

COMMITTEE ON HUMAN RESOURCES/INSURANCE

February 5, 2013

6:15 PM

Chairman Shea called the meeting to order.

The Clerk called the roll.

Present: Aldermen Shea, Ludwig, Greazzo, Roy, Levasseur

Messrs.: J. Gile, D. Chapman, D. Mara, A. Aldenberg

Chairman Shea addressed Items 3 & 4 of the agenda:

3. Summary of outstanding arbitrations and grievances submitted by the Human Resources Director.
(Note: Provided for informational purposes only; no action required)
4. COMPASS Program summary.
(Note: Provided for informational purposes only; no action required)

Chairman Shea addressed Item 5 of the agenda:

5. Updated FMLA policy, submitted by the Human Resources Director.
(Note: A revised section has been included per the committee's request from the 1/7/2013 meeting.)

Alderman Levasseur moved the item for discussion. Alderman Ludwig duly seconded the motion.

Mr. Dan Chapman, HR Analyst, stated per the request of a majority of the committee we revised the section concerning workman's compensation absences. That revision is "an employee on a leave of absence when approved for workman's compensation, due to a work related injury or illness, will not have that time charged against his or her 12 week FMLA requirement. If an employee is denied workman's compensation and has an injury or illness that constitutes a serious health condition, as defined under the FMLA, the leave of absence from work will be designated as FMLA leave."

Alderman Ludwig asked is it item 5 under the summary of changes that...maybe I am wrong but is it that one that basically speaks to the discussion that went on last time relative to when FMLA can start? Is that item 5?

Ms. Jane Gile, Human Resources Director, replied no.

Mr. Chapman stated no, item 5 is really just the section of the policy that deals with the City having the right to designate any leave that falls within the definition of a serious health condition, as FMLA eligible.

Alderman Ludwig asked so direct me to the portion of this that is in front of us that speaks to the City's ability to start FMLA leave concurrent with other means that an employee may have on the books like sick leave or vacation time? I will explain where I am and maybe that will make it easier for you to understand. In the area of workman's compensation, but I will even extend it a little bit further to an outside injury; I am of the opinion that I would not want my FMLA to start if I chose to use my sick leave and/or vacation and then I would want, should the need arise, for my FMLA leave to kick in. My understanding is that several years ago when I believe I was still working here and this changed and I think it is a City

policy and not necessarily part of the FMLA, but if I am wrong tell me that says as soon as the City knows it can be run concurrently with that serious illness whether it is work related to not. Have I got that right or am I wrong?

Mr. Chapman replied I wasn't here at the origination of the City's FMLA policy. The FMLA is a federal law that gives employers the ability to determine how paid sick time will be used in conjunction with FMLA leave, since FMLA leave is unpaid. So when the City policy went into effect, the City, at that time, decided that they would require that all paid time be used concurrently with the initiation of FMLA so that has always been part of the City policy. We haven't made any changes to that section of the policy.

Alderman Ludwig responded it seems to me and I guess we could look back in the records but I remember FMLA started when a person...I think we are talking about an extensive injury here and not just a few days. We are talking about something like I broke my leg skiing and I am not going to be able to come back to my laborer job for a number of months. I could have been dreaming but it seems to me that I remember FMLA not starting until that person had exhausted their sick leave and/or vacation if that is the route they chose. I have not seen that indicated in any of the prior FMLA claims that I reviewed here. That is what I remember.

Alderman Roy stated I agree with Alderman Ludwig. When this first came in I was still on the Fire Department and I believe that is how it went. I obviously haven't done the research back to when it started but a few years after that a new HR Director came in, and it was before you Jane, and this policy came into being. What caught me last time was, and that is why you have this language in front of us, that I didn't think it was fair for people who got hurt and were on workman's compensation that they would lose that ability to care for a spouse in the future. I

don't disagree with Alderman Ludwig and I say that because, and correct me if I am wrong, the intent of the FMLA law was to save the employee's job if they were in jeopardy of losing it because they didn't have sick leave or vacation time. It is obviously a slippery slope because today we have the sick bank. If we are going to do something like that we are going to have to define your accrued sick leave and not the sick bank because obviously there has to be a limit to it otherwise departments are going to be without people for an extended period of time. I think what stuck out to me most was there was this workman's compensation issue and I wasn't thinking about the broader issue. If I have accumulated sick leave of let's say 10 weeks, I tend to agree with Alderman Ludwig that I can use the 10 weeks of accumulated sick leave and then go on FMLA. I wish I had thought of that last time but that is where I was coming from with the workman's compensation. If I am not wrong, I would have to agree with Alderman Ludwig. What do you think?

Ms. Gile stated I think one of the things we came here for is we weren't making any substantive changes to the FMLA policy. The only changes we were making were changes of clarification in terms of some of the surrounding issues within the policy itself and also bringing it up to be in compliance with federal law with some of the military components of it. So we weren't making any changes to the existing policy. I understand your perspective on the previous one when it first came out. I think what we have found is that with the concurrent use of paid leave while someone is on FMLA it does protect their job during that time period and it is job protected leave and for someone that has an extended illness, more often than not the employer, meaning the City, will allow them to carry on after that point if there is a real serious health condition and they do have sick leave on the books they do allow that in many cases. I think one of the things the policy has assisted us in and as you know I think we spoke last week that there are 230+ people a year who are on FMLA who make use of this policy so it has provided a

good structure and framework for us to be able to implement it consistently across the City. If there isn't that consistency then I think you may get into situations where some department heads or some departments may use different types of discretion in terms of allowing people time off or if there is someone that has maybe not the best attendance record there may be an opportunity at that point in time to really be able to use this in a good way to maintain that person that may have excessive absences too. I think it can work both ways. It is an advantage to the City and it is also an advantage to the employee.

Alderman Ludwig stated Jane, I understand that this came in for basic housekeeping and that is what Dan's charge was and I think that is good but the fact remains that it is back in front of us. I don't believe that precludes us from looking at what is in the policy. I hope you don't think we are implying that this is something that you did. That is not where I am going. I just want to make sure that it is as fair to the employee as humanly possible. Sometimes I don't get things 100% right so in the event that someone who has abused sick leave, say they have been here for 20 years and they have three days on the books, which I would consider an abuse of sick leave and maybe they have no vacation I would absolutely assume that if they had an injury where they had to use FMLA that should kick in because they are in jeopardy of losing their job without FMLA. However, in the event that someone has numerous days on the books why can't they go through those days if they chose to do so and their vacation if they chose to do so and then say I am out and I don't want to lose my job so can FMLA now kick in? Isn't that the fairer thing to the employee?

Mr. Chapman responded I think one of the things that can be confusing about any discussion about FMLA is FMLA is not really an additional form of leave. FMLA is unpaid leave that is specifically intended to provide job protection while an employee is out for any type of leave, paid or unpaid. As long as the employee

meets either the definition of a serious health condition for himself or herself or a serious health condition of a family member, the FMLA is there so provide that job protection while they are out for their own illness or to take care of a family member. So it is not really an additional leave; it is simply whether the person is going to be paid while they are on an FMLA qualifying leave.

Alderman Ludwig stated I understand what you are saying. I am just thinking that while an employee was on extended leave, whether he was hurt on workman's compensation or he got hurt skiing up north, it seems to me that we will have reduced his ability to maintain his job by running the sick leave and vacation concurrently with FMLA. Now he has run out of...he is not getting paid FMLA I get that but he now has exhausted the intent of the FMLA Act and could lose his job. Am I not right?

Mr. Chapman asked if an employee exhausts their 12 weeks of FMLA?

Alderman Ludwig answered right.

Mr. Chapman stated they could.

Alderman Ludwig asked so isn't it better for the employee to stay on his own sick leave and vacation because the City is not going to separate employment while they are using sick or vacation time, I don't believe?

Ms. Gile answered they could. If somebody has sick leave it doesn't necessarily mean...

Alderman Ludwig interjected for an injury?

Ms. Gile answered if it is the will of the department and I am not saying that it ever happens but that is why the Family Leave Act came into effect; to protect those employees who have a serious health condition or something has happened to them. Other employers might have let them go because they were not able to do their job.

Alderman Ludwig responded maybe those are the two operative words – other employers because I couldn't name you one person who has ever been let go by the City of Manchester for no apparent reason while he is still on sick leave or vacation. If you can name me one, bring that name forward in private. I am not sure that has ever happened. I understand that employers, in the private sector, may have the ability to do that and, therefore, FMLA became a little more important for the employee working in that job.

Alderman O'Neil stated I think this is a very healthy discussion and I know you folks came in for some clarification and not the intent and I think it caught many of us, and I have been here a little bit, by surprise that there was no option by the employee. If a woman is going to have a child, an employee of the City, if they have saved up their vacation because they know they are due and they saved up four weeks vacation why wouldn't we let them take the 4 weeks and then they may decide I am coming back to work or something changes and there is a health condition with the baby or mother and then they may want to take the 12 full weeks of FMLA. Under our policy, they have already used 4 of those 12 weeks and that is where I think and where I thought Alderman Ludwig and Alderman Roy were going at the last meeting. I understand there can be abuse but generally speaking, to my knowledge, there is not a lot of abuse in the City. We are a large organization and by percentages we are going to have some people but why would we want to tell that woman that she has to go on FMLA on Day 1?

Ms. Gile answered that has been the policy of the City and it is not an unusual policy. It is the 20th anniversary of FMLA and there are always ongoing questions about FMLA and questions about abuse of it. I think what we are trying to do is put the new federal stuff in place. If it was something that you want further discussion on I think we would be willing but this is the way it has been implemented at least for probably 10 years. I know the City was a little late in getting it enacted. I think it was approved in 1993 and we didn't have a policy until 1998. We are just trying to get things cleared up and in place and if it is the will of the board to do something different, then it is the will of the board. What I would like to see though is if it is the will of the board to do something like that I think we should have good information to make those decisions on. By good information I mean to look at the amount of...maybe do a comparison of sick leave usage and FMLA usage. I know you had a question the last time we met about the use of the sick leave bank and FMLA and we did run some reports on that. I do have some of that information on people who are using the sick leave bank and also on FMLA and the figures were pretty high. If it is the will of the board I think we should base it on good information.

Alderman O'Neil stated I think the changes they have come in and asked for don't appear to be the issue. It is revisiting that one policy item. I just think that one item about the concurrent serving of FMLA with any other leave is just...I am not a member of the committee but, as a member of the full board, I certainly would like to have that discussion. I do think there are times where the employee may need to use both and not...I hate to use the term burn FMLA but when it is serving concurrently it doesn't use them a lot of options and we are no longer in these days talking about our own children but we are talking about taking care of elderly parents, etc. so I think as much flexibility as possible is in the best interest of all. If there is abuse I would like to see that and what we can do to cut down on that. Thank you Mr. Chairman for allowing me to speak.

Alderman Levasseur moved to accept the changes as outlined in the handout.

Chairman Shea duly seconded the motion.

Alderman Ludwig asked are we going to have further discussion relative to HR looking into what seems to be the larger question than what the housekeeping items are on this list?

Chairman Shea answered yes, I would assume that we would do that.

Alderman Ludwig stated I will vote in favor of the items that Dan and the HR Director have brought forward with the caveat that they are going to look into...I for one would like to know and I am sure we can find in the City records and if I am wrong I would be happy to admit it but I don't believe that FMLA was instituted in the City...we had a right to make that change and we did. I guess from a management standpoint that probably made some sense for the City to do but I would like to know if it was done in a different way and if it did come at the end of paid leave. I believe you are going to find out that that is true. That doesn't mean we need to continue that way. We may want to continue the way we have it but I would like to look at it and I would like this committee to have a shot at having a conversation about it at a minimum. If that is included in the motion I am ready to vote in favor of what is in front of us.

Chairman Shea stated well we could approve this and then make a motion to look into the other item or you can add an amendment to the original motion.

Alderman Ludwig responded I think we should do two separate motions.

Chairman Shea called for a vote on the motion to accept the changes as outlined in the handout. There being none opposed, the motion carried.

Alderman Ludwig moved to have HR review when FMLA should be enacted for the employee, including past practice. Alderman Roy duly seconded the motion.

Alderman Roy stated Jane I think you hit the nail on the head here about giving us all of the information so that we are making an informed decision on that. I hadn't thought of that but it is important for us to see exactly when FMLA has been kicking in. My belief is that if you are using the sick leave bank and that is not your accrued leave, you definitely should be on FMLA. I would like to see all of that information. It is going to show us also how many people are on workman's compensation and FMLA. That is our current policy, which I took exception to when I saw it in here.

Chairman Shea called for a vote on the motion. There being none opposed, the motion carried.

TABLED ITEMS

6. Communication from David Mara, Chief of Police, requesting the committee review the current policy on military leave for employees.

On motion of Alderman Greazzo, duly seconded by Alderman Roy, it was voted to remove Item 6 from the table.

Mr. David Mara, Chief of Police, stated with your permission, I would like Officer Allen Aldenberg to tell you about his military history and his experience.

Mr. Allen Aldenberg, Police Officer, stated I am in my 21st year in the Massachusetts National Guard. I currently hold the rank of Lt. Colonel and I have been deployed to Afghanistan, Pakistan, Iraq, Panama and maybe one more next year. I come to you regarding what the chief is going to speak about, which is military leave. I speak to you with a great deal of experience and that is the only reason I offer my experience so hopefully I can answer some of your questions relative to military leave and military service and some of the innuendos that come up from time to time. I appreciate you hearing us tonight.

Mr. Mara stated as we discussed before, currently the ordinance calls for 10 days of military leave that we will pay and there is also a section that was amended in 2006 to add five days for military funerals where they are assigned by the military staff. From what I understand, it is very rare for anybody to go to be assigned to a military funeral. They would have to be in a color guard or honor guard. That really doesn't help our officers or other City employees. Officer Aldenberg has been deployed many times and often he has to use his personal days, his vacation time and sometimes he has to go for unpaid leave in order to meet his commitment. A point to be made, as far as what cost this has to the Police Department, and I know that Jane is going to be talking about that, but regardless of whether or not we pay him we still have to allow him to go and of course we do; we comply with federal law. If there ever is an overtime issue we are going to have to pay it anyway so that is not an issue. To me it comes down to other departments and I believe the state offers more for their active military members and that is what I would like to do. I would like to raise it from 10 days to 20 days. I think it is a fair thing to do and I think it is the right thing to do. The risk that they put themselves in and the sacrifices that they and their families make and the type of employees that they are due to their military experience I think is just advantageous not only to the employee but also to the City. We will be able to attract people like Officer Aldenberg and retain them.

Alderman Levasseur asked when you go on these trips overseas do you get paid by the United States government?

Mr. Aldenberg answered I make more in the military than I do as a police officer so the City does not have to compensate me anything.

Alderman Levasseur responded I hope you understand the question. Chief Mara wants to go from 10 days to 20 days. If you are gone for 20 days are you compensated for those 20 days that you are away by somebody else like the U.S. government?

Mr. Aldenberg replied yes I am.

Alderman Levasseur asked so you are paid for the 10 days under the military leave program here in the City and you are paid by the U.S. government for those 10 days?

Mr. Aldenberg answered that is correct.

Alderman Levasseur asked so if we extend it to 20 days you will still get paid for the 20 days from the City and you said you make more from the government than as a police officer?

Mr. Aldenberg responded yes, I do Sir. The point is though that the 10 days right now, at a minimum, any member in the service has to do 39 days a year. So if you take 10 days off of that that is 29 days that I am still required to move things around and do swaps or use vacation time or take unpaid military leave or whatever it may be for me to get the time off. Most employees do the four and

two schedule. It is not the traditional Monday through Friday where they have their weekends available to them. A four and two schedule makes that more complicated to get the time off in order to attend military duty.

Mr. Mara stated I would like to add that his rate of pay is quite different than your average person that is in the military. He is a Lt. Colonel.

Alderman Levasseur stated I just want to make sure...so you are required for 39 days to be actually in service in the reserves?

Mr. Aldenberg answered yes, at a minimum.

Alderman Levasseur asked and you get paid for those 39 days? Do you get one check for the 39 days or do you get paid over the year?

Mr. Aldenberg replied I get paid for my weekend drills or my two weeks a year or if I go to a two-week school. I get paid on a monthly basis.

Alderman Levasseur asked if you get called to go to Iraq or the Middle East do you get paid by the government to do that?

Mr. Aldenberg responded of course.

Alderman Roy stated you said that any officer has a commitment of 39 days a year?

Mr. Aldenberg replied yes, at a minimum.

Alderman Roy asked so everybody that we employ is committed to 39 days so this policy would be paying for half of those?

Mr. Aldenberg answered yes, just about.

Alderman Roy asked Jane this figure of \$28,000 a year that covers all of our military personnel in every department, does that include the pay that we give the person who is gone on military leave and overtime to cover their spot?

Ms. Gile answered no, it doesn't include overtime. It is not like workman's compensation.

Alderman Roy responded so this \$28,000 is just to cover the pay of the employee who has gone off to military leave and if there is a need for overtime in the department that would be a separate cost?

Ms. Gile replied yes. There are no overtime calculations included in this.

Chairman Shea asked so the 20 days would include the 5 days for funerals?

Mr. Mara responded I don't think it is necessary to have that and could I clarify something? The military personnel are getting paid by the military and they are also getting paid by the City, however, they are still going to be getting paid by the City when they use their vacation or personal time.

Ms. Gile stated depending on what the committee approves tonight we would have to prepare an ordinance because it is in ordinance form.

City Clerk Matthew Normand stated if the committee was so inclined we could print the copies right now for the committee to see. We have a draft ordinance done.

Alderman Ludwig asked so the net effect of this is really five days, if I heard the chief right? The five days for the funeral was not readily used because of the way it has been designated to the soldier right?

Mr. Mara replied that is correct. I was talking to Officer Aldenberg and he doesn't know of any cases where we have actually used that five days so I guess the net effect would be 10 days because nobody can really use those five days.

Alderman Ludwig stated well the five days is on the books but...

Mr. Aldenberg interjected we have never been allowed to use it. We can't use it.

Alderman Ludwig stated but you could sit there and make a case that you are really only asking for five if you weren't so honest about the five that are on the books now.

Alderman O'Neil stated I think Officer Aldenberg tried to touch on this but if I look at the numbers...let me ask Jane. There are 13 employees for fiscal year 2012?

Ms. Gile responded that was in the federal fiscal year 2012; yes.

Alderman O'Neil asked of those, 11 are from the police department and one is from the fire department correct?

Ms. Gile answered correct.

Alderman O'Neil stated and I think where Officer Aldenberg was going was that 12 of the 13 do not work a traditional, and I don't want to put words in your mouth, Monday through Friday jobs so that they are automatically available every weekend for duty.

Mr. Aldenberg replied that is correct.

Alderman O'Neil stated police work the four and two schedule and fire is on the on for 24 and off for 72. Am I correct that that is where you were going with this? The firefighter and the 11 police officers may hit a weekend that is clean for them but they also may hit a weekend where they are working both of those days and you either have to swap or take a vacation day in order to meet your military obligation correct?

Mr. Aldenberg answered correct and my biggest concern is when the officers have to use their vacation time or personal time to fulfill their military obligation. That is my biggest concern to be honest with you.

Alderman O'Neil responded just to follow-up it is the uniqueness of the schedules for police and fire that make this challenging correct?

Mr. Aldenberg replied yes, it is very challenging.

Alderman Levasseur stated I think I get it now. You just really want the extra 10 days so it doesn't cut into vacation time. In other words if you have 30 days and 20 of those are vacation and 10 days to go over there you don't want to cut into those other 20 days. Can I ask you what happens if you go more than 39 days? I

don't mind a policy where you guys get the 20 days but what happens when you are gone for more than 39 days?

Mr. Aldenberg asked do you mean if you were going on an extended tour of active duty?

Alderman Levasseur replied yes.

Mr. Aldenberg answered then you would go on unpaid military leave like I have done.

Alderman Levasseur asked so 39 is the maximum and this policy wouldn't make it...in other words you get 39 days that you have to be in the reserves and the police department hires you and they know that in advance so after the 39th day you are not collecting money for any reason or do you just have to use up all of your vacation time and everything else past the 39 days also?

Mr. Aldenberg replied that is correct.

Alderman Levasseur asked so you can continue to collect...let's say you have 50 days you can collect for those 50 days even though you are only required to do 39 but you could be extended out to 60 days with the government?

Mr. Aldenberg answered correct.

Alderman Levasseur asked you would still be able to collect?

Mr. Aldenberg answered I would collect a paycheck from the government but I wouldn't be collecting anything from the City.

Mr. Mara stated when somebody gets deployed for an extended period of time we do not pay their salary.

Alderman Levasseur asked after 39 days?

Mr. Mara replied if it is a deployment, not just...it has to be an actual thing where they get orders and are deployed.

Mr. Aldenberg stated I think I know what you are saying, Alderman. If I burned up my 20 days of military leave from the City, and I am now beyond my regular military requirements and I say hey I have the opportunity to go to a two-week school, wherever it may be, that is a requirement that I have taken on myself and that is on me. If I want to go to that school, as an extra, okay then that is a decision that I am going to make to burn vacation time or do swaps, to go to that military school. If I do that or if I chose not to burn vacation or do swaps or use my personal time, then I could go on unpaid military leave. That is a decision I would make but there have been times in the past where I have run out of military time early on in the year for whatever reason and now I am getting into unpaid military time, swaps, vacation and personal time. I am not trying to be greedy, I am just trying to see if we can make this as fair as possible.

Alderman Levasseur asked Chief, it seems to me you are more concerned when an officer takes off and goes to a hot spot.

Chief Mara answered well, I am always concerned.

Alderman Levasseur stated well, you are talking about the fact that these guys go and put their lives on the line but if they are just doing regular duty where they

stay in NH and it is part of their training do you still think that extra 10 days should be included or should it be for circumstances where these guys are really uprooting their whole life and moving to another country for an extended period of time?

Mr. Aldenberg responded I think you could do it that way because then you are putting a burden on the soldier to come to the department and justify his military leave and you create a criteria and I don't know how you would create that. I think it is just wise if you are going to do the 20 days it is paid military leave, as requested by the Chief, when appropriate, and if he requires orders then the soldier provides the orders as appropriate.

Mr. Mara stated I agree with that. For instance, how long were you at your last tour in Afghanistan? How long were you gone?

Mr. Aldenberg responded over a year.

Mr. Mara stated he was gone for a year and a half and we did not pay his salary. We pay his benefits and when he comes back we put him back on salary. This has to do with what he was talking about, those 39 days in country where they are required to do it just to make it a little fairer. Even with that 20 days he is still going to have to use his vacation time or personal time as well.

Mr. Aldenberg stated you will never cover it all and that is not what I am asking to do. That is not fair and not realistic.

Alderman Roy stated thank you for your service. I appreciate it. I am doing the math here and even if we give you these 20 days you are still going to be on the hook for four weeks of vacation that you would have to use possibly. You could

have days off that coincide with your time but you could be on the hook for another four weeks.

Mr. Aldenberg responded potentially.

Alderman Roy stated my point is that some of the younger officers don't have four weeks a year. Do they? So they never actually get a vacation or down time because of their service either here at the department or for our country, correct?

Mr. Aldenberg answered yes and that was the case with me for my first seven years here.

Alderman Ludwig moved to approve the Chief's recommendation to amend Section 33.080(A) Military Service of the Code of Ordinances of the City of Manchester by increasing the number of paid military leave days from 20 to 20 and deleting Section 1. Alderman Roy duly seconded the motion. There being none opposed, the motion carried.

7. Solicitation policy submitted by Jane Gile, Human Resources Director.
(Note: Tabled 12/4/2012)

This item remained on the table.

8. Draft ordinances for the position of welfare commissioner submitted by Tom Arnold, Deputy City Solicitor.
(Note: Tabled 12/4/2012)

This item remained on the table.

*There being no further business, on motion of **Alderman Levasseur**, duly seconded by **Alderman Ludwig**, it was voted to adjourn.*

A True Record. Attest.

A handwritten signature in cursive script that reads "Heather Freeman".

Clerk of Committee