

## COMMITTEE ON HUMAN RESOURCES/INSURANCE

**February 4, 2008**  
**Aldermen Gatsas, Lopez,**  
**Pinard, Shea, Garrity**

**4:30 PM**  
**Aldermanic Chambers**  
**City Hall (3<sup>rd</sup> Floor)**

Chairman Gatsas called the meeting to order.

The Clerk called the roll.

Present: Aldermen Gatsas, Lopez, Pinard, Shea

Aldermen J. Roy, O'Neil

Absent: Alderman Garrity

Messrs: V. Lamberton, D. Hodgen, Lieutenant Bartlett

Chairman Gatsas addressed item 3 of the agenda:

3. Communication from Virginia Lamberton, Human Resources Director, requesting an amendment to Section 33.064(B)(2) of the Code of Ordinances which addresses sick leave benefits for Fire and Police Department employees.

On motion of Alderman Shea, duly seconded by Alderman Lopez, it was voted to discuss this item.

Mr. David Hodgen, Human Resources Chief Negotiator, stated as the Board may know, from the background information, on December 20<sup>th</sup>, we received a New Hampshire Supreme Court decision in a case involving a former police lieutenant who had been out on injury for more than five months before the Workers Compensation Appeals Board determined that his injury was compensable. And while he was out for the five plus months, he collected sick leave benefits, and then when the Workers Compensation Appeals Board determined that it was compensable, he was paid Workers Compensation benefits for that period of time, and we requested that he repay the dollars in sick leave benefits that he had received. And if he did that, we would have restored the sick leave days that he

used. He declined to repay us and filed suit in Superior Court. The City Solicitor's office made its best efforts to convince the judge that it really should be an arbitration matter and not a court matter but did not succeed. The Superior Court ruled that we did have to restore the sick leave days, but that he did have to repay us. Both the City and the lieutenant appealed to the New Hampshire Supreme Court and the New Hampshire Supreme Court, after construing the ordinance that's in question, ruled that because the ordinance doesn't specifically say that an employee has to repay the sick leave money, the City is obligated to restore the sick leave days, and the employee is not obligated to pay the City back. We believe that that results in a double payment to an employee, once as sick leave and again later as Workers Compensation, and potentially as severance pay when he retires and collect the sick leave incentive pay. So, the Supreme Court, among other things, said that if the City disagreed with its reading of the ordinance, it was free to amend the ordinance, and that's why the Solicitor's office has prepared the suggested amendment and why both the Solicitor's office and the Human Resources Department encourage you to amend the ordinance. I do not think that that will be the end of the story. I do think there still will be challenges from employees and probably unions, but at least this would be the first step in trying to resolve this problem.

Chairman Gatsas asked David, how many times prior to did we ever pay an employee triple?

Mr. Hodgen responded I don't know the answer about triple. We have paid double many, many times. And we have traditionally told employees that they needed to repay us, and many, many of them have repaid us. The Human Resources Department advises me today that over the last three years we have collected over \$112,000 in repayments. So this is a common occurrence. In many cases it occurs because it takes a week or so for the third party administrator to determine that it is compensable, and while that employee is waiting for that determination, he collects sick leave and then subsequently Workers Compensation, and it results in a double payment. The question of people who then cash in those...in cases in the past we have not restored the sick leave days unless the employee repaid the sick leave money, so we haven't had triple payments as yet. But with this Supreme Court ruling, that is a clear possibility.

Chairman Gatsas stated so what you're saying is in the past there has not been anybody other than this lawsuit that's ever participated in triple payments.

Mr. Hodgen stated I don't believe anybody has ever received triple payment. We have had double payments where the employees have left without repaying the sick leave, and we have not been successful in some cases in convincing them that

that was their obligation. They left without paying. So they left and were double paid. There is a very, very long list of employees who have repaid us.

Lieutenant Peter Bartlett, representing the Manchester Association of Police Supervisors, bargaining unit of the Police Department Supervisors, stated just in response to what my friend David Hodgen was talking about, in response to the language of Ginny Lamberton's letter on triple payments, I think that's far-reaching language. I don't know anybody in the 20 years I've worked at the Police Station where anyone received triple payments. If that's the case, that's the best-kept secret on the job. We'd have people out left and right collecting triple payments, sitting at home watching television. I just don't buy it. I think we can all agree that we're talking about one specific case here. That case is Lieutenant Jim Stankiewicz who left the job in April of '07. This case was argued in November of '07 and ultimately decided in December of '07. So Lieutenant Stankiewicz was retired from this Police Department well before this case went to the Supreme Court and would have received those severance benefits on his departure anyway. Additionally, David speaks about double payments, and he adds that people have left that haven't been convinced to make their payments back to the City. Well, if people are leaving the job and they're taking with them those sick leave benefits, they would be paid them anyway if they had more than 15 years on the job. That's part of the severance package. When these Workers Compensation cases go to court or the PELRB, the City has an obligation and a time frame to negotiate the settlement packages with the employees. So why they're not doing it at that particular time is beyond me. I can't speak to that. All that I'm here to do is to ask...I just heard about this today, so forgive me if I sound rushed. I looked at the language of the proposed ordinance change; I've looked at Ms. Lamberton's letter; I've looked at the Supreme Court case involving Lieutenant Stankiewicz. All that I'm asking for is that this Committee slow this thing down and table this, and just take a good, hard look at it. We're talking about one instance over the 20 years that I've been here, and to make an ordinance change that's going to drastically affect how Police and Firefighters are affected by Workers Compensation, I think it's a knee-jerk reaction to a Supreme Court decision that's going to cost the City some money. But he's gone and he would have gotten that money most likely anyway. So I'm just asking that we slow this thing down, take a good, hard look at what's going on here, before we start affecting the Workers Compensation benefits of Police Officers and Firefighters that are here doing their jobs, and getting injured on the jobs. That's what I'd like to see happen here today.

Chairman Gatsas stated I don't think anybody is questioning whether we protect Police Officers and Firemen. I think that's what we're here to do. But wouldn't you agree that if there is a triple payment on the table that any reasonable employer would be looking to make sure it only stays as a double payment?

Lieutenant Bartlett responded Alderman, I certainly don't want to see...I don't think there is anybody at the Police Station that's gotten triple payments. If I was charged with this task with the City, I certainly would want to correct that issue as well, which is why I'm asking you not to just dismiss this, but let's take a good, hard look at it, instead of just having this ordinance changed today. Let's take a good, hard look at some numbers and not just one particular case. Let's look at it over the long term and see what this could potentially do to us in the future.

Chairman Gatsas stated that's easy to say. There's only one problem. There's a Supreme Court ruling that says tomorrow if anybody else wants to do that and we don't correct this ordinance, people can get triple. Wouldn't you agree to that?

Lieutenant Bartlett responded no, I wouldn't, because if someone is still working here and the City is going to restore their sick time benefits, they're not getting triple payment. It's going back into their sick bank. And it's just being accumulated in their sick bank.

Chairman Gatsas stated that's not what the Supreme Court says.

Mr. Hodgen stated I agree with Lieutenant Bartlett that nobody has received triple pay as yet. It wasn't available to them prior to the Supreme Court ruling because we never restored sick leave days to anybody unless they repaid us. Now the Supreme Court is saying that we are obligated under the ordinance to restore those sick days and they are not obligated to repay us, which sets up the potential for someone to get triple paid, if those days are restored and then he retires or collects by leaving after 15 years, or retires with duty disability retirement or heaven forbid, dies. We have not had anybody collect triple payment yet, but if we do not address this matter, the potential is there.

Lieutenant Bartlett stated I can certainly understand the City wanting to address the matter. I certainly can. I'm just asking that if we can just take a little bit of time here to see how it's going to affect Police and Firefighters. That's all I'm asking. I'm not asking obviously for the City to ignore this issue or to not address it at all. I'm just asking for a little bit of time so that we can maybe work collectively to make sure that both parties are being addressed.

Alderman J. Roy stated I've experienced this in my own career. If I could explain a little bit to you. After being injured, I was out of work. It took several weeks, two or three weeks, I don't remember exactly how long, before Workers Compensation said, yes, this is a Workers Compensation case. For that period of time, I was paid sick leave so I never lost any income, which is a great benefit as far as I'm concerned. It's nice that the City does that. Once it was determined it

was Workers Compensation, I was compensated for those days by Workers Compensation. I in turn took that check to the payroll clerk and repaid those days, and at that time they reinstated my sick leave. It was ten to fifteen days. I believed then and I believe now that nobody should even get double pay. You should get paid for your days, and I used to tell this to other individuals at the Fire Department. You can't justify to me getting paid double, and they couldn't. And I was a firm believer that we should pay that money back at the time we got it. I think there were some other issues involved with this case that went to the Supreme Court. To me there was no triple pay. There was a possibility of double pay. If somebody didn't return that money to the City, there was a possibility of double pay, but I don't see where the triple pay could come in.

Chairman Gatsas stated and then if you retired at that same time, you'd get compensated for your sick time. That's where the triple comes in, right?

Mr. Hodgen explained it couldn't in the old days because we refused to restore sick leave days...

Chairman Gatsas interrupted I'm saying with this law. With this Supreme Court ruling you could get paid again. If you retired you could have gotten your sick days paid in. Now if you didn't believe that anybody should get double, I certainly have to believe that you don't think anybody should get triple.

Alderman J. Roy stated I'm just a little confused on the triple myself. I'd have to think that out a little bit.

Alderman Lopez stated I agree with Alderman Roy. You can look at it as triple or double or whatever way you want, but Workers Compensation... a person gets hurt and they use their sick leave, and they restore it, and whatever the settlement, if it's a settlement on Workers Compensation down the road, whatever the case may be, the person is entitled to his sick leave. That's what he earned. He's working on the job, he gets hurt, Workers Compensation kicks in, and then if there's a final settlement, they pay back whatever necessary there is. Now, the point that the Chairman made is almost like, well the guy never pays it back, if it comes to that, and we continuously write off Workers Compensation. We've got ten different people on Accounts tonight that we're going to write it off. So somewhere along the line, procedures have not... very loosely I say that... somewhere along the line, the employee, either they couldn't take it out of their pay or they didn't pay it back. Which is it, David?

Mr. Hodgen responded we cannot take those things out of people's pay without their permission. We did have a case in Superior Court with a retired Fire Lieutenant, and we made the mistake of taking that money out of his final

paycheck, and Superior Court was very clear that we had no legal right to do that, and we have not done that since.

Alderman Lopez stated it works a little differently with the federal government but whatever it is is the policy here. And I think what everybody knows, that they're not going to pay it back, so like I'm looking tonight on Accounts, we're going to write off ten people on Workers Compensation because they haven't paid the City back.

Lieutenant Bartlett asked ten Police and Fire?

Alderman Lopez stated I didn't say Police and Fire. I said ten people. But it would make no difference whether it's Police, Fire, or anybody else. I just don't understand really what the argument is when the Supreme Court is saying we've got to do something. Somebody has got to explain to me why we've got to hold this up. We're trying to protect the City if somebody, a Police Officer, gets hurt. He gets Workers Compensation. A Fireman gets hurt. He gets Workers Compensation. He gets his compensation and kicks in his sick leave. He gets his sick leave restored. He ends up with Workers Compensation. Workers Compensation is a separate case and I know somebody thinks it's triple; it's not triple; it's what he earned. He retires. He gets paid under Workers Compensation. He's got 30 days of sick leave. He's entitled to that 30 days sick leave. So I'm just trying to...What is the...

Chairman Gatsas stated it's the Supreme Court, Alderman. Just so that you know. I agree with what you're saying. There's 30 days sick leave; there's Workers Compensation. He uses all 30 days of sick leave. Workers Compensation pays him. If he doesn't pay back the 30 days sick leave, he's gotten it paid once, and he's gotten Workers Compensation the second time; and if he retires he gets it the third time, according to this ruling that the Supreme Court handed down. That's the triple. He has never paid back the 30 days, and he has to get it paid again in retirement.

Alderman Lopez stated and that's very difficult because Dave says you can't take the money away from the individual. Now the Supreme Court is saying we can't take the money.

Chairman Gatsas stated they say we can take the money if we change our wording.

Mr. Hodgen stated no, no. The Superior Court said that the officer in question had to repay us, but the Supreme Court, in construing the City ordinance, says it presently reads that he is not obligated to repay us, but nonetheless we were obligated to give him the sick leave days back. I do not know...I hope that case is

over. But I think there is the potential for him to say he wants the severance pay, now that we're ordered to restore the sick leave days. It hasn't happened yet. I hope it doesn't. But it could.

Alderman Lopez stated I agree with what you're saying. The ordinance now is going to say the employee shall repay the City all sick leave benefits the employee has received, regardless of when it is...whether it's, I'm getting Workers Compensation. I'm using my leave now. I get Workers Compensation. I pay it back, and when I retire I pay it back. Is the Supreme Court in this ordinance...when you said, would this take care of the fact that you can take money out of his pay?

Mr. Hodgen responded no, it's still against the law for us to make deductions from people's paychecks unless they are authorized?

Alderman Lopez asked then what do we do, David? If a person owes ten days sick leave and retires and hasn't paid us back, by law we've got to pay him his ten days.

Mr. Hodgen stated we have chased them. We have filed at least one case in Small Claims Court to try to collect. And frankly, I'm not sure if that's a current employee or not. On the basis of this Supreme Court case I believe they have dropped the Small Claims Court case with that particular Police Officer. It's a difficult matter. I think it boils down to whether employees are honest and accept the notion that they only should be paid once for each day that they work, not twice.

Alderman Lopez stated I agree with you, and that's why I agree with Alderman Roy.

Chairman Gatsas stated I think if you take a look at the letter and you go to that third paragraph down in the last sentence: Should the City disagree with our plain language construction of the ordinance, it is free to end them as it seems fit. That's what the court is saying.

Alderman O'Neil stated number one, I take some exceptions with this discussion going on, whether or not our employees are honest. They are. Having been someone who in the private sector went through Workers Compensation, and ended up in hearings in Concord, it is not the easiest process in the world, and it's not necessarily employee friendly. In the meantime you've got to worry about putting food on your table, paying your mortgage, paying your car payment. So I can understand where employees push and challenge the City on this. This thing went to the Supreme Court because we didn't have the common sense to settle this

before that, which I'm disappointed in as probably a whole other discussion for this Board. Very, very poor practice from the City side by whoever made this decision. This Board should have been informed that this thing was going to the Supreme Court because now there's a precedent set. I don't care if we change the ordinance, there's a precedent set based on the Supreme Court ruling. And what concerns me most of all is we've got Firefighters and Police Officers out there every day, and in the course of doing their job get injured. And God...we have a lot of twisted ankles, pulled backs, sprained knees...and you know what? I want them out there doing their job. I don't want them looking over their shoulders when they have to make a decision whether or not if they go into that situation where they may get injured, whether or not the City has their back. We had, I don't know, two or four Firefighters injured last week in a house fire up on Boynton Street. I don't want Firefighters or Police Officers questioning whether their employer has their back. In my opinion we don't treat our employees right in this case. This particular one, Lieutenant Stankiewicz, he challenged them and he took it all the way to the Supreme Court, and you know what? The City lost. Alderman Roy can speak first hand as a Fire Captain in this City about how they're treated and how long these processes... You know, this isn't somebody sitting behind a desk. These are people that are out battling all kinds of conditions, battling all kinds of people. I think we need to slow down. What is the impact of the Supreme Court ruling? Go on the website and get it. What's the impact of this? We've had no discussion at the Board level, but eight days after the court ruling we've got an ordinance change coming in. That's our solution. Pass an ordinance so we can try to stick it to our Police Officers and Firefighters. This one case, this one case, has affected this. We shouldn't make it look like every Police Officer and Firefighter is ripping off the system, and that's what it sounds like.

Chairman Gatsas stated let me just respond because I don't remember anybody, anybody on this Committee making any of those accusations, that we don't trust the employees. And I've got the floor now.

Alderman O'Neil stated the word honesty was used here. Are our employees honest? That was used here.

Chairman Gatsas asked by whom?

Alderman O'Neil stated I don't know if it was Alderman Lopez or Dave Hodgen himself. They entered a discussion of whether our employees were honest to pay back, which I think the majority of our employees are.

Chairman Gatsas stated you've had the floor.

Alderman Shea stated what I want to know is, going back now, is this restricted just to Fire and Police or would it be Highway employees as well as other City employees? David?

Mr. Hodgen stated in 1994 when the Board amended the ordinance to apply it only to Police and Fire, five different unions filed unfair labor practice complaints and we went to the Public Employee Labor Relations Board, who ruled against the City and said the City could not change the past practices by changing the ordinance, so this ordinance does apply to all City employees except non-affiliated employees, Airport employees and Library employees.

Alderman Shea stated so in other words school teachers would be covered by this as well.

Mr. Hodgen stated yes, that's correct.

Alderman Shea stated now the second point is, when you talk about accumulation of sick days, how many sick days do people who retire from either the Fire or Police, how many sick days can they accumulate?

Mr. Hodgen responded employees can accrue up to 120 sick days, can have that many on the books. When they retire in most cases, but not necessarily all, but in most cases employees can get paid for up to 90 days that they have on the books.

Alderman Shea stated okay, my question is, if somebody were injured, like a Policeman were injured in the line of duty, and that particular Policeman then has to go out...who pays for the first three days before Workers Compensation kicks in?

Mr. Hodgen responded the City does.

Alderman Shea asked who pays for the sick days? Does the employee, in other words, is that person, say a Policeman, does he have to pay the City three days of sick time? And then let's assume he gets injured but he only takes three days and he goes back to work. Does he lose three days of sick leave?

Mr. Hodgen responded yes, he would get three days of sick pay and three days would be deducted from his accrual.

Alderman Shea asked is it deducted from his paycheck?

Mr. Hodgen responded no, people have days on the books which say, we are entitled to earn 15 days of sick leave a year and that can be accrued up to 120 days for almost everybody.

Alderman Shea asked but if he's injured for three days, is it deducted from his pay check?

Mr. Hodgen responded no. It's the same thing as if I'm sick. If I'm sick for three days, I get paid and it is charged against by accrued sick leave. Nothing is deducted from by pay check. I get my pay check even though I'm out sick, or even though I'm out on Workers Compensation but all of the decisions haven't been made.

Alderman Shea stated I was told by someone that they lose three days of sick leave and it's deducted from their pay check, but that's not correct; they are still paid. Let's assume they get \$600 a week, they get \$600 a week when they're out, but three days are deducted from their sick leave.

Mr. Hodgen added from their sick leave on the books, yes.

Alderman Shea stated now basically then, they'd have to go out on Workers Compensation, so they go out on Workers Compensation and is sick leave deducted until it's determined that they are entitled to Workers Compensation?

Mr. Hodgen responded yes, under the ordinance that is a right of theirs to be paid sick leave until the Workers Compensation aspect is decided.

Alderman Shea stated okay, so then if it's determined that they are legitimately out because of an injury on a fire fighting tour or police detail, and they're out 20 days, then after the 20 days, is the three days of sick leave restored?

Mr. Hodgen explained if they are out for 20 days and then it is decided that it is compensable, they will be paid Workers Compensation for 20 days. They have already collected sick leave for 20 days...

Alderman Shea interrupted wait a minute, they've lost three days of sick leave.

Mr. Hodgen stated no, you don't lose three days if you are out more than 14 days, which is a complication. Under the Workers Compensation law, if the injury does not last at least 14 days, Workers Compensation will not pay for the first three days, and that then is paid to the employee but those three days are deducted from their sick leave accrual. There is no double payment so we don't ask them to repay the sick leave days. They were only paid sick leave, not both sick leave and

Workers Compensation in that case. If it lasts more than 14 days, Workers Compensation will pay back to day one, and then there is double payment for all of the days.

Alderman Shea stated okay, so basically if they're out 20 days, the first three days that they go out they are charged sick leave.

Mr. Hodgen stated well, it's deducted from their sick leave. All 20 would be charged, all twenty.

Alderman Shea stated I know it but, initially my understanding is the first three days, three days are deducted from their sick leave. Then the fourth through the twentieth day or whatever it is, they are paid Workers Compensation. But for the first three days what happens to their sick leave, nothing? Oh, so basically Workers Compensation will pay them for all 20 days, including the three sick days.

Mr. Hodgen stated yes, but if he's only out for 12 days, then Workers Compensation will only pay nine days and there are three days that Workers Compensation will not pay.

Alderman Shea asked so what happens? Do they lose their three days of sick leave?

Mr. Hodgen responded yes. They get paid but only sick leave for the first three days. Then there are double payments for the next nine days. We have traditionally asked employees to pay back the nine sick days, in which case we restore the nine sick days to their sick leave accrual.

Alderman Shea stated right, but the other three days is not restored.

Mr. Hodgen stated not restored and not double paid.

Alderman Shea stated it's a little bit confusing. I'm not sure.

Alderman Lopez stated I don't believe I used the word employees weren't honest. That's not the issue here. I think what's making it very complicated is the laws of the state and what the City is doing is not the way I'm used to it. But let's try to work through this so I can try to understand where you're coming from, Lieutenant, in asking us to table this until such a time. Now, I get hurt. I go fill out my paperwork as Workers Compensation. I'm on leave until the Workers Compensation is approved, which is 20 days, let's say for sake of argument. When my Workers Compensation is approved I should be restored my leave time

that I used as a benefit in line of duty for the City. That's the way I think it should work. Now the argument comes, should the employee pay instead of getting double. And the way our ordinance is reading here is that the sick leave will not be restored until they are paid. But then what I'm having a problem with, David, is what happens if the employee says no, I'm not going to pay it. And we continue to write him off. You said state law doesn't require you to take money out of the individual pay. Does the law say that you can take 20 days out of my Workers Compensation pay in order to pay for those 20 days I'm giving you back?

Mr. Hodgen responded no. We cannot make any deductions from employees' pay.

Alderman Lopez stated all right, I'll take that. So I think what the problem is here is in the end, and I agree with Alderman Roy, most people are going to pay it back because they received it. There's no doubt. But the problem we have is that someone is not going to do it. Now that this is aired out all over and we continue to write off Workers Compensation in the accounts, the City loses all that money. I think we're at a dilemma that we don't know what to do, because we can't take it out of their pay; we can't take it out of their Workers Compensation pay. We have to restore the leave back to the individual, which he's entitled to. Then when he's retired he's entitled to be paid for that leave. The Workers Compensation issue is a separate issue. And that's what I'm having a problem with. Are we making the right ordinance at the right time? If the law says I've got to give you your leave back, and you're entitled to your leave back, I think what David you're saying, by this ordinance, upon repayment of sick leave credit shall be restored. And is that going to hold up? Nobody knows, because if I'm entitled by law for you to give me my sick leave back, and there's no way for you to take it out of my pay or to take it out of Workers Compensation, by law you've still got to give me my sick leave back.

Mr. Hodgen stated as the ordinance currently reads, that's the case. As we suggest it should be amended, we would not give the sick leave back until they repay, and that might well be voluntary on their part because forcing people to repay is difficult. For everybody that voluntarily repays us, under the suggested amendment to the ordinance, we would restore the sick leave days, and then they would end up only being paid once under Workers Compensation.

Chairman Gatsas stated the write-offs that Alderman Lopez is talking about are probably employees that have not returned to work.

Mr. Hodgen stated they may not have or they more likely have retired without ever repaying us...retired or left for other employment...never repaid us, and it's very difficult for us to force them to.

Chairman Gatsas stated so let me ask you the question: These people that have retired and have gotten both their sick days and Workers Compensation, with this change in venue from the Supreme Court, could come back to the City and say I want my sick days again because I've retired.

Mr. Hodgen stated I guess the difference is, up to this point we have never restored those sick leave days.

Chairman Gatsas stated that's not my question. My question to you is this: With this Supreme Court ruling, those people that have 20-30-40 sick days could have gone to new employment, could now come back to the City and look for those sick days again, according to this Supreme Court ruling.

Mr. Hodgen responded yes, if they meet the other requirements for payment when they leave. They'd have to be here for at least 15 years or they'd have to retire.

Alderman Shea stated you know, what Alderman Roy said is really what is existing now. I don't see any difference between what you've said and what is existing now. Is that correct?

Mr. Hodgen responded yes.

Alderman Shea stated so basically it would disagree with what Alderman O'Neil is...in a sense wouldn't it disagree with what he is saying in essence? Because you've said that you were out and it was decided that you had an injury sustained; you received Workers Compensation; you then paid back the Workers Compensation to the City for having received benefits for sick leave. How does it differ from the change here.

Alderman Roy stated when I gave the money to the City, then they reinstated my sick days. I don't disagree with what Alderman O'Neil said. I don't know that there was any difference in what we said.

Alderman Shea stated there was quite a difference in a sense because you're talking about what previously existed that the City has used and he's talking about the ruling that the Supreme Court has indicated that the person who has filed against the City did not restore any money back and received money for his sick leave, so apparently that's what the difference is.

Alderman Roy stated I guess the difference is that when I paid it back, I only got paid for each day once. I don't think we need to get into the merits of that case. There were a lot of other extenuating circumstances in that case. The ultimate was

he hadn't paid back, and they said he doesn't have to pay back, but you have to restore his sick days. That's what the Supreme Court said and Alderman Gatsas is right. If I were to have said, I'm going to retire now, then they would have had to give me my sick days and I wouldn't pay them back, and then I would have been triple dipping. To me it was a matter of principle.

Chairman Gatsas stated let's do this. We've had a lively discussion about this and I think that Lieutenant Bartlett has agreed that nobody is looking for triple payments. And I think that that's what the City is looking to prevent because we have a case in front of us, and Alderman Lopez, we've already heard, in Accounts, they're writing off a bunch of days that certainly can be charged back, if they wanted to come in and with this law suit, follow suit, because there's a precedent on the table.

Lieutenant Bartlett stated and like I said earlier, forgive me for sounding rushed. When I heard about this today, Aldermen, and I read Ms. Lamberton's letter and saw the triple pay, like I said, I can't see any Fire or Police employees receiving triple pay, and then when I read her proposal to the ordinance, what was concerning to me was...for employees of the Police Department and employees of the Fire Department, the following shall apply. It just seems like we're being singled out because of this one case. And the only reason that I'm here, Sir, is just to ask this Committee to slow the process down so we can take a good long look at it and see if this is the best for the City and the employees. That's my purpose for being here.

Chairman Gatsas asked did you look at the ordinance?

Lieutenant Bartlett responded I did. I looked at the proposed change.

Chairman Gatsas asked and where do you see in that ordinance that it says Fire and Police?

Lieutenant Bartlett responded 33.064, Employees Injured in the Line of Duty (B). It reads 'For employees of the Police Department and employees of the Fire Department, the following shall apply.'

Chairman Gatsas asked is there a reason, David, why it's only there and doesn't apply to all other City employees?

Mr. Hodgen explained this is the amendment from 1994 where the original intent of the Board of Mayor and Aldermen was to take this benefit away from everybody except Police and Fire. As I said a little earlier, that was challenged by other unions and we lost, so technically speaking, the ordinance says it's only

Police and Fire but in fact it is everybody in the City except non-affiliated, Airport and Library employees. Highway Department, Park & Recreation, all of those folks are beneficiaries.

Chairman Gatsas asked so can we change the ordinance so it includes everybody?

Mr. Hodgen responded that's not what was recommended and probably would complicate things and would require more work, I think. Perhaps Tom Arnold from the Solicitor's office would like to comment.

Mr. Tom Arnold, Deputy City Solicitor, stated I'm sorry, I didn't hear the question. I was speaking to Mr. Lopez at the time.

Alderman Lopez asked why wouldn't we make this approval at this time for all City Employees and not single out the Police and Fire?

Mr. Arnold explained first of all, the reason the ordinance was drafted the way it was is because the current ordinance that we are dealing with that the Supreme Court interpreted is limited to Police and Fire. Now I understand from Mr. Hodgen about certain Public Employees Labor Relation Board rulings that apply to other unions. However, under state law we cannot amend a labor agreement by changing an ordinance. So that would require some further research to determine whether we could do that or not, but this is more or less a fix to the immediate problem we have that the ordinance that the Supreme Court interpreted is limited to Police and Fire.

Chairman Gatsas stated I understand. That was the ordinance they looked at when they made their ruling.

Alderman Shea stated I want a clarification because I was told that when a person goes out on sick leave, I was told this, that his pay is docked. So I want to make it clear that that's not a true representation, that a policeman who goes out on sick leave for three days, they get their same pay, but they use sick leave as a result of that. So they lose three days of sick leave but they're not docked in their pay. Is that correct, David?

Mr. Hodgen responded yes, the only exception is if they had no sick leave on the books at all, but yes, if an employee has sick leave on the books and he goes out for three days he gets his pay and it is charged against his sick leave accrual.

Alderman Shea stated okay, I want that clarified because I was told that it's taken out of their pay, but that's not the case. And I figured that wasn't the case but anyway, thank you.

Alderman O'Neil stated and I assure you, Mr. Chairman, I'll keep my cool this time. I appreciate the courtesy you gave me earlier to speak. This Supreme Court case, to the best of my knowledge, is extremely, extremely unique. It's more than just what we're talking about here. I don't want to go into it, some of the things that I'm aware of, but it's much deeper than a normal case. That's why it went all the way to the Supreme Court, and probably at some point there should be a briefing to the full Board about it, because it is very involved, to the best of my knowledge. I'm just suggesting as Lieutenant Bartlett has, that we don't use this for the premise to move forward. There hasn't been another one of these situations that I'm aware of, that would result in what Ms. Lamberton called the triple pay, or whatever. There haven't been a lot of those. This case was very, very complicated, so I would urge the Committee that maybe allow the discussion about the Supreme Court case to happen at the full Board level. And I think we need to be completely briefed on it. Secondly, I'm trying to understand the language. It only says...and maybe somebody can help me...the Justice has referred to language...it only talks about Fire and Police, but yet it already exists on the book that it affects every other employee. Why wouldn't we clean up the ordinance that says it affects every other employee?

Chairman Gatsas responded the ordinance, Alderman, that was taken and challenged at the Supreme Court, is the ordinance that you see before us, 33.064 (B) (2), that stated Fire and Police, so that was the ordinance that they made their ruling on.

Alderman O'Neil stated I guess my question, Mr. Chairman, is why is it broken down? Why don't we just say every City employee?

Chairman Gatsas responded because I believe what Dave Hodgen was saying that in 1994 the Board wanted to rule that the Fire and Police didn't fall under the same category as the other employees, so that's why they put this in place. However, the loophole only existed here. I hear what you're saying because it is confusing. Why shouldn't we include everybody? And I think what we'll do is have the City Solicitor bring something back that includes everybody, because the guys that we're writing off at the City shouldn't be getting paid twice.

Alderman O'Neil stated and if I could, Mr. Chairman, I didn't look at the accounts. I didn't know that was coming up. I'd be curious where these employees are, what departments. Are there any, Alderman Lopez, that you're talking about tonight, that are Police or Firefighters?

Alderman Lopez responded none.

Alderman O'Neil stated I guess my point, Mr. Chairman, is we should slow down and just make sure. I think we're reacting or staff is reacting to a very unique Supreme Court ruling, and that we should slow down and make sure we do this right because what we do is going to have an effect on all our Police Officers, all our Firefighters, and all our employees.

Chairman Gatsas stated and I don't think anybody disagrees with that. I don't think that anybody agrees, including Lieutenant Bartlett, that anybody should get paid twice, let alone three times. I don't think Alderman Roy has suggested that. I think that he's showed that in his place as a fireman he paid it back once he got it. But we're seeing a case that has paid him triple.

Alderman O'Neil stated again, Mr. Chairman, not to tie...I think it would be a good educational purpose for just the little bit I know about this case...

Chairman Gatsas stated I read the case.

Alderman O'Neil stated, no, there's more involved than what's on the...There's a lot more involved on this thing, and it might make...at some point to have the full Board discuss it. There is a reason beyond the ordinance that this thing went deeper, why it even got to the Supreme Court.

Alderman Shea stated there are two issues here. If we continue to have this and do nothing for it, what we're doing is we're delaying a process. Let's assume that we adopt the policy, but then if we find that the Police and the Fire have problems with it, they can come back to us too. So it works both ways. In other words, it can work either way. The examination can take place at a future time, but as long as we are representing the entire City, we have to protect the interests of all the people. And you people are arguing from your point of view and I don't disagree. But it is possible that we can change something that obviously adversely to your point of view affects you, to benefit you either way. But I'm saying if we don't do anything there is cause for abuse, even though we say that there may not be, there could be. And the point is that we're opening up, in my judgement, for other employees, or if we just do nothing at all and table this, then it goes into effect because it still affects...so we can affect not only Fire and Police, but every City employee in any kind of category that they're in. So I guess what I'm trying to say is in order to protect the interests of everyone concerned, I think it's best that we change the ordinance and protect the City at this time, but yet if there's a problem that is developed because of this particular ordinance, then you can come back and say, look you guys changed it but here are some things that are adversely affecting us as Fire and Police, because once we open this up, everybody in the City is impacted now. It just doesn't pertain to you. It pertains to Fire, Police, Highway, people working at the Parks & Recreation Department, school teachers,

and so forth. So it does impact everyone. It's far-reaching. So I'd rather be on the side of caution than the other way. But that's just my own opinion.

Chairman Gatsas stated let me see if I can get the Solicitor. How quickly do you think that you can work with Dave Hodgen that's clear on both, not only Fire and Police but also all other City employees?

Mr. Arnold responded I couldn't tell you how long that will take Alderman, because...

Chairman Gatsas stated well I'm going to tell you how long it's going to take. It's going to take until next week so that we can get this done before we come to a full Board meeting, because the discussion has to happen and it can't look like we're singling out Fire and Police. And I don't want anybody to believe that that's what was happening. I think that it was clear that the decision that was made by the Court was based on this ordinance, and I think Mr. Hodgen and the Solicitors were only bringing in an ordinance change that would affect that. And I think that we need to get this clarified and get it clarified as quick as possible. So what I'm going to look for is a motion to bring this in next week before the full Board so we can have the discussion on February 19<sup>th</sup>. So, David, if we can schedule a meeting for HR on the 19<sup>th</sup> before the full Board meeting. That way we can hear it in here and get it to the full Board.

Alderman Lopez stated and I agree with the way we're going with this so there is not singling out the Police and Fire. There's nothing wrong with the ordinance as long as it applies to everybody, and I think that you'll agree with that, or do you not?

Lieutenant Bartlett responded I understand the reasoning for the ordinance and the way that things went back in 1994. And like I said earlier about appearing rushed, I just would rather have more information than not, and honestly, that's my only purpose for being here tonight, is just to ask that we have some more information.

Alderman Lopez stated and David, before I do anything, if the Supreme Court's ruling is that we can do something, then we have the right to do that with all employees. Do we have to negotiate that with unions?

Mr. Hodgen explained the Supreme Court said if the City disagrees with their interpretation of the ordinance, we can amend it. I don't want to tell you that the City unions will agree that we can do that unilaterally and that they have nothing to say about it. I fully expect there will be pushback from City unions over this matter, even if the amendment that we've suggested is adopted.

Alderman Lopez asked Mr. Arnold, in reference to what the Chairman said, is that what you're afraid of is that you'll have to negotiate with unions? I don't understand that if we make an ordinance that's fair for all City employees why we would have to, because of the Supreme Court ruling.

Mr. Arnold responded because it was stated in the Supreme Court ruling that there was another state statute, 273-A, that states that we cannot alter a collective bargaining agreement by passing an ordinance, and that's what it will take some time to look at. I want to make sure that we don't violate that state statute, which the Supreme Court also referred to. It may be that we can make amendments without doing that.

Chairman Gatsas stated I don't think that any union person is going to come in here and for one second believe they should get triple payments for Workers Compensation. I would love to have them come and tell me that in this Committee that that's what they should get.

Mr. Hodgen stated we already have a grievance from a firefighter who, on the basis of the Supreme Court decision, says that we have to restore three days of sick leave to him, and he is not obligated to pay us those three days. That's a true case that exists right now.

Chairman Gatsas stated let's just get the ordinance; get it to us. Let's get back before this Committee, and we can have a discussion at the full Board. Alderman O'Neil, my suggestion is that on the 19<sup>th</sup> or maybe tomorrow night, the City Solicitor be prepared to come before this Board and talk about that case and give us the particulars, because it sounds like you know a little bit more than the rest of us.

Alderman O'Neil stated I have some information, but if he's in a better position, Mr. Chairman, tomorrow night or the 19<sup>th</sup>, whatever night he's in a better position. And Mr. Hodgen must have been involved in it, but Alderman Roy and I both are aware of a couple of little sidebars to it that I'm sure were brought up.

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

Chairman Gatsas asked, City Solicitor, you're going to have something for the 19<sup>th</sup>, correct? We'll have a meeting of HR before the 19<sup>th</sup>.

On motion of Alderman Gatsas, duly seconded by Alderman Lopez, it was voted to reconsider the ordinance amendment providing increases for the Library Clerk I and Library Clerk II positions. There being none opposed, the motion carried.

Alderman Shea stated my motion, because I didn't have a chance to be here, would be that we approve the Clerk I and Clerk II positions. The Librarian has indicated that this would come out of what she currently has in her budget. I would like this to go to the Board that this Committee supports it. Also, I must compliment you, Mr. Chairman, of your correct reasoning of the amount of pay that these people would receive. That was a very smart move on your part.

Chairman Gatsas asked the City Clerk how to proceed to override the original vote of the Committee.

City Clerk Carol Johnson stated the first thing you have to do is take a vote on the motion which is on the floor to reconsider.

Chairman Gatsas stated we just took that. It was unanimous.

City Clerk Johnson stated when that reconsideration takes place, that puts the motion to send it to the full Board without recommendation back on the floor. My assumption is that the Committee would wish to vote that down and then make a new motion. You're going to call for a vote on the motion to refer the Library Clerk I and II positions to the Board of Mayor and Aldermen without recommendation. That's the motion on the floor at the moment. Alderman Shea, if I understand what you were saying before, you want to vote nay, because you do not want this to go to the Board without a recommendation. That's the motion on the floor at this time.

Alderman Shea asked I can vote on that, can't I?

City Clerk Johnson responded yes, you can.

The Committee voted unanimously to defeat the motion sending this item to the full Board without recommendation.

On motion of Alderman Shea, duly seconded by Alderman Pinard, it was voted to forward this item to the full Board with the recommendations of the HR director.

Discussion ensued on setting the next date to address item 3.

## **TABLED ITEMS**

*A motion is in order to remove the following item from the table.*

4. Communication from Mayor Guinta, proposing a new department of Facilities, Grounds and Recreation through the consolidation of the Parks, Recreation and Cemetery Department with the Facilities Division of the Highway Department.

**(Note: Item includes new classification of Facilities, Grounds and Recreation Director forwarded by Human Resources Director)**

*(Tabled 1/23/08)*

This item remained on the table.

There being no further business, on motion of Alderman Shea, duly seconded by Alderman Pinard, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee