

**SALARY COMMITTEE
MEETING MINUTES
October 9TH, 2014**

The Salary Committee met Thursday, October 9th, 2014 at 4:00 PM in the Council Chambers at the Knisely Centre. In attendance were Salary Committeepersons: Dan Lanzer, Chairperson John Zucal Salary Committeeperson Ms. Winnie Walker, and Alternate, Ms. Sandy Cox had an excused absence from tonight's meeting. (The Committee did have a quorum with 2 out of the 3 members being present.)

Guests were Mayor David Johnson, Law Director Marvin Fete, Service Director James Zucal, President of Council Sam Hitchcock, Council Clerk Patti McKay, Councilperson Mrs. Cheryl Ramos, Attorney Rick Hinig, Executive Assistant Mary Jo Fragasse, Info System Coordinator Jeff Erb, Aaron Hixenbaugh, former Wastewater Superintendent, Amy Gilland Assistant Service Director, and Vicki Ionno New Philadelphia City Health Commissioner.

THE PURPOSE OF THE MEETING WAS TO DISCUSS 39-97 WHICH WAS REQUESTED BY THE LAW DIRECTOR; AND ANY OTHER MATTER THAT MAY COME BEFORE THE COMMITTEE.

**SALARY COMMITTEE CHAIRPERSON, JOHN ZUCAL CALLED THE MEETING TO ORDER.
ORDINANCE 39-97**

AN ORDINANCE ESTABLISHING GUIDE LINES FOR STAFFING CERTAIN DEPARTMENTS IN THE CITY OF NEW PHILADELPHIA UNDER THE JURISDICTION OF THE MAYOR, AUDITOR AND LAW DIRECTOR, CONFIRMING REGULATIONS BY WHICH EMPLOYEES STAFFING THESE DEPARTMENTS SHALL BE PROMOTED, SETTING RATES OF PAY AND OUTLINING BENEFITS FOR THESE EMPLOYEES, NONE OF WHOM ARE INCLUDED IN NEGOTIATED CONTACTS WITH THE CITY AND FOR OTHER PURPOSES AND DECLARING AN EMERGENCY

“Why it was developed in 1997.

The implication as what it does and what it does now almost 20 years later and if in fact if repealed what those intended consequences may or may not be and how all this links itself to the handbook and some of the requests that have been made by personnel in recent times.

Just to take that opportunity to look it over the Salary Committee would like to have as much feedback from those that are here this evening about their thoughts that is the only way we can improve the process.”

Section 1:

Begins with the definitions of who and who are not considered under coverage for 39-97 who benefits by as full-time employees part-time.

I think it is important to note category (G). Where it does list the non-bargaining employees. Many of who are in fact have some type of gain or loss depending upon what we may or may not do with 39-97. It certainly has implications for them.

Section 2:

The Probationary Period that was put in place.

Section 3:

Staffing levels you can see how it was discussed and determined how various departments would be staffed.

Section 4:

Benefits we have discussions about vacation time. Whether or not we can move forward with payment vacation based upon what is written in 39-97.

Section 5:

Temporary Transfers

Section 6:

Is actually struck from the document it did involve salaries

Section 7:

Exempt Salaries

Section 8:

Other Permanent and Temporary Part Time and Full Time Non-Bargaining Employee Wage Rates

Section 9:

Drug policy

Section 10:

Travel Mileage Allowance

Section 11:

Bonus in Lieu of 1996 Wage Adjustment

Section 12:

Equal Opportunity Employer

Section 13:

Repeal provision that this document 39-97 provides greater authority in any other be in some way conflict with that it is no longer valid and has been repealed 39-97 became a driver for that decision making.

Section 14:

The Saving Clause

Section 15 and 16

To allow the Legislation to go through as authorized by City Council

OVERVIEW from Councilperson John Zucal:

“We were talking about 16 different sections and many different sub sections within that. 39-97 is a very lengthy document.

In 1997 this was one of the best attempts they had to create, what was like a handbook to outline the different benefits, provisions, and opportunities that existed for those who were considered full-time or part-time essentially the whole non-bargaining group.

It does state very clearly this does not apply to those who are part of the AFSCME the FOP or the IAFF.

Mayor and Administration has a few thoughts about where the Administration stands in re gard to 39-97.”

Comments from Mayor Johnson:

“39-97 has been a great frustration since he has been here.

We have always done things by it. But now I ask 5 different people, do we still use it or not use it and I get 5 different answers.

If we are going to do a new book were going to have to get rid of this eventually.

I think now we have three people right now that are pending on whether we can pay their vacation or not.

They earned it. It is theirs they should get it and that’s my opinion on it.

I think if we take it out we have a Handbook from 2007 that handles almost all of this.

We can use that. It is more up to date until we can get a document that addresses everything we want to address.

The book that we have in front of us needs a lot of work it is too restricted to my position. and the workers in the City.

(It was determined the Mayor was talking about the new handbook that is in the Finance Committee.)

We discussed it that we repeal; if not just the section on the vacation, but repeal the whole thing.”

Comments from the Law Director:

“As everyone knows, since I took office in 2012 almost every other month I have asked 39-97 be reviewed revised, updated or repealed.

I am constantly in the position to give people answers based on it; sometimes they like the answer and sometimes they don’t. Sometimes it is a contradiction to what was done in the past sometimes it is not. That is not fair to anyone.

I’m in a position where there is an ordinance on the books I won’t tell the Mayor to go ahead violate this ordinance pay these folks their vacation time. I can’t do that I’m bound not to do that it would be a violation of my oath of office as well as my obligation as an attorney.

The part of the problem is this has not been updated as I think it was meant to be. I do think it was a very serious attempt to address non-bargaining employees and was good legislation when it was enacted and passed there was a lot of effort that went into it however; it has not been updated or changed.

There have been problems in following it.

I’ve seen things going back from Mayor Brodzinski.

Where somebody would leave their position quit or move on to a different employer.

The Mayor would sign a note to the Auditor saying pay So & So X Y & Z, which would include vacation time.

That never went past the Law Director to say whether or not it was okay.

Nobody else thought to say what about 39-97.

When the issue came to me I was asked to review 39-97 whether or not it applies.

It does apply unlike the section on raises, which I had to review previously.

The section on raises says unless it has an escape clause modified by subsequent legislation. This mandates that there be a raise of a certain percentage point

That we have in the past by subsequent legislation modified it. Sometime there is no raise at all or more raise than what was required or less raise that is required by this I gave an opinion on that. But I thought this was modified by subsequent legislation that section did have the escape clause. That was not a popular opinion I felt it was the correct opinion based upon my reading of this ordinance.

The other thing is the vacation issue. As long as this is on the books

I cannot tell the Mayor, Auditor or anyone else not to follow it.

It is largely believed, the population as a whole as well as among employees of the City that is something you earned and you should be compensated for it.

It is up to this body to decide if they want to do that.

I addressed this issue when our former Police Chief retired. Rather than fixing this.

We passed special legislation so he could get it. You can do that for the people that are being done right now. But you better do it fairly the same across the board or you might open yourself up to equal protection issue.

That has been my opinion we either need to do a complete overhaul or as everyone is aware our new handbook which is in committee now specifically says it does away with any prior legislation. It takes the place of any prior legislation.

The new handbook as well as the handbook that was passed in 2007 both allow payment for vacation. *39-97 Does Not*"

Question from Committee Chair John Zucal:

"Is there anything in the 2007 Handbook that you believe in any way, shape or form states that handbook supersedes anything in 39-97?"

Comment from the Law Director Mr. Fete:

"No, that's the problem, unlike the new handbook that we are having drafted, 2007 doesn't say it supersedes any prior legislation and shall be the policy for non-bargaining employees you might be able to draft legislation that would say we are repealing 39-97.

And non-bargaining will be bound by the 2007 Handbook and that is perfectly acceptable to do.

You could put an escape clause unless replaced by subsequent legislation.

If you adopt the new handbook obviously that is subsequent legislation it gets rid of it. I think part of the problem is because 39-97 isn't a codified ordinance you can look on line and pull up codified ordinances.

Most people here have a working knowledge of our codified ordinances but not of the multitudes of ordinances we've passed that are not codified they are just not on the radar. That is why I recommended changing this and addressing whether it considers some fundamental unfairness with regards to this.

It is clearly outdated some of the things like staffing has been changed it limits how much you can pay someone starting out.

When the Law Director has been asked whether it has been myself or my predecessors to interpret how 39-97 applies to a situation that has been done correctly, but the problem is when the Law Director wasn't involved and nobody brought up 39-97 that creates a problem."

Comment from Committee Chair John Zucal:

"For the members of Council each of you should have at least three different ordinances that were examples of how changes were made to 39-97 over the years."

Ordinance 17-2001

Just talked about awarding the annual 3 % raise to permanent part-time employees. so you can see how salaries were impacted by that.

Ordinance 59-2001

Which talked about staffing.

Staffing was addressed previously in section 3

Created a new position in the Water Department a part-time clerk.

Ordinance 17-2003

Greater detail about section 4 and the benefits

it did address vacation but never really changed anything in regard to payment of vacation.

So when you look at 39-97

“Section 4 - b3 it says days specified as holidays shall not be charged to an employee’s vacation leave.

This next part is when we begin to run into the problem.

Employee’s annual vacation leave must be used within one year of the anniversary date prior to the next anniversary date or the unused balance shall be forfeited. There shall be no payment for the accrued but the unused vacation leave except as follows:

Provides a series of exceptions to that most of which are involved the death of the employee and how compensation for the unused vacation time would take place for the spouse. No reference to it.

Part of our past practice this is where we have problems we’ve ignored that section of 39-97 granted payment of vacation time and how are we consistent with that.

We need to be consistent why would one employee get it and another not not.

I find that justly unfair.

I do believe it leaves us open to some legal scrutiny at a minimum and potential lawsuit finding against us because we have violated the ordinance in effect and made some type of payment to those individuals and now not the same for another individual.

The part of why we are here tonight 39-97 is the vacation issue.”

Comment from Committee Member Mr. Lanzer:

“I’ve been on Council for three years and have seen several instances already where 39-97 has come up. And we had to have legislation for it.

Coming from the Administration and the Law Director that we should scrap it and just go with the 2007 handbook until the new handbook has been enacted.”

Comment from Councilperson Mrs. Ramos:

“Reading through this I think it needs to be scrapped.

I agree with the Mayor and the Law Director on that the patches don’t really work for the vacation. How many weeks of vacation are we talking about?”

Comment from Committee Chair John Zucal:

“In the past we’ve paid folks for their unused vacation time.”

Comment from Councilperson Mrs. Ramos:

“They can carry over one year.”

Comment from Ms. Fragasse:

“You have one year to use it than the Supervisor the Mayor can approve.

You have three months to use that prior year or lose it.

You can be granted a three month extension to get that used up.

People that have been here the longest maybe five weeks.”

Comment from Councilperson Mrs. Ramos:

“I think that they earned and met the criteria they should be paid for their unused vacation time.”

Comment from Mayor Johnson:

“After this is done if you decide to do away with it, I would like to see an

Ordinance on the books saying you can prorate vacation if there date is Jan 1st they get 5 weeks and they quit on Jan 3rd I don’t think they should get all that vacation but we have no provision for that.”

Comment from Committee Member Mr. Lanzer:

“If we take it out, would it be automatically granted or would it be the Mayor’s decision?”

Comment from Committee Chair John Zucal:

“My big concern with repealing 39-97 without a mechanism to provide for all.

It was well done they tried it very best the intent was to outline for the non-bargaining employees; what their benefits were, what they were entitled to because compensation for the job that they performed. If we repeal it without any thing in place.

The handbook had not been accepted as a replacement document for 39-97.”

Comment from Councilperson Mrs. Ramos:

“Is the 2007 handbook in place?”

I don't think it has ever been adopted as a replacement.”

Comment from Committee Chair John Zucal:

“We repeal 39-97 but don't say there is a mechanism to insure vacation or any of those other. Where do you have any justification for decision making which leads anybody and everybody open to scrutiny from the Administration to Council?

Where we do in fact say the New Philadelphia City Handbook 2007 supplants Ordinance 39-97. Now those provisions are in place, now there is something for every non-bargaining employee.”

Question from Committee Chair John Zucal to all:

“Mayor, Service Director the Non-Bargaining Folks that are out there what are their thoughts about the 2007 Handbook. Do they feel that they have the safe guards and protection to the degree that 39-97 at least afforded them as part of the 2007 Handbook?”

Question from the Service Director:

“Are you going to adopt the Handbook 2007 in its entirety? There is a lot of discrepancy between 2007 Handbook and the new handbook that is being worked on.”

Comment from Committee Chair John Zucal:

“I think you almost have to accept it in the entirety

Because that is the handbook. I wouldn't want to *piecemeal* together until if and when the new handbook is available.”

Comment from Aaron Hixenbaugh:

“I know when the handbook was distributed in 2007 everone was give a copy and everyone had to sign for a copy when they got one.

That is the only thing that was ever distributed. (Did not receive a copy of 39-97.)

I actually asked to take the vacation and I was denied. I don't know how you would refuse to pay me. You can't have it both ways I earned it last year I earned it in 2013 you do it on an annual basis.

Jim Cappon worked 2 years and 3 month and when he retired he got 5 weeks vacation.

I worked 15 years and I had to take my last 16 days. That doesn't seem fair to me.

If I would have been able to take my vacation I should have been an active employee

I'm in a mess don't have any Health Insurance. It is just unfair.”

Comment from Committee Chair John Zucal:

“That is the problem doing it and not doing it.

The greatest form of injustice is being consistently inconsistent, it creates hard feelings.”

Comment from the Service Director:

“None of the unions recognize that handbook their contract supersedes that.

Amy Gilland was a part of that she is the one that was responsible for getting it published.

It was to come out of Labor Management it was to be for every employee.

Once it was drafted the unions said they did not recognize that handbook their contract supersedes that.”

Comment from Committee Chair John Zucal:

“The handbook was accepted by Council but not in lieu of 39-97 which is the problem.

That is the direction we need to go.”

Comment from Health Commissioner Vickie Ionno:

“I've been here three years when I was hired that was the handbook that I was given.

I've referenced it multiple times. It is a Bible for me and my employees in my department.”

Comment from info system coordinator Jeff Erb:

“My issue with 39-97 is whenever I was hired I didn't know 39-97 at the time.

It was probably 3 months after the fact that I was made aware of it.

Upon reading it the thing that sticks me is the continuation for the employee that moves from one job to another one. When someone comes in to replace them they are stating in there that there is a probationary period and they state that it is 90-95 and then a 100%.

Some of the leg work that I have done on it I have gone back and looked at when some of these are moved to the new position or went on to another job.

Outside the City probably 80% of the time replaced at the same amount that the previous person left.

Under Mayor Brodzinski Mary Jo Fragasse, Jim Zucal Amy Gilland and me. All of us came in way under what was customary at the time.

That is my complaint about 39-97 the unfairness that I was shown when there was ordinance on the books stating how there would be continuation of the income.”

Comment from Committee Chair John Zucal:

“You are talking about the new employee section.

New employees in the non-bargaining unit will be paid ninety percent of the prevailing basic wage in force for their particular classification from date of hire to ninety days of service with the City of New Philadelphia.

New employees in the non-bargaining unit will be paid ninety-five percent of the prevailing basic rate of pay for service on a continuous basis from 91 days to one complete year of service with the City.

(One day and one year you are passed the probation period.)

Comment from Info Systems Coordinator Jeff Erb:

“There have been probably 3 people (Lawyers) that have looked at that situation.

And nobody has really addressed that part of it.

They have always said that \$30,000 that Mr. Zucal was originally hired at was up to that amount. But everyone that was hired in during that time was hired in at what everyone was getting for that position.”

Comment from Committee Chair John Zucal:

“We need a salary scale in place. It is the best way to do business.”

Comment from Jeff Erb:

“That was put on the back burner. We don’t have anyone speaking for us.”

Comment from Committee Chair John Zucal:

“You constantly see where we use it or we don’t use it.”

Comment from Sam Hitchcock:

“There is nothing that I can say that is going to solve this problem.

We definitely need to expedite the new handbook for situations like this.”

Comment from Committee Chair John Zucal:

“What we have seen in the 2007 handbook especially the employees that have come in after 1997 they’ve had no inkling what so ever about 39-97.

That handbook that has come to them like Ms. Ionno said, the Bible.

This is how we do business this is how we operate.

That is the contract by which they function.

What we would like to do is repeal 39-97 and adopt in totality the 2007 handbook as is.

Then we can start to move from there. Now we don’t have to worry about 39-97 and that opens payment for that vacation time. And what it does allow us time to make sure we got the new handbook the way we want it to be if and when we adopt it.”

Comment from Sam Hitchcock

“I agree with the Law Director to scrap 39-97 and I agree with the adoption of the 2007 Handbook at least until we get the new handbook through the review process and possibly adopted by Council.” Mr. Lanzer agreed.

Comment from Service Director:

“Beware if you open that up to payment:

Disparity has been all over the board.

As Service Director I can tell you we have had Police Chief former Police Chief

Kelly Ricklic left the City there is Aaron Hixenbaugh there has been resignations & retirements. I just want Council to be aware of there are a lot of people this will effect.

There was legislation to pay the previous Police Chief. We paid the Police Chief that came from the union a substantial amount of money. There are a lot of people that have left. It is going to open it up to a lot of people since 2007.

Everyone was handled differently.

Those payments are made through the City of New Philadelphia. How can payments be made yea or nay by an act or a non-act. Somebody gets that payment it a violation of 39-97 is there a check and balance that should be made.

Should the Auditor say I can’t make that payment it should be an obligation to know what can or cannot be done?”

Comment from Law Director:

“39-97 would apply until it is repealed and the 2007 Handbook is put in place from then on you have a different set of policies.”

Comment from Committee Chair John Zucal:

“Does this leave us open for potential pay outs for past employees.”

Comment from Law Director:

“I think you are always open to that possibility. Anybody can file a lawsuit
I don’t think your action tonight is going to prevent that or open it up.
You can make it retroactive to a certain time make applicable by law.
If they bring a lawsuit they were treated differently than what 39-97 said
I don’t think anything we do today is going to open us anymore than you are already liable to. It will make
it legal to pay the Aaron Hixenbaugh and the other three that are in consideration right now.”

Comment from Councilperson Mrs. Cheryl Ramos:

Mrs. Cheryl Ramos requested for a copy of 2007 Handbook.
(Ms. Fragasse will provide a copy to Ms. Ramos.)

Comment from Committee Chair John Zucal:

Recommendation:

“We can’t do anything to change the past but hopefully we can do a whole lot to change the future. Be consistent in how we
handle things. (Especially when coming to monetary payment)”

Motion to repeal Ordinance 39-97 made by Mr. Zucal
Seconded by Mr. Lanzer
Voted 2-0 Motion passed

“Motion to enact the handbook drafted by the City of New Philadelphia from 2007 as the guiding document providing
all protections and benefits hence forward by the approval of City Council if and when it is enforced and accepted as
legislation.”

Seconded by Mr. Lanzer
Voted 2-0 Motion passed

2007 HANDBOOK IS THE OFFICIAL HANDBOOK FOR ALL NON-BARGAINING EMPLOYEES.

(Ms. Fragasse will give all Council Members a copy of the 2007 Handbook.)

The Salary Committee requested the Law Director prepare legislation and for it to be on the Agenda for the
October 13, 2014 meeting.
The meeting was adjourned at 4:49 PM.

Respectfully Submitted,

John Zucal, Chairperson
Salary Committee