

## HUMAN RESOURCES/INSURANCE

**April 21, 1998**

**6:15 PM**

Chairman Sysyn called the meeting to order.

The Clerk called the roll.

**Present:** Alderman Sysyn, Klock, Pinard, Shea, O'Neil

**Messrs:** Kevin Clougherty, Mark Hobson, Philip Croasdale, Ron Ludwig,  
Chief Driscoll

Chairman Sysyn addressed Item 5 of the agenda:

Discussion relative to reimbursement of athletic officials.

Mr. Clougherty stated the main thing we were trying to accomplish with the system this year was to get out of the situation where we were paying cash and get people onto checks. That was accomplished early in the conversion to the new system. As part of that we wanted to make sure that we got the 1099's and everything straightened out and that has been accomplished. The remaining issue is should City employees who are officials get paid off payroll and everybody else be paid off the payable system. We got a letter from Phil Croasdale and at the time I told him that we should just call the IRS and ask them what they think should happen. I understand that Mark and Janell have done that. My understanding from a brief discussion with them today is that the IRS said you can pay them that way if you want. They are not going to give us a written opinion, but the long and the short of it is if you want to pay them on the payroll side that is something that they are not going to object to and we will go from there. We want to document the conversation with the IRS and get it on record here and if we want to go to payables then we will pay them off with payables.

Mr. Hobson added the first thing is obviously a lot of this business has to do with the School Department and the athletic fund. I have spoken with both Norm Tanguay and Dick O'Shea on the matter and both of them had previous meetings someplace else tonight so they couldn't be here but they wanted me to express their concern which I did in the first paragraph. They said that the Board of School Committee has already addressed this matter as a policy issue through their Finance Committee and they created a policy that City of Manchester employees who act as athletic officials will be paid through payrolls. Mr. O'Shea also stated

that with all due respect he thought that this matter should be addressed by Mr. Croasdale to the Board of School Committee and not the Board of Mayor and Aldermen since they have already addressed it as a Board. That was the first thing I wanted to bring to your attention, but as you requested of me, we performed our own due diligence and talked to both the Department of Labor and the Internal Revenue Service. The Department of Labor sent us guidelines on what it means to have an employer/employee relationship. Now the interesting fact in this case is that the City, particularly the School Department, was investigated for the Department of Labor for the way they treated independent contractors stating that some of their independent contractors actually should have been treated as employees. So what the School Department has done in this case is they have taken the more conservative route by treating the employees in this case as full employees through the payroll system which means as you can see in my last paragraph it means that this more conservative approach has some benefits to the employee such as it takes out the appropriate taxes, it covers workers compensation benefits, and it also contributes to the employees retirement through the payroll system whether they are state retirement or City system. Back in the paragraph about the IRS and the Department of Labor, they both stated that, as Mr. Croasdale said in his letter, that athletic officials who are employees and also members of recognized athletic associations such as those cited by Phil in his letter, these officials will generally receive training which you will see here in the definition, training, their assignments, their supervision and most likely some type of liability insurance through these respective associations that they belong to. Therefore, these officials will most likely qualify as independent contractors but for those employees who, in this instance, wish to be treated as independent contractors it is recommend by me anyway that they be required to document their contractor status through the Finance Department just as we do with all other independent contractors. The reason why I state this is because we were audited by the Department of Labor for the School System already regarding the way they treated independent contractors and employees. The other negative if you will to the independent contractor status is that they will receive payment on a monthly basis through the accounts payable system rather than some school employees, who I know work regularly throughout the season, get their money each week or bi-weekly through payroll. One can also say that it is a perceived benefit to get your money quicker through Payroll than it is through Accounts Payable. Of course, going through Accounts Payable as independent contractors they have to fill out W-9 forms for the IRS regulations and then they are paid with 1099's at the end of the year so they become responsible for their taxes. Mr. Croasdale did point that out in his letter on Page 4 in terms of how payment will be processed and savings to the City, etc. So I just have to tell you that in talking to people in our office and talking to school management, there is a lesser administrative burden for the City and we are taking a more cautious approach to process

employee payment through the payroll system rather than through an Accounts Payable System.

Alderman O'Neil stated the biggest concern that I have is if they get hurt under the process of them being an employee they are going to go out on workman's compensation at their pay in their full time positions. I don't personally agree with that. I believe we should treat them as independent contractors and I think that Kevin has said that if he gets the information from the School Department he could get checks out weekly. Correct?

Mr. Clougherty answered yes. Again, that is a School Department issue but the system can accommodate those different cycles. As far as the workman's compensation issue, as you know the practicality is that we are going to pay it anyway one way or the other. From the Treasurer's standpoint, I am just happy we are issuing checks. That was the main hurdle.

Mr. Hobson stated the last thing I want to say is that having lived through paying people in cash from the athletic director actually walking down to the field and handing out money to people and the audit trail being a semi-disaster, I think that in this case the School really is trying to do its due diligence and they really are attempting to do what is right by the employee, whether that is being perceived that way or not. I sense that from my conversations with Mr. Tanguay and Mr. O'Shea and I happen to agree with them, but we will relay your concerns and we will follow your direction obviously and I think we would all agree that if the School Board has already set some kind of policy we need to go back and talk with them about what you are recommending because they might have to modify it.

Alderman O'Neil stated my concern is the workman's compensation. As long as people are members of these associations, I think they should be treated as independent contractors.

Mr. Hobson asked what if they are not. Lets say they are a teacher and they are not trained and they ref or official these games. In that case, they would have to prove their independent contractor status through the Finance Department or, some of these seasons are so short that we may be better off just paying them as an employee like we are doing now.

Alderman O'Neil asked Mr. Croasdale if baseball exclusively uses umpires from the association.

Mr. Croasdale answered yes.

Alderman O'Neil stated in football they do and soccer they do. Basketball I don't know if it is 100% or not.

Mr. Clougherty stated my recommendation is to get the NHIAA observe that and make the payments and we pay them and they make the assignments. That would be a great thing.

Mr. Croasdale stated as far as the School Department determining whether or not a person is an employee versus an independent contractor, the IRS will make that determination for you by filing the Form SS-8, "Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding." I filed that form and got a letter back from the IRS saying that there was a log jam and it would be about 11 months before they could issue a determination. Nevertheless, it is coming. Along with this form, they do give you a list of 20 factors in which an employer should consider in making a determination regarding a worker being an employee or independent contractor. As long as the employer can document as to why they are classifying them as an independent contractor based on those 20 factors, there is no liability or recourse for them. The sure fire way is to file the form SS-8 and you do get the determination in writing. In that regard, I would think that the school would be covered if they followed the guidelines and the guidelines are pretty straight forward showing that we are independent contractors and getting a W-9 and other information in order and having it all on file.

Alderman O'Neil moved to treat athletic officials as independent contractors. Alderman Klock duly seconded the motion. Chairman Sysyn called for a vote. There being none opposed, the motion carried.

Chairman Sysyn addressed Item 6 of the agenda:

Communication from the Airport Director requesting that two positions be changed from full-time to create six (6) limited seasonal positions with those employees hired for the period of November 1 through March 1.

On motion of Alderman O'Neil, duly seconded by Alderman Klock, it was voted to approve the request.

Chairman Sysyn addressed Item 7 of the agenda:

Communication from the Human Resources Director requesting that Assessor Thomas Nichols be paid an amount of \$4,972.71 due to an error in accrual of vacation time; and noting that this amount will be absorbed by the department's FY1998 budget.

Mr. Hobson provided an explanation.

On motion of Alderman O'Neil, duly seconded by Alderman Pinard, it was voted to approve this request.

Chairman Sysyn addressed Item 8 of the agenda:

Communication from Human Resources requesting the establishment of an Urban Forester Classification at Grade 18, Schedule IB, 40 hours, and the deletion of the Forestry Technician Grade 18, Schedule VIIA, 40 hours.

Alderman O'Neil moved to approve the request. Alderman Pinard duly seconded the motion.

Alderman O'Neil asked what does this do.

Mr. Ludwig answered we initially had a Forestry Technician position which ran our Green Streets program. The person resigned last September. What we are looking to do is to combine two different aspects of our department, tree maintenance and tree planting, and create an Urban Forester which is kind of the current trend.

Alderman Shea asked is this the fellow who plants trees near road construction, etc.

Mr. Ludwig answered right. The Green Streets Program typically has worked with the City Highway Department. We also sponsor a residential tree planting program where residents can purchase trees and we also do the planting in parks and all of the right-of-ways.

Mr. Hobson stated if we look at the letter that Mr. Moran put together for the Committee, I just want you to know because it will probably be asked somewhere, is this under review by Yarger Decker and the answer is yes. Yarger Decker is going to go through, make a formal class specification for the position, and put it

into the budget for next year. Right now all we are asking you to do is approve this for the rest of the year in a temporary status and then the class specification will be brought back to you through this study.

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

Chairman Sysyn addressed Item 9 of the agenda:

Communication from Chief Driscoll requesting that an additional officer be hired under the Police Department's Over and Under Hiring Policy.

On motion of Alderman O'Neil, duly seconded by Alderman Klock, it was voted to approve this request.

Alderman Shea asked for an explanation.

Chief Driscoll answered our present compliment of sworn personnel is 198. We had 13 openings and we reached out to Human Resources and Mr. Hobson and asked that they do a test for us. By the time we got done with the whole testing cycle we had 14 people that we felt were qualified applicants for the job. Because so much work had gone into them, to leave that one individual in a capacity in which should we hire him a month from now or three months from now it would be a huge expense and a huge inconvenience, it was better to hire him now. There would be no additional cost to our budget. We came before the Personnel Committee about a year and a half ago I believe and asked if they would refresh the over/under hiring policy and at that time they did that. There was, in fact, an agreement reached and we brought that out and reviewed it and I felt it was applicable at this time. We asked Mark to implement it and he gave us the authorization to do that. I wanted to run it by this Committee also.

Chairman Sysyn addressed Item 3 of the agenda:

- . Chairman Sysyn advises a motion is in order to enter into non-public session under the provisions of RSA 91-A:3 II(e) to discuss pending claims against the City.

On motion of Alderman Klock, duly seconded by Alderman O'Neil, it was unanimously voted to enter into non-public session. The Committee discussed pending claims.

Chairman Sysyn called the public meeting back to order, advising that on motion made and duly seconded, it was voted to return to public session.

Chairman Sysyn addressed Item 10 of the agenda:

Communication from Mayor Wieczorek recommending approval of Department Head hiring procedures.

Mr. Hobson stated this process of hiring a department head through a process was built into the Charter and the Mayor, myself, Tom Clark, and Hugh Moran have been working on this, along with Janell and others. Our recommendation is that we believe we have covered everything that the Charter wanted to do, we have included Commissions where Commissions are involved, we have tried to use something that is objective where in the back you see that we have instructions for how to do interviews, we have candidate forms and charts to set-up questions, rank people as you are going through the interview process and way at the end of the process we also go through a rating sheet where you are looking at categories of their backgrounds in terms of their education, their managerial and supervisory experience, and their technical knowledge. What we are trying to do is do something that business uses and fit it for a municipality so that it works for the Commissions, it works for the Mayor and it works for the Board. I feel like it is something that is ready to be adopted. You have seen this once. We passed this by you almost two months ago and now we are bringing it back for your approval to be brought to the full Board.

Alderman Shea asked who does the interviewing, the Mayor.

Mr. Hobson answered by Charter it states that it is the Mayor and like Parks & Recreation, their commission.

Alderman Shea asked there will be more than one person doing the interviewing.

Mr. Hobson answered right.

Alderman O'Neil asked what if there is a department without a Commission.

Mr. Hobson answered what we recommended is that the Mayor develop a committee to work with him.

Alderman Shea asked can it be someone else besides the Mayor or does the Mayor always have to be involved.

Mr. Hobson answered according to Tom Clark, it is the Mayor's nomination. Alderman O'Neil stated if I read this right it says that we have to go externally or is that a suggestion. We seem to have had a high success rate and I believe it has never been a written policy, but from hiring within our system. You are certainly an example and other department heads are examples of that. I would hope that we would keep that practice. The way I read this and I might have read it wrong, was we do internal and external at the same time and my concern is I would think the general practice is going to continue because that is the system that everybody had been through. Are we wasting money and other people's time going outside when most likely we are going to hire from within the system? I could see if for some reason we don't find somebody or the Mayor doesn't find somebody within the system.

Mr. Hobson replied when I went to the City Solicitor and asked his opinion on it, the way that it was considered was that the procedure shall require a job description and the posting and advertising of any vacancy in appropriate publications.

Alderman O'Neil responded that is very general. That doesn't say we could be advertising just for within our own system.

Mr. Hobson stated we chose, and obviously the Committee can modify it, but we chose to say that what we would do is advertise both internally and externally at the same time. One of the things that we have been using very successfully at very low cost is the Internet. We got 500 hits on the Internet for our police applications.

Alderman O'Neil stated my biggest concern is I don't want to set-up a false hope when the chances are probably going to be 90-95% in most cases that we are going to hire from within the City. That is a trend that has been going on for years and we have been successful at it. I don't know why we would want to change.

Alderman Shea stated Alderman O'Neil brought up a good point but I see nothing wrong with hiring or advertising, all things being equal. A person who has been responsible as a city official would probably have an advantage but I don't see anything wrong with it.

Chairman Sysyn stated I see where you are coming from because the last Board there were some people who were furious because they did not put the jobs out externally.

Alderman O'Neil stated if we have to come up with a Police Chief, I don't want to be advertising all over New England because it is 99.9% that it is going to be somebody from within the Manchester Police Department.

Alderman Shea stated nobody is saying that someone from outside has to apply. It is up to them to apply.

Alderman O'Neil stated it is time that I am more concerned about.

Chairman Sysyn, Alderman Shea and Alderman O'Neil had a brief conversation about pros and cons of advertising outside of the City.

Mr. Hobson stated I can ask our Solicitor to review the Charter and give us his opinion as to whether we must post externally or is it recommended to post externally.

On motion of Alderman Pinard, duly seconded by Alderman O'Neil, it was voted to table this item.

Chairman Sysyn addressed Item 11 of the agenda:

Reports from the Human Resources Director submitted for informational purposes:

- A. New Hire Report
- B. Termination Report
- C. Vacancy Report

Mr. Hobson passed out the Vacancy Report and stated that it shows the department, the position, the grade and the salary. Is that something that you would rather see than just the positions?

The Committee members noted that they would like more detail like the report that was passed out.

Alderman O'Neil asked if one the report there is more than one position, it would be so noted.

Mr. Hobson answered yes.

**TABLED ITEM**

Communication from Alderman Hirschmann regarding a Sidewalk Action Team proposal.

(Tabled 1/20/98 pending report from Public Works Director.)

This item remained on the table.

There being no further business to come before the Committee, on motion of Alderman Pinard, duly seconded by Alderman Klock, it was voted to adjourn.

A True Record. Attest.

Clerk of the Committee