

A REPORT BY
THE 2014-2015 CONTRA COSTA COUNTY GRAND JURY
725 Court Street
Martinez, California 94553

Report 1512

**THE RODEO-HERCULES FIRE
DISTRICT CHIEF'S EMPLOYMENT
AGREEMENT**

A Question of Transparency

APPROVED BY THE GRAND JURY:

Date:

June 12, 2015

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The Rodeo-Hercules Fire District Chief's Employment Agreement

A Question of Transparency

TO: Board of Directors for the Rodeo-Hercules Fire District



Image Courtesy of RHFD

SUMMARY

The Rodeo-Hercules Fire District (RHFD) is a special district with responsibility for fire protection for the cities of Rodeo and Hercules. Its employees are firefighters, paramedics, a full-time chief, and a part-time administrative officer. RHFD contracts outside general counsel. As a special district, RHFD is governed by an elected Board of Directors (Board). During a regularly scheduled meeting on October 8, 2014, the

Board voted to enter into a renewed employment agreement with the fire chief, Charles Hanley. The vote by the Board was four to one in favor of accepting the employment agreement. Following the Board's action, questions were raised concerning the contract possibly containing provisions which, if enforced, would substantially diminish the elected Board's power and responsibility to oversee and supervise the chief, who was hired by and reports to the Board, and were otherwise unconscionable.

The Grand Jury found that the agenda description of the fire chief's contract for the meeting was inaccurate. Because of this error, the Board should

- Consider reopening negotiations with the fire chief, and
- Ensure that future agenda items relating to the contract are properly worded to enhance transparency.

METHODOLOGY

The Grand Jury reviewed:

- The citizen's complaint submitted to the Grand Jury
- The current employment agreement between the RHFD and the fire chief
- The 2010 employment agreement between the RHFD and the fire chief
- All amendments made to the 2010 employment agreement between the RHFD and the fire chief
- The agenda for the RHFD Board meeting of October 8, 2014
- The minutes for the RHFD Board meeting of October 8, 2014
- Media coverage on Chief Hanley's contract
- The RHFD website (www.RHFD.org)
- The Ralph M. Brown Act (full text may be found in California Government Code Sections 54950 -54960.5)

The Grand Jury interviewed:

- RHFD Board of Directors members, past and present
- RHFD employees
- Labor negotiation experts
- Brown Act experts

The Grand Jury attended:

- RHFD Board meetings

BACKGROUND

History of the Rodeo-Hercules Fire District

RHFD is responsible for providing fire protection and paramedic services for the cities of Rodeo and Hercules. Originally created in 1937 as the Rodeo Fire Protection District, it became the Rodeo-Hercules Fire District in the 1980s. In addition to providing municipal fire services, RHFD firefighters and paramedics also respond to emergencies on Interstate 80 and State Route 4 - two major highways that pass through those cities. Rodeo and Hercules are home to a major oil refinery, other industries, and residential communities. RHFD operates one fire station in Hercules and another in Rodeo. RHFD is currently staffed by 21 fire personnel, including a full-time fire chief and an administrative officer who works two days a week. In years past, the fire service employed more personnel, including four administrative workers.

RHFD is governed by a five-member board of directors. The Board is elected by the voters of the cities of Rodeo and Hercules. Board members serve four year terms with alternating election cycles held every two years.

RHFD derives its principal funding from property taxes and benefit assessments. In previous years, RHFD maintained a level of funding that kept it operating. Starting with the economic downturn in 2008-2009, RHFD began to lose a considerable amount of funding. The refinery's assessed value decreased, resulting in property tax revenues approximately \$600,000 less than the previous year. A lower assessed value for property within the area covered by RHFD has led it to seek other ways to finance its operations and capital improvements. In 2011, in an effort to keep the RHFD solvent, it contracted with the City of Pinole to oversee the administration of Pinole's fire department. This agreement was not renewed, however, eliminating this source of income. In 2014, RHFD voters approved the establishment of a benefits assessment district to keep RHFD operating. The benefit assessment district has been challenged in court and RHFD has been prohibited from spending any of the assessment money collected until the matter is resolved. Today RHFD is struggling to stay financially sound while providing necessary services to its citizens.

The RHFD board hired Charles Hanley, in 2010, to be its new chief. The initial employment agreement between RHFD and Charles Hanley (the "2010 Agreement") was negotiated, signed, and became effective as of October 25, 2010. The term of this agreement was three years with an optional extension of one year.

The parties amended the 2010 Agreement on January 12, 2011 (the "2011 Amendment"). This Agreement affected two sections of the 2010 Agreement. The 2010 Agreement was amended again, on March 12, 2012 (the "2012 Amendment"): this amendment affected four sections of the 2010 Agreement.

At its October 8, 2014 meeting, the Board entered into a new employment contract with Charles Hanley (the "2014 Agreement"). This contract contained 20 sections - twelve of them differing from the previous employment contract, and Chief Hanley benefitting from the changes.



Hercules Citizen Addressing RHFD Board

Civil Grand Jury image

The Brown Act

The Brown Act (California Government Code sections 54950-54960.5) applies to all public agencies in California. It is designed to assure open meetings and public deliberations by local government agencies in California, including special districts such as RHFD. The act itself makes this purpose clear:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

(Gov. Code, § 54950)

The Brown Act requires the following:

- A public agency must post notice of regular meetings at least 72 hours before the meeting date.

- The notice must include an agenda of items to be discussed or voted on at the meeting. The description of each item on the agenda should be brief but must be sufficient to inform a reasonable person of the subject to be considered.
- Votes taken by the agency must be taken in public session. With limited exceptions, the agency may not conduct meetings in private session. Prohibited private sessions also include “serial” meetings - i.e. meetings of smaller groups that taken together include a majority of the agency members, outside of a noticed public hearing.
- The public must be allowed time at each meeting to address the Board on matters included on the agenda and on other matters within the agency’s jurisdiction.
- Any publically discloseable documents delivered to a majority of the board members at or before the meeting must be made available to the public “without delay.”

The Brown Act objectives are to encourage informed public participation in major policy decisions of public agencies. Public participation promotes better public acceptance and understanding of agency decisions. When public agencies fail to follow the Brown Act, it may lead to misunderstandings and public distrust.

Although RHFD has been under considerable financial pressure, it must continue to comply with the requirements of the Brown Act. The purpose of the Brown Act is clear. It is designed to facilitate public participation in major policy decisions of local public agencies. This builds public confidence in government policymaking by allowing the public to be informed of and make knowledgeable comments on important policy matters. Recently there has been sharp criticism of RHFD’s employment contract with its chief.

Section 54957.1(a) of the California Government Code, states that “the legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present...” The minutes of the October 8, 2014 meeting reflect that the motion to accept the 2014 Agreement passed 4 to 1, but they do not reflect how each director voted.

The Contract

At a Board meeting held on October 8, 2014, the then Board received, reviewed, negotiated and accepted the employment agreement with the fire chief, Charles Hanley. The employment agreement in effect at that time was due to expire in 17 days. Chief Hanley presented a document titled “employment agreement” to the Board’s attorney just prior to that meeting. Twelve of the twenty sections (approximately 60%) of this document were different from the 2010 Agreement. Contained within these twelve changed sections were 50 subsections, of which 30 were changed. Changes in the 2014 agreement restricted the Board’s oversight of the chief and raised the standard of the Board’s ability to terminate the chief.

Some examples of changes:

2010 Agreement	2014 Agreement
No termination within 6 months of November election, except for grave misconduct.	No termination within 14 months of November election, except for gross misconduct.
Nothing in Contract	Job with successor agency at same salary, pension, health, dental...; unless employee opts for separation, then 12 months salary.
Nothing in Contract	Free of harassment; "undue oversight"; work speed-up; abusive conduct; open hostility; other forms of harassment by any board member equals termination without cause.



RHFD members and General Counsel at Board Meeting *Civil Grand Jury Image*

The Problem

The 2014 Employment Agreement does not appear to be an amendment to the 2010 Employment Agreement, but rather a stand-alone contract. Additionally, unlike the 2011 and 2012 amendments to the 2010 employment agreement which were clearly titled "amendment to the employment agreement," the contract of 2014 is equally clearly

titled "employment agreement;" yet, when the 2014 employment contract was placed on the agenda, it was referred to as an "amendment to employment agreement".

At the October 8, 2014 meeting, the Board spent less than one hour discussing five items in closed session, including the fire chief's employment agreement. Given the fact that the matter was heard in less than one hour, it is unclear the extent to which the Board discussed the strong operational and fiscal impact of the employment agreement. Members on both sides of the negotiation were "surprised" that the contract was approved that night.

Grand Jury interviews revealed that one reason for the quick approval of the contract may have been that a newly-elected board member, who was to take office in January, had made statements that he was unhappy with the fire chief.

Copies of Chief Hanley's employment agreement with his suggested changes were reportedly available to the public at or about the same time the Chief delivered the agreement to the Board's general counsel, which may have been as late as one hour before the meeting.

The minutes for the October 8, 2014 meeting do not reveal how each director voted on the contract, as required by the Brown Act.

Brown Act violations appear to continue to be a problem for RHFD. At an April 8, 2015 meeting, a citizen served a "cure or correct" demand letter on the Board. This letter alleged that items on the agenda were incompletely described or not described at all. The Board, following the advice of its attorney (who reviews the agenda before meetings), removed twelve of thirteen items placed on the agenda for that night. Additionally, a letter authored by Dan Romero, Vice Mayor of the City of Hercules, which was introduced at the April 8 meeting, questioned the transparency of the Board's agenda items.

FINDINGS

- F1** Fire Chief Hanley's employment agreement was improperly identified on the agenda for the October 8, 2014 meeting.
- F2** The RHFD Board's actions at the October 8, 2014 meeting do not reflect that adequate time for consideration and negotiation was given to an employment agreement that has a fiscal and operational impact on the RHFD.
- F3** The RHFD Board has had problems with its agendas subsequent to the October 8, 2014 Board meeting.
- F4** The October 8, 2014 Board meeting minutes did not reflect how each Board

member voted on Fire Chief Hanley's employment contract.

F5 The 2014 Agreement was substantially changed from the 2010 agreement, including the 2011 and 2012 amendments, affecting 12 of 20 terms.

F6 The changes in the 2014 Agreement all favored Fire Chief Hanley.

RECOMMENDATIONS

R1 The RHFD Board should attempt to re-open negotiations with the chief concerning his current employment agreement with RHFD to allow for proper notice under the Brown Act.

R2 The RHFD Board should properly identify all items on its agendas and include accurate descriptions of each agenda item.

R3 The RHFD Board should record each director's vote on reportable actions from closed session in the meeting minutes of every Board meeting.

R4. The RHFD Board members should receive training on the Brown Act immediately upon taking office and no less than every two years afterward.

REQUIRED RESPONSES

	Findings	Recommendations
RHFD Board of Directors	1 - 6	1 - 4