

January 28, 2006

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Saturday, January 28, 2006**

PRESENT: Aldermen Jean-Baptiste, Wynne, Bernstein, Holmes, Tisdahl,
Moran, Rainey, Hansen, and Wollin

ABSENT: None

STAFF: Judith Aiello, Julia Carroll, Herb Hill, Elke Purze, Debbie Sleet
and Judith Witt

PRESIDING: Mayor Lorraine H. Morton

START: 11:45 a.m..

Alderman Bernstein moved that Council convene into Closed Session for the purpose of discussing matters related to litigation pursuant to 5ILCS Section 120/2 (c) (11).
Seconded by Alderman Jean-Baptiste.

Roll call. Voting aye – Wynne, Bernstein, Holmes, Moran, Tisdahl, Rainey, Hansen,
Wollin and Jean-Baptiste.. Voting nay – none. Motion carried (9-0)

LITIGATION:

1st Assistant Corporation Counsel Herb Hill noted the reports handed out were what staff reports annually. Last year the report had \$22 million in exposure and this year \$1.2 million.

Three big cases are coming next year but he did not expect monetary settlements. The Hansen sledding case is up for a motion for summary judgment March 23.

Another big case is Hotchkiss, a young man who crashed his motor vehicle into the McCormick/Green Bay Road embankment and was killed.

The Whisman case is about a woman who was walking on Central Street about four months ago, tripped on the sidewalk and died nine days later.

The two death cases have been referred to the excess carrier who has closed the cases at this point not believing they would reach \$2 million.

Another case involved Mr. Miller who contends he owns certain Water Reclamation property by adverse possession. Mr. Siegel got a successful summary judgment decision the past week. That case will go to appeal. Mr. Miller, an attorney, has a special interest because it deals with his driveway and back yard.

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Mr. O'Neill received a notice regarding the death at the Sherman Plaza Garage. \$18,000 in OSHA fines was levied against O'Neill Construction based upon training for the use of forms. They don't anticipate any costs coming to the City.

Mr. Hill will bring up the Bradley case at the next regular Council meeting. This is a sanitation truck driver that rear-ended a vehicle with substantial soft tissue injuries. Medical costs are close to \$27,000 plus loss of wages and he is booking it at \$60,000.

Mr. Hill thought that next year's litigation costs would be about \$500,000; reported they began the Nonresponsive Tortfeasor Collection program. January 1, 2006 after exhausting the collection efforts of their Third Party Administrator, further attempts to collect were made. In one month they collected about \$12,000 out of \$22,000.

Alderman Bernstein and Mr. Hill discussed the Graham (domestic disturbance) and Ivanov (shoplift arrest) cases and the theory in the Hotchkiss case.

Mr. Hill hoped for fewer executive sessions asking for money in the coming year.

Litigated Worker's Compensation Cases

Human Resources Director Judith Witt reported on three cases that were litigated that were before the Industrial Commission and not in court. The cover memo explained the City's liability under Worker's Compensation and why the costs can be so high. Council should be aware of three cases and the kind of cases they have not had in a long time.

Peter Hanchar, former Fire Captain, died December 2005 alleged exposure to carcinogens caused pancreatic cancer which led to his death. The Fire Pension Board awarded him an Occupational Disease Disability Pension in May 2005. Through attorneys they are doing extensive investigation and discovery to determine the risk level and whether they have a case to defend to contest it. Ms. Witt explained there are three kinds of disability pensions: duty-related, non-duty related and is occupational disease, where the state legislature has a presumption under certain conditions .that because of the nature of the job, certain conditions are disabling. Alderman Rainey asked if that was being appealed to the Pension Board. No. Ms. Carroll asked if the City's liability is limited to a certain dollar amount. Ms. Witt said the worst case is they are liable for weekly death benefits, which is 2/3 of weekly wage for the life of the widow which is about \$ 1 million. Alderman Rainey asked if the claim is being challenged. Yes. Ms. Witt explained the Industrial Commission tends to look favorably on the Pension Board's decision, but are not legally bound by it. The City is assessing whether they have a case to dispute his pancreatic cancer; have discovered he had diabetes and diabetics are prone to pancreatic cancer. Hanchar's proof is studies from Evanston Hospital that exposure to fumes and smoke contributes to pancreatic cancer. He worked here 25 years and was 54 when he died. They have not approached his widow. In response to Alderman Bernstein Ms. Witt said there are two prongs to occupational disability. Can the person perform the job of a firefighter ever again and the cause of that disability? If it on duty, off duty or occupational, the state law talks about a certain presumption, that as a firefighter, some cancers are presumed to be duty-related. The City is represented by Wiedner McAuliffe. .

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George Dwyer, firefighter, died May 2005 of esophageal cancer; was also awarded an Occupational Disease Disability Pension in April. He claimed that his cancer was caused by exposure to smoke and other things.. Attorneys have subpoenaed records and number of fires attended. They have collected a large amount of data and are analyzing it.

Ms. Carroll asked why they show the liability as present cash value. Ms. Witt said it is under a different part of the act. Dwyer has a widow and one minor child.

The last big case is Peter Foley who is on duty related disability pension, with seven injuries over five years. His lower back was injured when he fell carrying a wheelchair and patient down stairs in 1995. This case will be resolved during 2006-07. Maximum partial disability would be about \$500,000 with an offset to the Pension Board..

Mayor Morton questioned whether Foley should have lifted the wheel chair. Ms. Witt pointed out that firefighters cannot roll people in wheel chairs down stairs but have to carry them. Foley was not alone. Illinois is a no fault worker's compensation state.

Ms. Witt said other cases were of lesser liability and hoped to settle cases for a little more than \$500,000 during the next fiscal year.

Mr. Hill asked that confidential documents be returned. They would be available at anytime anyone wanted to see them.

Ms. Carroll understood they wanted to talk about benefits and what is currently in the contracts. She said when they negotiate with the unions, if something is taken away, there has to be some kind of trade-off. Ms. Witt will give information on employee contributions and a comparison to other communities. She has spoken with Ms. Witt about negotiating with the unions to modify health insurance plans. By modifying the plan, they can get either increased deductibles or larger co-payments. She said it was not likely they would have this settled before they have to pass the budget. Alderman Wollin thought this was the time the City would want input from Council to say that a contribution by employees toward health care costs is supported. Ms. Carroll said employees already pay between \$90 and \$170 monthly for health insurance.

Ms. Witt explained that all contracts have language that says they cannot significantly change benefits without negotiation. One thing on the table with Police, Sergeants and AFSCME that the City has proposed, is eliminating that language and replacing it with collaborative approach to try and save money in the future. At the bargaining table she has emphasized there is a health insurance crises and the City is not immune from it. 15% increase in health insurance in the market is good but it is five times the rate of inflation. The problem cannot be solved on their own. She has told the unions that they can either work collaboratively over the next year to try to determine whether it is better to raise the co-pays, deductibles or have employees pay more, rather than doing it over the bargaining period of two months. She always proposes an increase in contributions by employees and this year it is more significant than last year. Evanston is approaching the

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high end of employee contributions compared to other municipalities and need to do something different. She is proposing a percentage of premium, and in one case an increase of \$60 per month which is above where they will end up. All unions came in saying they wanted no increase in health insurance.

Ms. Carroll thought the planned evaluation is crucial and how Evanston compares to the market based on deductibles, co-pays and out of pocket contribution by employees. Evanston has to be competitive and Police/Fire look at benefits carefully.

Alderman Holmes wanted to understand benefits, what they are, where they came from to determine if there is any leverage. Ms. Witt said benefits have been negotiated over many years and the philosophy of the City has been to treat non-union people similarly to union members. As a result of the 2003 union election, 90% of employees are unionized. A few years ago, Good Friday was eliminated as a fixed holiday. The City offered an additional floating holiday in lieu of Good Friday. AFSCME said they had to have the employee's birthday as a fixed holiday. She has proposed trading it again this year. Non-union employees have four floating holidays. AFSCME members have three floating holidays plus their birthday off. Many employees don't always want to take their birthday off. About 100 full time employees out of 850 are not unionized.

There being no further business to come before the Council, Mayor Morton asked for a motion to adjourn and the Council so moved at 12:27 p.m.

Mary P. Morris,
City Clerk