

Personnel Committee Minutes

Honorable Council
City of Newark, Ohio
November 16, 2020

There was a meeting of the Personnel Committee in via Zoom on Monday, November 16, 2020 following the Service Committee with these members in attendance:

Ryan Bubb - Chair
Mark Labutis Vice-Chair
Sean Fennell
Dee Hall
Jonathan Lang

We wish to Report:

1. Consider **Resolution No. 20-88** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO AN AGREEMENT WITH SPECIALIZED LEGAL COUNCIL FOR THE PURPOSE OF INVESTIGATING ALLEGATIONS OF WORKPLACE HARASSMENT AND OTHER ALLEGATIONS OF POSSIBLE WRONG-DOING IN THE OFFICE OF THE CLERK OF MUNICIPAL COURT

HR Director Bill Spurgeon – This came to the attention of the administration and myself I believe on October 5th or 6th if memory serves. There are allegations involving some current and past stake holders in this department. I was asked to weigh in professionally as HR Director what my course of action would be recommended to do. The allegations were submitted to the legislative body by the claimant I haven't engaged directly, but after hearing out the council person which is what the committee charged me to do, I wrote a letter authored to you, that you either investigate the matter further with outside council, investigate the matter further with the engagement of my HR Department or take no action. My final statement to the committee was at best, should you choose to look into this matter, that you engage outside council. I do that for a number of reasons. Number one, there are former employees involved, no one has directly come to my office and even if they did, I simply do not have the bandwidth to engage multiple depositions, statements, investigations, that sort of thing. It's just myself and the Assistant Director of Human Resources and again, I recommended that a separate body would do that. Certainly if a single person came to our office we absolutely would process that, but in the same manner, if I saw that evolving to a larger process, more persons needing to testify, more statements, it is quite likely that I would take the same manner that it appears the legislative body is doing tonight. I would hit the brakes and engage outside council. That is my involvement up to here.

Mr. Marmie – When we started looking into the reason for the pay raises I was beginning to look at former employees and the purpose for which they left. I only contacted one individual and that was at the direction of someone else who works in

the city of Newark and then I had three other individuals contact me who I did not even contact after reading the minutes. Some of the comments that were made, I like Director Spurgeon, I put the brakes and said this is beyond my scope. I want to make sure that all parties are duly represented and have due process and I'm not going to conduct an investigation myself. We need to protect employees, whether it be management and/or employees, we just want to make sure we do the right thing and when it's brought to my attention I have a duty to act. I did that. I contacted the HR Department and that's when he got involved and he has indicated what transpired and where it's gone from there.

Mr. Fennell – I was just wondering Director Spurgeon, is this your recommendation specifically, it just feels like this is more of an administrative function and not a legislative function and I was just kind of wondering if you might be able to shed a little bit of light as to is this a normal course, what is the precedence for something like this. Basically, just wondering is this the normal process we would go through for something like this.

Director Spurgeon – The best that I could find is that it is within the powers of council and the charter. When I wrote the letter I did recommend three courses of action, one being, don't do anything. That aside, I am unaware of precedent. What I would say is these are allegations. I do believe it's in the employers best interest to make sure folks are high performing and fully engaged and certainly when allegations are lobbied the person they are lobbied against deserves this protection, this process as well. So, this is merely outside my scope and capacity, bandwidth perspective which is why I advocated should the council choose, I would prefer they choose outside investigators to do this.

Clerk of Courts, Marcia Phelps – Please see statement attached to these minutes.

Mr. Blake – I am curious about when the HR Director spoke with the former employees, are these employees part of a protected class? I notice that the resolution mentioned workplace harassment and other allegations, but it does not say the word discrimination within the resolution. Are any of the former employees of a protected class, are they a woman or a minority or any other protected class?

Director Spurgeon - I am uncomfortable discussing matters of personnel in a public forum. For the record, I have stated that I have not spoken directly with any former or current employees. What I did hear is the concerns of a legislator who had.

Mr. Blake – Thank you for that clarification. My question is related to that, if the former employee is a person from a protected class, then we already have a State Agency that deals with these typed of complaints, it's called The Ohio Civil Rights Commission. So, if there was a female that has a complaint regarding something or another protected class, then my question is why is that person not going to the Ohio Civil Rights Commission. Especially with it being a former employee. I guess my question is why is it coming through this process as opposed to going through the Civil Right Commission. My next concern is if we aren't talking about discrimination, if we're just talking about work place harassment, the HR Director or law Director can correct me, but in Ohio we don't have an anti-bullying or workplace harassment law. So, I really don't see why we are going to spend \$10,000 to conduct an investigation when there really is no law for bullying or for workplace harassment. I am concerned what would be the outcome of

this \$10,000 investigation when there is really no law that enforces bullying or workplace harassment.

Director Spurgeon – I'll defer matters of law to our law Director.

Law Director Doug Sassen – I know nothing of the allegations that were made in this case. I'm not comfortable discussing how the case should proceed based on some hypothetical set of facts when I don't know what the actual set of facts are.

Mr. Fennell – We're learning a lot about this tonight and especially since the office of the Clerk of the Municipal Court has already started moving forward with an investigation in the department, generally I think that it is best practice in HR matters to give the person in the department that is involved, especially conducting an independent investigation, I don't think that we need to be redundant. I think that if there is a time that we are unsatisfied with the results of that independent investigation, then maybe we could move forward at that time. Right now, I would like to hear the results of that independent investigation before we expend more funds.

Mr. Lang – I'm glad to hear that Marcia is moving forward with an investigation at this time. I would be a little concerned with the impartiality of that investigation, given who those attorneys ultimately report to. Also, with respect to the timing, these allegations were first brought to light back in early October and we are just now hearing about council being engaged to conduct an investigation, we've got legislation to potentially move our own investigation forward. My thought would be to go ahead and move this out of committee tonight. There would still be two readings at council to continue discussing this and see where the process is. In all fairness, the investigation that's being conducted now could potentially be wrapped up by the time we get to that second reading in December which is about a month away. So, I think it would be good to see where that investigation is and if it's moving forward speedily, maybe we do hold off at the second reading and wait until we get the report from that investigation. At this time, my suggestion would be that we move this forward so that we are in a position to initiate our own investigation if things aren't moving fast enough on the other track.

Motion to send to full council by Mr. Lang, second by Mr. Labutis

Mr. Blake – I once again just want to say, is council setting a precedent that when a city employee becomes a former employee, can any former employee come forward and make allegations and we then expend dollars for a legal investigation. I caution the committee in taking this action. I also think there is some caution that needs to take place where if this is a discrimination issue then it needs to go to the Civil Rights Commission. If this is just a workplace harassment, anti-bullying situation, there is no law related to that type of situation. We're wasting potentially \$10,000 in my opinion.

Motion passed 4-1 with Mr. Fennell voting against

Ryan Bubb - Chair

Speaking to Resolution 20-88

Thank you Mr. Chairman, members of the committee, members of Newark City Council and the City Administration for your time given to me to speak. I find it surprising the way this has transpired. I am not aware of, nor have I been apprised of, any allegations of workplace harassment or misconduct in my office, UNTIL THE PERSONNEL COMMITTEE MEETING OF Oct. 5, 2020. It seems odd that this Resolution has been put before this committee without consulting me about what concerns may exist.

In my 37 years serving as an officeholder in Licking County, I've never seen anything like this. It's unprecedented in this county for elected officials of one body to initiate investigations into another elected official's office. It's so unusual and out of the blue, that I'm afraid it may have political undertones.

Nonetheless, as the independently elected Municipal Court Clerk, I am responsible for the operations of the Clerk's Office and must take any allegations seriously, and I do! If there's wrong-doing in my office, I want to know about it and take a proactive approach to these alleged allegations.

Therefore, when I learned of these alleged allegations have earned the merit that Newark City Council Personnel

Committee consider a resolution authorizing and directing the Director of Public Service to Enter into an Agreement with specialized legal counsel for the purposes of investigating alleged allegations by viewing the same agenda item as those it was distributed to on Wednesday Nov. 11, 2020, I immediately hired a law firm. O'Connor, Haseley & Wilhelm Law, to serve as Independent Counsel for my office in order to get to the bottom of this, and to make sure that there is a **fair inquiry free of any partisan considerations**. The lead partner in charge of this investigation has experience in such matters at the municipal, county, state and federal level **and is committed to conducting a prompt, thorough and impartial investigation**. I have no relationship with this firm which was referred to me by experts in the field. I am well aware that they will submit a report that will document all findings of impropriety no matter who is responsible -- whether those allegations are against me or someone in my office.

My office has charged this firm with the following:

- * Conducting an Independent investigation into any and all claims of workplace harassment, hostile work environment or any instances of wrong-doing that may have been alleged by any former employee of my office.

- * Investigating any similar claims or concerns by any existing employees of the Clerk's Office.

* Reviewing current office policies and recommending revisions that can best protect my office and its employees from workplace harassment, misconduct and litigation. As well as protect the City of Newark, our funding authority from any undue claims filed against this office.

* Providing anti-discrimination and harassment training to employees of the Clerk's Office

* To conduct the investigation with transparency and consideration for all involved.

* And to report findings of the Independent Investigation to this Committee, and to my office.

Because I'm the one responsible for running the Clerk's Office and am the one accountable for the conduct of its employees, I am committed to moving forward with this Independent Investigation. You are welcome to go ahead with what you are suggesting. But, in the interest of efficient use of taxpayer dollars and out of recognition for my role as the administrator of this office, I respectfully request that you await the results of this investigation before determining the need for your own.

As I said I take the alleged allegations very serious and would love to come to a resolution of what has been presented. Thank you for giving me the opportunity to speak to this

Resolution. I look forward to working with you to ensure that the employees of the Licking County Municipal Court Clerk's Office operate in the most professional work environment possible as they endeavor to provide quality customer service to all those who use our office and the processing of case management needs.

Thank you.