

WINTERBAUER & DIAMOND PLLC**MEMORANDUM**

2/28/18

To: Sound Transit Board of Directors
From: Steven H. Winterbauer
Subject: Sound Transit—Investigation Findings

1. Introduction.

This is a summary of the scope, and findings, of my investigation of certain concerns raised regarding Sound Transit's Chief Executive Officer (CEO). The concerns fall into two broad categories: Some were EEO in nature, others relate to leadership style. All but one of the EEO concerns were raised in the first six months of 2016.

My investigation included interviews of 24 persons, who collectively represent a wide cross-section of Sound Transit, albeit a fraction of the total workforce (which currently numbers in excess of 800 employees). The interviewees include the original complainants to the extent discernible, current and former employees, representatives of several different departments, and supervisory and non-supervisory staff alike, from administrative staff to managers to members of the executive leadership team to the Chief Executive Officer (CEO). Most of these persons were selected for interview because they previously voiced, or were involved in addressing, one or more of the concerns at issue. All of these persons represented themselves and Sound Transit well through this process. They were consistently cooperative, professional, and thoughtful, and each clearly is deeply committed to Sound Transit's mission and best interests.

2. Questions & Primary Conclusions.

The primary purposes of the review were to (a) examine how the 2016 concerns were addressed and whether the methodology met Sound Transit's legal obligations and was consistent with its then-existing policies; and (b) determine whether similar concerns were expressed in 2017, and, if so, how they were addressed and whether the methodology met

legal obligations and was consistent with the agency's policies.¹ The primary conclusions are these:

- i. Sound Transit's response to the 2016 concerns satisfied any applicable legal obligations.
- ii. Sound Transit's response to the 2016 concerns did not breach agency policy because there is no policy that specifically addresses the disposition of concerns regarding the CEO, but the response was in some respects inconsistent with the spirit of agency policy, which contemplates more prompt, direct and well-documented review than occurred.
- iii. Since mid-2016, there has only been one additional concern raised of an EEO nature and the agency's response satisfied any applicable legal obligations, and was consistent with the letter and spirit of agency policy.
- iv. The concerns of an EEO nature were not presented as formal complaints, did not require formal investigation as a matter of law, appear to have resolved, and do not require further action.
- v. The concerns regarding the CEO's leadership style have lessened, but nevertheless persist.

3. Discussion.

a. Concerns voiced during the first six months of 2016.

Sound Transit addressed the concerns raised in 2016 in a manner that met its legal obligations. Some concerns were EEO in nature or included an EEO dimension. For example, during a Black History Month luncheon, the CEO reportedly made comments condescending toward persons of color insofar as he reportedly stated or implied that African Americans require more mentoring and assistance than their counterparts to succeed in a professional setting. The CEO believes this interpretation takes his comments out of context and misconstrues his intent, which was not to broadly denigrate or elevate the abilities of any particular group, but rather to acknowledge the significance of collective responsibility to individual growth and advancement. His precise words were not recorded and recollections are incomplete and inconsistent. The other concerns raised in 2016 related to the CEO's leadership style, which has been described variously as East Coast, dictatorial, and unnecessarily confrontational. (Additional specific examples of the 2016 concerns are set forth in a memorandum prepared by the agency's former Chief Human Resources Officer.)

¹ I was also tasked with providing guidance as to best practices for addressing similar complaints or concerns in the future. This assignment is on-going.

None of the concerns raised in 2016, regardless of substance, were presented as or intended to be formal complaints, or were construed as such. The persons who complained or voiced concern did not request or expect formal investigations or, for that matter, that any other action be taken. Rather, the concerns were informal expressions of frustration, disappointment and the like to different persons on the heels of interactions with the CEO which the complainants found to be unprofessional, discourteous or otherwise unsatisfactory. There are circumstances where a concern is sufficiently significant that the employer has a legal obligation to investigate, even if contrary to the wishes of the complainant. The judgment of the Sound Transit personnel with knowledge of the 2016 concerns was that the concerns did not rise to this level. I agree.

The responses to the 2016 concerns did not violate the letter of agency policy, because no policy specifically covers concerns raised regarding the CEO. The spirit of the policies, however, is that response will be consistent, prompt and documented. Sometimes this happened. Other times it did not. In or about February, 2016, for instance, the former CEO personally contacted the current CEO to timely and directly address certain concerns that had arisen regarding how the current CEO had reportedly looked at certain female employees. In other instances, HR personnel personally spoke with the CEO regarding specific reported concerns. While offering context and clarification, and in some instances denials, the CEO was receptive and made adjustments. More often, however, HR or other personnel spoke with the CEO in generalities without identifying specific reported behaviors. In some instances, the lack of a consistent, contemporaneous and documented agency response denied everyone the opportunity for immediate resolution and allowed recollections to fade and relations to worsen, which, in turn, hampered even after-the-fact examination.

b. The EEO concern raised in 2017.

Since the first half of 2016, specifically in September, 2017, one additional concern of an EEO nature regarding the CEO surfaced and it was promptly and effectively addressed by the agency. The larger context is set forth in a memorandum prepared by an HR manager and will not be repeated here. The primary complaint regarding the CEO was that when a female employee advised him of an external stakeholder's position on an issue, he replied, "Honey, that ain't never gonna happen," or words to that effect, in a tone and manner that were abrupt, disrespectful and dismissive. The employee felt the CEO's actions, particularly his use of the term "honey," disregarded the depth and breadth of her experience and diminished her role, all in the context of a meeting that included other agency personnel. While deeply insulted, she maintained her composure and professionalism during the meeting and did not respond. She subsequently complained to her manager and to HR. HR promptly acted. It spoke to witnesses, including the CEO, reconstructed the facts, secured the CEO's personal apology to the complainant, and documented its efforts. The CEO acknowledged his actions, agreed they were inappropriate, understood how they could insult or offend regardless of his intentions, and pledged not to behave similarly in the future. The complainant found this resolution satisfactory. She has continued to work with

the CEO and reports the behavior has not recurred. There have been no other complaints of an EEO nature or involving an EEO dimension, formal or informal.

c. Continued concern regarding leadership style.

Since the first half of 2016, the CEO has also made strides in addressing the reported issues regarding his leadership style and approach, including, for example essentially eliminating his use of profanity, but a material level of concern nevertheless remains. The CEO was consistently praised for his intelligence, work ethic, policy knowledge and commitment, and more specifically for his role in the success of the ST3 ballot initiative. But, with rare exception, the same interviewees are highly critical of his willingness or ability to motivate, energize and empower those around him. Common complaints include a lack of consistent attention to and/or acknowledgement of the importance of such attributes and actions as: humility and acknowledging his own mistakes; listening; creating space for others to think independently and creatively and periodically err without fear of repercussion; recognizing that those around him, and especially long-term employees who may periodically disagree with him or offer input he finds unpersuasive, are acting in the interests of the agency and have devoted many more years than him to its mission; recognizing the value of historical and institutional knowledge that he does not possess; crediting prior agency accomplishments, which were achieved without him and yet continue to benefit him; being consistent in extending professional courtesies, such as greetings, introductions at meetings, and tact and diplomacy when providing negative feedback; providing frequent, effective and, to the extent possible one-on-one communication, including feedback that is periodically positive rather than consistently negative; and reacting and responding in a consistently measured manner that does not immediately ascribe intentions or automatically challenge competencies.

Some of this criticism likely traces to a confluence of factors beyond the CEO's control. These include that he was tasked with being an agent of change; faced the initial priority, and concomitant burden and stress, of ushering ST3 through a rapidly-approaching ballot process; worked for years in Washington, D.C. in an environment quite different than a Seattle-based public agency; and stepped into the long shadow of a former CEO who, by all accounts, excelled at exercising her authority while developing lasting personal and professional allegiances. There may also be some measure of confirmation bias in play following an initial six months that were difficult by any measure and left many with an unfavorable first impression of him. Even giving these factors their due, and recognizing the CEO's efforts and progress over the past two-plus years, there persists among a number of agency personnel concern about the CEO's leadership style that is material in breadth and depth and tied to specific behaviors that are within his control to address.