CITY OF BURTON
COUNCIL OF THE WHOLE WORKSHOP MINUTES
OCTOBER 17, 2011 AT 6:00 P.M., COUNCIL CHAMBERS
www.burtonmi.us

The Workshop was called to order by Legislative Chairwoman Ellen Ellenburg at 6:10 p.m.

MEMBERS PRESENT: Ellenburg, Martinbianco, Smith, Haskins, Wells.
MEMBERS ABSENT: Heffner and O'Keefe.
OTHERS PRESENT: Atty. R. Austin and J. Adams.

PURPOSE OF THE MEETING: Discussion and review of Ordinance 30.03, formerly Ordinance 68-C.

PRESENTATION:

Mrs. Ellenburg turned the meeting over to Council President Tom Martinbianco. She stated they have both been working together on this.

Mr. Martinbianco said they have a number of proposed changes discussed in the past meetings that were held. We spoke in the past meeting regarding the ordinance that governed the Administrators and what constituted disability leave. We ended up with a reaction from Administration some time ago that bought us an opportunity to change those things which paid at that time 52 weeks in full to 30 days and the balance being transferred over to the insurance carrier that has been changed. We now have an underwriter that will take care of the balance of the situation.

On Page 75, we discussed at great length the potential change in rule from the State level, which since the last workshop has been inactive. Mr. Martinbianco went over Page 75, Section G, Sub Section 2, concerning Blue Plan 2. We would have to insert pursuant to State Law, the annual deductible amount shall be funded by a Hard Cap or an 80/20 split as provided by State Law unless an Opt Out provision is selected. All costs incurred by such implementation borne by the Administrators. Members shall be responsible for the 20% co-pay; the rest of that Sub Section being intact.

The second thing we discussed under the same G2 is now D, unable to reduce the elected amount in case someone elected to opt out of the health insurance coverage would be to reduce that from $2,500 to $1,500. Under Sub Section E of G2, it indicates bargaining unit member and that language should be changed to reflect Administrator.

On Page 76 G2, Sub Section G, there is several items, to drop #4 to drop the City Clerk from the computation. Also on page 76, G4, we discussed to change the 52 weeks to the first 30 days of 100% pay and the rest being the same. For the balance of that year, the rest would be the same, which would be 2/3 of the pay.

Page 78, Sub Section H 2A, the language reflected of the same as G2 A above, the Hard Cap, 80/20 split or Opt Out provision. Under C, the same language to reduce anyone not taking the health insurance, reducing that amount for $2,500 to $1,500. On Page 79, City contribution to pension, change that equal to the language equal to15% prevailing Council wage. Because of the history of some of the situations we have been under, there is the potential to create a new Sub Section dealing with contract employees, or interim employees and as to their status, compensation, longevity, there has been several chronicled and used ordinances from other communities to discuss interim employees. However, they also include the language of being laid off and that would not be a part of that definition of interim or contract employee.

Mr. Martinbianco stated further, there is the potential for us to discuss that, if it is in fact an administrative function, and I believe it is, find the appropriate place for it and the appropriate language that would define their role, and also define their job description and move forward from that level.

Mr. Austin said he is going to have to turn these notes into an ordinance. He asked if he could get clarification and make sure I am clear on it. On G4, Page 76, would that read the Administrator shall receive 100% payment of salary and benefits for the first 30 days, thereafter the benefits shall be 2/3 of the Administrator's regular salary, up to a period of 1 year.

Mr. Austin asked that in G2, hospitalization insurance on Page 75, you are waiting for an election by this Body.

Mr. Martinbianco said he guesses we have to do something as opposed to allowing the State to come in and dictate. We will have to at least to my understanding of the law as it is written, the 3 choices are is to accept the Hard Cap rule, accept the 80/20 co-payment plan or opt out all together. There is certain rules that would dictate that.

Mr. Austin suggested using this ordinance as this Council's expression as to which choice you want. I am assuming you are prepared to go forward with this ordinance at this point.

Mrs. Ellenburg said our goal is to have it in place so it will be affected January 1st.

Mr. Austin stated we have to make an election rather quickly on this, by January 1st under the Senate Bill 7. We have time to make the election, whatever option you choose. To make that election, normally it is done by resolution but we might as well make that election right in the confines of this ordinance revision.

Mr. Martinbianco said he doesn't know if we have to do that of necessity because we are going to be in contract negotiations with the union parties relative to anything and everything that will be on the table. Whatever decision we make will set the precipice for what is going to go on within the confines of negotiations.

Mr. Austin asked do you want to leave your options open on this ordinance.

Mr. Martinbianco replied he would like to be able to through dialogue with the balance of the Council members, be able to figure out from a financial standpoint what is best to keep the City in the best state of solvency and provide the least of the impact on the employees. There has to be a balance there and I understand and wrote in some of my notes about adopting an annually by resolution which choice we would make. It may be one year Hard Cap, maybe next year 80/20. Maybe we would find through negotiations we could opt out and if there is enough give and take, look at those options as well. If we could do it by resolution and do it annually, that would probably be okay. However, once we get into contract negotiations and we have an effected date for whatever happens through our union friends, then we will make it effective for however many years the contract is good for; it may be one, 3 or 4 years. The financial impact is going to change base on the numbers we get, specifically with health care.

Mr. Martinbianco stated further that number could be subject to fluctuations during that period. One thing we do know for sure, those costs are not going to go down, they are going to go up. Our hope is to manage the increases as we have in the past, which has allowed us to get to the level that we are, in minimizing those costs to the best extent possible. If something happens and it goes through the roof we have to have some safety net to be able to go back to.

Mr. Austin said the ordinance, the basic structure for the hospitalization insurance plan will provide that the Council will make annually make the determination as provided by State Law, in accordance with the options afforded to it by State Law.

Mr. Martinbianco interjected, as in impacts this ordinance, and this ordinance only. It provides us with minimum exposure.

Mr. Smith asked if union contracts would start negotiating next Spring?
Mr. Martinbianco replied that is to his understanding.
Mr. Smith said he has only been through one cycle of this. When I looked at this, it is 3 year life of the contract. With the State Law being the 80/20 rule or the Hard Cap, after January 1, how would we do that. Can we opt out at any time or do we have to do it within a defined time frame.

Mr. Martinbianco stated that under the Hard Cap, coverage beginning on or after January 1, 2012, a public employer may not pay more than the annual cost for medical benefit plans then a total amount equal to, and there are 3 numbers in there. Let's say $11,000 times the number of employees with individual and spousal coverage, it says a public employer may allocate its payments among its employees and elected officials as it sees fit. These caps will be adjusted by them on October 1st each year to apply to the following calendar year. So October 2012, they will make the determination that $11,000 might end up being $11,800, to apply to the following calendar year based on the change in medical care component United States Consumer Product Index for the most recent 12 month period.

Mr. Martinbianco stated under the 80/20 scenario, by a majority vote by its governing Body, a public employer may opt out of the Hard Cap and into an 80% cap option wherein the public employer may not pay more than 80% of the total annual costs of all medical benefit plans that offers and contributes for its employees and elected officials. The public employer may allocate employees share of annual costs of medical benefit plans as employer sees fit, however, elected public officials under this rule must pay 20% or more of the total annual cost of medical benefit plan.

Mr. Martinbianco stated further, when you talk about opt out situation you discussed, it talks about 2/3 vote of its governing Body each year, and local government may exempt itself from the requirements of the Act this year. An exemption is not effective for a City with a Mayor who is both Chief Executive Officer and a Chief Administrator, which would be us, unless the Mayor also approves the exemption. What I am seeing here, total annual cost, both the Hard Cap and 80% cap pertained to annual cost of the medical benefit plan, these include the premium, and all employer reimbursement of co-pays, deductibles and payments into Health Saving Account and related accounts. They really don't discuss at length when you can opt out or if you can't opt out. My guess is if we make something for employees effective January 1st of next year, it will be enforced for that entire year. That might set the tenor, trial by error. You hate to have your top Administrators up to be the trial by error. We will find out exactly if it was to work, under each of those 3 scenarios how each one of them impacts.

Mr. Martinbianco indicated further what is interesting in the Act is the penalty. Failure to comply with this Act will result in the State Treasurer reducing each economic vitality incentive program payment by 10% for the period of non-compliance. This penalty is separate and distinct from health care component of EVIP certification process. Action under this Act does not certify or disqualify you for that.

Mr. Martinbianco expressed trying to contain the cost both as it is related to health care under each of the opportunity plans that have been mandated by the State and try to figure out a competitive balance under each of those plans, make it effective as of January 1st. Now we have a mew bench mark and once we enter into those contract negotiations, say this is what our top Administrators are having to live through and we have every anticipation if that is successful, that is what you are going to live through.

Mr. Martinbianco stated further, I am not that intimate with those types of contract negotiations, but let's say something happens and they could say we are just going to continue on the current contract for 6 months until we get this decided and then by January 1, 2013, we will know what is in place, what we can afford and they can do all their economic run ups and run downs. Under this new law which is fairly complex, it is going to take some time to weigh the economic benefit or the bereft of what their employees are going to have and end up with at the end of the day.

Mr. Smith expressed giving a year to shake it out.
Mr. Martinbianco said that is what he is thinking.

Mr. Haskins stated he has copies of that Bill plus the House Legislation Bill after contracts have expired. I am still going through the Bill quite diligently. Our lobbyists work closely in Lansing with all these, I do believe there is an Opt out with the 80/20 as long as you provide the State with written notice there is not supposed to be a penalty. It is very complex and most of the verbiage in there reverts back to a different way, there is possibly an opt out option without penalty.

Mr. Martinbianco said the opt out is always apparent for you, but if Highland Park were to opt out 3 years ago, they wouldn't be in receivership right now. That is part of the problem that you run into with communities and their financial thing. The Attorney and I had a brief discussion regarding Monitor Township who did that very thing and elected to opt out. You can't compare apples and especially you can't compare townships and municipalities where we offer the entire panorama of services and some townships don't. We have more overhead as it relates to the every day necessity of having employees around and having them all perform specific functions. They could opt out and their financial situation is a lot better than ours.

Mr. Austin asked Mr. Haskins if you don't opt out and accept the Hard Cap year 1, are you then permitted to opt out in subsequent years under the Act.

Mr. Haskins replied it is a union contract. So if your union contract is only good for a year, then when that contract expires, you can at that point in time do something. If your union contract is for 4 years, then unless it is going to be beneficial to the workers and employees that negotiated the contract, they are not going to want to put a letter of agreement in to change it. You can't just inadvertently keep changing it on your employees once the contract is in place. So if you go with the cap and stick with it that is pretty much the way you are going to go. Mr. Haskins said this is all verbiage of everything we have read up to date so far. The Bills are very complex.

Mr. Haskins said basically if you get into a 4 year contract, and you decide to go with the 80/20, then pretty much that is what you are going to stick with unless the employer can show the employees that if you go with the cap it will save the employees this much money coming out of their paychecks. As of now from where we are it, the standpoint of the Bill, keep changing it from year to year once the contract is settled.

Mr. Austin said he is not clear on if you don't take action to opt out or opt for the 80/20,
I am not sure what right you have later on to do so.

Mr. Haskins stated for the 80/20, once they get into it that is not something they are going to want give up, because health care and pensions are a big cost to municipalities.

Mr. Martinbianco said judging the language he read from it, it specifically talked about collective bargaining agreements or any other contract executed after a date specific. He asked Mr. Austin if he would call this ordinance a contract or a collective bargaining agreement.

Mr. Austin replied no.
Mr. Martinbianco said this agreement might not fall under this. It is a professional services agreement, the closest thing I could think of.

Mr. Austin said people who lose compensation are not protected by the union contract provision in that State Statute.

Mr. Martinbianco interjected which is collective bargaining.

Mr. Haskins said they are to a point though. When this law was put in place on the 80/20, it all goes back to your beginning negotiating your contract because none of these go into effect till your contract expires. Once your contract expires now you are negotiating. Even though this is State Law, you negotiate the contract. In advertently if legislation changes the law again and say 80/20 is not good enough, let's go to 70/30, at that point in time it will not go into effect until the contract is thus expired again. Even though it is legislation, it is still going to be instituted in a CBA as far as language. Even though it is law, we are instituting a letter with it so there can't be changes in the middle of your CBA until it expires.

Mr. Austin stated to the extent of this ordinance governs City employees with no collective bargaining agreement.

Mr. Martinbianco said they did not provide any other, no other proviso, professional services agreements. Let's say a community decided to get together and have a strong mayor but they wanted to contract out those 6 or 7 Charter positions we have and maybe their Charter will allow them to do so, those are all professional service agreements. What we are looking at here with the scope of this ordinance as it relates to health care issue, talks about collective bargaining agreements and other contracts. These are all at-will employees, as we found out and they are not subject to collective bargaining. I would want to know in their definitions, if that would also extend to ordinances that govern professional administrators within a municipality.

Mr. Austin said I would say not. You are going to have to make an election on behalf of those employees. They are not covered by a collective bargaining agreement and you are going to have to make an affirmative election or no election at all if you are willing to accept the Hard Cap of the Statute.

Mr. Haskins said this is an idea. In the case of what you are stating, what it behoove the ordinance to state something in there on a case by case basis, that way you can dictate what goes on with the contract employee or whatever may come in after the fact, at-will employee or whatever you want to say. Would that be feasible to put that somewhere in the ordinance, case-by-case basis in the event of. All this may be reverted. We might go back to a Democratic House, Senate and Governor and all this may be reverted where you have people that are supporting unions again and helping union rights.

Mrs. Ellenburg said at that time couldn't it just be amended.

Mr. Austin said my recommendation is to take Tom's advice and make paragraph G2 A, as generic as I possibly can and let you make the decisions outside of the ordinance but have the ordinance simply speak to the available options.

Mr. Martinbianco said if you read the way I worded it, which may or not be legally aesthetic, it says the annual deductible amount shall be funded by either a Hard Cap or 80/20 split as provided by State Law. If we find out State Law is silent as it relates to this, it really won't apply.

Mr. Austin stated I may put in there as determined annually by the City Council. It will be up to Council to make their decisions annually or as the law provides. This paragraph will be pretty generic and just make a passing reference there is a State Law that is affecting how we do business on our hospitalization insurance.

Mr. Martinbianco said the 80/20 thing corrects itself because you will get an audited amount and we will know what those costs are and that is how the 80/20 will be spread. The Hard Cap will probably be calculated the same way and those costs can be ascertained. The State has gone out of their way to tell us exactly when and what means they are using to evaluate what the Consumer Price Index for the most current 12 month period on health care, medical care component of the CPI and using that. They are going to give us that number every year. So that is going to change, even in collective bargaining it is going to change. That is going to be a running number. It was not that many years ago the old 68C was evaluated and re-done on an annual basis anyway and then it became a couple of years, then 3 years, and some of the other contracts got extended out. It could be a case where the City Council is going to have to make those determinations on an annual basis.

Mr. Austin said my guess is it is going to be shorter than it is now and say something like the City of Burton agrees to provide hospitalization coverage in accordance with State Statute. The City Council will annually make an election of; something like that.

Mr. Haskins said it is defined very well as far as the annual deductible, the amount shall be funded by either Hard Cap or 80/20 split. If things turn to where you get the Democrats back in, they are going to repeal all of this and go back to union rights. We can have meetings and re-adjust this if we are still all here. We know and see how diligent a process it takes to get changed. I don’t know if putting in this in here in strong language on the 80/20, how State Law reflects.

Mr. Martinbianco said he doesn’t even know if the Statute applies to these employees. That will be a discussion during the course of negotiations with all the bargaining units and it will be incumbent upon them to find out how that will impact the cost of their membership, and if they should include language that should something changes the formula or nullifies current law, that we operate under what is the most current law.

Mr. Smith said he agrees I think we will be negotiating these contracts and the most general we make it, it will be easier for most parties to negotiate and still complying within the law.

Mr. Austin said you are going to make some concrete decisions, but you will do that by resolution outside of this ordinance.

Mr. Smith said if we tighten it down, it limited both parties, both the unions as well as the City when they go to negotiate.

Discussion ensued regarding dates for a First Reading of An Ordinance.
Mrs. Ellenburg said they would call a Special Council Meeting on November 17th at 6:00 p.m. for the First Reading and discussion on it.

Mr. Wells said his biggest concern on this ordinance is the Administrative part where they can go on sick leave and stay on sick leave for 52 weeks drawing full pay and benefits. I know Mayor Zelenko said she changed the insurance so we only have to pay for 30 days and the insurance picks up 2/3 of the cost and they reimburse us at the end of the year. We still haven't found any language. There is no impetus for them to go to work. If we don't draft something in it where they have to see a City doctor; we have to know why they are on sick leave. We are still paying out money for nothing. We need something to protect us so we can put someone in that place if they are off for a full year. To me that is the most important thing. The union part will take care of itself. It is the Administrators I am concerned with. We have gone through it now with two people and who is to say by November 8th we don't have a couple of more jumping ship.

Mr. Martinbianco said those are both valid issues. One of the incidences is someone in the Teamsters union. We talked about the definition of an interim or contract employee. Upon authorization from City Council, what they might expect. Those are the 2 pitfalls we can relate to and we will go back and now that we have the knowledge at hand we can go back through our union contracts and take care of the one set of issues. If we go back and evaluate of what we consider to be an interim or contract employee, we can take care of the set of issues you are referencing now. As far as Administrators, if you think there needs to be the same type of language, I am sure that can be drafted and put in place in the same fashion.

Mr. Wells said my point is we can't afford to do that anymore. I thought we brought these meetings up to put a stop to this until we do come up with a better ordinance. I know there are some union negotiations that may have to go on, but if we lose a few more people and then they are grand fathered in and we are paying 100% of their pay. He feels it needs to be taken care of as soon as possible.

Mr. Martinbianco asked Mr. Wells what would his prospect for the best solution or language to bring forth as it affects Ordinance 30.03. Is there a proposition within the scope of that issue to take care of it. It is not going to take care of any other issue other than it is already something in the bargaining agreement that won't expire for another 180 days, 160 days. We will still be saddled with that problem. That is the kind of thing that goes under the union negotiations through all the collective bargaining units we can bring forth.

Mr. Martinbianco stated further, as far as anything else, we have to address it under the scope of 30.03, and put the defining and implementing language in that, or under the scope of 30.03, are able to identify hiring an interim or contract employee, the conditions under which they are employed. Their compensation for that time certain period and who would allow them to have any extension on anything else other than our own workmen's compensation if it was the winter and there was a slip and fall in the parking lot. We would have coverage for that any way.

Mr. Wells said some of those administrators are now in a union, the Teamsters. To me there is a win and a loss there. You are an Administrator and you had this, but now you are a Teamster you are part of the rank and file. So we are going to change the way you go on sick leave the same as the rest of the City employees. What is the difference? You can't have it both ways. You can't be unionized and then be an Administrator and say I want the moon on this side, but I want to make sure my job is protected by the union.

Mr. Martinbianco said you are not going to affect change as it happens to a collective bargaining administrator. We are talking about the Charter employees and not anyone else that unbeknown to a lot of us, got together and decided to get unionized. That is beyond our control; we couldn't help that. Under the conditions and terms of the agreement, they were hired in for. There was none of us, including you and I that were privy to any of that interim discussion. We never questioned their ability to organize. I voted against the contract, not their ability to unionize. We have to continue the distinction between the Charter employees that are being discussed here and anyone else covered under collective bargaining agreement whether they are administrators or rank and file, or if they were a contract or, and otherwise an exempt employee. That is what we have to focus on.

Mr. Wells said he wants to know where in the Charter it says administrators can be unionized.

Mr. Martinbianco expressed that the Charter five are appointed and serve at the pleasure of the Mayor. Back in the day when Mr. Becker wore the hat of Controller and Treasurer, he did both jobs but yet he was still a Charter employee. Now you have division and definition and job classifications. That is what we demanded with the unionized administrators.

Mr. Wells said when all this went down, a lot of us was taken aback. You can't have it both ways, you can't be unionized to save your job and then get paid it this high level. You are a rank and file member now.

Mr. Martinbianco said if you go to large municipalities like the City of Flint or Dearborn, where they have extensive multi-page definition of administrator who is different levels, and you are governed by administrative rules that govern what happens at your level and what your entitlements are at that level. Not little ole Burton. We have administrators that are unionized.

Mr. Martinbianco stated further, we have a volunteer fire department force that is unionized. It doesn't diminish what they do, it just says they operate under a collective bargaining agreement and if you want to re-open or choose to re-open those collective bargaining agreements, they believe there must be some financial incentive for the City to want to do that. What can we get from them to offset what it might end up costing us in the long run for our membership.

Mr. Wells said that financial incentive is so the City doesn't go broke. That is what our job is here. I think it needs to be looked at before we wait 180 days to go into union negotiations. That particular group right there we need to find a way to protect ourselves, the City and residents.

Mr. Wells said where it states that the Police Chief, Fire Chief and City Clerk are not able to have health insurance upon retirement has to be changed.

Mrs. Ellenburg expressed that the next meeting will be November 17th at 6:00 p.m.

Meeting adjourned at 7:00 p.m.

Julie Adams, City Clerk