

MINUTES OF FINANCE COMMITTEE MEETING
LANE TRANSIT DISTRICT BOARD OF DIRECTORS

March 3, 1992

Pursuant to notice given to *The Register-Guard* for publication on March 2, 1992, and distributed to persons on the mailing list of the District, a meeting of the Lane Transit District Board of Directors Finance Committee was held at 12:00 p.m. on Tuesday, March 3, 1992, in the District's conference room at 3500 E. 17th Avenue, Eugene.

Present:

Peter Brandt, Committee Chairman, presiding
Jack Billings
Keith Parks
Phyllis Loobey, General Manager
Mark Pangborn, Director of Administrative Services
Tim Dallas, Director of Operations
Bill Nevell, Personnel Administrator
Tamara Weaver, Finance Administrator
Craig Smith, Attorney of Record for LTD Pension Trusts
Jo Sullivan, Recording Secretary

LTD DEFERRED COMPENSATION PROGRAM: Ms. Loobey provided some background and a history of the LTD deferred compensation program, which began in October 1984. In December 1991, staff had asked the Board to delegate to staff the authority to sign a contract for a second deferred compensation carrier, but Mr. Brandt had raised questions concerning the legal consequences to LTD and the Board of participating in a deferred compensation program. Because other transit districts could not answer the questions, staff had asked Craig Smith, attorney of record for both of the pension trusts, to respond.

Mr. Smith discussed the Board's personal liability issue. He said he was not focusing on the District's two retirement plans (ATU and Salaried) or the severance pay plan. The 457 plan for deferred compensation had different characteristics than the trusts, because there were no trust or trustees. The deferred compensation program was analogous to a 401(k) plan in the private sector, and the assets were similar to a non-qualified deferred compensation plan because the assets set aside for the employees were actually on the balance sheet of the District as an obligation that the District owed each employee, and must be available for the general creditors of the District. Ms. Weaver said that the personal responsibility for the Board was almost non-existent, but the District was responsible for the funds.

Mr. Smith said the deferred compensation funds were a contractual obligation that the District owed each employee. In essence, the District agreed to hold back money the employees earned and create a reserve account and pay back the money into the future. That obligation was funded through annuity contracts. The employees were involved by electing to go into the program, and took on some investment-making responsibilities by making choices, but the District provided the array of choices.

The District had a fiduciary responsibility for providing investment carriers from which the employees made their choices, so that was where the liability might arise. The agreements stated that the District was not responsible for poor decisions in those choices, but Mr. Smith said the District should not rely on that. The District was providing a package to employees and selecting where the employee's money would go if the employee chose to participate in that benefit, and then the employee made some choices within that range offered by the District. In terms of general fiduciary responsibility, the process was as important as the outcome.

Ms. Weaver said the District had been thorough in choosing the carrier, but did not fully recognize the importance of this choice and relate that importance to the Board. The Board needed to delegate back down to staff the level of responsibility it felt comfortable with. She said that the employees viewed deferred compensation as an important part of their retirement, and it was the District's responsibility to treat the choice of carriers in a prudent fashion. Mr. Smith said that the District's defense would be that, based on a rational evaluation, the carriers offered were adequate.

Mr. Brandt said that because the Board had fiduciary responsibility, it needed to develop criteria and standards to follow. The Board members were not investment advisors, so maybe the District needed some kind of investment advice to show it was prudent in choosing the carrier. Mr. Pangborn handed out a Weiss Research Company paper. Mr. Smith said that Weiss was the most conservative rating company he could find, and that it was difficult to receive a high rating. Weiss looked at a carrier's ability to pay claims, insurance, etc. Ms. Weaver said that only 15 percent of the insurance companies were rated "B" or better. Weiss was an independent company and sold its ratings, which LTD had purchased for \$45.

Ms. Weaver summarized by saying that after looking into this area, Mr. Smith had reviewed the District's policies to make sure they were good plans within the IRS 457 code. The plans were listed on the District's balance sheets and as assets to the District's creditors. Mr. Nevell had found that a second choice of carrier for employees seemed to lessen the District's risk. The Board did approve Hartford, the District's current carrier, and it was currently one of seven or eight on the list of preferred carriers. The issue of offering a second carrier would be reviewed and formalized and brought back to the Finance Committee. Staff would also provide information on an annual basis, to ensure that the carriers were sound companies.

Mr. Brandt said he thought that investments in life insurance companies would be about the same if the companies had good ratings, so multiple choices of carriers would be a waste of effort. However, if the District offered mutual funds, there would be more questions. Mr. Parks wondered why the employees wanted more options. Mr. Nevell said that one of the issues was choice. The District had been with Hartford since 1984, and employees wanted options because the investment options between companies were different. For instance, PEBSCO, the recommended second carrier, would have a different set of investment options for employees. Additionally, having two to choose from would lessen the District's liability.

Ms. Loobey said that within the Hartford plan, employees could select any investment option available any day. Mr. Brandt thought that a prudent person would say that only one

carrier was needed, as long as there was a range within that company. He thought that most people did not have the ability to decide between one company or another, so it just added paperwork for the committee and staff to be sure the carriers were appropriate.

Mr. Billings asked to what degree adding another carrier added administrative costs. Mr. Pangborn explained that the costs were found in two categories: managing the contributions and sending to money to one or more companies, which was done by Finance; and developing and monitoring a set of procedures. Ms. Weaver said that the administrative tasks were not trivial whenever something was doubled, but they were not so significant that Finance could not do it if there was some degree of importance. Mr. Pangborn said it would take staff resources that were not allocated. This would not mean adding another staff person, but would mean another task to perform.

Mr. Pangborn said that employees would have to choose one carrier or the other; they could not allocate money to each carrier's program at the same time, and could change carriers once a year. The work involved with that process was to inform employees, schedule individual meetings with the carriers, and fill out paperwork. He said that if this provided a significant benefit to employees, then it was staff's obligation to provide it, if it could be done without undue burden. Mr. Brandt added that it added audit costs to track the money between companies.

Ms. Loobey said that the real crux of the issue was the value of what was perceived to be some level of risk for the District. If the District acted prudently, it could not be held liable for an investment not proving to be the way the employee thought it would. But if two carriers increased the prudent actions of the District, did that tip the balance? She said it was a legal question. Mr. Smith's opinion was that if the District's carrier was among the highest rated, the marginal benefit of having a second carrier was not that great. It would be a plus because the employees would have been given more choice, but it went back to the question of whether or not the District acted prudently.

Ms. Weaver said that if the District paid Weiss a nominal fee, Weiss would inform the District immediately of any changes in a carrier's rating. Once or twice a year, staff could prepare a detailed report for the Board. She thought that these actions would cover the Board's liability. In discussing procedures, Ms. Weaver said that she and Mr. Neveill would review the carrier's performance through the Weiss research, to inform the Board about the ongoing health of the carrier. Staff would also perform other standard activities such as filing reports after reviewing them. One question to answer would be at what rating the Board would want to move money from one carrier to another.

Mr. Brandt asked that staff draw up the policy and procedures and present them to the Board. He said he believed it was the Committee's desire to stay with one investment vehicle as long as it provided some diversity for the employee's investments. Mr. Billings said he at first had supported more choices for the employees. The cost factor was not incrementally that much, but was almost invisible and added to other costs and tasks that could lead to the need for more staff. Because there were six or seven choices within one carrier, he could choose not to add a second carrier.

Mr. Parks asked about the rating for PEBSCO. Ms. Weaver said it was a "B-," which Mr. Parks thought made it not prudent for the Board to recommend PEBSCO as a second carrier.

Mr. Pangborn said that staff had learned a lot more than the District's level of accountability when doing this research. He thought the procedures might include a vehicle for informing employees that the deferred compensation funds are the District's assets, and that employees' funds might be moved to a higher-rated company if the carrier's rating went too low. He said this would be somewhat of a shift in perspective for the organization.

Mr. Dallas said that employees were becoming more and more aware of the need to look beyond Social Security and employers' pensions to plan for a viable retirement. They were putting larger amounts of money in deferred compensation, and were beginning to ask if their money should be in more than one place. If they had two carriers, they could select two different options (such as a lump sum and an annuity) at retirement. Also, he said, Hartford was solid but conservative, so another carrier might perform differently. Third, there was the question of where to move the deferred compensation funds if the only carrier had low ratings. Mr. Brandt said the District would select another carrier at that time.

Mr. Parks said that, logically, he did not see why the District needed two carriers, since employees could switch between accounts or programs within that one company. Mr. Brandt added that if the carrier did not have the programs to fit the needs of the majority of employees, then maybe the wrong carrier had been chosen. He suggested that a committee of employees could give input, but if this was looked at on a year-to-year basis, that would be a mistake.

MOTION

Mr. Parks moved that the staff prepare a list of rules and procedures that would give as much protection to the Board as possible in controlling the funds, and that the District not name a second carrier at that time. Mr. Billings seconded, and the motion carried unanimously. Ms. Loobey said that staff would have the procedures ready for the Board meeting on March 18.

VOTE

PAYROLL TAXES ON DEFERRED COMPENSATION: Mr. Brandt said that the actions of the legislators in approving payroll taxes on deferred compensation as part of transit districts' payroll tax collections were causing a cumbersome and difficult situation for LTD taxpayers. The law was created for Tri-Met in Portland, and LTD had no voice in it. Ms. Loobey explained that Tri-Met had talked to her about how to handle tax collections for ministers, because they did not pay FICA, but that was the last she had heard of their intent to change the law. Mr. Smith said that Tri-Met redefined the definition of wages to include deferred compensation.

Mr. Brandt asked why LTD had to comply. Ms. Loobey explained that state tax code was referenced in LTD's payroll tax, and the legislature had amended the state tax code. LTD had no way of saying it did not want to comply, because a local ordinance could not take precedence over state law.

Mr. Brandt said he would like to see a letter of explanation go to payroll taxpayers so they would understand. He said there would be a lot of misinformation and confusion about the new tax.

MOTION Mr. Billings moved that the District communicate with the taxpayers to let them know that LTD was not responsible for the change in the law, and that the District actively seek an amendment to exclude LTD from this law in the 1993 legislative session. Mr. Parks seconded the motion, which then carried by unanimous vote. Mr. Brandt thought the Board should decide what to say to the taxpayers, but the Finance Committee was recommending that it be done.

VOTE

The Committee discussed a letter drafted by Mr. Smith, and agreed to take that draft to the Board. The letter needed to be mailed fairly quickly, because first-quarter payroll tax payments were due April 30. It was decided to discuss this letter at the March 4 Board meeting.

SELECTION OF INDEPENDENT AUDITOR FOR FY 1992-93: Ms. Weaver explained that Coopers and Lybrand was in the last year of a five-year contract, and would stay within the contractual 5 percent increase. She said she had made extensive changes by installing all new software, and that a small pre-audit would be performed to be sure the transition had been made properly.

MOTION Mr. Parks moved that the Finance Committee recommend to the full Board that the District retain Coopers and Lybrand as its independent auditor for FY 92-93. Mr. Billings seconded the motion, and the recommendation passed by unanimous vote.

VOTE

ADJOURNMENT: There was no further business, and the meeting was adjourned at 1:25 p.m.



Recording Secretary