

CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
SEPTEMBER 10, 2007, 4:15 P.M., COUNCIL CHAMBERS
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The Special Meeting is called to order by Council President Gary Isham at 4:20 p.m.

MEMBERS PRESENT: Conley, LaDuke, Isham, Cross, Tinnin and Wells.

MEMBERS ABSENT: Major.

OTHERS PRESENT: Mayor C. Smiley and J. Adams, Deputy City Clerk.

PURPOSE OF THE MEETING:

- 1) Transfers to meet line item budget requirements.**
- 2) Discussion and possible action to eliminate the line item budget.**

PRESENTATION:

Mayor Smiley said the transfers for the line item budget is the start of many because of the way Mrs. Foster has to administer them. It will require Council to make these types of transfers throughout the fiscal year for various things. There are two police officers that exceeded their 5% of overtime allotted, and 5 others that are critical as far as their 5%. Other transfers are to settle the grievances he received from the Controller's Department regarding the additional work placed on them for administering the budget for line item purposes.

AUDIENCE PARTICIPATION: None.

COUNCIL DISCUSSION:

Mr. Cross inquired regarding the grant money being reimbursed and if it goes back into General Fund or into the police budget.

Mayor Smiley explained the procedure Mrs. Foster did before the line item budgeting took effect. He stated the revenue from this grant that generated the overtime, is a revenue for the Police Department. What is not used will go back into General Fund at the end of the year.

Mrs. Tinnin wanted to know why there is not an overtime account established.

Mayor Smiley said because of the line item budgeting, you can't pick and choose what part of the budget is going to be on line item.

Mrs. Tinnin said the line item budget is set up for each officer's salary and fringes. She doesn't know why a line can't be set up strictly for the purpose of taking the extra revenue that is needed out of that line item for fringes and overtime purposes and put into that specific line.

Mayor Smiley responded that it will make the budget more confusing and restrictive.

Discussion ensued further on this subject and Mrs. Tinnin expressed Council having a meeting with the auditors.

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Mr. LaDuke referenced Item #2 and asked the Mayor if they were to go to a departmental budget, would that eliminate the need for Items 15, 16, 17 and 18, because that takes away the additional work for those individuals.

Mayor Smiley replied in his opinion that would solve the grievance up to this point.

Mr. LaDuke said in a year and a half we have had a line item budget and he has seen nothing really significantly change in the operation other than we made it harder. I think as leaders we have to be willing to say we tried and it didn't work. The voters told me in August that at this point, they are not unhappy with the way the City is being run.

Mr. LaDuke expressed the Charter states if there is a union contract and it is amended, the Mayor has the ultimate right to administer the contract as written. He won't question that is a function of the administration. But he does not have the right under the Charter and according to our Attorney, to change the conditions of the contract. That has to be changed by the City Council. If there is a change in a salary, and it is a negotiated salary, that needs to come before the Board or the Finance Committee. The Mayor can surely make tentative agreements because that is what he does when he negotiate.

Mr. LaDuke asked the Mayor if he is going to commit to Council that he is going to work with them, make this departmental budget work and follow the intent of the City Council as it relates to the budget.

In response, Mayor Smiley stated he fully intends upon doing everything he can to work with everybody involved, whether it is the legislative branch of government, the many unions we deal with, or the administration in trying to provide all the services that we can. I don't know what you have specifically in mind. You had the opportunity to be here and see everything that goes on. It is not like we hand out upgrades. We are very restrictive and I believe there have been 20 in the history of the City of Burton.

Mr. LaDuke said if we adopt this budget then supposedly we have taken care of the problem. The additional work is gone. He does not want to see that the Controller makes \$5,000 more a year because you think she should make more money because she has a negotiated contract. I think the Council should have a final say, and you bring a tentative agreement if you want to sit down and negotiate an upgrade to the City Council. That is what I am looking for.

Mayor Smiley expressed he is only one side of the equation, you know that in the time you came in and negotiated from the SEIU point or the administration. When you bring something in to me, I am only one side, and then we have to decide what is best for the City. For me to make a one sided commitment, I would ask for the same commitment out of the Council. You need to come in and be involved, and stay in touch with us more than on Mondays at 7:00 at night. It takes that because it is really difficult.

Mr. LaDuke said if you make that commitment, I will make that commitment.
Mayor Smiley indicated he is here, he does not know any more that he can do.

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Mr. LaDuke asked the Mayor if he believes that Council has the final say in amendments to union contracts.

Mayor Smiley responded no, he does not believe that and he thinks the attorney may have given the wrong advice on that. I think once Council approves a contract from cover to cover, whatever is in that contract goes between the union elected body and the administration at that side, to administer that agreement like we would any other agreement. I think Council is then out of it. If there is a change, a length of time, yes that is an extension of the contract.

Mayor Smiley stated further, if we can look at what we have done in the past, and if Council wants more involvement and sit down and look at some things we should address that issue. I think it is the fairest way for both of us to really sit down and discuss what we think should be good policy. To discuss it here in a meeting is really hard. We have a union that we negotiate with.

Mr. LaDuke said when you negotiate a contract you get a tentative agreement and bring it forward. Any time you want to make a change in the contract you get a tentative agreement and I support that, but then you bring it forward. You are not the one saying no, it could be the Council saying no.

Mayor Smiley expressed that is an agreement, the agreement is cover to cover. If it is in there that gives management the rights or unions rights to do things, it takes it out of certain people's area.

Mr. LaDuke stated he does not read it the same way and neither does our attorney.

Mrs. Tinnin said there has been Councils of the past that apparently haven't caught on to this when it took place. Now that this Council of the present has caught on to what has happened, we are saying we feel this is a violation of the contract that the City Council approved. Our attorney also feels it is a violation of the contract that the City Council approves, and has the ability and authority to approve additional pay increases.

Mayor Smiley said it does not have anything to do with this line item transfer. A lot of things should be done in executive sessions too. I think the attorney has given you the wrong advice.

Mr. Cross interjected that because it has been done in the past does not make it right. When you make an error then it has to be corrected. The correction is forcible by law.

Mayor Smiley said there was no error made. The contract is very clear management has the right to do that.

Mr. LaDuke said we have differences of opinions and how do we resolve that if we take our attorney's advice on how to resolve the issue. The next thing is we will have to resolve it the best way we can if it happens in the future. I respect if you have a difference of opinion, if Mrs.

Conley has a difference of opinion, there has to be a method out there that can resolve this issue and get it taken care of.

Mayor Smiley stated unless we change somebody's work, we don't give upgrades. If this is the case, there has never been an issue. You are giving a lot of hypotheticals. All the times you brought in upgrades for you or somebody else, what was changed in their jobs. It was not just to be a nice guy that we gave somebody an upgrade, something had changed.

Mr. Isham said Mrs. Foster is being represented by Local 214 and the Administration.

Mayor Smiley replied that is not correct.

Mr. Isham said the grievance should come from Local 214 if there was a problem with Mrs. Foster's alleged burden of more of a workload. We should have heard something from Local 214 that is her representative.

Mayor Smiley said you heard it from me, I answered that grievance in my step. If you read the grievance, I said I understand that but Council does not want to pay. Until Council pays, she is still doing the work and there is nothing more I can do. If you don't want to transfer the money to fund a grievance, obviously we are going to the next step.

Mr. Isham said he doesn't think it was that Council didn't want to pay. We had no prior knowledge and were blindsided by a huge increase, 40% plus. It was never discussed with this body.

Mayor Smiley said what wasn't discussed is when you adopted a line item budget. You can see the documentation when they added that amount of work to her and told her in 3 days to do this. She was told from now on this is the way it will be done, and she couldn't do it. By right we should have went to Mrs. Foster and asked what is it going to take to get this done.

Mr. Isham said he certainly agrees with that. We should have asked what do you need to be able to complete this task

Mayor Smiley stressed we do not have a problem working with City Council. We will do whatever we can to meet the needs. This really is just every day transfers that any Controller has made in our City, based on how things are flexible within the departments. This is strictly an overtime issue. Mrs. Foster said there is 400 transfers she has to bring to Council that are going to be just like this. Are you going to have 3 and 4 meetings on every transfer? We are going to slow this City down.

Mr. Isham stated we are sensitive that it is cumbersome. This body is certainly willing to work with administration. We both talked about better communication and we really need to strive to get there.

Mr. Cross expressed that he offered to Mr. LaDuke various solutions.

Mr. LaDuke said he is at a point right now that he still believes in the Attorney's opinion that the administration does not have the right to amend contracts. I believe the administration will follow that advice when it comes down to the end, and if not, we will have to pursue it at a different angle.

Mr. LaDuke said he still does not believe the line item budget is as cumbersome as some might think. I don't know if it was thought through enough. For a year and a half, this Council has tried to implement a line item budget and for whatever reason, it has not worked.

Mr. Cross said we tried a partial line item budget and that didn't even work. The answer was then to go to a total line item budget, which we have done. I want to give up the arguments and vote.

Mr. Isham said he too spoke to our attorney as to who has the right to make the amendments on collective bargaining agreements. I have a lot of experience in that area and talked to others outside the building trades circle as far as making amendments to them. He agrees with Mr. LaDuke that when a collective bargaining agreement is recognized by both sides and they come to an agreement and it has been endorsed by both sides, during the shelf life whether it is a 2 year agreement or 4 year agreement, any modifications or amendments to that collective bargaining agreement is agreed to by both parties. One party cannot go in and make amendments to a collective bargaining agreement without violating labor law.

Mayor Smiley said he agrees but that is not the case here. I followed the agreement, there is nothing that has been modified in that agreement. Management had the right to change work conditions, wages, add to, delete from. I did not violate any of the agreement.

Mrs. Tinnin interjected you still have to bring it to Council for approval.

Mr. Isham said you may not have offended the Teamsters, but you violated this body's right to be in the loop so to speak.

Mayor Smiley said that is not accurate. He did not violate anything, period. I stayed within the scope of the agreements that were adopted.

Mrs. Tinnin said in the next agreements they will have to be very expetive.

Mayor Smiley said you have to make sure when you adopt agreements like that, you are willing to meet regularly. You are confusing the issues. I did not change that agreement. Not one section of the agreement did I deviate from nor change anything. The agreement gave management the right to do what it did, and union right to do what it did.

Mr. LaDuke asked what it is going to take if our attorney says he agrees with us. He is your attorney too. By giving raises that is an amendment. We have a distinct disagreement on the interpretation. He asked how we get to that point, do we bring in a third party.

Mayor Smiley said maybe through education, workshops, maybe some clear understandings through the legislative branch of the administration. You can't give me one example of someone that got an upgrade that one wasn't agreed upon by both parties.

Mr. Isham asked the Mayor to clarify that he believes he has the right to make that financial change. Would you have the right to go in and cut her salary by 30% under that collective bargaining agreement under management's right.

Mayor Smiley replied if the workload changed, yes I would. We would get a grievance just like we did on this. We have the right to do that. Management and union have the right to administer the contract and you have management rights and you know that from any union agreement.

Mr. LaDuke said we need to talk to our attorney to see what avenue we have to explore to come to a resolution.

Discussion continued concerning the Controller's position and added workload, grievance procedure, and the Motor Pool position.

COUNCIL DISCUSSION ACTION:

Mr. Cross called the question on Item #19. Motion carried 5-1, with Mrs. Tinnin voting no.

Mr. LaDuke moved and Mrs. Tinnin seconded to vote on Council Action Items 16, 17 and 18 in a block. Motion failed 3-3, with Cross, Tinnin and Conley voting no.

Moved by Cross and seconded by Tinnin to Vote on Council Action Items 1 through 14. Motion carried 6-0.

COUNCIL ACTION:

Cross moved and Tinnin seconded the following motion:

1. Approve and authorize a transfer of funds in the amount of \$1,500 from General Fund - Contingency to Police Salaries Permanent – 2022.
- Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

2. Approve and authorize a transfer of funds in the amount of \$575 from General Fund - Contingency to Police Fringe Benefits – 2022.
- Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

3. Approve and authorize a transfer of funds in the amount of \$1,500 from General Fund - Contingency to Police Salaries Permanent – 2017.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

4. Approve and authorize a transfer of funds in the amount of \$575 from General Fund - Contingency to Police Fringe Benefits – 2017.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

5. Approve and authorize a transfer of funds in the amount of \$1,500 from General Fund - Contingency to Police Salaries Permanent – 2019.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

6. Approve and authorize a transfer of funds in the amount of \$575 from General Fund - Contingency to Police Fringe Benefits – 2019.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

7. Approve and authorize a transfer of funds in the amount of \$1,500 from General Fund - Contingency to Police Salaries Permanent – 2049.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

8. Approve and authorize a transfer of funds in the amount of \$575 from General Fund - Contingency to Police Fringe Benefits – 2049.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

9. Approve and authorize a transfer of funds in the amount of \$1,500 from General Fund - Contingency to Police Salaries Permanent – 2121.

Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

10. Approve and authorize a transfer of funds in the amount of \$575 from General Fund - Contingency to Police Fringe Benefits – 2121.
Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

11. Approve and authorize a transfer of funds in the amount of \$2,500 from General Fund - Contingency to Police Salaries Permanent – 2005.
Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

12. Approve and authorize a transfer of funds in the amount of \$975 from General Fund - Contingency to Police Fringe Benefits – 2005.
Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

13. Approve and authorize a transfer of funds in the amount of \$5,000 from General Fund - Contingency to Police Salaries Permanent – 2047.
Motion carried 6-0.

Cross moved and Tinnin seconded the following motion:

14. Approve and authorize a transfer of funds in the amount of \$1,950 from General Fund - Contingency to Police Fringe Benefits – 2047.
Motion carried 6-0.

LaDuke moved and Wells seconded the following motion:

15. Approve and authorize a transfer of funds in the amount of \$22,225 from General Fund - Contingency to General Fund – Controller Salary – 2028.
Motion failed 4-2, with Cross, Tinnin, LaDuke and Conley voting no.

LaDuke moved and Wells seconded the following motion:

16. Approve and authorize a transfer of funds in the amount of \$13,625 from General Fund - Contingency to General Fund – Controller Fringe Benefits – 2028.
Motion failed 4-2, with Cross, Tinnin, LaDuke and Conley voting no.

LaDuke moved and Wells seconded the following motion:

17. Approve and authorize a transfer of funds in the amount of \$6,600 from General Fund - Contingency to General Fund – Controller Salaries Permanent – 2051.
Motion failed 5-1, with Isham, Cross, Tinnin, LaDuke and Conley voting no.

LaDuke moved and Conley seconded the following motion:

18. Approve and authorize a transfer of funds in the amount of \$1,850 from General Fund - Contingency to General Fund – Controller Fringe Benefits – 2051.
Motion failed 5-1, with Isham, Cross, Tinnin, LaDuke and Conley voting no.

LaDuke moved and Wells seconded the following motion:

19. Approve and authorize the elimination of the line item budget for the fiscal year 2007-2008.
Motion failed 3-3, with Isham, Cross and Tinnin voting no.

Meeting adjourned at 5:17 p.m.

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