CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
AUGUST 1, 2007, 5:00 P.M., COUNCIL CHAMBERS
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Councilman Jeff Major called the meeting to order at 5:05 P.M.

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

MEMBERS ABSENT: Isham.

OTHERS PRESENT: Mayor C. Smiley, K. Foster, Controller, and L. Young, Clerk's Office.

PURPOSE OF THE MEETING: Discussion and possible action concerning the following:

1. Review the attorney's opinion as it relates to the upgrade and wage adjustment of the Controller and any action that might be taken as a result of that review.
2. Discuss any Charter violation that might have occurred by the Administration as it relates to the line item budget and the refusal of the Mayor to follow the intent of the adopted budget.
3. Discussion and possible action as it relates to criminal or Charter violations as it relates to the line item budget and the changing of the salary in the recent teamsters union agreement.

PRESENTATION: None.

AUDIENCE PARTICIPATION:

Mary Crawford, 6203 Briggs, voiced her disappointment with the Burton City Council, and stated that she was ashamed to call them her Council. She pointed out that holding the meeting six days before the election is dirty politics at its worst. Mrs. Crawford felt that the media is slanted and the reason for the meeting was to sully a good man's (Mayor Smiley) name and to divide the public. She asked the Council where their honor and pride in themselves were.

COUNCIL DISCUSSION:

Mr. Wells inquired as to why this meeting was called when it was not an emergency.

Mr. Major said that the Mayor dictated the timing of the action.

Mr. Wells inquired as to why these specific agenda items could not wait until the Regular Council Meeting to be held on August 6, 2007.

Mr. Major stated that in his opinion this meeting could not wait until Monday night.

Mr. Wells said that in his opinion the meeting was called because no one wants to spend any money on this election and this is the last chance for the people sitting on Council that are running for office to get their names in the paper before Tuesday's election. He also spoke in reference to the Teamsters Union and how it took a year and a half to approve the contract. He also stated that when they approved the contract, the city was not running on a line item budget. He felt that it was the Council that violated the Teamster's contract by approving it and then giving Mrs. Foster a fifty percent increase in her workload.

Mr. Major inquired as to whether or not there are provisions in the Teamster's contract for the adjustment of wages. He also stated that he voted to approve the contract because he was ordered by the Judge to do so. He said that the provisions are that a wage increase has to be negotiated by the Council after a presentation by the Mayor.

Mr. Wells directed his comment to Attorney Austin and said that unless there is an emergency, the city cannot pay him if someone calls him at ten o'clock for an opinion without prior approval of the Council after $60,000 is used up in his line item of the budget. He referenced the Police Department and stated that the police officers are allowed 5% for overtime in their budget, and asked what an officer is to do if he/she is not allowed any more overtime without approval of the Council and is driving back to the station and sees an accident.

Attorney Austin quoted Section 18 of the Uniform Budget and Accounting Act. He said that he does not believe the 5% overtime is capped off for each individual officer and once an officer has exceeded 5% for his overtime, he is cut off from his overtime and that giving him additional overtime could not be construed as a violation of the Legislative intent.

Mr. Wells felt that it is the intent of the people sitting on Council to get the administration out of the city and to move themselves in while making the city look back in order to pursue their own agenda.

Attorney Austin stated that he spent a lot of time researching the question and formed an opinion. He also said that this could bring up further questions. He declared that the Chief Officer of the city has to be allowed to run the city without interference of the Legislative branch of government and it is the Legislation's duty to establish a budget, so both branches need to find a way to co-exist.

Mr. Wells said that the Charter has no flexibility, and could possibly shut the city down. He also voiced his concerns with the privacy laws as far as adding family members to the employee's insurance.

Mr. LaDuke said that the solution is communication and working together. He stated that he would be willing to eliminate the line item budget if the Mayor is willing to abide by the Charter and realize that the role of the Council is to set the budget. He also said that he does not want to cost the taxpayers money by taking this issue to court. It was also stated that if the Council eliminated the line item budget it would eliminate the need for an increase for this position.

Mr. Wells stated that there was at least two meetings set up between Mr. LaDuke and Mayor Smiley, both of which Mr. LaDuke did not show up for. He also said that he could not justify a 40% raise and inquired as to why it took three years to make Mrs. Foster's salary equal to that of the former Controller, Brad Becker.

Mayor Smiley replied that after Mr. Becker passed away he had to appoint a Treasurer. He appointed Steve Perez as the Purchasing Agent/Treasurer and gave him $20,000 raise, which brought his salary up to $72,000. When Mr. Perez retired, that $20,000 went back into General Fund. Mrs. Foster had never approached him before in regards to a pay raise and continued to do the work. The last fiscal year, the Council put a line item budget in place, and Mrs. Foster continued to administer that line item budget and work through it. Mayor Smiley stated that in December, when Mr. LaDuke was appointed to Council, everyone thought that the line item budget would be eliminated, but then he found out that they were going to have a line item for each employee. He said that it was then that Mrs. Foster came to him with her letter of resignation while declaring that she was unable to do the work because the job had become too overwhelming with the creation of 120 new line items. She knew that Brad Becker was receiving more money as the Controller and that she was doing the same job and more and is just as qualified as Mr. Becker, being that she has received all the same awards. Mayor Smiley said that he had two choices: to either pay Mrs. Foster the same rate as her predecessor, or accept her resignation and let her return to her previous position as Deputy Controller, which would allow her to receive overtime, and would then have to hire a Controller. Mayor Smiley pointed out that by increasing her wage, he was able to save the city $100,000.

Mrs. Foster stated that everything that the Mayor said in regards to her salary increase was correct. She also said that she is willing to put in the extra hours in order to complete her work in a timely manner.

Mayor Smiley stated that when you put mandates on jobs, the employees are going to want a raise.

Mr. Wells inquired as to what would happen if the line item budget was eliminated, in regards to Mrs. Foster’s salary.

Mayor Smiley replied that Mrs. Foster would have to go back to her previous salary and if there was more work that she needed to do, they would evaluate the jobs. He noted that although the line items were not the only change in her workload, it was, in fact, the most significant. Mayor Smiley also stated that her position title is Controller/Budget Director, and according to the union agreement, when you add a workload responsibility you must compensate that employee. He clarified that Mrs. Foster received her salary upgrade not only for the increased workload brought about by the line item budget, but also for the added title as Budget Director.

Mr. Wells brought up the fact that the same thing is about to happen in the Water Department, because one of the employees has certifications that are desired by other municipalities and if he leaves, the Water Department will shut down.

Mr. LaDuke stated that they are willing to listen to requests for pay increases but it has to come before the Board first.

Mr. Wells stated that he is proud of the amount of female administrators within the city and stated that Mrs. Foster is worth every penny because she is a hard worker.

Mr. LaDuke stated that it was never negotiated and brought before the Council for approval, as the Charter dictates, that they wanted this position changed as far as the salary. This was the salary that was given to the Council by the Union and Administration.

Mr. LaDuke stated that if he sat in “Murder’s Row” as he nicknamed it when he was an employee with the city, he would be disappointed to have the Council micro managing the city.
He said that he is not opposed to upgrading Mrs. Foster, however, he does not agree with how it was handled.

Mr. Wells stated that they should be having this discussion as a Council of the whole on Monday, August 6, 2007, which is how it supposed to work.

Mrs. Tinnin was confused as to when Mrs. Foster came to the Mayor for a raise, stating that it was in December.

Mayor Smiley corrected Mrs. Tinnin by clarifying that it was, in fact, a couple of weeks ago when the Council put an un-funded mandate on Mrs. Foster. He also stated that he has no problem coming to the Council, however, they need to clarify what he needs to come to them for because past practices have proven otherwise.

Mrs. Tinnin stated that once you sign a union contract and become a dues paying member, you give up all rights to other union contracts. You cannot be a member of two different unions and flow back to another union contract.

Mr. Cross corrected Mrs. Tinnin by saying that a person does have the right to flow back to a previous position, taking out the lowest seniority position, however pay raises are to be negotiated by the union and management.

Mr. LaDuke said he thinks that a union and management can meet periodically and negotiate outside of the contract and things change, but once they come to an agreement, the next step is to bring it to the Council because they are the ones to approve contracts.

Mrs. Conley wanted it stated on the record that she felt as if the Mayor violated the Charter.

Mr. Cross asked Attorney Austin what the next step would be.

Attorney Austin replied that he sent a copy of his opinion to the Attorney General’s office because the statute required it, not because he felt that there was any criminal intent. The statute permits the county prosecuting attorney to prosecute for any violation of the State law. The Charter provision is punishable as a misdemeanor by up to ninety days in jail or a $500.00 fine. If a complaint is forwarded to any law enforcement agency, he believes that they would conduct some kind of investigation. If they then present that investigation to him, then he would refer it to an outside attorney, because that would be a conflict of interest for him. He then stated that if the Council would like to take action they could forward a copy of the opinion to the Prosecuting

Attorney of Genesee County. The Council could also refer any alleged violation of the State Uniform Budget and Accounting Act to the Prosecuting Act and any alleged violation of the Charter to the Burton City Police or the State Police.

Mr. Cross stated that if it was a budgetary violation, Attorney David Leyton would be able to take the case, however he does not prosecute Charter violations.

Mr. Major felt that it would be a conflict of interest to send the complaint to the Burton City Police department since the Mayor is the one who appoints the Police Chief.

Attorney Austin stated that he felt as if Chief Whitman deserves credit for previously referring a complaint against elected officials to the State Police. He also feels that Chief Whitman is impartial and does not always see eye to eye with the Administration, Council or with himself.

Mr. Wells inquired as to what they would be charging the Mayor with.

Mr. Cross and Mrs. Tinnin replied that the charges would be violation of Section 7.6a of the Charter.

Mr. LaDuke stated that the goal should be to resolve the problem with zero cost to the residents. He also said that he felt that having the Mayor admit that the Charter was violated is enough if it resolves the problem. Then the Mayor would have to come in front of the Council, with the proposed increase and either gets it approved or not approved. If the Council eliminates the funding for a position, then the Mayor needs to live within the budget.

Mrs. Tinnin said that the Mayor should submit a letter in writing, as to have a real commitment, stating that he violated the Charter and that from now on he will live within the budget set by the Council.

Mr. LaDuke admitted that it was past practice for the Mayor to grant upgrades without the Council's approval; however now it is clear that Council is to approve all contracts. He also stated that if the Board does not pass the upgrade then the employee doesn't get it and if the employee wants to resign they shouldn't let the door hit them in the butt. He also felt that if the Council does eliminate the funding for a position, he does not want the Mayor to find a different way to fund that position.

Mr. Major vehemently stated that he wants the Mayor to admit that he violated the Charter and the accounting procedures.

Mr. Cross stated that he wanted the attorney to draft their options and have it put on the agenda for the Regular Council Meeting on Monday August 6, 2007.
Attorney Austin stated that they would have to add it on to the agenda Monday night, since the deadline to add agenda items is 12:00 P.M. on the Wednesday before a Regular Council meeting. He also stated that the Clerk's Office is swamped with the current Special meeting, the Special meeting that has been called for Thursday, August 4, 2007, the Regular meeting on Monday, August 6, 2007 and the election on Tuesday, August 7, 2007.

Mr. Major stated that he did not believe that there would be a quorum for the following day's meeting, and that he personally will not be attending.

Mr. LaDuke stated that he would be out of town.

Mr. Cross stated that he would be out of town.

Mrs. Conley stated that she would not be attending the meeting.

Mr. Wells stated that he would like to amend the previous motion and send this issue to court with the understanding that if it gets sent back and the court does not do anything, the people on the City Council that are making these accusations have to resign.

Mr. LaDuke stated that he would support the amendment if Mr. Wells agrees to resign if something comes back to say that the Mayor is guilty.

Attorney Austin interjected and informed the Council that they do not have the right to refer something directly to the court. They would have to refer it to a police agency.

Mrs. Tinnin gave the ultimatum that the Mayor is to agree to abide by the budget set by the Council and Mrs. Foster is to go back to her right wage under her contract, or they are going to go forward and have the Prosecutor decide where he is going to send it.

COUNCIL ACTION:

Cross moved and Tinnin seconded the following motion:

1. Approve and authorize Attorney Richard Austin to draft the Council's options for further action
   and have them as an agenda item for the meeting on Monday, August 6, 2007 for discussion and possible action. (4 affirmative votes required)
   Motion carried 4-2 with Wells and LaDuke voting no.

Meeting adjourned at 6:15 P.M.
ljy