

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



**Special City Council
Meeting Minutes
December 27, 2005**

A special meeting of the Fayetteville City Council was held on December 27, 2005 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Reynolds, Thiel, Marr, Rhoads, Ferrell, Lucas, Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Cook

Pledge of Allegiance

New Business:

DOL Supervised Settlement: A resolution to approve the Department of Labor Supervised Settlement for all employee groups (except firefighters) and to approve a budget adjustment of \$150,000.00 to pay for settlement checks.

Michele Bechhold: Donna Galchus a director with the firm of Cross, Gunner, Witherspoon, and Galchus is with us tonight. The City worked with this labor firm in our supervised settlement process and also the law suit with the Firefighters. Donna will be giving us an overview of the process that the City completed with the Department of Labor. I just want to let you know from the City's perspective what steps we have taken to take a proactive approach to ensure we stay in compliance as we move forward. One of those things is specifically modifying our check stubs so that it will show the number of hours that the FLSA adjustment is being applied to. Currently our software system doesn't do that, so we'll have to do a modification, and we plan to have that in place by the last check of February, 2006. Another step that we're taking is to insure that all of our policies and procedures are on CityNet, that's our intranet; it's very accessible to the employees, the supervisors, the division heads. That's also reinforced through our Finance and

Internal Services training. There are several different modules; one of those is for Human Resources and that training system. New supervisors as well as refresher courses will be held that will help individuals understand what our policies are, and how to comply with the law as well. We also will be instating with the cooperation of the Internal Audit Division more thorough auditing on time sheets to ensure compliance with our policies with that aspect as well. Another thing that the City will be exploring in helping us to maintain compliances is an automated time keeping system, we will be looking at the possible benefits of that. We will be evaluating the costs of those types of systems, and how it might ensure or help us to do our time keeping in a more efficient manner, help with better reporting, and keep an eye on all those exceptions that we may need to address through policy issues. At this time I would like for Donna Galchus to come up and just provide you with an overview of the Supervised Settlement Process.

Donna Galchus: Last March we contacted the Department of Labor on behalf of the City of Fayetteville, and asked them to assist in two respects in reviewing some issues about our pay under the FLSA and in helping us if there were issues to come in compliance, and that's the process that we are now reporting that we have completed. What happened as a result of that and as part of that the Department of Labor investigators stationed up here in Fayetteville actually came in and interviewed City employees. He interviewed approximately 43 employees and he also had an employee I believe from almost every department and sometimes two from every department. As a result of his investigation what he found there were two types of main issues that came out. One is what I'm going to refer to as add ons, and how they affect the pay to City employees. Now add on's are things like lump sum payments that employees would receive, like on call pay, field training officer pay, and education bonus. Those are just a few examples and the problem with that was that those amounts were being paid to the employee, but if the employee worked overtime in a given period they were not being taking into account in the rate computation of the overtime rate. So that was one issue we identified as a result of this. The second issue was what I'm going to refer to as off the clock work, and we found that there was an issue in three departments at three areas on off the clock work. One was the Police, two the 911 dispatchers, and three the jailers, and what was happening we had employees that were coming in to take report or give report, and they were doing that prior to actually going on the clock, and this also becomes an issue in terms of overtime computation and individuals were not being actually compensated for time worked.

Mayor Coody: Donna just to be perfectly clear I think that was about a fifteen minute time period.

Donna Galchus: It was a fifteen minute time period I believe in the Police Department, and I think in the 911 Dispatch, it was even less, ten, eight minutes some thing like that. They had to come in and they actually had to be seated at the telephone at that point. So based on all that at that point, the first thing was to come in to compliance and the City did come into compliance in September of 2005. At that point we went back for two years and computed what we owed the employees who had been involved in either receiving these lump sum payments and were due money or who had off the clock work. The City decided that they wanted to pay the overtime to these employees in terms of re-computing the overtime rate and they also if someone worked off the clock and was not paid they were going to pay them for that straight time also. Those computations were made and it took quite a while to go back and really review each employee's records and see what they were owed and make those computations, and we did this in conjunction with the DOL investigator. We actually did the computations, he's reviewed them,

he's looked at them, and we are now at the process where he has prepared a release that each employee will receive with the check for the money that are due them. It's been approved by the Department of Labor Solicitor's Office in Dallas and we're ready to move forward in bringing this to an end.

Alderman Ferrell: Can you tell me have there been any other cities in Arkansas that have been through a similar situation in the last five years.

Donna Galchus: There have been some cities that have had some wage and hour issues, these add ons I think may have been issues, whether they did a supervised settlement I'm not sure.

Alderman Ferrell: Would a typical corrective action go back two years in something like this? Would this be a typical time frame?

Donna Galchus: What we would call the limitations period for an action under the Fair Labor Standards Act would be two years for a regular action and if there was any proof of willfulness it would be three.

Alderman Ferrell: Thank you.

Alderman Marr: Donna how was the records of this off the clock time obtained? Was it the employees submitted the time that they thought they had done? How was time tracked?

Donna Galchus: Well it was done a couple different ways. In the Police Department the officers who had to take this report and had the off the clock time were on patrol that day. So if they were on patrol we checked the records and they were giving fifteen minutes because they had to have done that if they were on patrol. In the 911 dispatcher case we looked at when they clocked in and we used a rule of if it's more than seven minutes than it moves toward the hour otherwise they get the full ten minutes of time. We actually had some records that we could look at to do that so it was done a little differently in both those departments because of the different situations.

Mayor Coody: To follow up on Alderman Ferrell's question I believe that especially in the firemen's case in that was with the add ons that you said was kind of rare there was a Washington D.C. Law Firm that was kind of making a nation practice of suing cities nationwide if I recall correctly. I don't have any idea how many cities were affected but I believe that there were several in Arkansas that were targeted. I don't remember which ones they were, but I know they were several nationwide at least.

Donna Galchus: That law firm represents the Firefighters Union around the United States and I think they had a law suit even against one of the cities up here, I don't think it was necessarily a group law suit.

Mayor Coody: Ok.

Aldermen Ferrell: Does this finish the problem?

Mayor Coody: Donna I'll let you answer that.

Donna Galchus: Your question was are we done?

Alderman Ferrell: Yes, is this the end of it with the Police and Fire. Is the corrective action taken fixed for everybody now, and is the Department of Labor happy with what has happened? Is it over?

Mayor Coody: I think the answer is yes. I know the DOL is providing waivers for when the City provides a check to settle up any discrepancies there will be a waiver signed you might explain what the waiver says.

Donna Galchus: The waiver will say they are extinguishing there rights under the FSLA, and infact some courts, the majority of courts have held that if they cash the check it also becomes just as if they signed the waiver if for some reason they didn't.

Mayor Coody: Do we have any more questions?

Alderman Reynolds: Are we doing things correctly now and in the future?

Donna Galchus: Yes. We went back and looked at how to compute and we actually used DOL. We sat down with them and talked about how we figure these add ons and the off the clock work is no longer going on at all. As Michele was saying through education of the mangers and continuing to maybe audit things and look at things over time I think were going to ensure that. I think we always have to be kind of watching things and keeping up with it because manager's change and things can revert back but I don't think that's going to happen because of what they put in place.

Alderman Ferrell: Thank you.

Mayor Coody: Anything else?

Alderman Lucas: We do have the policies and procedures in place so that it will be something for them to refer to and everything and it will be on the books that that is the way it is suppose to be done.

Donna Galchus: Yes Madam

Mayor Coody: We redid all of our policies and procedures based on all of this to make sure, and we just finalized those in the last several days to make sure all of our policies and procedures reflect everything we learned in this exercise.

Alderman Marr: I have a couple questions for the Human Resources Department to the corrective actions. What percent of our time sheets do we audit currently? You said that were going to increase that with more auditing what did we do, how many did we do, or how often did we do it prior to this?

Michele Bechhold: The Human Resources Division does not see the time sheets. I can check with Accounting and see on the percentage. I know on the previous organization the Internal

Auditor reviewed the time sheets when Nancy Smith was here. I'd want to verify to see if that practice was continuing after Vicki Deaton came on.

Alderman Marr: Let me ask it in another way. What is our goal what percent of the time are we looking to increase, if we were going to set a goal of more auditing. What percent of time sheets are we expecting to audit?

Michele Bechhold: We are in the process of beginning to partner with the Internal Audit to develop what that plan will be and that will be a goal we will set together and look at the hours available and how many hours of their program can be devoted to that along with auditing all the other items that need to be looked over in the City.

Alderman Marr: Mayor I'd like us to get an update when you've got that set so we know how much we are doing, how much we did and what our plan is moving forward. On evaluating a time keeping system on the other items you mention a time frame, which thank you for correcting the check stub I appreciate that a lot, but the time frame for evaluating time keeping systems and things of that nature do you have a time frame?

Michele Bechhold: I don't know that we've been given a deadline; I know that IT has been working on a RFP and Steve may have some information on that.

Steve Davis: Actually our time frame is to have our evaluation completed by the end of the first quarter of 2006. We would expect in terms of the increased Internal Audit activity, what we expect to do is a sampling, targeting those areas that had the biggest issues that we uncovered during the Supervised Settlement so we would expect that just off the top of my head I would expect somewhere between fifteen and twenty six percent.

Mayor Coody: Any other questions?

Alderman Rhoads: What's the average check amount?

Steve Davis: For this settlement? There are some checks like Park's has a total of \$10.00 for all of there employees, and I think there's thirty employees in Park's.

Mayor Coody: The bulk of this I'm guessing \$140,000 out of the \$150,000 goes to the Police Department.

Donna Galchus: Their was a total of 251 people that will be receiving checks and approximately a total of \$125,000 and that doesn't include the benefits that still have to be added into that.

Alderman Marr: And the largest check?

Michele Bechhold: The largest check I don't know that I have a specific number, but its going to be in the neighborhood of between a \$1,000 and \$1,500 because there would be a great disparity on an average since there would be some checks as small as thirty nine cents and some checks as large as a \$1,000 or so.

Alderman Rhoads moved to approve the resolution. Alderman Jordan seconded the motion.

Alderman Reynolds: Where's that money coming from?

Steve Davis: Because most of the expense is in General Fund it's coming out of our Reserves and General Fund.

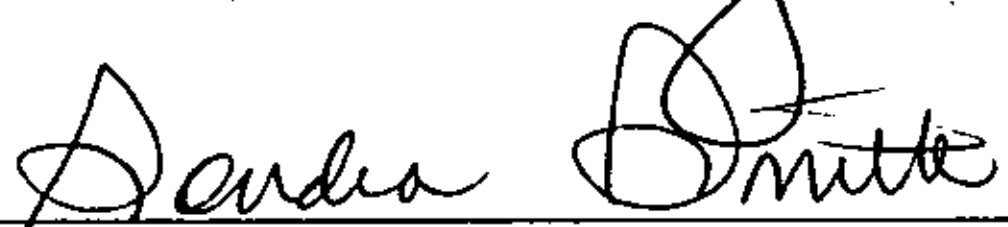
Upon roll call the resolution passed 7-0. Alderman Cook was absent.

Resolution 258-05 as Recorded in the Office of the City Clerk.

Meeting Adjourned at 6:25 PM



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer