

**Evanston City Council
Closed Session
Aldermanic Library
September 9, 2002**

PRESENT: Aldermen Rainey, Feldman, Jean-Baptiste, Bernstein, Moran

NOT PRESENT AT ROLL CALL: Aldermen Engelman and Newman

ABSENT: Aldermen Kent and Wynne

STAFF: Judith Aiello, Arthur Alterson, Maureen Berry, Kathleen Brenniman, Pat Casey, Roger Crum, Mark Franz, Doug Gaynor, Blair Haltom, Herb Hill, David Jennings, Frank Kaminsky, Max Rubin, Debbie Sleet, Elke Tober, Judith Witt

GUESTS: Ted Clark and Mark Smollens

PRESIDING: Mayor Morton

START: 5:13 p.m.

Alderman Rainey moved that City Council convene into Closed Session to discuss matters of collective bargaining, litigation, real estate, and Executive Session Minutes pursuant to 5 ILCS 120/2 (c) (11) (5)(6) and (21). Seconded by Alderman Jean -Baptiste. Roll Call - Voting aye – Rainey, Feldman, Jean-Baptiste, Bernstein, Moran. Voting nay – none. Motion carried.
(5-0)

Minutes: Closed Session minutes of August 12, 2002 were accepted without change.

Collective Bargaining

City Manager Roger Crum reported that all labor contracts would be up March 1, 2003 and development of strategy sessions begins on or before December 1, 2002. Mr. Clark, a well known labor attorney, has been the city's attorney for seven-eight years and has met with Human Resources Director Judith Witt, Mr. Crum and others several times. Alderman Newman was present at this time. AFSCME ends 5-year contract; Teamsters police 3-year contract; IAFF firefighters 2-year contract and FOP – Sergeants 1-year contract. Three of four bargaining units (sworn police/fire) are prohibited from striking. The quid pro quo is binding interest arbitration. AFSCME has the right to strike, when the contract has expired, and the union has given 10-day notice. In 15 years there have been three instances of binding interest arbitration with IAFF. There were few strikes by non-strike units when public employees were given the right to strike in 1984. With police/fire, either party can go to an outside arbitrator. On economic issues, arbitrator can be selected by the union or city without charge. Non-economic issues, the arbitrator can fashion an award. The criteria used are 200 arbitrator awards.

A significant factor in most cases are economic issues and external comparability. Where does Evanston stand in relation to comparable communities? There are 13 jurisdictions of comparables. They look at what increases were negotiated in other jurisdictions. Alderman Engelman was present at this time. Ms. Witt also noted internal comparability. With two uniformed services, agreements with police have an effect on the agreement with fire. AFSCME wage increases affect increases for non-union personnel

In 1993-94 the city faced significant constraints and negotiated zero increases with AFCSME and police. Fire held out. The arbitrator sided with the city. Significant belt tightening was demonstrated from top to bottom. Alderman Newman asked for a list of comparables in communities. Mr. Clark said geography, demographic data, population, proximity, tax base, EAV. Ms. Witt said the firefighters contract was based solely on population and they need a group of comparables to argue against. Alderman Newman asked how often comparables are raised? Mr. Clark said they are not written in stone. Mr. Crum noted that based on population they could take out Naperville and Aurora. Alderman Feldman asked if the list of increases on comparables averages out? Mr. Clark said in interest arbitration the arbitrator is willing to move those below the median. When they don't move there is upward bias. Alderman Feldman asked if somebody wanted a raise and was making 5-10%

more, how is that dealt with? Mr. Clark stated each proceeding is fact specific. Selection of arbitrator is important. A decision in 1994 case was based on total compensation, including longevity pay and educational opportunity.

Alderman Newman asked where Evanston's rates of pay compares and if what is paid is below comparables. He said the starting point should be compared to total compensation and the market seems to be Chicago, Skokie, Niles, Lincolnwood. Mr. Clark said that the population factor is taken into account. The cost of living favors the employer. It was less than 2% in 2001 and even lower in 2002. Interest arbitration does not give much weight to financial ability of the municipality to pay. Most interest arbitrators are reluctant to deny an increase based on inability to pay. East St. Louis rejected no increase, even though near bankruptcy. An arbitrator ruled city had the obligation to fund increases.

Alderman Newman questioned Evanston's track record; asked, if a cost of living was paid, what was the effect of setbacks due to 9/11 and sales tax revenue? Mr. Clark said that would be a definite factor; noted the property tax rate is high in the Chicago area which could be presented to the arbitrator. Most revenue areas are tapped. Alderman Feldman said if the city pled they cannot afford increases, they were saying other costs were more important. Mr. Clark pointed out anytime the municipality pleads inability to pay, people start looking at the budget. Other choice arguments are made by unions. Mr. Clark explained how binding interest arbitration is made final and binding. 3/5 of Council can vote to accept or reject. If rejected they go back to the arbitrator for a supplemental proceeding. The arbitrator reiterates initial award and the statute says city picks up entire cost. They can seek judicial review, which is difficult to meet.

Alderman Rainey asked what is the role when a universe served and protected has grown a lot in number of buildings, intensity of use, number of people and new residential? Mr. Clark said it would be argued that with no significant size in the bargaining unit with more work, that employees are entitled to larger increase. Mr. Clark stated likely issues are wages and health insurance with an overall increase of 12-15%. There is cost shifting or cost sharing whereby employees pay a greater share. Employers are looking at restructuring co-pays and deductibles.

Alderman Newman asked if police still have separate health insurance? Ms. Witt said yes. Balance shifting is not that dissimilar to United Health care and is the reason police have Blue Cross. Blue Cross may say they are rated large group and increase. This is a tightly held issue with police unions. Police plan costs about the same as United Health Care. Alderman Moran questioned Ms Witt on the differences in dental and health insurance. Ms. Witt said they pay less overall. Police officers pay \$100 including dental; firefighters pay \$45 month. Non-union family is \$75-150. AFCSME pays \$85. Mr. Clark stated if they could get everybody on the same payment plan for health insurance it would be good. Alderman Rainey said that Humana is at \$400. Ms. Witt said the number has been the same since it began. Mr. Clark said the operating budget has 75-76% cost for personnel. They have taken efforts to reduce costs. At that point easy savings have been accomplished. They will look at a moderate rate of increase, longevity pay that is 5% of salary. In many other jurisdiction that is based on dollars. Freeze longevity pay and not let increase as wages go up. They will look at total compensation.

Mr. Clark said on job security, with the AFSCME agreement, normally they would recommend a 3-4 year contract. The advantage of a lengthy contract is labor peace and labor costs are known. The problem with multi-year agreement is that unions are reluctant to accept due to low increases. In this situation they will look at 1-2 year agreement; cannot lock in wages increase for year 2 or 3. This is a major policy decision.

Alderman Rainey asked if a multi-year agreement is favorable on premium costs? No. Mr. Clark showed a total compensation chart for police officers. Evanston ranked 11 out of 13. Mr. Clark noted when longevity is added, plus AA degree bonus, the ranking is significantly higher. They are ranked by total compensation. Mr. Clark noted that interest arbitration bunches salaries. All compare themselves to others. Alderman Newman questioned pay of \$2,300 annually. Mr. Clark said that step was predicated on having AA degree. Ms. Witt said half have the AA now. Alderman Newman asked how many get the \$2,300? About half and that number will grow.

Alderman Rainey noted tuition reimbursement on a bills list of \$45,000. Mr. Clark said that most cities have tuition reimbursement and extra pay for certification. Can the AA degree be in any area? No. Mr. Clark said the AA degree has to be in a related area. Mayor Morton asked if firefighters and police receive merit pay? Ms. Witt said merit pay is part of contract; took five years to get there. On fire, Evanston is 10 out of 13. Total compensation includes longevity, EMT stipend and education. Evanston is at the median, 7 out of 13. Mr. Clark said the EMT stipend in Arlington Heights and Oak Lawn, was significantly higher than \$3300 in Evanston. Mayor Morton asked what communities were compared? 13 communities based on population. Mr. Clark said the interest arbitrator would look at revising, if they maintain the same relative position, it would be fair and equitable. Alderman Newman asked how many get EMT pay? Ms. Witt said 74 out of 120 and one

fourth of firefighters have an AA degree. Mr. Clark said that the percent increase negotiated is approximately 4% a year. 2001, 2002, 2003 was based on eight jurisdictions and averaged 3.9%.

Alderman Engelman asked if any contracts were negotiated during the last year. Mr. Clark said that Arlington Heights and Schaumburg negotiated this year. Naperville negotiated last year. Skokie fire/police will next year. Waukegan negotiated firefighters 3-year contract with a 12% increase. Mr. Crum pointed out this was a direct wage increase without health insurance.

Alderman Newman asked if spending on facilities was a factor with police/fire? Mr. Clark said it would have some relevance. Mayor Morton noted that Arlington Heights has a racetrack and Schaumburg has sales tax, while Oak Park is similar to Evanston. Ms. Witt said they could list who comparables are and argue why Schaumburg can pay more. Mr. Clark noted the ability to attract qualified police officers and firefighters. Evanston has a couple of officers from Lake Forest who were paid more and turnover is negligible. Mr. Clark said that Evanston is in the ballpark. Next 2,3 years they would remain around middle. Total compensation will require adjustments to salary. Mr. Clark noted some contracts were negotiated since 9/11 and the recession and some contracts were negotiated before 9/11. He is getting anecdotal information, that there is tightening due to loss of sales tax revenue. Since 9/11 there has been an outpouring for police/fire and support for upward pay. The norm was 3-3.5%, which has moved to 4%. Currently the norm is 4%. Alderman Feldman asked if other communities require that police/fire live in their city? Mr. Clark indicated the trend is toward relaxation of a residency requirement. Mr. Clark stated on negotiations, a general proposition would be to hold an increase in personnel to growth in non-property revenue. The city's cost on health insurance through co-pay and deductibles could be reduced significantly so that employees pay more. They could go to lower cost plan or if a Cadillac plan is desired, employees pay more. Mr. Clark asked what is reasonable for city to pay on employees behalf and reasonable amount for employee to pay? Ms. Witt noted increasing numbers of a larger group of retired pay full premium. Alderman Rainey noted when people reach 65 there is gap coverage on Medicare and a reduced rate when they get Medicare. Alderman Rainey noted that family coverage for couple is the same as for a family of seven. Ms. Witt has looked at three and four tier costs. She noted that new hires have babies. There is an alternative lower rate for couple and one child.

Mr. Clark said they could look at reducing the cost of fringe benefits, elimination of tuition reimbursement and pursue early retirements. Alderman Newman asked if there is tuition reimbursement in other municipalities? Alderman Feldman asked if additional education such as an AA degree makes a difference? Are police better? Mr. Crum said that is not quantifiable, but they like to see additional education because of the discipline. Alderman Rainey asked about the amount of tuition reimbursement paid? Ms. Witt stated the city pays state rates and for multiple courses. It was suggested maybe employees should pay more.

Alderman Moran asked the difference in raises last year for non-union personnel versus police and fire? Police/Fire 4% -4-1/2%, AFSCME 3.75% and non-union 3% and 1/2% in June. Mr. Crum stated there is an organizing effort of non-union and that ties into city negotiations. If someone gets AA degree is that considered for merit pay? Alderman Newman said that he learned more that evening than in the past 11 years; noted having good morale in police/fire is essential. Ms. Witt said it is essential in all departments. Alderman Newman would like one more session to talk about alternatives.

Mr. Crum said the intent was educational for development of an appropriate strategy of what to put on the table. Alderman Feldman asked the figure they are aiming at? Ms. Witt said the budget, finances and employee perspectives are considered. Alderman Newman asked if employees were looking for anything? AFSCME may say no to layoffs. Ms. Witt said the city has laid off many in the past ten years. Alderman Rainey wished to meet with the unions. Mr. Clark said that will happen at the bargaining table. Mr. Clark said police/firefighters are looking for 4% with no increase in health insurance costs and AFSCME is the same. Ms. Witt has negotiated contracts for wages and health insurance for the past six years. Alderman Rainey asked how much has been paid out for tuition reimbursement since March 1. Alderman Feldman asked the cost of each percentage increase in personnel salaries. 1% = \$500,000 and 4% = \$2million. Mr. Clark urged that all maintain confidentiality. Mr. Crum said they would return in October.

Litigation – Bettye Palmer vs. City

Mark Smollens reported no substantive change on this case. Trial date is October 3. The case is 12 years old and has been dismissed once. Plaintiff has a new attorney, Leonard Murray, because Attorney Pendergast retired. Previously Council gave authority to settle for up to \$75,000, based on the long duration of a trial. The new attorney has taken no depositions. Bettye Palmer is a part-time employee who recently had heart surgery and is on medical leave. That is a complication in this case. Mr. Hill noted in these 12 years every possible continuation was asked for.

Alderman Moran noted one damage issue was dismissed. Mark Smollens said there were no damages in the case. Alderman Newman thought there was dismissal of the criminal case. Mr. Smollens did not think much of claim when nearly two shifts of police officers had to quell a riot on Wesley Avenue. He said the state has strong witnesses in this case. Officer Charles Moran was not served. Attorney Murray has a file two boxes thick; serves as President, Cook County Bar Association.

Mr. Hill said there is no basis to ask for more authority. Alderman Jean -Baptiste confirmed an offer was made to Attorney Prendergast and there was no response; suggested they intensify contact. Alderman Newman asked if the trial lasted three weeks, and they lose, what was the maximum exposure? Mr. Smollens responded with 200 hours at \$150 an hour - \$30,000. Alderman Moran asked if there are billing questions? No. Attorney Poulos claims \$100,000 is owed him. Alderman Newman asked the real exposure. Mr. Hill thought the exposure was in excess of \$100,000 and will give a more concrete number at the next meeting. It could be \$75,000 or less. The city would pay on nuisance value. Alderman Jean-Baptiste said the Prendergast letter had a great argument; suggested they get serious about settling. Mr. Crum said they would take aggressive action on contact. Mayor Morton thought the problem was the city was accused of not doing right on ECDC and this is the second Palmer suit against the City. Mr. Hill said they have offered \$50,000 and will see where they go.

Litigation – Tracy Parham vs. city

Mr. Hill reported meeting with Mr. Quinlan and Mr. Ryan who filed a 67-page post trial motion. Their response is important because it sets forth all grounds for an appeal. They picked 4-6 strongest arguments and had an independent analysis. Mr. Quinlan said that mental health records and audiotape should have been allowed. The \$11 million was a fluke judge and ruling. Mr. Hill reported the sister who was in the car has filed a lawsuit. The car belonged to Salonica Prado's aunt and at a fast food restaurant drivers were switched, but attorneys could not put into evidence that they were out to buy marijuana. Mr. Hill said they will see how judge responds; nothing was certain.

Real Estate – 1881 Oak Avenue

Assistant City Manager Judith Aiello recommended extending to October 31, Glenlake's request to start construction on the 1881 office building. Glenlake claims \$1.2 million in costs when they try to sell. Alderman Feldman wanted a better understanding of what they are doing. Ms. Aiello said it is extension of time and threat of giving back; said that Mr. Ryan believes that Kardell has a different interpretation. Alderman Feldman questioned if he was bluffing about foundation. Alderman Moran said that would preserve their position. There were no objections to the proposal.

Litigation – Contract for legal services for Township Assessor

Alderman Newman moved that they convene as Township Trustees. Seconded by Alderman Bernstein. Motion carried. Mr. Hill stated there is a proposed contract with an outside attorney with whom he had spoken. The assessor requested consideration of funds to pay the attorney. Trustee Rainey moved unlimited funds be provided. Mr. Hill noted that state statutes provide for the office. In response to Trustee Newman Mr. Hill said the general policy of a government entity is to pick up the cost of hiring an attorney. Hiring an outside attorney here was due to Mr. Siegel and law department conflict of interest. Mr. Hill does not know if anything was set aside for this in the township budget. Trustee Feldman thought a governmental body traditionally picked up attorney costs for elected officials, and if malfeasance, it would depend. Police/fire department individuals have been defended. Mr. Hill noted that hiring employees in the assessor's office is her responsibility. Trustee Engelman stated it was essential to hire an attorney to represent an officer or employee. The problem was who is this attorney. Before agreeing to a contract, he wanted the assessor to come in. Trustee Rainey noted Ms. Eckersall had signed the contract. Ms. Brenniman was in touch with Ms. Eckersall about the meeting. Trustee Jean-Baptiste suggested that the Law department recommend an attorney. Trustee Engelman pointed out a constitutional officer can choose legal counsel. Trustee Bernstein also wondered who the attorney is and his track record. Mr. Hill said the assessor has until October 13, 2002 to get counsel. Mr. Crum stated these are real bills and if trustees choose her attorney there is a conflict of interest. Trustee Newman suggested they have a policy on hiring attorneys and in the case of misconduct the governmental entity should not have to pay. Trustee Moran pointed out there are state statutes on that. Trustee Engelman's question was why she was hiring this attorney at this rate of compensation. Trustee Newman suggested getting a resume or letter. Mr. Hill will invite the assessor to the next meeting and had some concern about the impact of postponement.

Real Estate – Housing Rehab Foreclosure –Pettius

Information was provided on the history of this case.

At 7:23 p.m. Alderman Jean-Baptiste moved to convene into open session and recess. Seconded by Alderman Feldman.
Motion carried unanimously.

Mary P. Morris, City Clerk