



**EXECUTIVE COMMITTEE MEETING
MINUTES**

**Wednesday, June 17, 2010
9:00 a.m.
Merrimack Valley Federal Credit Union
500 Merrimack Street
Lawrence, MA**

Members Present: Joseph Bevilacqua, Chair, Cal Williams, Peter Matthews

Members Absent: Anne Ormond

Board Member Present: Howard Allen

Staff Present: Ralph Abislaiman, Betty Kirk, Deborah Andrews, Mary Kivell

1.) Call to Order

A quorum of committee members being present, Board Chairman Joseph Bevilacqua called the meeting to order at 9:10 a.m.

2.) Approval of Minutes of March 30, 2010 Meeting

Joseph Bevilacqua said that the portion of the minutes that refers to the election of the First Vice Chair should simply state that Peter Matthews serves as First Vice Chair to the corporation and not just to the executive committee. It was agreed to amend the minutes stating that Peter Matthews serves as First Vice-Chair to the corporation as that was the intent.

Motion by Cal Williams seconded by Peter Matthews to approve the minutes of the March 30, 2010 Executive Committee meeting with the above change. Motion passed.

3.) Revised Bylaws

Joe Bevilacqua asked if the bylaws needed to be approved today. Rafael said that his sense is that if the Executive Committee could take a look at them today and if we could have them for the next board meeting that would be good. This may be something preventing the HPW certification and their revision was a requirement of the recent State monitoring visit. The changes are minor. Joe

said that he thinks that they should be voted upon today if that is one of the issues.

Joe mentioned that his memory is that the WIB had years ago changed titles and the word board members were changed to directors and its officers to Chairman, Vice Chair, Treasurer and Secretary/Clerk. He said that he thought that the executive director title was also changed to president. Betty said that before Fred left one of last things he did was the change the title Director to Executive Director. Joe said that somewhere down the road he would like to see the Executive Director's title changed to President.

Motion by Cal Williams seconded by Peter Matthews to approve the revisions to the bylaws with the changes in titles for officers and to bring the revised bylaws to the quarterly board meeting for approval. Motion passed.

4). Other Business

Ralph Abislaiman reported on the 501©3 noting that it has been in the works for several years. He said that he called the IRS to check on its status and they couldn't find the paperwork. He thinks that they couldn't find it is because the FEIN number used is for the City of Lawrence and that is a problem because a city cannot be a non-profit. Ralph has applied for a new FEIN for the MVWIB and that should speed up the process.

Joe Bevilacqua said that the reason the 501C3 is to be able apply for private foundation moneys and funds. Ralph agreed we could use the 501C3 for corporate and foundation grant writing. So long as we continue to use the City to write checks, personnel salary and fringe IRS reporting issues won't be a problem.

Joe said that the Chamber and its Foundation keep separate and distinct accounting reports. There was discussion on MVWIB account auditing. The MVWIB is part of the City and the City has material deficiency findings in its audit. Ralph said that he has asked Tracy to explore the possibility of asking auditors to write an audit addendum stating that the MVWIB does not have material deficiencies.

Joe said that when we meet with our counterparts we can ask what other WIBs do regarding private audits for any of their entities. He then asked about the status of the High Performing WIB application. Ralph stated that it is a work in progress and that he's learning the ropes since he started as interim Executive Director and month and a half ago.

Betty Kirk said that she's called to follow up but hasn't heard back as yet. Betty said that we attempted to refashion our resubmission response based on the questions that were asked.

Joe said that there were two reviews and that Fred and he had met with Undersecretary Jennifer James. He said that the state controls the process and Joe said that everyone feels that we have generally done a good job responding. They want assurance that the board is involved in the process and the board has indeed been involved in the process.

Betty said that tracking of goals and how we are going to do work and report it back to the board has been questioned. The Board created the Executive Committee to help with that. Joe said that the Executive Committee will be meeting periodically.

Ralph Abislaiman said that there is an Advocacy Committee in our HPW submission and inquired on possible board members for that committee. The committee was included in the HPW package to inform state and federal legislators on workforce development issues. Joe asked whether such committee is a requirement of the state or if we had put it in locally. Betty said that it was put in locally.

Joe said he has concerns with the name of the committee. He said that he agrees that we should confer with state and local officials on funding but said that there is a fine line between that and becoming a lobbyist. A lobbyist designation changes everything. We need to address our ends in an educational way. He mentioned that he had written on behalf of the MVWIB to our U.S. Senators asking them to support a Summer Youth Jobs programs and gave the reasons why. We need to advocate via education and not be perceived as lobbyists. We ultimately need to speak to a lawyer and see what happens if we have an advocacy committee.

Howard Allen said that they had the same situation in UNH. They were not allowed to lobby with the state yet they recognized thirteen years ago that they needed to get their faces in front of the legislators. Howard said that if we didn't we were in trouble. The 327 legislators in New Hampshire at that time had an average age of 72 and their average education was about 9th grade. The number of those who were computer literate was 33. This became an advocacy issue for Whittemore School of Business and Economics and UNH. We walked the same fine line.

Joe mentioned that we have the Mass WIB Association which is an advocacy group with all WIBs being members across the state. He views them as the advocacy association. He just wants staff and board members to be aware of his

concern. Ralph suggested changing the name of the Advocacy Committee to the Education Committee and avoiding the lobbying issue.

Joe said let's think about that. There is a need for it but in the communications from Gillis and others there is information relative to this. Peter Matthews suggested making the minor education and advocacy word changes before the board meeting and Ralph said that he would take care of the language. An education committee could involve board CQI as well as public education related to workforce development and training. **An education committee rather than an advocacy committee name was approved by the Executive Committee.**

5. Update re: OSY Funding for LARE Medical Assisting & LARE CNA/CHHA

Ralph Abislaiman said that it is a difficult situation from his perspective because to do precisely what the Planning Committee did will require us to dismiss the Youth Council recommendation not to refund and the Career Center and the MVWIB Youth Manager concerns about referring about thirty-five youth to train for jobs that don't appear to be available.

He questioned the inherent conflict of interest demonstrated by a vendor who advocates for underperforming programs while also serving on the WIB. Vendors ability to advocate in committees that decide funding, even though they are not necessarily members of those committees, makes it extremely difficult to avoid the appearance of conflict of interest. State level guidelines give less importance to the appearance of conflict of interest. Our local MVWIB DGA Procurement Policies and their enforcement in the CEO Agreement clearly states that the appearance of conflict of interest should be avoided. He referenced page 2 of the policies wherein it states, "no employee, officer or agent or board member shall participate in procurement activities resulting in the selection or award of contracts where a real or apparent conflict of interest may be involved." Adherence to our guidelines is something that the state certifies when they come and monitor us. State/federal regulatory guidelines that a WIB cannot take away from them but that they can add to them.

Ralph continued stating that by most standards there is an appearance of conflict of interest in having a vendor come to the Planning Committee and advocate for second year funding for programs that did not meet negotiated guidelines. This is something that probably shouldn't have happened as this should perhaps never have been brought to the Planning Committee or Youth Council because it was a contract enforcement issue.

Joe asked if we are going in the direction of not having vendors serve on the WIB. Ralph said that there are required seats, such as a higher education representative, and they may be vendors. One way of avoiding the issue of

conflict of interest may be to have an entity board member or trustee serve and not a staff member. Joe said we need to think about this and said that whatever policy is adopted it has to be for every single vendor. Joe said that he sees the rationale for a vendor making their case before the Planning Committee but he also understands what Ralph is saying in that staff may also be able to handle it internally following preset Board guidelines.

Ralph said that here you have a contract with certain stipulations and the staff, according to what he read in past meeting minutes, had earlier attempted to make the case to lower the standards to match the economic situation for all training vendors. The Planning Committee rejected that and the same person who drove the rejection then is now waiving those standards for a particular vendor. There is something inherently wrong with that and he wants to look for ways to avoid that in the future.

Staff is more than willing to do what the Planning Committee directs but if it creates the guidelines under which contracts are written, then those guidelines should have weight and shouldn't be waived because someone is persuasive. Ralph said that he understands that the staff recommends and the board decides.

The question becomes whether the staff is deciding when it enforces what the board has decided already or is the board within its rights to change the rules that they created for a particular vendor. Joe says if there is an RFP that says ABC then the expectation is that ABC is what is met.

The way procurement policies are currently written, DGA is instrumental in deciding who gets funding because they review proposals and then sign contracts with different vendors. If a vendor doesn't meet its proposal or contractual goals, it is written that DGA also becomes the entity hearing the appeal. Ralph said he feels that is wrong and that the Planning Committee or some other board entity should become the tribunal for vendor appeals.

Joe said that there has to be a role for the WIB in this and Ralph said definitely and that role might be in the initial procurement where the WIB decides who is going to be funded. Here we are talking about a second year re-contracting of underperforming programs under contract.

Cal Williams said that the initial procurement was reviewed by the Youth Council and they did not vote to proceed with funding and then it is up to the Planning Committee to vote yea or nay. The Youth Council said that their recommendation is not to fund for a second year.

Cal said that two years ago the youth council recommended funding the programs and then they got reports back indicating that the programs were not

performing. The Youth Council took it upon itself to recommend no second year funding because of poor first year performance. The Youth Council felt that is not good business to continue to fund poor performing programs for an additional year.

Ralph wondered if this had ever happened before with a second year contract and if underperforming contracts had previously been brought before the Youth Council. Cal Williams said that it had happened before with YouthBuild and then the Youth Council recommended not refunding due to poor performance and the Planning Committee approved that Youth Council recommendation not to refund.

Peter Matthews said that he was thoroughly confused on many fronts. That is why when he makes any decisions, he makes them on his instinct and whatever information is available at that time. If the rule is if a program is already defunded for lack of performance, why was it coming to the Planning Committee?

While he sits at the Planning Committee he assumes that it is coming to the Planning Committee for a decision. If it automatically needs to be defunded, why is it coming to Planning? If it comes to him for a decision, he said he is going to put politics and personalities aside and try to make the best decision and get people to work. His problem is that he doesn't know the intricacies of the law but he assumes that if something comes to him you are looking for a decision. Cal said that the Youth Council has an advisory role.

Joe said that we can go on and on but this needs to be finalized as he doesn't want to see it dominate every meeting. He said that he thinks it shouldn't be a staff decision to terminate or extend a program. He thinks it should go to the staff for review, compliance and then, when appropriate, to the Youth Council who recommends to the Planning Committee and then to the full board. The staff doesn't have the power to terminate an award but rather to recommend termination.

He thinks all funding information should come to Peter Matthews and his committee for action. He asked Ralph to make sure the process would not violate any rules and regulations. Ralph said that he would research the issue in depth.

Joe wants contractual obligation made clear when an RFP is issued and that responses are reviewed by staff and evaluated appropriately to make sure they are in compliance with the RFP. Then it should go into the review process and be cycled to the committees with all appropriate information and recommendations.

Ralph said that he inherited this situation and doesn't know what exactly happened in the past. But it's clear that the staff never downgraded the contractual requirements because the board decided those standards needed to be achieved. After a particular vendor failed to meet those requirements in three contracts, the effort was made to refund some of them. All three were underperforming but vendor forces rallied and refunded 2 out of 3 underachieving contracts. The reason given by the vendor was that the youth in the programs were particularly dysfunctional which is impossible to prove. The program that was successful had twelve kids and they all got certificates but only five got jobs. The problem appears to be the youth job market for that field and not the kids.

Peter said he remembers the standards and that they were set at 75% and the state is 60%. Most WIBs are at 70% and some are at 60%. Betty Kirk said that we are the highest in the state. We have to remember that that was basically the standards for ITAs but we use the same ones for group contracts as well. Those standards were set by the board. Peter asked if there is a certain minimum. Betty said that the state is 60% and that is the minimum. Peter said that if this is the most difficult population, why are we setting it at 75%? We have a group of Lucent dislocated workers who are more employable.

Betty said you could use different standards for youth for example 80% completion and 75% entered employment and \$10.00 average wage. In the group contracts for youth the MVWIB could also set the wage lower than that. So why not set a 65% or 70% employment rate because it is a hard to serve population looking for work in this recession. She said she doesn't see why the board doesn't do that.

Cal said that in all fairness to Peter not knowing the history of these programs, the staff monitors programs and updates are provided to the Youth Council. They were notified ahead of time of a problem and voted to extend the contract for three extra months realizing the importance of the programs. They attempted to bring it up to standard and that just didn't happen. He said we had to come up with a recommendation that answered the question do we invest another \$200,000 in programs that are underperforming and the Youth Council said no way. This is why the Youth Council had made that recommendation and unfortunately Planning didn't have all the information.

Ralph said that it is unreasonable to expect people to know the minutia but that if we all of a sudden go from funding one to two youth group contract renewals and the second contract has a 33% job placement rate, something is wrong. Deborah said that the CNA employment outcome rate was 33% or 6 entered employment and that 56% or 10 out of 18 people received training related certificates. There were 18 total enrolled. Deborah said that this isn't about the

vendor but that there could be saturation of the CNA labor market for the first contract.

Joe asked if we were here today to talk about clarifying policy on contracts or to vote on the contract again. Ralph said that staff would recommend that the executive committee overturn the decision. Joe said that he would like Ralph to develop a procedure on the proposal review and award process for proposals and second year re-contracts. He hopes that we can do that so that each vendor and board person understands that it will be staff reviewed and board voted. But Joe said that in terms of voting on the contract he would have a problem at the present time and that we should look for legal advice.

Joe said the he is concerned about the procedure on how we are doing this. This is a renewal contract voted for refunding by the planning committee and not the full board. The planning committee has been delegated the authority because the full board meets quarterly and the planning committee monthly. Now that we have a board meeting that's coming up, he thinks it is reasonable to make the argument that the full board in this particular case is going to be voting on this particular issue.

Joe said that his concern is procedure. If this came to the full board we would hear the report of the Planning Committee and somebody would have to say that we don't recommend the continuation of this although the Planning Committee voted for this. He said that someone else on the board would have to make a motion to reverse the decision. Ralph said it would be preferable to avoid the possibility of a full board decision for second year funding because it is likely to be overturned by the CEO who will not want to put the City on the hook for costs that the State is likely to disallow.

Joe asked if a reversal was warranted, how else can we overturn the Planning Committee's decision. Ralph said that there doesn't seem to be another way and that is why he wanted to get the Title 1 Administrator's recommendation for a course of action and have the Executive Committee overturn it. But the Title 1 Administrator thinks that she can operate without giving a legal opinion. That is hard to understand because the City will be on the hook for the money and the Title 1 Administrator directly represents the Mayor on fiscal issues.

Joe asked what Ralph's discussions with the Title 1 Administrator have been like. Ralph said she also questioned whether or not the decision of the Planning Committee should be questioned and somehow thinks her role as Title 1 administrator can be exercised without expressing an opinion on the applicable law. Betty Kirk said that Anne Randazzo stated that she was going to look at this but that she thinks that Anne doesn't want to get involved.

Joe said that everything needs to be above board and following correct procedures. It seems that there is only one of two ways to approach this. One would be when the full board report is given on the reauthorization of the contracts, the Planning Committee would reconsider its own decision or two, someone from the board is going to have to say "I'm not sure we agree with the Planning Committee's decision" and then the Board votes and states no to the Planning Committee decision. We have never have done that before.

Cal asked whether the decision to fund those two programs was contingent upon their improving performance within a certain timeframe. Ralph answered that he spoke with Tom Connors of LARE/American Training directly after the Planning Committee regarding the Planning Committee approval of both contracts and Tom said that if he sees things aren't working he will pull the contracts right away and stop them.

Joe wondered if procedurally or legally, since we have notified him that his contract has been extended, we can now stop them without cause. Ralph said though he told Tom that the Planning Committee had approved them, he also said that there is enough gray area so that it isn't necessarily a definite thing. The DGA procurement policy says that the final arbiter is the Executive Committee and that's why he asked for this meeting.

Joe said his suggestion is that we need a clear, defined policy going forward for clearly delineating the process. He also believes because this is treading on legal grounds that we need to be acting in conjunction with an attorney. If we have given tacit approval to continuation and suddenly overturn it without something happening since that date of approval, then he is not sure of the grounds we have for that. His opinion is that unless something has happened between the time that the Planning Committee voted approval to today then we shouldn't act unless we have some attorney's advice. Ralph said that is what he was trying to do by involving the Title 1 Administrator, who is also an attorney working for City of Lawrence Attorney's Office.

Peter said that he is 100% in favor of that and that all of us want to do the right thing and have the right procedure so that this kind of thing doesn't happen again. Peter also said that he was under the impression that Anne Randazzo is looking into it and that she is continuing her research before she comes back and says it is wrong or ok.

Betty said that this is time sensitive. We have already held up the program start date. If it is held up through July or August, LARE won't have time for recruitment and the class start date will be pushed back.

Joe said he doesn't want to do something that puts us in legal jeopardy. He said that he is not objecting to Ralph bringing it up again as it is his responsibility. He

thinks that we need a definitive policy in place. Peter said that speaking of procedures he thought he heard along the way there is a grievance procedure but that we are not under a grievance procedure. Ralph said that he doesn't know why a grievance procedure wasn't used. That would have avoided this entire issue. If the Board wants the Planning Committee wants to hear second year renewal grievances, that is entirely within its purview. Grievances must prove that a capricious and arbitrary decision occurred and that would be hard to prove in this case. Cal said that when he looks back at the MVWIB Youth Council record with YouthBuild, when it yanked back money, that was a tough decision.

Joe asked can we agree on this today. There needs to be one road map that would be available to the Career Center, vendors and board members to clearly know how it works. He asked Ralph to start putting that roadmap together.

This particular contract issue needs attorney involvement. Ralph asked the committee to consider what happens if the Title 1 Administrator or City Attorney doesn't make a decision and it is instead kicked up to the State Ethics Commission or the Division of Career Services. There will then be even more difficulty with the program start-up timeframe and it would look as if we can't solve an internal problem. Another alternative to put on the table is that the Executive Committee, Planning Committee and Board agree to refund not two but only the one more successful program with a codicil that it has to be reengineered to take into account that there seem to be very few jobs in that field for young people. If that happens, in the future the City would only be on the hook for one contract that may be disallowed by DCS. That would be his recommendation.

Joe asked if the WIB and the vendor have the ability to renegotiate a contract once awarded based on the market? Ralph said yes within the context of a contract amendment. But in this case we can't amend a contract that has yet to be created. But the vendor may be willing to negotiate a different second year contract.

Joe expressed a concern that we not create a legal situation where we are exposed until a firm policy is in place. If the Planning Committee decisions have never been brought before the board or executive committee, and we do it for the first time, we can expose ourselves. That is why we need a policy in place.

Peter said that we need legal advice regarding the issue of vendors sitting as board members under state or federal law. Joe said that some seats are mandated such as community colleges. Peter said that at the full meeting before all this happened we had two members vote against a recommendation of the Planning Committee. Both were vendors. After that meeting Peter said that he asked how can that be and was told that is how it is set up.

Joe asked Ralph to review the mandated seats and come up with a suggestion to address Peter Matthew's concern. We could maybe not have the president of the college but a trustee sitting as a WIB member and do the same for other vendors.

Peter said that he hates to be specific but when it came to specific issues and the way the system is set up some people should abstain. He wondered who should stop them if that is supposed to be the case. Ralph said that it is clearly stated that if you stand to benefit from a decision you cannot vote on it. You have to abstain from the vote.

Joe said that one thing Ralph can do in discussion with the attorney is to see how that might be handled. He said that he can't recall all the mandated partners, obviously the Community Colleges but there others. Maybe the attorney can come up with suggestions. What we are trying to do is come up with a clear set of written policies and procedures that become known to all so we avoid these problems going forward. Peter said that there was some discussion about having one individual represent all vendors bringing general issues agreed to by all vendors to the Planning Committee. Betty said that it referred to ABE providers.

Joe said that Ralph will help frame the vendor policy and resource allocation issues and develop policy for us which will in turn help avoid these types of issues going forward. Peter asked if next week's agenda should include these items. Ralph said that we might include them as a legal question. Joe said if Anne Randazo decides it is wrong then we go back to the Planning Committee. Absent any opinion from an attorney or the Title 1 Administrator, we are on shaky ground.

The discussion on the content of Peter's report ended in an agreement that we are waiting for a legal opinion. Joe said that we can also report that the Executive Committee asked Ralph to develop policies and policy training for the board and contractors and that he could do it with the Education Committee that at this time consists of the Executive Committee members.

6. Adjournment

Having no further business Cal Williams made a motion to adjourn seconded by Peter Matthews. Motion passed.

Respectfully submitted,

Mary Kivell

Mary Kivell
Recorder