

City Council of the City of New Castle
Special Meeting/Educational Seminar
Police Community Room – 1 Municipal Blvd – New Castle, DE 19720
Thursday – September 5, 2013 – 6 p.m.

Roll Call:

Councilperson Petty
Councilperson Megginson
Councilperson Cochran
Councilperson Vannucci
Council President Barthel

Also present:

Donald A. Reese, Mayor
Marian C. Delaney, Finance & Human Resources Manager
Janet E. Carlin, City Treasurer
Daniel R. Losco, City Solicitor
Wendy K. Voss, Labor Attorney at Potter, Anderson and Corroon

Agenda

1. Educational seminar re: Councilmember's involvement in City's day to day operations.

President Barthel stated that he asked Ms. Voss to provide an overview, or tutorial, on the role of the City Administrator and City officials.

Wendy Voss discussed an overview of the structure that has been established through legislation for the City and management of operations and management of personnel.

Basically looking at three different points of reference:

- The first and most important is the City Charter which establishes the powers of the City.
- The Employee handbook sets out personnel policies and procedures and also establishes authority for some individuals to take particular actions.
- The Collective Bargaining agreements also govern terms of employment for certain employees.

To the extent that the Collective Bargaining agreements might differ with the employee handbook, the collective bargaining agreements will govern. If there is an area that the collective bargaining units (CBA'S) are silent – the Employee handbook can fill in.

City Charter:

Under the City Charter, section 11 establishes the municipal power. Council is vested with the legislative powers of the municipal corporation. Regarding actual operations of the City, most of the time the powers, of the City, are presented in terms of Council being empowered to provide for, and to enforce laws that go to all of those subject matters.

The only two provisions of the City Charter that go directly to personnel or operations are the City having power to establish and direct the police and fire departments and to enforce laws to keep the peace and provide for the safety of the citizens. The other catch-all power is to exercise all municipal powers necessary to the proper administration of the municipal government. In reference to these two things, Council can only act as a body and no individual member has any authority to take action on his or her own.

Employee Handbook:

The Employee Handbook is where the operations and personnel policies are set out. It states specifically that the human resources function of the City will be in accordance with the handbook, which has been codified and most recently adopted by resolution in 2011. The policies of the personnel handbook will govern all aspects of administration of personnel. The only powers reserved to the City Council, in terms of personnel oversight in the employee handbook, is the recruitment and hiring of department heads and the City Administrator. At present the City Administrator position is vacant.

City Administrator Responsibilities:

The responsibilities of the City Administrator are established in the handbook. The City Administrator has the overall responsibility for the administration of the human resources policies and the operations of the City as established by Council. The duties include filling vacancies, determining vacancies need to be filled, recruiting and hiring functions with advice to Council, notification to Council that something has happened so Council can exercise its oversight but, not be part of the action. Approving promotions, as long as, Council is informed. Suspending and discharging employees and taking other disciplinary actions. There is a very specific set of procedures in the handbook for who may take disciplinary action under different circumstances. The department heads do have the power to suspend employees which is a practical function. Other than that, the department head needs to have the approval of the City Administrator. Supervisors can, in some cases, take disciplinary actions but, only with the prior approval of the City Administrator. City Administrator also has the responsibility for making the final decision on whether probationary employees will be retained in employment.

Department Head/Supervisor:

Department heads and supervisors specific area of responsibility is laid out in the handbook. The department head is in charge of overall operations of an entire department and reports directly to the City Administrator. As of the date of publication of the handbook, it listed three department heads (Director of Finance and Human Resources, Police Chief and Director of Public Services.) Currently there is no Director of Public Services and that may change in the future. A supervisor is the person authorized to direct the work of the employees and reports to the department head. In a functional sense, because the supervisor on the City payroll is also a member of the collective bargaining unit, it is more like a "lead" employee.

The lead employee would be a person with experience who would be a mentor, oversee employee work, help employees with their work, keep an eye out and be an information source for the department head.

Mr. Barthel stated that if the employee handbook listed a Director of Public Services position and the City was looking at advertising now for a City Administrator/Public Service Director – would it be a matter of just changing the handbook. Ms. Voss felt the handbook should be updated and that the language was ambiguous and more generalized language could be listed.

Specific responsibilities of a department head would be to serve as the employee immediate supervisor and be responsible for the employees and the entire operation of the department. They assign the work, monitor the work, prepare performance evaluations and recommend appropriate human resources actions – which is to discipline as necessary. All discipline will be overseen ultimately by the City Administrator. Department heads, with the approval of the City Administrator, can discipline employees and do have a specific authorization to suspend employees when the situation warrants. Any final action is going to require action by the City Administrator. Department heads are authorized to make final decisions on probationary employees but, need to consult with the City Administrator.

Mr. Cochran asked if that final decision needed to be brought before Council. Ms. Voss responded no and that ultimately, it is the responsibility of the City Administrator.

Supervisor:

A supervisor would weigh-in on the status of probationary employees, help (mentor) employees with work, be responsible for discussing, with new employees, their progress and whether the employee is performing assigned work in a satisfactory manner and make recommendations. Ultimate actions would be up to someone else.

Department Directors:

The Human Resources department is responsible for maintaining employee records and preparing and recommending revisions to this policy and to the employee work rules. Also, to counsel and advise on matters of human resource policy, professional development and job related training. This encompasses discipline because human resource policy includes all of the work rules and appropriate discipline. It is a resource and it is also a responsibility.

Collective Bargaining Agreements

FOP Contract:

With FOP, there is only one provision that stretches out to Council. In the grievance process, appeals of matters can be taken to Council when not resolved before the City Administrator. The entire Council would then be called upon to serve.

AFSCME Contract:

In the AFSCME agreement, there are two provisions that similarly create an appeal procedure for Council. First, is in health and safety section. If there is a condition that an employee feels is unsafe or unhealthy and if not resolved at the first step – then it can be reviewed by Council for a decision by Council. If an issue places employees at risk – we want to have Council act on a decision as soon as possible. The decision would be binding on the parties.

In the grievance process in the AFSCME contract there is also an appeal to a designated Council member. Not the full Council – a designated member of Council. Council would decide which council member would be the most appropriate person.

Mr. Barthel discussed the recent Council action of discontinuing the use of helmets by Public Work personnel. The City changed the policy – instead of employees wearing helmets – they would follow behind the truck. This policy change was approved by AFSCME.

Liability:

Ms. Voss stated that looking at this all together, whoever is in charge at the end of the day, needs to be aware that there is the potential for individual liability. Not just liability on the part of the City, but individual liability under certain employment related statutes.

First, would be the Fair Labor Standard Act (FLSA), wage and hours claims, where a claimant would have to establish that the individual targeted, as an individual defendant, has sufficient involvement in the decision to show operational control on that transaction.

FMLA (Family Medical Leave Act) does not apply, at this time, as the City does not have enough employees. FMLA is administrated the same way as FLSA and you can have individual liability and to determine operational control.

Insurance Policies:

Mr. Barthel asked Ms. Voss to review the City insurance policies. Insured would include the lawfully elected and duly appointed officials, employees and volunteers. Volunteers covered, only if in writing, and if requested by the City or authorized by the City to volunteer in a circumstance. Coverage effectively goes to wrongful employment acts, discrimination, harassment, retaliation, protected categories, race, religion, age, disability, etc., and third party wrongful actions. Is the same list but, without the employees going out to the public at large.

Exclusions include—any labor dispute, grievance, labor charge, request for arbitration, wage and hour claims, OSHA and anything directed at a volunteer who does not have a written agreement with the City. City has a council manager model of government that is very universally recognized as the best practices preferred form.

Liaison Positions:

One item, left out, without any definition, is the liaison position. Generally speaking, unless there is some defined role, this would be seen as a function of council, for councils' benefit as information gathering to report to council for council to consider issues as a whole body.

The council manager model is recognized as preferred type of government as it limits confusion over who is in charge and the City Administrator provides professionalism across the board. Model defines who is responsible and knowledgeable. Creates institutional memory. City Administrator will come as close as anyone can in being fully knowledgeable to ensure that policies are enforced consistently and the City Administrator will know what the history has been. This becomes important to discrimination and retaliation claims when people are treated differently – which is the core of any legal claim.

Mr. Cochran inquired as while there is no City Administrator and he understands that council should gather information, is there an issue with council being involved on a day-to-day basis. Ms. Voss advised that it is in the gray territory as the council has not designated an interim City Administrator/Acting Public Services Director.

As an example: A contract for buying equipment would be approved by City Council not just the Liaison to Public Works, Mr. Megginson. Invalid if approved by one individual and not approved by Council. Mr. Megginson asked if he took a contract to Council who would sign. Mr. Losco advised that the Mayor could sign.

Under AFSCME, if an employee is called in for an interview that could lead to discipline or would be disciplined, they can request union representative. Although given the title of supervisor, best to think of a supervisor as a “lead” employee.

Mr. Cochran asked if all department heads could discipline. Ms. Voss stated that the department head has the specific power, in the handbook, to suspend employees but, ultimate action is to be taken by the City Administrator. Department heads can issue discipline but, the decision should come from the City Administrator.

Ms. Delaney asked if under the City's insurance were committee member considered volunteers. Ms. Voss responded no and that committee members are duly appointed officials.

2. Executive Session to discuss a personnel matter.

Council adjourned to meet in Executive Session to discuss a Personnel Matter.

Respectfully submitted,

Marian C. Delaney,
Finance/HR Manager