

COMPLAINT INVESTIGATION UPDATE:

On March 22, 2013, RT received an anonymous letter from “Concerned, Yet Hopeful RT Employees” alleging a culture of discrimination and harassment of minority employees. Simultaneously, RT began receiving a series of EEO complaints from 20 RT employees, ultimately including 11 in the Bus Maintenance Facility. Their complaints alleged harassment, discrimination, retaliation, bullying, or favoritism based on race in violation of RT’s Unlawful Workplace Discrimination Policy.

Upon receiving the complaints in question, it was determined that an Independent Investigator should be retained. On March 26, 2013, the Van Dermyden Maddux Law Corporation was retained to conduct an independent fact-finding investigation of the complaints.

The Independent Investigator evaluated the complaints and repeatedly attempted to contact each of the 11 complainants to arrange interviews. After 74 separate communications by phone, voicemail, and certified letter, the Independent Investigator was able to speak directly with 6 of the 9 available complainants; however, all but one complainant declined to be interviewed. In addition, the Independent Investigator interviewed 9 other witnesses. The Independent Investigator concluded the investigation and issued a report on November 11, 2013. The investigator found by a preponderance of the evidence that the allegations of racially-based discrimination contained in four of the complaints were not substantiated. As to the remaining complaints, the investigator concluded that each of the 7 complainants provided insufficient information to sustain their respective claims.

The Independent Investigator also separately conducted a “Climate Review” session held at the Bus Maintenance Facility on September 4, 2013 attended by approximately 24 non-supervisor Bus Maintenance employees.

The Climate Review session raised concerns related to the following ten areas:

1. Low Salary and Lack of Pay Increases
2. Out of Date Equipment
3. Failure to Repaint Lot Lines
4. Preferential Treatment of Light Rail
5. Deficiencies in Staffing
6. Immature Supervisor Behavior
7. Hostile Supervisors
8. Favoritism by Supervisors
9. Lack of Meetings and Communications
10. Lack of Trust in Human Resources


These concerns are set out in greater detail in the Investigator's Summary of the Climate Review Session dated September 6, 2013.

A number of these concerns fall into the area of budgeting, both operating and capital, and can be addressed in the annual budget cycle. Other concerns will be addressed in the negotiation process of an updated labor agreement. However, a number of concerns can be addressed immediately by management. I have directed RT's Human Resources, Labor Relations, and EEO office to take the following steps;

1. Review and update RT's existing supervisory and management training program to address the concerns identified during the climate review session including;
 - Supervisor favoritism
 - Immature behavior
 - Hostile behavior
 - Communication
2. Implement regularly scheduled climate review sessions.
3. Assure that RT's annual EEO and Diversity training program is available to all employees.
4. Develop and enforce a Non-Bullying policy
5. Update RT's existing Unlawful Workplace Discrimination and Professional Conduct Policy.
6. Review RT's procedures to assure timely and effective investigation of EEO complaints.

Following completion of the Independent Investigator's review of the remaining complaints (expected in January 2014), Staff will present a work plan and Implementation schedule to the Board of Directors. This effort has already begun, however it will be adjusted to reflect any additional findings of the investigator.

REGIONAL TRANSIT MEMO

DATE: November 20, 2013
TO: Mike Wiley, General Manager/CEO
FROM: Bruce Behrens, Chief Counsel 
SUBJECT: Independent Investigation into Complaints from Bus Maintenance Employees

Background

On March 22, 2013, RT received an anonymous letter from "RT Employees" alleging a culture of discrimination and harassment of minority employees. Subsequently, beginning in late March of this year, RT received a series of EEO complaints from 20 RT employees, ultimately including 11 employees in the Bus Maintenance Facility. Their complaints alleged harassment, discrimination, retaliation, bullying, or favoritism based on race in violation of RT's Unlawful Workplace Discrimination Policy.

The Bus Maintenance Department services and maintains RT's bus fleet; it includes 95 employees:

Director	(1)
Admin Techs	(2)
Supervisors	(10)
Bus Service Workers	(26)
Mechanics	(53)
Painters/Upholsters	(3)

All the complaints received from Bus Maintenance staff were from Bus Service Workers.

RT Policies

Under the provisions of RT's *EEO Complaint and Investigation Procedures* (EE-SOP-02-001), the District's EEO Office is authorized to conduct investigations on discrimination complaints in most instances. However, where special circumstances are presented, the Chief Counsel is required to determine whether an independent investigator is appropriate, and if so, determine when and who to retain for such services.

RT's policies prohibit discrimination.

RT's Workplace Discrimination and Professional Conduct Policy (May 13, 2008), states:

RT is committed to providing:

- *A supportive and respectful working environment for all employees*
- *A diverse and representative workplace that mirrors the customers we serve*
- *A workplace where employees are treated fairly, equitably and nonjudgementally*
- *A workplace where supervisors/managers take responsibility for modeling appropriate workplace behavior and assuring respectful behavior towards others.*

The policy expressly prohibits workplace discrimination and harassment based on a person's protected status¹, and further states:

It is illegal to discriminate on the basis of a person's protected status in any employment decision or action, including: "hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay; retirement plans; and disability leave; or other terms and conditions of employment."

In addition, RT's policy provides:

All RT employees must act respectfully and professionally towards other employees and members of the public. Conduct, that while not necessarily illegal, is inappropriate, unprofessional, or offensive ("Unprofessional Conduct") will not be tolerated. Unprofessional Conduct in the workplace contributes to low employee morale, absenteeism, turnover, and loss of productivity. It also erodes the public's trust and RT's credibility in the community.

Examples of Unprofessional Conduct include belittling fellow employees, spreading unverified rumors, yelling, cursing, or making threats.

Before acting, employees should ask themselves the following three questions:

- *Does what I am saying or doing serve a purpose beyond self-interest, self-gratification, or entertainment?*
- *Would I like to be spoken to, spoken about, or treated in this way?*
- *If speaking about a co-worker or customer, do I have sufficient information to be sure that the statement I am making is true, or is what I am saying merely conjecture or gossip?*

If the answer to any of these questions is "no", the employee should not make the statement or engage in the conduct.

The Investigation

Upon receiving a copy of the complaints in question, I determined that an Independent Investigator should be retained. On March 26, 2013, the Van Dermyden Maddux Law Corporation was retained to conduct an independent fact-finding investigation of the complaints.

The Independent Investigator evaluated the complaints and repeatedly attempted to contact each of the 11 complainants to arrange interviews. After 74 separate communications by phone, voicemail, and certified letter, the Independent Investigator was able to speak directly with 6 of the 9 surviving complainants; however, all but one complainant declined to be interviewed. In addition, the Independent Investigator interviewed 9 other witnesses.² The Independent Investigator concluded her investigation and issued her report on November 11, 2013. Based upon the complaints, interviews,

¹ Race, religion, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth, and related medical conditions), age, or sexual orientation.

² The lack of cooperation suggests the need for additional means to obtain cooperation in investigations.

and documentary evidence, the investigator found by a preponderance of the evidence that the allegations of racially discrimination contained in four of the complaints were not substantiated. In addition, the investigator concluded that each of the other 7 complainants provided insufficient information to sustain their respective claims.

Accordingly, each complainant should receive a confidential closure letter notifying them of the disposition of their respective complaints.

"Climate Review"

In addition, the Independent Investigator also conducted a "Climate Review" session held at the Bus Maintenance Facility on September 4, 2013 and attended by approximately 24 non-supervisor Bus Maintenance employees.

The Climate Review session raised concerns related to the following ten areas:

- 1) Low Salary and Lack of Pay Increases
- 2) Out of Date Equipment
- 3) Failure to Repaint Lot Lines
- 4) Preferential Treatment of Light Rail
- 5) Deficiencies in Staffing
- 6) Immature Supervisor Behavior
- 7) Hostile Supervisors
- 8) Favoritism by Supervisors
- 9) Lack of Meetings and Communications
- 10) Lack of Trust in Human Resources

These concerns are set out in greater detail in the Investigator's Summary of the Climate Review Session dated September 6, 2013.

Several of these topics appear related.

Four of the areas of comment made in the Climate Review relate to funding, budgetary, or resource issues (No. 1 (Low Salary and Lack of Pay Increases); No. 2 (Out of Date Equipment); No. 3 (Failure to Repaint Lot Lines); and No. 5 (Deficiencies in Staffing). As such they would not seem to be topics for further consideration (with the possible exception of No. 3, which seems like a potentially safety related concern).

Several of the other areas of comment seem to be stand alone: No. 9 (Lack of Meetings and Communications), and No. 4 (Preferential Treatment of Light Rail).

However, of the remaining topics, at least three (and possibly four) areas of comment related to supervisor conduct, including No. 6 (Immature Supervisors Behavior), No. 7 (Hostile Supervisors), and No. 8 (Favoritism by Supervisors), and to a lesser extent, No. 10 (Lack of Trust in Human Resources).

The Impendent Investigator's summary of the Climate Review (and witness interviews) identified several primary areas of concern:

“Poor Treatment By Supervisors. Bus Maintenance employees feel their supervisors talk down to them and are hostile towards them; Bus Maintenance supervisors do not agree with this assertion.

Perception of Favoritism. Bus Maintenance employees feel that supervisors promote based on friendship, not merit, and create a “good ‘ol boy” system; Bus Maintenance supervisors do not agree with this assertion.”

Proposed Remedies Identified in Complaints

The 11 Bus Maintenance Worker complaints shared a common (and in some cases, identical) list of alleged discriminatory conduct. Not surprisingly, among the 7 complainants who included proposed remedies in their complaints, most primarily focused on curing the alleged past discriminatory action. As reported above, the Independent Investigator did not find any of the complaints to be substantiated, making most of the proposed remedies (e.g. equal protection, cease and desist harassment, vigorous enforcement of RT policy) not specifically applicable. However, several of the complainants included broader proposed remedies that went beyond addressing their immediate allegations.

These included:

- Establish and mandate annual EEO and Diversity Training for all employees
- Development and enforcement of a Non-Bullying policy;

Recommendations

Required Action:

- 1) The investigation does not find any of the individual complaints to have been substantiated; based on those findings, complainants should be sent a closure letter advising them of the outcome of the investigation of their complaint.

Possible Actions:

- 1) The Board should direct the General Manager/CEO to work with staff to develop appropriate training responsive to the concerns raised in the “Climate Review” session. The perceptions expressed during this session should be considered in light of the high concentration of complainants from a single unit of the District. The comment related to supervisor conduct, including No. 6 (Immature Supervisors Behavior), No. 7 (Hostile Supervisors), and No. 8 (Favoritism by Supervisors) suggest a possible focus for such training. The remaining “non-budgetary” topics (No. 9 - Lack of Meetings and Communications and No. 4 - Preferential Treatment of Light Rail) should also be reviewed for possible action.
- 2) Institute regularly-scheduled “Climate Sessions” or other mechanisms to improve communication.

- 3) Institute the non-economic "proposed remedies" included in some of the complaints:
 - a. annual EEO and diversity training for all employees
 - b. development and enforcement of a Non-Bullying policy
- 4) Update RT's Unlawful Workplace Discrimination and Professional Conduct Policy, last revised in 2008.
- 5) Modify EE-SOP-02-001 to provide greater incentives for cooperation in the timely and effective investigation of EEO complaints.
- 6) Provide additional focused training to Bus Maintenance supervisors and management.