

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

July 2, 1993

To: Board of Directors (Legal and Claims Committee--Action)
(Organization and Personnel Committee--Action)
From: General Counsel
Subject: Authority to Retain Outside Counsel to Handle Employee
Disciplinary Hearings

Report

Under the District's personnel policies, an employee who is discharged, suspended for more than five days or demoted is entitled to a disciplinary panel review hearing. The hearing is quasi-judicial in nature, with the employee generally represented by counsel retained by the Employees Association and the District represented by a member of the General Counsel's staff. Normally there are no more than five or six of these hearings each year.

However, during the next few weeks five such hearings have been scheduled. It is very likely that at least one of the disciplinary matters involved also will result in litigation. In addition, the District has just been served with a Petition for Writ of Mandate seeking reinstatement of an employee discharged late last year. At the same time, two members of the legal staff are on maternity leave, including the attorney who normally handles personnel matters. This, together with the Department's other existing heavy workload, has created a staffing problem with respect to preparing for and presenting the District's case at the disciplinary hearings.

Consequently, on June 2, 1993 the General Counsel's office retained the firm of Liebert, Cassidy & Frierson (Liebert, Cassidy) to represent the District in these hearings and other associated matters, pursuant to the General Counsel's authority under Administrative Code section 6431 to retain outside counsel under a contract not to exceed \$25,000. Liebert, Cassidy has extensive experience, generally representing management, in public agency labor relations matters, including disciplinary proceedings. The firm also is

particularly familiar with the District's personnel procedures, having in the past provided legal advice with regard to the adequacy of those procedures. Liebert, Cassidy also is representing the District in its current labor negotiations under a separate contract approved by your Board at its March 1993 meeting.

To the extent staff resources are available, the General Counsel's office will assist in preparing for the hearings. However, it is possible that the \$25,000 limit on the General Counsel's contract with Liebert, Cassidy will not be sufficient to cover the costs of the work contemplated in the contract. Therefore, it is recommended that your Board authorize the General Counsel to amend the existing contract with Liebert, Cassidy for representation of the District in disciplinary appeal hearings and other matters to increase the maximum payable under the contract to \$50,000. The firm's rates under the current contract are \$185 per hour for partners John Liebert, Richard Kriesler and Linda Jenson and \$120-\$150 per hour for associates. These rates are reasonable for the type of service to be considered.

Liebert, Cassidy has an equal opportunity/affirmative action plan that meets your Board's requirements. Sufficient funds exist for this contract in the Legal Department's budget for fiscal 1993-94.

Board Committee Assignments

This letter is referred for action to:

The Legal and Claims Committee because of its authority to study advise, and make recommendations with regard to the selection of special counsel and the determination of the scope of their assignments, pursuant to Administrative Code section 2461(e); and

The Organization and Personnel Committee because of its authority to study, advise, and make recommendations with regard to the terms and conditions of employment of special counsel, pursuant to Administrative Code section 2471(g).

Recommendation

**LEGAL AND CLAIMS AND ORGANIZATION AND PERSONNEL COMMITTEES
FOR ACTION.**

It is recommended that the General Counsel be authorized to amend the existing contract with Liebert, Cassidy & Frierson, dated June 2, 1993, providing for assistance to the General Counsel on disciplinary appeal hearings and associated matters, to increase the maximum payable under the contract from \$25,000 to \$50,000.


N. Gregory Taylor

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