



MINUTES OF THE PERSONNEL COMMITTEE

TUESDAY, MAY 25, 2021, 4:30 PM

AMENDED

Virtual Meeting. Public may join via Zoom.

A. ZOOM MEETING INFORMATION.

I. This item contains documents which provide call in information and instructions for the Zoom meeting.

B. ROLL CALL.

I. Members: Ald. Bill Galvin, Ald. Barbara Dorff, Ald. Veronica Corpus-Dax, Ald. Brian Johnson

Present: Bill Galvin, Veronica Corpus-Dax, Barbara Dorff, Brian Johnson

Others Present: Ald. Lynn Gerlach, Ald. Mark Steuer, Ald. Kathy Lefebvre, Fire Chief David Litton, Interim Police Chief Jim Runge, Finance Director Diana Ellenbecker, Human Resources Director Joseph Faulds, Asst. Fire Chief Rob Goplin, Asst. Fire Chief Ryan Gibbons, Police Commander Kevin Warych, Asst. Community Development Director Cheryl Renier-Wigg, Attorney Timothy Hawks, Attorney Geoffrey Lacy, HR Operations Manager Melanie Falk and others.

C. APPROVAL OF THE AGENDA.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to approve the agenda.
Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, Abstain- None.

D. APPROVAL OF MINUTES.

I. Approval of the minutes from May 11, 2021.

Moved by Ald. Veronica Corpus-Dax, seconded by Ald. Barbara Dorff to approve.
Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, Abstain- None.

E. REGULAR BUSINESS.

I. Consideration with possible action on the request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.

a. Administrative Clerk - Community & Economic Development

Moved by Ald. Brian Johnson, seconded by Ald. Barbara Dorff to approve.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, Abstain- None.

2.

Consideration with possible action on the grievance filed by the Green Bay Fire Fighters Local 141 dated November 19, 2020 regarding medical evaluations.

The Committee may convene in closed session pursuant to Section 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to hold a hearing on this matter.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, No- None, Abstain- None.

Moved by Ald. Barbara Dorff, seconded by Ald. Brian Johnson to enter closed session.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, No- None, Abstain- None.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to return to open session.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, No- None, Abstain- None.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to hold until the next meeting.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, No- None, Abstain- None.

3. Consideration with possible action to have staff study the need for more staff for the City Attorney's office.

Moved by Ald. Barbara Dorff, seconded by Ald. Brian Johnson to refer to the Finance Committee for discussion at their June 22, 2021 meeting.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, Abstain- None.

F. INFORMATIONAL.

I. Report of routine personnel actions for regular employees.

Moved by Ald. Brian Johnson, seconded by Ald. Barbara Dorff to receive and place on file.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, Abstain- None.

2. Next meeting date: June 22, 2021

G. ADJOURNMENT.

Moved by Ald. Brian Johnson, seconded by Ald. Veronica Corpus-Dax to adjourn.

Motion Passed.

Yes- Barbara Dorff, Bill Galvin, Veronica Corpus-Dax, Brian Johnson, Abstain- None.

VERBATIM MINUTES

- Are we ready to go, Joe?
- [Attorney Chavez] Yes.
- Yes we're ready.
- Okay, this is the City of Green Bay Personnel Committee meeting on May 25th at 4:34 p.m. I will do the roll call. Alder Corpus-Dax.
- Here.
- I'm sorry I caught you with that potato chip.
- That's all right.
- Alder Johnson.
- I saw his mouth move I think he said here.
- Alder Dorff.
- Here.
- And Alder Galvin is here. I'll entertain a motion on the agenda
- Second.
- and second. All those in favor, say aye.
- Aye.
- [Both] Aye.
- That passes unanimously. I'll entertain a motion on the minutes.

- The motion's approved.

- All right, all those in favor say aye.

- [Both] Aye.

- Aye and that passes unanimously. Onto regular business. Consideration with possible action on a request to fill the following replacement positions and all subsequent vacancies resulting from internal transfer. Administrative clerk, community and economic development. Does anybody have any questions for staff on this position?

- Do approve.

- Second.

- All those in favor say aye.

- [Both] Aye.

- Okay, onto number two. Consideration with possible action on the grievance filed by the Green Bay Firefighters Local 141 dated November 19th, 2020 regarding medical evaluations. The committee may convene in closed session pursuant to that but before that, I have something I have to read before we even do something like that. So just give me a second. I'll pull it up. All right. All right, here's what I have. We're now onto item number two, consideration with possible action on the grievance filed by the Green Bay Firefighters Local 141 dated November 19th, 2020 regarding medical evaluations. This grievance is before the personnel committee meeting at this time upon the mutual agreement of the parties for extensions of time rather than at the meeting that was first available after filing. This is a quasi judicial matter. It is the goal of the personnel committee to provide and conduct a hearing that is fair in form, appearance and substance. To ensure that this hearing satisfies these goals each member of the personnel committee please confirm the following by stating I confirm. Number one, I do not have an interest or conflict of interest in this matter. Alder Dorff.

- I confirm.

- Alder Corpus-Dax.

- I confirm.

- Alder Johnson.

- I confirm.

- I have not received any communication from any person or party about this matter. Alder Dorff.

- I confirm.

- Alder Corpus-Dax.

- I confirm.

- Alder Johnson.

- I confirm.

- And I confirm also to both of those items. A decision will be made based upon the labor agreement between the city of Green Bay and the Green Bay Area firefighters local 141 in effect, as of the date of the event complained of. At this time the following of materials have been submitted into the record. Letter to Jeffrey A. Lacey with exhibits one through seven dated April 22nd, 2021, were two agreements exhibits, physical examination grievance. Number three, director false step three grievance response to the personnel committee regarding GBFFA grievance medical evaluation. Pursuant to section 5.5.3 of the labor agreement, the committee may decide whether to hold a fact finding hearing. No fact finding hearing has been requested but the Union has requested 15 minutes to provide oral argument and I'm advised that both parties are ready to proceed with this hearing tonight. Wishes the committee with respect to this request. Take and we need to take a vote to decide whether to hold a hearing or not.

- I move that we hold a hearing. I need a motion, is that what you wanted?

- Yes, that's the motion, I need a second.

- Second.

- Okay I have a second, all those in favor say aye.

- Aye.

- Aye.

- Aye.

- Okay. So we will be holding a hearing. Each party will be allowed 15 minutes to present their position. Personnel committee will make findings of fact and conclusions of law based upon the testimony presented as well as the documents entered into the record. To ensure that this hearing proceeds in orderly fashion, I'll describe the process that will be followed. One, the grievant will have 10 minutes to present its argument in support of the written submissions. Two the city will have 10 minutes to present its argument in support of the written submissions. Three, the grievant will have five minutes for a closing statement. Four the city will have five minutes for a closing statement. Five, throughout this process, the personnel committee members and the chair may ask questions of any speaker. Please answer the questions asked and do not engage in debate. Six, if anyone needs accommodations to hear or speak, please advise me now assistance will be provided if necessary. Does anyone need accommodations? Okay and then seven, once arguments are concluded the committee may go into closed session to deliberate and a decision will be issued at the next committee meeting. Alright. Is the grievant ready to proceed?

- Mr. Chair, we are ready to proceed. I believe though that the opening statements included an extension of time to 15 minutes

- Alrighty.

- I didn't hear that. I didn't understand that. What was said?

- Yeah, let's see, is my-

- Yes sir, go ahead. Go ahead.

- Is this better? Is this better?

- Yeah.

- Yeah.

- Okay. I said that I understood that the extent that there was in the initial remarks an extension of time for the opening statements of both counsel or both parties from 10 minutes to 15.

- So you're saying you believe we have, you have 15 minutes to for an opening statement and presentation in five minutes for closing?

- Yes sir.

- A total of 20 minutes.

- Yes sir

- All right. I guess I don't have an issue with that. How many have an issue with that? Okay.

- I also have a housekeeping matter. Do we have a shared screen feature available to us here?

- You should. Joe do, are you running this or is someone else from your staff running this meeting?

- I am. Attorney Hawks are you able to share your screen right now?

- I am.

- Is it working?

- Can you see that?

- Yes.

- [Attorney Hawks] Okay. So the-

- [Joe] Attorney Hawks, one thing as well the city has the same document and I guess we would ask the committee that either Attorney Hawks or ourselves we can submit this Article 8 as a document for the committee to take under consideration.

- I don't have a problem with that. Does anyone on the committee have a concern with that? No? Okay, all right. All right let me, is, Joe are you able to set a timer but not that I'm going to hold anyone to it till the, you know the exact second but just so we keep things you know rolling along and under control.

- [Joe] I if she would be able to do that. as their feedback on that?

- I was actually just going to suggest that it, that I would be in charge of the timer.

- All right.

- [Joe] Thank you.

- All right. So when Mr. Hawks, is that it, are you ready to proceed?

- [Attorney Hawks] I am.

- All right then you may begin when you're ready.

- [Attorney Hawks] All right. The committee has received from the department a memorandum regarding the reasons why it should dismiss this grievance and I'm here to respond to each of those arguments and explain why they are wrong. On the way to that discussion, we began with us a section of it called the background in the memo that you all have received. In that background the city writes "The independent physicians determination "that certain firefighters only three "of the 1900 go stress testing prior "to being cleared for duty is what the association grieves." It is really important for me to emphasize that that is not what the association grieves and that the committee has been misled by that representation. What the association grieves is the city's and the department's refusal to bask regarding the matters dated by a significant change in the physical examination process involving firefighters. Along the way you'll hear me say at least once that firefighters, other than for the purpose of illegal drug testing do not check their rights, their constitutional right of privacy at the door of the firehouse. You should know that this is not the case involving simply the question of the stress test or of the three involved in the subsequent testing process. It is a question about the duty of the city and the department to engage in bargaining. Remarkably, this collective bargaining agreement contains a clause that incorporates the duty to bargain in good faith during the term of the contract as a contract provision itself. That means the city does not have only a statutory duty to bargain during the term of the contract, it also has a contractual duty to bargain during the term of the contract. The union came to the city and said, "Bargain with us please about these sorts of issues" and it's not just about the stress test. It is about a number of issues that are created by the stress test. As are indicated in a paragraph in the Union's submission to you at the beginning anticipation of this hearing. So let me again go quickly now to turn to the defenses that the city raises and address each of them in order. The first of those is that the contract requires a present dispute be resolved by declaratory ruling not by grievance. The grievance is there for improper, wrong Take a look at the shared screen. I have taken the time to highlight in yellow, the language in this article, the contract that relates to changes in work rules and highlight in green this language that relates to standard operating guidelines. So you will find that the, that the in green you'll see the sentence "Therefore the parties agree to the following process "for recommending, negotiating, approving "and implementing SOG." So identify and there in sub point three, the contract says "If there's a dispute over bargain ability "then the parties shall immediately "seek a declaratory " That's fine, that relates only to SOGs. Now SOGs are a very specific, well-defined, well understood term in the operations of the fire department, standard operating guidelines. This is a clause that applies to standard operating guidelines only. The issue that the Union raises does not deal with the standard operating guidelines. This doesn't appear everything in green in this article is irrelevant to the case. Everything in yellow is relevant to the case because we're dealing with a work rule. We're dealing in essence with an implicit if not express order of the department to comply with the medical examiners prescriptions at the risk of losing their job. Now notably the medical examiner can't cost anybody the loss of their job, only the chief can and only on a review recommendation to a police and fire commission but the Union understands that the chief isn't making this a voluntary option for firefighters to comply with those prescriptions, it is a mandatory prescription. If the chief was to say tonight to you, "Nevermind I don't care, "if they don't have to follow the prescriptions "of the medical director it's up to them, "this grievance is over." I doubt that the chief is going to volunteer that information to you today. Okay so let's look at the changes in the work rule's language. You have changes to work rules that affect wages hours and conditions of employment which is the standard definition of mandatory mutual agreement before becoming effective employer agrees to negotiate changes of the existing work rules or the established new work rules with the Union they shall be posted. All right so as a present contract according to, as argued by the city requires this dispute to be resolved by a declaratory ruling, answered no, clearly wrong. The contract specifies only that SOGs go to DR, Declaratory Ruling process it, according to the language of this

- Excuse me Mr. Hawk.

- [Attorney Hawks] Yes, sir.

- Okay so you're saying that this change in the medical physicals that the firefighters are receiving is a change of work rule and not a standard operating guidelines.

- [Attorney Hawks] Yeah and actually this deals with the sec in defense of the of the employer that is in our opinion, incorrect. It's not just a change but also the establishment of a new work rule. So if you go down to the second sentence that's in yellow towards below the green, the employer agrees to negotiate changes in existing work rules or the establishment of new work rules with the Union, they shall be posted. So the answer to your question is this is a work rule and in our submission initially to the committee we included the dictionary definition of a rule and put in context of work and clearly when the chief says I am ordering you to follow the prescription of the medical examiner at penalty of your job, it's a work rule. This is what you must do to be able to comply with the directions of the department. It is a work rule-

- Okay has the fire department given firefighters physicals in the past?

- [Attorney Hawks] It has. It has indeed. What is different is, it has never ordered them no, no prior physical, required them to undergo a stress test or for that matter, a variety of other proceeding in the current contract between the city and the medical and the physician provider help and providing the service.

- So in-

- [Attorney Hawks] the firefighter,

- Just one more word. I'm sorry.

- [Attorney Hawks] No firefighter prior to this the facts giving rise to this grievance has ever been directed to engage in a, in a stress test or other procedures at the risk of loss of their job. That is a function of the department and the chief's order not of the medical directors order. So that is the change that we're talking about.

- So in the past, if a firefighter went in for their annual physical and whosever giving the medical exam had a concern about their fitness for duty how was that handled?

- [Attorney Hawks] To the, to my client's record, my client's memory with regard to cardiac conditions which is area that I have inquired about, I can't, I have to limit my answer to that area it has never happened before. We have had firefighters who have departed the service as a consequence of cardiac related issues but there were never identified or reported to the client, my client's memories as a consequence of the physical exams.

- And, well but isn't that what the physical exam is there for, is to find out if they have any existing medical issues that could affect their ability to perform their job?

- [Attorney Hawks] Yeah the issue there is where do you draw the line between which ones do and which ones don't

- Okay.

- [Attorney Hawks] and in this case, drawing that line is very important. In the past that line has been drawn by the employee's own treating physician. We've had cases in the department of just to bring up aortic aneurysms in firefighters that have had the result of having them remove from service as a consequence of a duty disability but they were identified and located by the either the treating physician or by other circumstances and then brought to the department's attention not by physical exams Not that-

- Was it, I mean, what if had been or should it have been anticipated that these physical exams may find issues?

- [Attorney Hawks] Yeah, I'm sure it is possible but in other departments and in other circumstances on a point the Union wants to negotiate with the department and the city is, do we involve the treating physicians or with the employee's own physicians assessment and evaluation of the condition before we put them out to

pasture? And the answer to that question is clear from the Union's point of view is absolutely. No physician's opinion is infallible.

- Okay. So moving on to work rules and standard operating guidelines can you point out to me where it shows somewhere in writing that the work rule that these physical exams are listed under work rules as opposed to not being listed under standard operating guidelines?

- [Attorney Hawks] To my client's understanding there it is, there is no commonly used phrase or label of work rule in the operation of the fire department. So the only answer that we could provide this committee within anticipation for this meeting today is the one that we have already provided which is the dictionary definition of work rule or yeah, of work rule which you have in the papers that we've submitted which is a direct action as conduct you much, you must engage in. What is okay and what is not okay in terms of your conduct on the job.

- So this is what I'm thinking right now, what this whole thing boils down to is how this committee interprets whether this physical exam with the follow-up stress test falls under work rules or standard operating guidelines.

- [Attorney Hawks] Yeah and this is important to understand. I would, I would disagree on a point it's not what, it's not whether or not what the medical director says about the fire, this issue is what the chief says about this issue. If the chief is saying to his employees that you must undergo these directed procedures by the medical examiner or the physician at risk of your of losing your job then it is a work rule.

- Okay. All right I'll accept that that's the bargaining units interpretation and I'm sure the city will argue theirs, their side of that then. All right, I'm sorry for the interruption but I just want to make sure I'm understanding everything here thank you.

- [Attorney Hawks] I appreciate the questions actually. It makes understanding so much better. Then the third, the second point of the defenses of the grievances untimely and in this argument the city says it's untimely because the grievance was ripe at the time that the contract was let and the Union says absolutely not this grievance was ripe only when it became clear two, of two things. One failure to follow the guidelines, the director of the medical examiner would result in discipline and two, the demand to bargain was denied. So the Union made a specific demand to bargain preceding the collective and was told, no we're not gonna bargain about it for Pete's sake Then the whole principle of robust collective bargaining during the term is that if something comes up that's a problem the employer and the Union, both can come up on either side have a duty to bargain about it. What's unique about this case is that duty exists by virtue of the contract as well as, the third, the third point that the employer raises is that subject matter is not a mandatory subject of bargaining, wrong again. These were talking about the impacts of the decision not just a decision to require stress tests or the decision to undergo a physical exam. The union agrees that physical exam should be granted. The union agrees that inappropriate cases a stress test should be directed. What they don't agree with is that the department, is the department's refusal to talk about the terms and the circumstances there which that stress test will be ordered. They have absolutely no issue with the physical exams. That that is not an issue in this case whatsoever. The union agrees with that. They will agree in appropriate cases that stress tests should be ordered and that their members should comply. They're asking for, no they have proposed a written specification of the criteria by which the stress test will be ordered. The department has refused to discuss that

- Okay, if I can interrupt again. So the bargaining unit has no problem with a yearly physical.

- [Attorney Hawks] Right.

- Okay, what they have a problem with is as part or resulting from that physical, the examiner, the person giving the physical has a concern and wants to follow-up with a stress test that's what the bargaining unit has a problem with, is that correct?

- [Attorney Hawks] It's not just that though, I've got to be careful about limiting the scope of the issue and I don't have, I cannot call up quickly the memo that was submitted to the committee but in the end page, you'll see a paragraph that identifies each of several impact items that the Union wants to negotiate with the department and they range from who pays for what. If there's a stress test that's ordered by the department and the treating physician of the employees says no stress test is ordered but the department's physician says a stress test is ordered, right now it's a department's position that the employee has and the employee through his insurance has to pay the cost of the stress test. The union say, "Wait a minute, "if his treating physician says that's unnecessary "why do we have, why does he have to "or she have to pay the cost of the stress test." That they, that is sort of that question.

- Right, right.

- [Attorney Hawks] And we're here to say, hey, the party should sit down and talk about it and figure it out and that's what the Union is asking for as a remedy in this case, it would appreciate this committee saying to the department and the city like, "Go back, "talk about this guys, figure it out "and don't come back to us again, get it solved.' That is a remedy that we're asking this committee to endorse.

- Okay.

- Times up.

- I'm sorry.

- Time is up.

- Oh okay I'm sorry. It and I guess I didn't anticipate me asking questions during this presentation time but I've taken up a lot of his time. So Mr. Hawk, until you're done with your presentation

- [Attorney Hawks] Good.

- and I'll keep my questions.

- [Attorney Hawks] I will do and I'll be quick and I want to encourage the committee to allow opposing counsel the same amount of time to The Union bargain is not as a mandatory subject of bargaining, I've already discussed it. At this point there's no work rule that has been changed. Well, this goes back to this definition of work rule issue. We think that a work rule is any rule of conduct, any order by the chief to conduct an employee, to an employee to conduct themselves in a particular way as a work rule. There was no work rule that required them, required employees to follow the orders of the physical exams in the past which we are aware. So there is a change but the problem with it is the second point there and it's one that I made earlier. It's because we don't need to rely simply on a change of work rule, the contract specifies that the employer agrees, that the city agrees to negotiate changes in existing work rules or the establishment of new work rules. Here we have something that the employers required for the first time in the history of the relationship history by the way, I have been a part of since nine, since early, since about 1990. So I've got about 31 years of history of the department and the fire department in mind. So what we have here is a change, a work, either a change or the creation of a new work rule that has not previously existed and the contract addresses that specifically and even if the contract didn't, state law does. The parties have never negotiated the contents, a medical examination is performed by the contract of medical provider because it's never been an issue, it's not a defense. There's never been an issue about the contents of the medical examination to be. I would add one more thing. I talked, I spoke to the chair he's mentioned in the departments, in the department's argument,

John Crabb, who on the safety committee, I said, "Was there anything at all in "the materials that you were provided "or the discussions that occurred in the letting "of this contract that alerted you to the, "whether or not there was going to be a change "a procedure." So he said, "You could have raised the issue back "at the time you were participating in his testimony "today if we were taking witnesses or at the time of hearing "if will be no, there was no such information provided to him. Then alerted him to the depth of scope of the examination and the orders of the department would be so radically different from what they had The last defense of the city and the department is that the chief's obligation is regulatory not respected to the degree suggested by the Union. It's we simply disagree with that the state regulation directs the chief to take out of service firefighters with "known" inability to perform the duties of the job. It does not open up the door to the chief to require firefighters to undergo physical examinations or any other kind of examination that permits the city and the government to basically investigate the very personal nature of their lives, their bodies, where they when there is not a known basis for being disqualified from service as a firefighter and with that I'll answer any other questions you might have.

- Do any of the committee members have any questions for Attorney Hawks? Right, I can't see Brian, I don't know if Brian has any questions.

- [Alder Johnson] I'm good right Alder Galvin.

- Okay, all right. Then we'll, this will be a city of Green Base opportunity to re, to get, to lay out their case and then east side will get roughly five minutes to make closing arguments. Director Faulds, I guess you'll be leading the charge here.

- Yeah. We'll have attorney Geoffrey Lacey represent the city and present their argument.

- All right very good, Mr. Lacey when you're ready.

- [Geoffrey] Sure thank you everybody and I've got a timer running so I'll try to keep control of my time as well because you know, lawyers tend to talk too much but anyway I wanted to just address a couple of things that Attorney Hawks mentioned, which I think are part of the problem with this case and actually Joe do you want to just leave that out, let's just leave that up if you can.

- Yeah I can share.

- I'm sorry, Tim you had it up do you mind just throwing that back up?

- Yeah no, no I'll put it back up.

- Yeah, that'll be easier. Sorry I forgot that, I forgot that wasn't your job.

- Does this, does this work?

- [Geoffrey] Yeah, that'll work.

- We got it Attorney Hawks.

- Thank you.

- Anyway know in a grievance situation there's some sort of action, something that the city or the department in this case has actually done that causes the grievance. You know, in this case, the city, the department hasn't done anything it has simply continued to do what has always been done which is have firefighter undergo annual physical examinations and presumably be certified or not certified, I suppose, by that independent third party physician, the Union frequently refers to this as the department's physician. That's just not an accurate

description. This is, you know, Bellin Health. It's a third and then actor and they're the ones that make the determination as to whether a firefighter is, you know, appropriate service. According to Mr. Hawks, that the purpose of the physical examination is essentially a completely pointless exercise. If the physician has no authority to determine that additional testing is warranted in a particular case for whatever medical determination that physician reaches that justifies additional testing they have their standards, they're the medical experts, not myself, not Attorney Hawks, not, I don't know if there's any doctors on the personnel committee but we leave that to the professionals. The national fire, the NFPA standards that were submitted by the Union and are included in your packets I believe is exhibit six yeah. Where the structure of physical examinations are discussed at some detail, specifically says the purpose of those physical examinations is to identify conditions that may become disqualifiers and there's a whole list of ailments that could disqualify an individual from service and this isn't included within that would be heart disease issues. So obviously no one can be excluded from, from service unless they have a known heart disease, to suggest otherwise just really doesn't make any sense. How that heart disease becomes known however includes the medical examination. That's the whole purpose of that examination and on the one hand the Union says they don't object to the examination, they don't object to the physician performing the examination, they just simply object to the physician deciding that additional testing is required but that's not a decision that the department makes. The conflation there that is what the Union is relying on that a physical examination process existed for, I think we both agree as long as anybody can remember, certainly well preceding this round of examinations and it's an independent physician that makes that determination. The stress testing that is the issue here is part of the RFP that was issued last year, which the department was involved in whether the question and what Mr. Hawks referenced the Union representative indicated they had no noble change in the work rule, well that's not the right question. He had access to the materials, the RFP materials, the question and answer addendum that was created as part of that process, all of these are in the materials that were submitted to the committee as well, as well as the final award letter to Bellin Health all of which contemplate the performance as directed by the physician of stress tests as well as other types of tests that are and other source of determining whether an individual has a heart disease condition as well as chest x-rays as pulmonary functions are also exclusions from performance as a firefighter. All of that information was included in there. What they take issue with is how this particular physician has decided to perform that function and that is just simply not something that's subject to the grievance procedure, not something that the city has even taken action. In fact, if the city starts meddling in how the physicians perform that function, I would be, I would expect that the firefighters should be concerned about what that means for their health and safety. A couple of other things that I want to point out that the Union's letter that was submitted by Attorney Hawks suggests that this is some effort for the chief to be able to quote "sack" employees at will and I just want, that is absolutely ludicrous. There's no evidence of that, there's no evidence of anybody being disciplined, reprimanded, suspended, terminated or even threatened with termination. In fact, the purpose is quite the opposite just as the NFPA standards again that were submitted to the committee by the Union. Those rely on that physical examination to identify conditions that could become disqualifiers so that they can be managed and the individual can continue to be certified. Having a known heart condition is not an automatic disqualifier. In fact the regulation that you have very clearly says that that person could still be certified by the doctor. The whole point is to protect the health and safety of the firefighter themselves but as well as every other firefighter that he has to serve alongside an individual so that if they have some sort of heart, their pulmonary seems to be the primary focus of those exclusions, that those things are identified and managed and treated early before they become catastrophic for the firefighter. On the contract itself. You know, Mr. Hawks I think acknowledged essentially the end analysis here. There is no distinct definition of work rule versus standard operating guidelines. There's no indication of any work rule that relates specifically to physical examinations. There's no change to a work rule that relates to physical examinations. There's no additional work rule that's been created. All of this information all of this process is longstanding. This RFP again refers to the NSPA standards that the documents submitted is 2018 so we know there are at least three years old and that's why, you know, they go much, much further back than that. Stress testing is part of that system in numerous locations dealing with potential cardiac concerns and heart disease and so forth. So there's just absolutely nothing that has been changed, nothing that has been added, no additional requirement and the effort to split hairs and determine that this structure for assuring that there's negotiations in an orderly fashion for changes to work rules and changes to standard operating guidelines, assuming changes modifies both of those, you know, that's what the

stat, that's what the contract language says. So if we're going to split hairs and say, this only refers to operating guidelines with respect to the specifics as to how the process is followed, then we have to, then we're going to have to split the same hairs and say, well, it only refers to changes and Mr. Hawks has acknowledged there is no change to any work rule, no change to any standard operating guidelines. Therefore that's the end of the contract analysis. There is no duty to bargain.

- Can I ask a question?

- [Geoffrey] Yes, yes, oh, I'm sorry. I thought you were telling me five minutes was left which was what my, which is what my timer said.

- No but I'm really good at guessing times. Now my question is so is the grievance about giving a stress test to firefighters during their physical or about who has to pay for the stress test or is it both of those things?

- [Geoffrey] Well, I'm glad you raised that because that's another item that Mr. Hawks stated which is factually inaccurate, no firefighter is required to pay for the stress test that is ordered by the physician completing the medical certification examination. It's included in the RFP, it's included in the award, you can see the fee schedule is right in there. What the Union suggested in it's, in the document that they submitted that was part of the demands with respect to bargaining the impact of this was that the city paid for any treat resulting from a diagnosis or what might ever, what, whatever might be identified in the course of a physical examination and of course I would suggest that that's, that's unreasonable given for example, if a firefighter has a physical examination the physician's concerned about, you know, risk factors relative to cardiac function, orders a stress test and let's say, there is some heart disease that is identified and maybe that requires a stent procedure and I'm talking much about but you get the idea well, that underlying condition that's now been identified and now being treated, the city doesn't pay for that but they never would, no, you know personal health issue that arises would responsibility of the city but the testing, the stress testing, if there's an EKG that's ordered, if there's a cancer screen that's part of that. All of that stuff is already paid for. The firefighters are not required to pay for the components of the tests that are part of the physical examination. That's just, that is just factually not accurate. As far as, as far as the, again the contract piece, you know, I would submit to you either and the way I would read this is the purpose of this contract language is if there are going to be changes to what has, what exists already in terms of work rules or operating guidelines that there's a procedure to follow. If that procedure includes bargaining, if it affects wages, hours and conditions of employment, we're talking about impact bargaining which requires there to be some change. That's the definition of impact bargaining. We bargain what happens when a rule is changed. So for example if an officer does miss time then we bargain the impact on their wages. That's change, there has been no change. There is no change and Attorney Hawks acknowledges that as he has to but...

- [Attorney Hawks] That's not true.

- [Geoffrey] I didn't interrupt you when you were speaking but that is what you said. The fact of the matter is there's no work rule that can be pointed to it and nothing that can be changed. This contract language speaks specifically to a process involving changes of work rules and changes of standard operating guidelines. It then lays out sections that do not specifically refer to SOGs except in number one but number three just refers to generically dispute over bargain ability in terms of what's covered by that section which by the way is titled, Work Rules. So I think it's clear that the implication here is that if there is going to be a change to those things that are established which logically makes sense that in this context because it's in the contract we would have to go through this process. We dispute whether it's subject to negotiation at all in part because it's not primarily or directly related to wages hours and conditions of employment but also because it implicates a direct authority or a directive that's given to the chief in state regulation which has to be adhered to. The chief we can't negotiate a way that obligation that the chief has as an individual. We also can't negotiate about what a physician can determine, justifies further examination in a particular firefighter. We are not, we will not negotiate and dictate medical standards to an independent third party physician which is what Attorney Hawks and the Union are requesting that we do. You know and I think on the point relative to the chief's authority,

you know it is, as I mentioned hyperbole initially to suggest that that this is all about creating an opportunity to in adversely affect firefighters upon employment, that's just not supported by anything that's actually happened and is, you know, patently unreasonable but what is reasonable though is these regulations, 97 page document that Tim submitted, when I saw that, I thought, oh my God I'm not reading all this but luckily we could skim through that but it's all about maintaining the safety of the firefighter, about maintaining the safety of air fighters that go into emergency operations and rely on each other and depend on the other's ability to safely and effectively perform and then also it is based on the concept of early identification of potential disqualifiers of a medical nature to keep the firefighters on the job, because everybody, you don't have to be a doctor to understand that the sooner that you treat, identify and treat and manage conditions, the better your chances are of keeping it from becoming that disqualifying condition.

- I have another question.

- [Geoffrey] Yeah thank you.

- Okay, so initially when I was reading through this and what you were saying it was about whether the doctor can order a stress test or not but then it became bigger because now there are actually four different things that are being asked for right? It's not, it got really way bigger than the first grievance memo where it was just about the stress test, didn't it? Are you defending all of those areas?

- [Geoffrey] Well, yeah I guess what I would say is that's been part of the difficulty with this and part of the reason why we said this is why we should be going to the commission for declaratory ruling because we've been trying to nail the Union down on exactly what it is they want,

- Yeah.

- [Geoffrey] because again the physical exam and what we agreed to and this is what I heard and Attorney Hawks can dispute this if he meant something else but what I heard is the Union does not take issue with the physical examinations, the Union does not take issue with the fact that the physical examination structure protocol includes stress testing as a potential, it's written right into all the documents. What it takes issue with is the fact that somebody actually was required to go through that process and it happens to be that it involves stress testing but the physical examination protocol involves a whole host of other potential, you know additional tests that could be ordered. You know, I pointed out a couple of them because they're the ones written in either specifically into the additional questions that were part of the host of additional tests that are available going through the, you know, the NFPA standards all intended to identify based on what a physician's initial examination concludes or appropriate additional testing to identify whether or not there's a condition that is one of the potentially disqualifying conditions. Again, that's the whole purpose of the examination. It says it right in the standards, the purpose of the examination is to identify potential health conditions. I'm paraphrasing there but... So to answer your question I'm not entirely sure what and that's the problem because there is no work rule that's been changed, nobody has, we've been saying, what is this work rule? What are you talking about? What's been changed? But there is no work rule that has been changed and it's the physician who makes the decision. Certainly we're not to the position where the fire department and the Union leadership are going to dictate to the physician, how they determine whether appropriate risk or whether risk factors exist such as a stress test is justified before that physician in his or her medical judgment will certify a firefighter but beyond that I don't know what it is they're asking for other than to supplant the independent doctor when they don't like the determination that doctor reaches by requiring to or deference to the firefighters treating physician. If in fact there is one, which of course is another issue but...

- And so there were always physical required, right?

- [Attorney Chavez] Can I just come in and say that both parties have used about the now it's up to the council or to the committee on whether they want to continue asking questions? That's entirely permissible but I just want to let you guys know that both parties have used about the same amount of now.

- Barb before you ask your question, Mr. Lacey, do you have any other comments you wanted to make or are you done pretty much and you can start taking questions?

- [Geoffrey] Yeah. I'm comfortable taking questions from here on out thank you.

- Okay, I'm sorry go ahead Barb.

- So the physical is required, is that correct?

- [Geoffrey] As far back as anybody who's been involved in this can identify, yes.

- But there was never ever a stress test before this year? Is that what the concern is?

- [Geoffrey] Well I don't know.

- I mean, it's, I mean, I'm not saying stress tests are good or bad, I'm just saying is that why this popped up? Because this completely looks bigger than just stress tests. It's, the four things that they're asking for. It's very large not just about stress tests. So are we talking about way more than stress tests?

- Well I, I don't know if stress test had been required by the physician conducting the physical examinations in the past but stress testing as a component of the physical examination process when indicated by the physician, is it's part of the standards that are what the request for proposals most recently in 2019 and 2020 incorporated, that's what it's been around for, you know preceding that as well. Stress testing is part of that protocol when the physician determines that it is appropriate.

- In my mind something has happened to create a lot of anxiety because I'm reading that there a process has to be designed to resolve conflicts between the city's position and the members' treating physician and that the department will apply the standards regarding fitness for duty and that there's prescribed treatment, written documentation is required. There's a lot of anxiety I see being raised in these demands and I'm just trying to figure out is the inception of all of this concern and fear because a stress tests were suddenly required and whoever can answer that question.

- Well if I can just follow this up Barb and join my question with yours

- Sure.

- and this would be for Attorney Hawks because I think he's the one that's going to answer your question here. If any part of this physical, do they do an eye exam as part of the physical? Let's say they do. If as part of that eye exam the doctor had a concern and wanted a follow up eye exam would the bargaining union have the same concern about that as they do about this stress test?

- Binocular vision is a basis for under the NFPA standards for elimination from service so yes.

- Okay.

- If there was a debate between physicians as to whether or not binocular vision existed or did not, the Union would be interested in negotiating a process by which the physicians disagreement could be resolved. I have done-

- This is all a precedent setting thing. It's way bigger than stress test it's for us if we come back with some kind of ruling, it sets a precedent for any kind of physical exam. That's what it looks like to me when I look at the final memo but I.

- But again. Go ahead, go ahead Mr. Lacey.

- I was just going to briefly say that you know, I mean, perhaps most succinctly what the Union wants is a second opinion. It, you know, basically the firefighters own physician perhaps but that the independent physician that we in the city council approved hiring and that we pay to do these physical examinations would not be the end all be all decision maker that they would, that we would be forced then to enter into some kind of process where the physicians would reach agreement and that might be something that makes sense. I don't necessarily think it does but there's no basis to require the department to enter into discussing and negotiating a structure like that. It's never been the case. It, there's no, there's been nothing that's changed about this other than who the doctor is that's performing these but that's, that doesn't change a work rule that just changes, you know what the Bellin Health, you know organization puts forward as the physician doing the work. In fact, when this started the RFP process it was in response to concerns from a union members that they wanted it to be done, the examinations to be done by a physician, not a physician assistant, not a nurse practitioner and the city and the department was responsive to that. So, chief I don't know if you have anything you want to add relative to, you know what your experience with the examinations has been and I'm sorry, I shouldn't just assumed of the committee.

- Was that part of the process? I don't think we are calling witnesses today.

- Right no.

- If we did I would have had the Union witnesses.

- Exactly Mr. Hawks and I guess I would say I can somewhat understand that the bargaining union's concern. Years ago we had officers that were on disability from a duty related injury and they were showing back up at work because their personal doctor said they were fit for duty but then we found these officers could not perform their duties and these doctors were saying they were fit for duty not knowing what an officer needed to be to be fit for duty and that was when the city started getting their own doctor involved, they had the officer's exam before they were declared fit for duty or not fit for duty. So I can certainly see where there might be some concern or about the doctor that is been hired by the city to conduct these physicals and what if I go in the city doctor says I need to get a stress test and my own doctor says you don't based on my examination and I think that's some of the concern that the bargain union has here but before that rabbit hole and that's a pretty big rabbit hole, I still think the substance of this whole thing is, it, does it go to our decision, is this something that's should be bargained or is this something that should be a declaratory ruling? You know I mean, I don't know if we necessarily need to get into the meat of stress tests versus no stress tests and what are the bits and pieces that they want to go along with it and all that other stuff. If I'm incorrect, I, someone please explain to me how this, what we should be looking at.

- I would like to respond to one of Dr. Lacey's remarks and also pick up the rebuttal.

- All right, hang on, hang on just one second Mr. Hawks, does anyone have any other questions before Mr. Hawks proceeds?

- Well, I'd like your question to get answered, that you just asked first, well I think it should get answered

- Okay.

- by the attorney or by Joe, somebody needs to answer that. Are we talking about the things they're asking for or are we just saying is this declaratory or does it have to be bargained? What are we here for? I need to understand that.

- I will take the floor then to answer that question from the Union's point of view.

- All right Mr. Hawk.

- The answer, I'm sure it will be contested

- Okay.

- but from the Union's point of view, the only way you get to a DR pursuant to the contract is if you have a change of a the standard operating regulation, the SOG and I mean that's what the contract says. I mean it's just plain, it's unambiguous, it's what the contract says. I have confirmed a prior knowledge or a prior understanding of the law in this point of whether or not you could get a DR from the WRC outside of the contract and the answer from the WRC is no, probably not. There's a discretionary under chapter 227 there's a discretionary process to get a declaratory ruling from an agency. WRC's position is unless it's a matter of statewide concern, we're not going to grant the petition. So, I mean we don't get there. You don't get to you don't get there under the contract, we will resist it and you're not going to get there under this, under the current reading of chapter 227 which is the chapter dealing with administrative procedure, Wisconsin. So no, we don't get to a DR, we get to an arbitration. Ultimately the, even the WRC I predict will say no issues arbitration or procedural issues have to be decided by the arbitrator because that's what the parties have agreed. So, yeah, so that's the answer that's, I'm sorry that's my answer on behalf of the Union to your question Alder Dorff.

- And I would say, first of all I think there's a distinction between creating an obligation on the commission to engage in a declaratory ruling activity by virtue of the contract which I would agree the commission refused to do that versus saying, if we have a disagreement over bargain ability which is what declaratory rulings do all the time. Determine whether something is in fact subject to bargain ability, which would be, you know, is it permissive? Is it mandatory? Or is it prohibited? That's what a declaratory ruling is all the time. In terms of, you know, what this committee is looking at. I think, you know number one is there a distinction between work rule and SOG? If there is nobody knows what it is because even, I mean we have a dictionary definition is not a contractual definition. There's no knowledge of what that distinction is and we have a procedure that refers to SOG is in the procedure only as to number one the rest is, it's not, you know, complaining on ambiguous so that only applies to SOGs in that work rules but we also have clear language that says none of this means anything if there isn't a change to an existing work rule or to an existing SOG and no such work rule or SOG exists that has been changed. In fact, again back to my original point no action has even been taken by the city, the department in this case, it's been entirely the physician who conducts the medical certifications and does that pursuant to a grant, an award after an RFP to conduct an FPA 1582 compliant examinations. Not personal doctor, not family physician, not personal cardiologists. Not to take anything away from those physicians, fantastic professions but the NFP compliant examinations are different things, there are a specific thing and that's what we have performed.

- In my rebuttal arguments I've identified three points I want to make, is it appropriate for me to proceed to rebut the first of one of those deals directly with the last remarks?

- And I know you're trying to keep a thing on here but if everyone's all done with their questions then I think we can go into the rebuttals and then Mr. Hawks, if no one has any questions, okay Mr. Hawks you may proceed.

- The very first one goes to this contention by Attorney Lacey that I have admitted that there was not a change. I want to rebut that most directly as possible. There are, there were nearly 20 firefighters required to undergo stress tests in 2020. In no other period of time, anyone who I have interviewed to prepare for this grievance can remember any other firefighter being directed to undergo a stress test. That is a change. imagine being 48 years old, slightly overweight, with a little bit elevated blood pressure, with four kids, two in college and being told that you have to undergo a stress test that may result in your termination of employment. That's a change. That's what this union is talking about and the notion to beat the argument that there's been

no change is simply absurd. Simply an absurd. I have pulled up the exhibit or the memo that we filed with this committee and if I can get a shared screen opportunity again, Joe. I got it. So I, what I did was cut and paste one paragraph of that memo I submitted with the committee. Again going to Alder Dorff's comments of this that this is a bigger issue than just stress tests. I couldn't agree more with that observation, it is a bigger issue. So in the memo we wrote "The department fails to distinguish "between effects or impact bargaining "and decision bargaining." Now that means like labor law jargon, it is but it's jargon with a meaning. If, for example, a school district decided to of 20 that's a, that is a decision which is a permissive subject of bargaining. If the Union turns around and says for every student over 20 we will, you need to pay the teacher X dollars more. That is an impact proposal. That proposal is a mandatory subject to bargaining. In this case the Union has the department, the contract requires you to bargain with us, we want to bargain, not just about the decision but also about the impacts or effects of it. There's a whole section in a query how arbitration works. So there's a treatise that deals with this. So there I wrote on behalf of my client, "The union doesn't challenge a decision "bargaining over the impact's specification of the criteria "by which the decision to require a stress test may be made." That's important. Right now the firefighter, there are 20 firefighters who were required to undergo stress tests and none of them could say why they were obligated to do so while others were not. These are the people that are subject to the fear about losing, possibly losing their employment and why they think it's important to know why they as opposed to others were not required to undergo stress tests. Secondly, "The specifications of the results "of the test by which disqualification "of appointment will be made." So exactly what is it in the stress test that results in a firing as opposed to no firing? That's not unreasonable. That's not unreasonable that's an impact of the decision to require stress tests. "Development of a company total disability." Well, wait a minute, now we've got a disability We have to talk about the Americans with disabilities act and whether or not there's an accommodation that may be made. In the past the department has made and believe me with the Union has been tremendously appreciative of the relationship it has had with the department over the years on these sorts of issues. I can say in 31 years I cannot recall a grievance arbitration, now think about that. This is a sophisticated relationship historically. "The results of tests by which disqualified, "development of accommodation "to cover newly covered disability "covering the cost of lost time "agreeing to the light duty workday." What do you need for, time if you need time where you're not going to be in full service can we talk about the light duty work day and keeping your appointment for trying to figure out whether or not we can get you back into service. "Agreeing to the, and expressing "incorporation of standards established by the FDA." So there's been frequent references to the NFP, NFPA standards. They have these standards. That's 175 pages, that's not accidental and that's the chiefs association that's largely responsible for the development of the NFPA standards but most importantly, the department refuses to negotiate a fair sensible procedure, between treating cardiologists and the departments and it doesn't have to be a cardiologist it could be orthopedics or we have joint injuries or repair joints and this whole issue can turn on that. I have negotiated a agreements in collective bargaining agreements in the past where the two visit, where the Union and the employer agreed that the patients will pick the tiebreaker and then all parties will live with the tiebreakers decision, whatever it may be. So it's possible, it's wise, in my opinion that's all this union is requesting to do in this case. It courageous everybody to slow down, go back to the bargaining table and figure out the answers as opposed to picking a fight. That's it.

- Okay and Mr. Lacey?

- [Geoffrey] Yeah, just a couple of quick points. First of all, none of the things that Mr. Hawks just went through are items that have anything to do with what the Union has said is the work rule relative to the physical examination. None of that has changed it. A firefighter could be, could have been disqualified for medical purposes in the past and all of these things would have been appropriate potentially, you know, items to have in terms of a procedure and so forth. Many of which we would have to follow anyway, the city has to follow the ADA. So we have a legal structure that exists This is not something that they're creating and coming up with but specifications of the test, again, we don't get to negotiate and dictate to a physician how it is they're going to make the determination relative to an individual's physical fitness. When they are told and they agree and this is the whole process that was taken to select the individual or the organization doing it, that the tests are pursuant to or compliant with then NFPA standards and Attorney Hawks just referenced again. That's the key. Of course it has to be compliant with that that's the whole purpose and to suggest that, you

know our position that there's been no change is absurd. It just reminds me of the old adage. When you have the facts, call on the facts when you have the law, call the law, when you have neither power on the table that's basically what that argument is. Directed by whom? It's directed by the doctor. Nobody in the department directed these specific people, handpicked these people and targeted them for additional testing. There's no evidence of that and no basis to suggest that. That's why we have independent physicians conduct these certifications examinations but, you know, and then lastly I would just say to the you know, the passionate and I always respect him, he's a passionate guy but to the passion and argument that, you know for firefighters potentially losing their jobs over there I would say, you know if you're a fire, how do you feel if you walk into a fire and you have a heart attack because nobody has required that this physical examination process be robust that it'd be targeted as the NFP standard set forth to identify potentially in the earliest stages since we do these annually whether there is some health concern that ultimately could become a disqualifier. I would rather be the firefighter who finds out early, gets you know, the treatment and whatever is necessary to manage that rather than find out when it's too late or be the partner of a firefighter who finds out too late and I'm trying to drag them out of the building as well. That's what this is about. It's about safety and it's not about trying to sack firefighters. It's about maintaining and assuring the safety. Something that this department in the support of the council has done quite a bit of in terms of programs, equipment that has been purchased for the department to help improve the health and safety of the firefighters. That's all I have.

- Okay. I think both the city and the bargaining union for their presentation and I'll, if no more questions, I'll entertain a motion. Whether you want to go into closed session or not. You're muted.

- I move that we go into closed session.

- Second.

- I have a second. All those in favor say aye.

- Aye.

- Aye

- Aye. We'll be going into closed session. I'll have Barbara the Verbiage but then before we do, I just wanna ask a question of Attorney Chavez.

- Before we go in or before

- Right, before we go in, yeah.

- Okay. The committee may convene in closed session pursuant to section 19.8518 Wisconsin statutes for purposes of deliberating concerning a case which was the subject of any judicial or quasi judicial trial or hearing before that governmental body the committee will thereafter reconvene in open session pursuant to section 19.852. We'll take action on items discussed in closed session if appropriate and to consider the remainder of the agenda.

- Right thank you and Attorney Chavez.

- [Attorney Chavez] Yes sir.

- Since this committee is going to be giving out its decision at the next personnel meeting is there any reason that anyone that's involved with either side of here has to stay or could they log out and enjoy some of this weather we have right now.

- [Attorney Chavez] They do not need to stay.

- All right. I mean, if Attorney Hawks if you and your people want to stay, I mean certainly, the same thing for anyone from the city but like I said we're not going to be rendering a decision until next week and so if you guys want to head out and enjoy this weather while we have it by all means.

- And take off this tie.

- Yes. Start with that and then go down from there.

- Yeah, thank you though we'll depart. Thank you for the

- Thank you for your time everybody, appreciate it.

- Yeah.

- Thank you.

- [Alder Gavin] Passes unanimously. We're back in open session onto item number three, consideration with possible action to have staff study the need for more staff for the city attorney's office.

- [Alder Johnson] Is there any motion taken on the second one?

- [Alder Gavin] No.

- [Alder Dorff] I don't think so.

- [Alder Johnson] Okay. We're going to make our decision the next week.

- [Alder Dorff] Next week.

- [Alder Johnson] Okay sounds good.

- [Attorney Chavez] Yes this matter has just been taken under advisement and that's all that's happened right now.

- [Alder Gavin] Okay then we'll just-

- [Alder Johnson] Bill should I report any motion or what should I, we report in the minutes?

- [Attorney Chavez] It'd be appropriate to make a motion to

- [Alder Gavin] Okay.

- [Alder Dorff] We move to hold till the next meeting.

- [Attorney Chavez] Okay

- [Alder Gavin] All those in favor say aye.

- [Alder Dorff] Aye.

- [Attorney Chavez] Aye.

- [Alder Gavin] Aye, that passes unanimously that we're going to hold it until the next meeting under number three consideration with possible action as staff study the need for more staff for the city attorney's office staff.

- [Attorney Chavez] It's me again.

- [Alder Gavin] Okay.

- [Attorney Chavez] So we have been looking at the need for additional staff and I can provide you guys with an update as far as what we need. I think that the better approach for that though might be as we get closer to the budget, instead as far as what addressing some of the temporary needs, I went through and identified the items that we need to address on a pretty quick basis that would allow the department to start focusing on some of those things that have been bottle necking and I think that, so as a reported before we've explored looking at outside counsel, we've looked at hiring somebody on a temporary basis, like to hire somebody who's retired and has less experience on a temporary basis. I was only able to speak to one person who's potentially interested who is formerly retired and although he seemed like a good fit at the outset, there were some limitations based on the fact that he is retired and then some of the things that he's just not doing any more such as litigation and they do need some litigation help. Hiring a new employee at this stage would not be a means to clear the backlog simply because it will take awhile to get them up to speed. So if we're looking at some temporary or a quick way to get things moving forward from a law department the solution is really to hire out or to farm out some of our case load. So I've identified a number of items that I think are appropriate to farm out which will free up our legislative attorney to focus on some litigation. So I can go over what I've identified with you or I just give you guys a number, what would you prefer?

- [Alder Gavin] I would give the number, rest of the committee?

- [Alder Dorff] Fine with number.

- [Alder Gavin] Yeah.

- [Alder Johnson] Keep the numbers appropriate because I think we'd need to defer to your expertise on, you know, what's appropriate to farm out versus what you do internally.

- [Attorney Chavez] Okay. So to farm out all of the items that I think will clear that to allow the legislative attorney get to those things we're looking at about \$45,000. We, I think that if we even took 30,000 I think that we would make a pretty good, we'd make a pretty good dent but I would, they say 46 or 45 is really the number that that would make the most dent for the city.

- And Vanessa with that said and I want to make sure I understood you. This is short term but we are still working towards adding staff or seeing if we can or should add staff on a permanent basis more in junction with the new budget coming up, correct?

- Correct. We are looking at all options that are available to us, whether it's some, you know we realize that offer is going to be a, an ongoing issue for us. We're exploring whether or not there's opportunity to fund at least part of take care of that. We're looking at what kind of needs we have as far as you know is this person just going to be clearing some backlog or is it somebody who's going to actually be taking on new official responsibilities? We're also looking at filling some gaps in our department. We have one employee who's going to be pulling on maternity leave we're looking at ways that we can make sure that we don't go further into a workload hold than we already are. So we are trying to be as proactive as possible. This is just the, this is the way we see of making this backlog workable until we get there.

- Okay.

- I've-

- Go ahead Alder Dorff.

- So then we would just need to put a proposal in to finance. I know our contingency we still, because it's the next meeting, it's still at 150,000 in our contingency. So it seems like 45,000 would be a reasonable number at this point for us to commit.

- All right and did we have money left over from last year yet?

- That goes away sir.

- Yeah I think it goes back into the general fund. We should look at using contingency I think but we should not talk about it and this means this personnel.

- Right, okay.

- I talk about we, it's not on the agenda for finance so we have to put it on.

- Okay. Well, I liked the idea of taking care of some short term needs that need to be done now as we look forward to the future, adding on the staff that's going to be necessary so we don't end up having to, hold on so that we don't have to be hiring out all the time. I know there will be times we have to but you know, when I heard recently that we had one open records request that took 200 man hours, person hours to fulfill and we've been getting inundated with a lot of requests that are sucking up a lot of our staff's time and I don't anticipate that stopping anytime in the near future. We need to do what's going to be best so we can get the most out of our employees. Alder Johnson.

- Thank you Alder Gavin. You know and I think if we do forward this onto finance with a recommendation I do think it would be appropriate there to provide a list of what we're trying to clean up in terms of a backlog. The one question though Attorney Chavez that I would have for you is thinking about some of the thing hogs this past year. I think a lot of it are directly related to election whether it's items that we initiated or like open records requests that we've had to respond to. I mean, those to me feel like kind of one time things. I mean, do you envision and when you, so when we start talking about permanent additions into the future I guess what I'm really trying to wrap my arm around is the backlog being driven and created by things that have happened this past year that we don't anticipate to repeat?

- Yes and no. So the extent of the backlog is really high but what we've also discovered is that there are a lot of things that a law department just isn't capable of handling. We sure have enough people to be able to touch a number of things that we probably need to. So for example, we should be doing trainings on a regular basis to reduce the potential for liability and we're not able to get to those types of things. We should be doing, you know, we should be attending or providing more coverage at council oh not council, these various committee meetings to make sure that all of the proceedings have legal counsel available to them, we're not able to meet their current staffing levels. So we're picking the ones that have the either items that require an attorney to be present or have the potential for the biggest areas of concern. You know, we just have a ton of things that are happening that we should be doing and aren't, so that's why I say we're looking at this position as, is it really going to be something that's going to fill an existing void or is it something that's going to be able because it's just really just like picking up the slack before it exists.

- I would have to concur with that from what I've seen going on in the attorney's office, both when I was an employee of the city and with some of the requests I've had in there over the last five years. They're just not, they just don't have the staff to get things done in a timely fashion and then, I mean this year, you know, it was an anomaly but the backlog was there even prior to this.

- I'd like-

- Go ahead.
- I'd like that we can motion that we refer this to finance for the June 22nd meeting of finance.
- And that Attorney Chavez continue to work on coming up with a firm number of what she thinks that city attorney's office needs.
- And end up in the middle, that little the ones that have the plastic-
- And I'll second that but I'd like to maybe just add some caveats to it if I could and these don't have to be documented, it's more so just if Attorney Chavez could consider this when it comes back. It doesn't need to be part of the formal motion. One again is an actual listing of those things that we'd be looking to outsource and you mentioned the things that right now that we're not maybe giving full attention to that require or should have full attention. If we could maybe just list some of those items. I think that would be helpful as well to understand where we're sort of missing the boat a little bit and then the other thing that I still would like to see is what a comparable cities look like in terms of you know, how much they're allocating towards legal fees and I know it's never an apples to apples comparison you know but I think it would be useful for us to understand, hey, other cities have approximately this many people have a legal budget that's this much, whether it's in-house, outsourced you know, I understand every community might respond to that a little bit differently but I think that would be useful information for us when determining what's necessary there.
- Okay.
- Is there a second to my motion?
- Yeah, that was the second.
- Oh that was the second.
- Yeah but I said I just wanted to add those couple extra things but not necessarily part of the motion though.
- All right.
- But I do second it.
- All those in favor say aye.
- Aye.
- Aye.
- Aye.
- Aye.
- Passes unanimously on to informational. Does anyone have any questions for number one, the report of routine personal actions for regular employees.
- Motion received in place and file.
- Second.

- All those in favor say aye.
- Aye.
- Aye.
- Aye and we don't meet again until June 22nd.
- Right.
- Holy cow, okay. All those in favor- Entertain, what?
- We don't meet again until June 22nd?
- That's exact.
- So are the grievance issue that we just had,
- June 22nd.
- won't come back until then?
- June 22nd.
- Okay.
- So don't throw away your notes.
- And I did notify the parties of that.
- Okay.
- Okay. All right. I'll entertain a adjourn.
- To adjourn.
- Yeap there we go. Okay all those in favor say aye.
- Aye.
- Aye.
- Aye. All right.
- How much time do we have?
- Five minutes or more, maybe 10.
- Five minutes.
- You want, what do you want, alders? We can do 10.
- 11.

- Yeah. Yeah it's 6:58, we will convene at 7:07. Nine minutes, go. Right now go.