'm in shock that this has gotten to this level; this miscommunication of what's happened. However, I'll do my best to explain the situation to you so that you can understand where I was coming from and what I was thinking.

On June 29th, I was advised to be in court for a personal civil lawsuit. I had had some notice ahead of that, however, I thought it was a mistake because it was starting on a Wednesday and it was over the Fourth of July holiday. I had expected that date to change, and, as I believed it was in error, and made no provision before that day to take the time off from work.

However, on June 30th, I was... I'm sorry... On June 29, I got a call that I would be in court the next morning. The injury, it was a personal injury lawsuit that I had brought forth, and the injury that I sustained in this accident was a C6 C7 herniated disk. It is an extruded disk that causes me quite a bit of pain, so I was anxious to get this taken care of.

Immediately following the telephone call that I received from my attorney, the very first phone call that I made was to you, President Jaksch, and I wanted to make certain that I informed you of what my situation was, where I was going to be, and about how long I expected it to take.

I then called Gene Huffman, who is the chairman of the Realty Committee, and gave him the exact information that I gave President Jaksch. Let them know how long I would be out of the office. I didn't expect to be checking voice mails or e-mails. This was a serious situation. It was going to be a jury trial and it needed my full attention.

And then, as a courtesy, I called Mr. Chuck Freeman, to give him the information, in case... Just so he would know, if there was any... if he was hit with anything from the Realty Division, he would know I was out of the office and why.

I let, everyone did have my cell phone, but I let them know I wouldn't be making a practice during the day, during the day to check those messages. I let everyone know I'd be in court at least a week beginning the following day, and it was very important to me to make certain that the Board knew where I was going to be and what I was going to be doing and why I was out of the office. I wanted to be up-front about that.

I returned to my office to work on the following Thursday. I can't recall the date right now but it was the Thursday after the Fourth of July. I did leave my office for a time on Thursday to attend the courthouse to hear the verdict and then the following... and I worked on Friday, as well, trying to get caught up on the work that I had not been able to do while I had been out of the office the week before.

The following Monday, on July 12th, even though I'm a salaried employee, and I don't fill out a time sheet, I knew that payroll was pending and I felt I needed to fill out a leave request form since I'd spent so many days out of the office. I wanted to make certain that those got documented and got down to payroll.

We had recently, I believe, I can't recall the exact date, but I believe it was the month before this month in June, we had adopted a new employee policy. And I didn't know what policies had changed. Wasn't quite certain what it said regarding leave. So I picked up the new employee leave manual and looked at it briefly. I didn't study it. I was busy trying to still get caught up on the work with just trying to expedite my leave request form, but I wanted to review the policy manual to see what it said regarding leave.

After reviewing the sick leave policy, and how it was worded, I interpreted my injury and my absence from work qualified for sick leave. It says "sick leave may be granted for absences from work due to illness or injury, medical provider appointments for confinement, care of spouse or legal dependent and other such absences that comply to state and federal regulations." To me, my injury qualified; my court date qualified me to be out. That was why I was out of the office was due to an injury.

Now, be it good, bad or indifferent, whether I interpreted that rightly or wrongly, that was my honest interpretation. At no time did I ever attempt to deceive or commit any type of fraudulent act.

On my request for leave form, I also put "personal injury" on there, because I knew that everybody knew that I was at court. I had hoped that they knew I was since I had informed three important members. And I thought that was indicating the connection to why I chose the sick leave.

I did believe, whether it be rightly or whether it be wrongly, I did believe in good faith that I was doing the right thing. Didn't occur to me that I was doing anything wrong or to second guess what I had done.

On Thursday, July 15th, Mr. Huffman visited my office. We had a few things to discuss. The first thing that he asked me was "how did I claim my sick leave time?" Or "how did I claim my time in court to payroll?" The time off that I was in court; how did I report that to payroll?

At that time, I informed him that I used my sick time as that's how I interpreted the policy. And then I asked him if there was an issue with that or if he needed a copy of the form that I had submitted, and he said "no, there was no issue and he didn't need a copy."

And I said "let me know if there's an issue; if I need to change it, let me know."

That's all that was said. He did not take a copy of the form with him and, as I said, he said there was no issue and no problem.

On Friday, the 16th, the past Friday, Mr. Freeman informed me that my time in court, via email, that Mr. Huffman was questioning whether or not my time in court qualified for sick leave or not. And Mr. Freeman told me no, it did not.

I don't know if you've got the email chain of that information. I'm happy to share that with you. I've got copies.

(Mr. Iller distributed copies.)

Ms. Rupert: Upon reviewing his email, I immediately responded for him to please change my time from sick leave to.... that I had believed I had two personal holidays I hadn't yet used this year and the rest for vacation time.

His only response was "will do." At this time, I assumed he would relay that information to the payroll department and it was no longer an issue; or it was the first time it I had been brought to my attention that it was an issue. His response to me of "will do" made me believe that there wasn't an issue.

Then, I attended the Board meeting on this past Tuesday, and I did hear President Jaksch amend the Board agenda to include the review of a public employee. And I had no idea that it would be about me. I had no reason to believe that had been about me, as no one on the Board had ever indicated to me that there was any miscommunication or any issue regarding my timesheet. I had not been made aware of any reason why you would be discussing my performance and also because of the fact that Mr. Huffman, when he was in my office the week prior, had informed me that my personal evaluation review would be the first Board meeting in August. So, I had no reason to believe there was any issue of the Board.

I believe the Board asked the entire room to be excused except Mr. Freeman and Mr. Iller. And so I left the room. It's unfortunate, I probably, in hindsight, would have been better for me to stay in the room and address those questions then. I did not realize there were any questions left to be answered.

I returned to my office, and within an hour after my return, I did receive a phone call from Mr. Brian Iller, who informed me that I was being placed on paid administrative leave and he would be coming up to my office to escort me out and I would be charged with... I can't remember your exact term, Mr. Iller? I don't believe it was fraud, I believe it was another word that you used. I can't remember.

Anyway, I immediately said "you've got to be kidding. What are they saying I've done?" and he said "I'll be up to talk to you in just a little bit."

He came up to my office and explained to me this timesheet issue. And so, he allowed me to clear my personal belongings out of the office. He took my credit card. He took my office keys. Asked me if I had anything else to declare that was KID property and that the Board would be having a hearing today, Thursday, at two o'clock, which Mr. Huffman had previously confirmed our Realty Committee meeting that day, on Tuesday.

So I was quite confused; quite concerned. My entire professional career I have never had my integrity questioned in this manner. And I assure you if I've done or interpreted something wrong, I sincerely apologize and I would hope that we can fix that. But at no time ever, did I ever, and have I ever in my entire time with KID, done any, committed any act to deceive this Board or defraud the KID.

This has been a wonderful institution. My grandfather retired from KID. So I care a lot about what goes on here. And I care a lot about the employees, managers, the things that work and the things that don't work. But I just don't know how this miscommunication came to this level.

Mr. Iller: Thank you, Ms. Rupert. Before I give Board Members an opportunity to ask questions, in my letter of July 20, 2010, giving you the written notice, the end of the first paragraph, last sentence says "the concern is that this would result in the District paying you unused vacation or personal leave at the end of the year." And I appreciate your explanation for your reading of the policy and why you thought it was appropriate, but I was... You did not address that concern and I would appreciate it, maybe, if you would do so.

Ms. Rupert: Thank you, Mr. Iller. I appreciate your consideration in allowing me to address that.

Kennewick Irrigation District employees are allowed to cash in up to two weeks of vacation, unused vacation, a year. I believe you have to have 160 hours. I'm not quite familiar with the new manual because I haven't reviewed this in the new manual.

How it was before, is you could cash in up to two weeks vacation a year, one-time occurrence, per year. This is an enjoyment that, or benefit that is enjoyed by many of the KID employees. It's not just me. Many people choose to do their cash in at Christmastime.

This year, I chose to cash in my two weeks at January. So I've already cashed in my two weeks benefit, if you will, that I've earned. Nor do I intend to apply for those funds. By policy, we're never been allowed to cash in any personal leave or personal holidays. Those you use them or you lose them. There was not any intention on my part to cash in any vacation for cash; however I did do that in January. I paid some Christmas bill with that in January.

Mr. Iller: At that point, do any of the Board Members have questions they would like Ms. Rupert to address? You can, your options here, you can ask a question, you can take this under advisement, consider what she said, you can discuss your concerns here in this meeting, you can consider it each individually and address it at a future meeting.

Mr. McGuire: May I ask Mr. Freeman a question?

Mr. Iller: Sure.

Mr. McGuire: Mr. Freeman, when we incorporated the sick leave and late policy into the employee manual, did it change? Did the policy change?

Mr. Freeman: No.

Mr. McGuire: Mr. Freeman, did all the department heads and senior staff have the opportunity to review and make input to the new employee manual prior to its implementation?

Mr. Freeman: Yes.

Mr. McGuire: Thank you.

Ms. Rupert: May I? I did have an opportunity to review the policy manual and I did send several suggested changes to Mr. Freeman which never made it inside the policy manual and was never discussed with me why they didn't make it inside the policy manual. So, if

we may have had an opportunity to make those changes, but there was no consideration given nor no reason why consideration was given to me personally.

Mr. Iller: Any questions by any of the other Board Members or comments that they'd like to make?

Mr. Huffman: I just wanted to address the one question on the meeting that you and I had. You determined in your conversation with me that it was a personal injury and you stated that I didn't object or question it because I did not present...

Ms. Rupert: I'm sorry, I can't hear you.

Mr. Huffman: I did not read the policy prior to what we were talking about, so I didn't know the policy until afterwards.

Ms. Rupert: Right. I don't. I do recall asking you if there was an issue with it. I don't recall asking who brought up the issue.

Mr. Huffman: There was not an issue brought up because I didn't bring up an issue. You stated...

Ms. Rupert: No, you brought it up to me. You asked me how, "how are you getting paid?"

Mr. Huffman: I asked you how you did your time.

Ms. Rupert: You said "how did you do... how are you getting paid for the time you were out of the office."

Mr. Huffman: I didn't say paid; I said, "how are you doing your time off?" That's all I said. And you're the one that said that (*inaudible*) you were going to use sick leave because of the personal injury.

Mr. Jaksch: John.

Mr. Pringle: A question, would, Mr. Freeman, would any accumulated vacation time during 2010 be something that would be eligible to be cashed in?

Mr. Jaksch: In 2011.

Mr. Pringle: In 2011, could you cash it in?

Mr. Freeman: Anything over 160, you're eligible to do it once a year if it's budgeted for.

Mr. Iller: I do have a copy of the relevant portions of the handbook here that I can provide.

(Mr. Iller distributed copies.)

Mr. Jaksch: Any other questions? David?

Mr. McKenzie: Just for the record, when was the payroll actually run for this time? Was it paid as sick leave and then changed, or the time submitted changed before payment?

Mr. Freeman: The changes were made after the pay...

Mr. McKenzie: After the pay period.

Mr. Freeman: After the pay period.

Mr. McKenzie: Thank you.

Ms. Rupert: The submittal of my request for time off was done on July 12th, which was a Monday. Typically, if I'm mistaken you can correct me, Mr. Freeman, but I believe payroll is usually run no later than Wednesday, because it's usually in the bank by Thursday. And then I was advised Friday morning that my time didn't qualify as sick leave. So, once again, I will state, this is quite a miscommunication and there was never any time that I ever willfully committed any dispute or fraud on KID. Never have. Never would. This is a miscommunication.

Mr. Jaksch: Any questions?

Mr. Iller: Thank you, Ms. Rupert. *(Inaudible)* May I address the handbook...*(Inaudible)*

Mr. Jaksch: I have a couple questions here myself, but go ahead.

Mr. Iller: The accrual, which was the question that was asked, and the payout, are provided for on the second page of the document I just handed out; page 26 of the handbook.

Actually, no, it's page 26 going over to page 27, is accrual, and the page 28, no, page 27... talks about the cash pay... It's actually... I was right the first time; halfway down the page on...

Mr. Jaksch: Where are you at?

Mr. Iller: Page 26.

Ms. Rupert: Well, I will state, that as far as this book goes, I've never received the final document in its final form. I've seen it as the draft, the copy that I have is the draft. I've never received the final book in its final form.

Mr. Iller: So there is a sick leave... Page 26 halfway down... for sick leave there's a 25% payout at the time of eligibility for vacation accrual on exempt staff. That's the provision that raised concern, over on page 28. Second paragraph on page 28, maximum allowed accrual for vacation time is 300 hours. All vacation time in excess of 240 hours must be taken by February 10th of each year or forfeited. Employees who have accrued more than 160 hours of paid vacation may request a cash out of either 40, 80 or 120 hours of their accrual once each calendar year. Again that's page 28 of the employee handbook. The concern was that by accounting for this, at least as I understood it from the prior discussions, was that by taking the time off for the trial as sick leave you were saving your unused vacation which then could be cashed out and, in fact, you have cashed it out the last three years.

Ms. Rupert: As have most other employees.

Mr. Iller: Right.

Ms. Rupert: But there is a change in this policy, because before, we could not go over 80 hours and I clearly see 120 hours added to the policy now. I never noticed that before. Before the maximum was 80 hours.

I've even brought it to this Board on previous occasions because I was asked not to take vacation during the closing of the Home Depot. I had a vacation scheduled and the manager at that time requested that I not go on that vacation. I stayed here and worked instead. We had a paid vacation to Lake Chelan with friends and I was not able to go and I was also... In fact, later that year, I tried to get to cash out more than 80 hours and I was told by the Board no.

Mr. Iller: Was that before this new handbook was adopted?

Ms. Rupert: Yes. But I heard the statement that there were no changes in this policy, and this is a change.

Mr. Iller: OK, but that change doesn't have anything to do with the sick leave discussion that we're talking about, does it?

Ms. Rupert: I'm just trying to clarify the situation.

Mr. Iller: Well, I just want to make sure that we unders... I want to make sure that you understand what the Board's concern was and are fully addressing it. The concern, as I stated in my letter, was that by taking sick leave you would preserve vacation that you would subsequently get paid for, and this is the policy provision that discusses that, so is there anything else you would like to discuss on that issue.

Ms. Rupert: Yeah. I would probably like to discuss that, you know, without doing an audit, there may be employees that do do this; that actually do exactly what you're saying. They call in sick and they go take a vacation. Or they claim their vacation time and they do something else. I understand that. I understand your concern. That's fraud.

What I did was not fraud. It may have been a miscommunication, but it was not fraud. And I did everything in my power to make certain everybody on this Board knew where I was, what I would be doing, and I was totally open and transparent in what I was doing. I did not try to alter any documents. I did not try to hide anything from the Board. I did not try to commit deceit or fraud in any way to any member of this Board or any manager here.

Mr. Jaksch: I've got about three questions, if I can get them in. One is, Joetta, when did you take the cash out last year; when in January?

Ms. Rupert: I don't have that exact date.

Mr. Jaksch: But sometime in January?

Ms. Rupert: It was either late January, possibly could have been early February.

Mr. Jaksch: OK. My question to you, Mr. Iller, is, reading this cash out thing, once a year, it looks like this carries over so it could be cashed out in February 15th of 2011. Is that correct interpretation of this thing?

Mr. Iller: I think that's a reasonable interpretation. I don't know what the practice has been in the past.

Mr. Jaksch: OK, but there's nothing prohibiting that, as I read this policy.

Mr. Iller: I read it the same way, Director Jaksch.

Mr. Jaksch: Ms. Rupert, did you turn in your keys and laptop to Mr. Iller when so requested?

Ms. Rupert: I absolutely forgot... My keys have been turned in. I forgot that I do... I meant to bring it with me today. I do have a laptop at my home that I was given to work from home with as well as an internet card.

Mr. Jaksch: OK.

Ms. Rupert: I apologize. I forgot that. I'm happy to bring it back.

Mr. Jaksch: Credit cards as well?

Ms. Rupert: Yes.

Mr. Iller: She provided me with the credit card. She could not locate her key when I was with her on Tuesday so she left that with the intern I believe.

Ms. Rupert: I left my whole set of keys with the intern.

Mr. Iller: OK. And I do have information; I did, in the course of investigating this on the Board's behalf, get the information as to the private cash out, which I will provide a copy to Ms. Rupert and Mr. Schultz, and to the Board.

(Inaudible while Mr. Iller distributed copies.)

Mr. Jaksch: Mr. Freeman, one question for you. As the result of the keys not being turned in, what action did you take?

Mr. Freeman: We changed the locks on the offices. Just in case.

Mr. Jaksch: OK.

Mr. Iller: The paper I just handed out is the print out of the payroll register that says that the last vacation cash out Ms. Rupert took was... check the date... February 11, 2010.

Ms. Rupert: I'd like to make one other comment, if I may?

Unidentified voice: Sure.

Mr. Jaksch: Go ahead.

Ms. Rupert: I make a very good living at this job. This is a difficult job at best and so that's why I make the salary I do. I do have a real estate license. I do know what I'm doing. I would never compromise my annual salary for a fifteen-hundred dollar vacation cash out. It's not worth it. And I would think that each one of you know me well enough to know that I would not do that.

Mr. Jaksch: Any other questions?

Mr. McGuire: I have a question for Mr. Freeman. Is the employee manual on a shared drive that all employees, that senior staff and managers have access to?

Mr. Freeman: I believe it is on the N-drive.

Mr. McGuire: Thank you.

Mr. Jaksch: Any other questions? David, anything?

Mr. McKenzie: No. I'm good.

Mr. Jaksch: Gene? OK. I think we're done.

Mr. Iller: OK. Well, that will conclude, I guess, the portion of the meeting of which Ms. Rupert has responded to the complaint or charges, and at this point, then, the Board has the option of discussing the matter further, taking action, not taking action, taking the matter under your individual advisement for action at a future Board meeting.

But what we cannot do, because of the notice for this special Board meeting, is go into an executive session at this point to discuss the legal ramifications of potential actions on this matter. That was not on the agenda and, because this was a special meeting, we cannot modify the agenda to do so. If we want, if the Board would want to discuss with legal counsel the risks of a potential action, that would have to be the subject of a future Board meeting; either a special Board meeting with an appropriate notice or a regular Board meeting.

Mr. Jaksch: I guess it would be my advice to the Board that we've heard quite a bit today; that we take this under advisement and meet at a near future date to make our final decision.

Mr. Schultz: Did the Board want to hear from me?

Mr. Iller: Well, Mr. Schultz, do you have anything you would wish to add?

Mr. Schultz: Well, just very briefly. I was the attorney that helped Joetta on her bodily injury claim, and was surprised to read about this in the newspaper, actually, yesterday. And came up and met with Joetta a little earlier.

And just reviewing this policy, I think the, I understand that the Board wants to be very careful, and if you have a person, an employee, in a position of trust that is abusing that, that you'd want to take the appropriate action, whatever that may be, whether a reprimand

all the way up to dismissal. But when I look at this policy, I think that Joetta, and her interpretation of it, is reasonable.

And it just states that the policy says "sick leave may be granted for absences from work due to injury." Well, her absence was due to injury. We spent a week up in court talking about her, the injury she sustained in the accident. But for her injury, she would not have been absent from work.

Now, the policy says sick leave may be granted. That seems to imply some discretion on the part of the KID.

She made the submittal on a form that is labeled a request, and turned it in. And her request was denied. And the problem was solved within a matter of days; very few days. She submitted this form on the 12th of July and by the 16th, four days later, it was... her interpretation was disagreed with and the situation was corrected.

Now, my client said she's sorry for interpreting the policy the way she did, but I think that it's, actually, it's not bad faith in any way for her to have read the policy the way that I've suggested. The way I interpret the sick leave policy is that we want to prevent people from calling in sick when they're really not sick and instead they're going on a vacation or something like that.

This isn't the situation here. She was out of the office due to the personal injury. That is a reasonable interpretation.

I leave it to you to make a judgment on what kind of employee she's been and what value she has to the KID, but she certainly wasn't hiding the fact what she was doing. In other words, she wasn't saying she was sick when really she wasn't. She was very up front about where she was; that she was in a personal injury trial. That was well known. If it was her intent to deceive, would she have done that? No. In fact, right after the trial, did discuss how she handled the sick leave form.

And so, I don't know, I just would hope that the Board is fair and reasonable with Joetta Rupert. Thank you.

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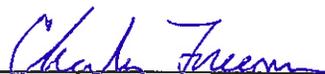
Adjournment: Vice President Huffman moved to adjourn the meeting at 2:35 p.m. Director McKenzie seconded the motion and it carried unanimously.

Attest:

Witness:



John Jaksch, Board President



Charles Freeman, Secretary/Manager

Prepared by Doris Fiske, Executive Assistant