The Virgin Islands Consortium

Suit Alleges WAPA Lies To PSC, Took Retaliatory Action Against Whistleblowers, And Made Bad Decisions That Led To Increased Utility Bills

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WAPA board's first action during a meeting on Thursday was to move executive session to the top of the agenda. What followed was more than four hours of closed-door discussions on sensitive matters affecting the utility.

Among them was a lawsuit filed in April by two WAPA employees, which levies damning accusations on the semiautonomous entity, contending that WAPA has lied to the Public Services Commission (PSC); it has taken retaliatory action against whistleblowers; and has made bad decisions that caused costs to increase 20-40 percent annually.

The case, taken up by ubiquitous Virgin Islands Attorney Lee Rohn, speaks to the grievances of two WAPA employees, namely Dwight E. Nicholson (a former lieutenant governor candidate with Soraya Diase Coffelt during the 2018 General Election), and Julio Fung. The allegations against WAPA come at a time when the authority could least afford being painted as a company that harasses employees who don't fall in line with the favored agenda.

WAPA spokesman Jean Greaux declined to comment, citing pending litigation.

"WAPA has not been truthful to the PSC, has made unsupported decisions that have increased the cost of fuel and electricity to the detriment of rate payers," the suit alleges. The suit also comes as WAPA seeks approval from the PSC to yet again raise the base rate, this time by 6 cents which would send the final cost to 47.36 cents per kilowatt hour, an unheard-of rate that would send residents' electric bills skyrocketing.

Mr. Nicholson, a results engineer III at WAPA on St. Croix, and Mr. Fung, a data acquisition and controls coordinator at WAPA in St. Thomas, said in the lawsuit that for years they have watched as WAPA made "economically incorrect" decisions related to the operation of the authority that resulted in increased costs for ratepayers.

The suit says even though Mr. Fung and Mr. Nicholson regularly perform cost analyses of such decisions, the information is rarely provided to WAPA board of directors so that sound decisions could be made.

There was a letter written and circulated within the authority that criticized WAPA's decision to rent units instead of repairing units the authority had already owned. Both Mr. Nicholson and Mr. Fung were invited to a board meeting to make a presentation to board members, according to the suit. With the letter in hand, Mr. Fung and Mr. Nicholson attended and explained why WAPA's decision to retire and not repair units it had owned, and to engage in contracts to rent units was not economically sound and caused costs to increase between 20-40 percent. Mr. Fung also presented information that the suit says established why it was unsound that WAPA had chosen to enter into contracts to rent units instead of repairing what it already owned.

The presentations, however, were ridiculed and relegated as "humorous", according to the suit. The suit also alleges that in response to Mr. Nicholson and Mr. Fung presenting this information, they were retaliated against by being given numerous task lists and were informed that the policy of compensatory time -- a worker being given time off in lieu of overtime -- would no longer be extended to Mr. Fung and Mr. Nicholson. This statement was made by Supervisor at WAPA Jherome Dias the day following the Feb. 7 board meeting, according to court documents.

WAPA pays on average $400,000 monthly per unit to APR Energy for the units being rented. There are currently three APR Energy units being rented in St. Thomas. On St. Croix, there are modular units from Agrekko providing 20 megawatts of generation. These units, still in the testing phase, is projected to cost more than $23 million in over three years.

On February 11 a meeting was called by WAPA Chief Operating Officer Clinton Hedrington. Mr. Nicholson, who was out sick, did not attend, but Mr. Fung did. According to the court documents, Mr. Fung and Mr. Nicholson were chastised for insubordination "in an aggressive manner" by Mr. Dias, "who falsely accused plaintiffs of going over their heads by making their presentation to the board" without approval, which made Mr. Dias and the others at the meeting -- Mr. Hedrington, Sabrina King from Human Resources, and the generation planning manager -- "look bad."

On February 14, Mr. Nicholson, according to the suit, overheard WAPA Director of Productions Kevin Smalls saying that Mr. Fung and Mr. Nicholson were "out of control" and that Mr. Dias needed to "get them in control."

Then on February 25, Mr. Dias called a meeting. Mr. Nicholson did not attend because he was out performing work that Mr. Dias had assigned, according to the court documents. Mr. Fung attended the meeting and was informed that if "the onerous and impossible lists of tasks that had been assigned were not accomplished by the dates demanded, plaintiffs would be disciplined for insubordination."

The suit says many of those tasks were not completed on the demanded dates because other tasks with higher priorities took precedence, and that other tasks were extremely complex and time-consuming, and information needed for the tasks' completion was not provided. "For example, one of the tasks required a new report to be generated to replace a monthly report from 2005 that had taken over a year to generate," according to the suit. "This current production report had been in use since 2005 and even if plaintiffs had been given the parameters, which they weren't, it would have taken over six months to attempt to generate that report."

Realizing that the situation was getting worse, Mr. Fung and Mr. Nicholson wrote a letter to a WAPA board member on February 26, setting out the escalating harassment. The letter was also circulated to members of WAPA's audit department.

On February 28, Mr. Nicholson received a disciplinary letter from Mr. Dias for missing the Feb. 25 meeting. Mr. Nicholson notified the board of the letter from Mr. Dias, which the suit says was sent to Mr. Nicholson without the knowledge of his union representative.

The letter, which has not been rescinded, sets up Mr. Nicholson and Mr. Fung for increased disciplinary and adverse employment actions against them, the suit says.

"As a result, plaintiffs have suffered loss of compensatory time, threats against job security, mental anguish, physical and emotional suffering and loss of enjoyment of life, all of which will continue into the foreseeable future," according to the lawsuit.

Read the original document