

**MEETING OF THE BOARD OF PUBLIC WORKS
SEPTEMBER 22, 2022
MEETING MINUTES**

A meeting of the Board of Public Works was held on Thursday, September 22, 2022, at 3:00 p.m., in the Auditorium at City Hall, 229 Main Street, Nashua, New Hampshire 03060.

Mayor James Donchess, Chair declared the meeting to order at 3:00 p.m., and called the roll.

I. ROLL CALL

Members Present

Chairman, James Donchess, Mayor
Vice-Chairman, Kevin S. Moriarty
Commissioner, Shannon Schoneman
Commissioner, June Lemen
Commissioner, Paul Shea

Also Present:

Steven A. Bolton, Esquire, Corporate Counsel
Lisa Fauteux, Director, Division of Public Works
Dan Hudson, P.E., City Engineer
Andrew Patrician, Assistant Director, Division of Public Works
Jeff Lafleur, Superintendent, Solid Waste Department
David Boucher, Superintendent, Wastewater
Jon Ibarra, Superintendent, Street Department
Bryan Conant, Superintendent, Parks and Recreation
Bobby Jones, Representative AFSCME
Alex MacLean, President/Chief Steward, AFSCME Local 365
Steve Pecoraro, Collection Systems Technician, Wastewater Treatment Facility
John Lyons, Vice President AFSCME Local 365

II. MOTION TO APPROVE THE AGENDA AS PRESENTED

**III. MOTION TO APPROVE THE MINUTES OF THE BOARD OF PUBLIC WORKS
MEETING OF AUGUST 25, 2022**

IV. PUBLIC COMMENT

**V. AMERICAN FEDERAL OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES:
STEP III GRIEVANCES**

Chairman, James Donchess Mayor

Maybe we'll move on. Are they right here? Okay. All right, good. All right, well, the next item on the agenda is our series of grievances. First being 21-17. I think--

Lisa Fauteux, Director, Division of Public Works

--yeah, so, but I think, I think Attorney Bolton, Mayor, will explain the grievance process--

Mayor Donchess

All right. Thank you Attorney Bolton--

Ms. Fauteux

--if that's okay--

Mayor Donchess

--who I've not yet introduced is here and he is going to explain the process that we'll use to hear each of the grievances.

Steven A. Bolton, Esquire, Corporate Counsel

As you're probably aware, there is a collective bargaining agreement between the employees of the Division of Public Works and the City. And, as required by New Hampshire law, that collective bargaining agreement includes within it a process to resolve disputes. Disputes are known as grievances, and the procedure is known as the grievance procedure. So, you're here today as one of the steps in the grievance procedure. Essentially goes that if there's a dispute as to whether the contract has been followed or violated in a certain situation, an employee can first bring it to the attention of his Supervisor, and then the employee with the assistance of the Union can, if they are not satisfied with the immediate resolution in the less formal process. They proceed to Step 1, which is bringing the matter to the attention of the Superintendent. The Superintendent responds within the time period specified in Article 14 of the contract. It then can be moved up to the further step, which is the Director of Public Works, and the Director of Public Works renders a decision, and if the Union and the employee are still not satisfied, then they can within the time specified bring it for a hearing before the Board of Public Works. These time limits can be waived by the agreement of both sides, and in many cases they are. Sometimes there's a dispute as to whether they have been waived or not have been waived, and you may have occasion to apply that requirement as well. So, you will hear the Union's position. You will hear the management's position, and ultimately, you can ask questions, you can try and determine the facts as you need them to determine whether the Union is correct that some provision in the contract has been violated, or whether management is correct and they've properly applied the contract to the situation. And, there are a number of them; I believe there are seven of them you will hear. That is essentially your role in the grievance procedure.

From here, if the Union is not satisfied with the decision as you render it they have a right to proceed to binding arbitration on the matter. So, an arbitrator is selected and each side presents their case to the arbitrator, again according to what is provided in the contract and then the arbitrator makes a binding decision. So, you're the next to last step in the entire grievance procedure process.

Chairman, James Donchess, Mayor

Does anybody have any questions of Attorney Bolton? I do have one. So the issue in each grievance is whether the contract, written contract, the collective bargaining agreement has been violated or not.

Mr. Bolton

Correct.

Mayor Donchess

Okay. All right. Well let's go on to--

Ms. Fauteux

--Commissioner--

Mayor Donchess

--oh, Commissioner Shea.

Commissioner Paul Shea

And so, would we have--to kind of follow a motion process if we were to have an alternate solution? Is that how we would come to a decision here, if it's different from management?

Attorney Bolton

Yes, you could say well management was wrong in how they did what they did. The correct thing would be X, and X might not be exactly what the Union thinks the correct thing to do would be. So, you could have a third alternative perhaps, and if that is how you vote, that's how you vote, and if the Union is dissatisfied with that they have arbitration to resort to.

Commissioner Shea

And, would they inform us today if they are satisfied or would they go and discuss further and come to some determination at a later time?

Attorney Bolton

I think in most cases they will come to a determination at a later time. They have a time limit by which they have to request arbitration, but it is somewhat extended. It's not a day or two, I think it is like 90 days, yeah. Yup, 90 days. So, they have quite some time, and they may utilize some or all of that to consider what their course of action will be.

Commissioner Shea

Thank you.

Mayor Donchess

Anyone else? All right, well we'll go to the first grievance which is No. 21-17. So, we will get a presentation from the Union and then hear from the Department.

Bobby Jones, Representative, AFSCME Council 93

Mr. Chairman, if I may.

Mayor Donchess

Go ahead.

Mr. Jones

I'm Bobby Jones. I work for AFSCME Council 93 the exclusive representative. The Union had put forth a list of grievances, one of which included 21-7, where the Grievant was Vern Thompson regarding a suspension, and the Union was notified late this afternoon that that grievance was not being heard today. And, we're wondering why the grievance is not being heard since we have submitted it for this step.

Discussion:

Ms. Fauteux

Mr. Jones, actually I have told numerous times that that grievance was not going to be heard because it didn't follow the process within the contract. And, I did mention that you should talk to Attorney Bolton about next steps if you wanted to discuss that further. But, it --I don't know if you want to speak to that further.

Attorney Bolton

I think that was. It's untimely at this point. The time limits were not followed and they were not waived.

Mr. Jones

So, can you point to a provision of the contract that states if the time frames are not followed, then the grievance is dead? Because during your presentation to the Board you said it would be the Board's decision as to whether or not the time frames were met or they were extended, and I'm not aware within this Collective Bargaining Agreement of such wording, whereas other bargaining--

Attorney Bolton

--well it's there sir--

Mr. Jones

--agreements do have that.

Attorney Bolton

It's in Article 14, and it does specify that the time limits may be extended if both parties agree. You don't have such an agreement.

Mr. Jones

There also isn't wording to indicate that--

Attorney Bolton

--I'm not going to argue with you Sir.

Mr. Jones

Very good. The Union protested that this will not be heard, and will be moving forward for arbitration with it. Thank you.

Mayor Donchess

All right. So, we'll go on to Grievance 21-17. Just introduce yourself and then go ahead.

A. Grievance No.: 21-17

Alex MacLean, President/Chief Steward, AFSCME Local 365

Yes, hi. I'm Alex McLean, AFSCME Local 365 President. We have Grievance No. 21-17. Do you want me to read the grievance as it is written on the first page so that you hear it out loud, and then go into our presentation?

Commissioner, Kevin J. Moriarty

Yes, please.

Mr. MacLean

Okay, not a problem. So 21-17 is a part of the Street Department. It is a class action. It's the CBA states, the Collective Bargaining Agreement that states you receive one dollar extra for the Hot Box, as well as one dollar extra for using your CDL-A. It is the Union's stance that historically compensation for Hot Box is part of the CBA. Per our current CBA, it was agreed upon to compensate for utilizing your CDL-A. We have multiple Hot Boxes that do not require a CDL-A. The Union sees the contract as employees need to be compensated for the Hot Box as they always have been, and compensated for utilizing a CDL-A as no positions are required to hold a CDL-A. It's kind of along the same lines of, I mean you go to Burger King and you order a meal you get fries or the onion ring, you want the extra you got to pay for the extra. So, that's the Union's stance on this.

Discussion:

Chairman, James Donchess, Mayor

Any questions on --yes.

Commissioner, Paul Shea

Can you elaborate on Hot Box. What that means.

Mr. MacLean

Yeah, so a Hot Box is--it's generally towed behind a vehicle. The DOT rules and regulations are combined GVW vehicle weight of a truck and trailer. Anything over 26,000 pounds requires you to hold a Class A license, a CDL-A license. We have two Hot Boxes that are underneath that weight restriction and two that are over. So, what's going on is generally it's never been an issue before because we've always been compensated for the Hot Box. The issue has arisen in the fact that now we are requiring drivers who are only required to have their CDL-B license for the position. We are utilizing drivers that come onboard with their A to tow these other trailers, and they are only compensated for the Hot Box, they are not also compensated for now utilizing their CDL-A.

Chairman, James Donchess, Mayor

Commissioner Shea.

Commissioner Shea

So if you're out doing lawn maintenance or something like that you're not using a CDL-A, right? So, you are driving a vehicle that does not require a CDL-A. It sounds like you're not using the CDL-A, is that fair to say?

Mr. MacLean

Yes. So on a general day-to-day you don't use your CDL-A.

Commissioner Shea

And you don't get an additional dollar for each hour worked to --

Mr. MacLean

Nope. You only get it when you are required to use it.

Commissioner Shea

And so, are employees being paid the additional dollar when they drive the Hot Box that's underweight, and then an additional two dollars when they are driving the Hot Box that's overweight, or they are not when they are driving the one that's overweight requiring the CDL-A?

Mr. MacLean

No, they are only compensated the one dollar for the Hot Box. So that is wherein lies the issue.

Commissioner Shea

In both instances.

Mr. MacLean

In both instances, yes. So like if you took out the Hot Box that doesn't require you to utilize your CDL-A it would just be a CDL-B driver towing that Hot Box. They would just get the Hot Box rate. It is now an issue that we have that they have a Hot Box that requires you to use both. You're required to tow the Hot Box, but now that Hot Box also requires you to hold a CDL-A.

Commissioner Shea

I just have one more question, if I may.

Mayor Donchess

Go ahead.

Commissioner Shea

So can you explain the, kind of elaborate on the circumstances from prior to this issue arising and compensation. Are the new Hot Boxes the overweight ones or are the new Hot Boxes the underweight ones. Were we compensating before for the CDL-A or not? I don't fully understand that.

Mr. MacLean

So, this falls under the new contract that was signed last year. We added the words or the words were added to be compensated for using a CDL-A. So it reads, I don't have the contract in front of me. Hold on one second. The contract is, I should have brought that up with me--

Commissioner Shea

--you're fine.

Mr. MacLean

Thank you very much. So the contract reads:

"Employees who operate the sweeper, drives pulling the Hot Box, (which was originally in this contract prior to this one), or operates a vehicle required by the State or Federal law to operate by a CDL-A license, and who have met the qualifications period prior specified in Paragraph D above, will be paid the differential of one dollar per hour above the rate of the position, in addition to any shift differential which may operate while operating such equipment."

So the piece that was added was utilizing your CDL-A. That has never been in there before, and it is now a new thing.

Commissioner Shea

I have one more, I'm sorry.

Mr. MacLean

Yeah.

Mayor Donchess

Go ahead.

Commissioner Shea

This isn't a real thing, but hypothetically, if someone where driving a street sweeper with the heavy Hot Box on the back, is it your, I know it's not--

Mr. MacLean

--yeah--

Commissioner Shea

--but is it your feeling that in that instance they should get three dollars an hour?

Mr. MacLean

You're asking them to do three different positions. You're asking them now to utilize a license that they don't necessarily need, and to sweep the road, as well as the Hot Box. So, yes.

Commissioner Shea

And just a thought--

Mr. MacLean

It's not an instance that would every happen--

Commissioner Shea

--right, right. So I struggle a little bit with the word "or" because it seems like those are the three conditions under which someone would receive a differential. It doesn't sound like there is space in that language for each of those three things to be considered on an individual basis. I, I understand your sentiment on it, but with the use of the word "or" I struggle to see where there should be two differentials. It seems like there is a class of differential, and that if you fall into any of those buckets, then you get a dollar an hour. I, I'd welcome further thoughts on that, but that's my first impression of the issue.

Mr. MacLean

Yeah.

Lisa Fauteux, Director, Division of Public Works

Superintendent Ibarra would you like to speak--

Mayor Donchess

--can I just ask--

Ms. Fauteux

--oh sure--

Mayor Donchess

--does anybody else have a question? Commissioner Moriarty.

Commissioner, Kevin S. Moriarty

I do. The grievance itself is it one employee with this grievance or is this like, are we talking about multiple employee who are involved with this grievance?

Mr. MacLean

Yeah. So, it only pertains to the essentially the truck driver classification. So, it was filed as a class action for the truck drivers. So nobody else, no other, nobody else is ever asked to tow the Hot Box or any of that except, for a truck driver. Other classifications are asked to utilize their CDL-A though.

Commissioner Moriarty

So then, all the truck drivers, Mayor if that's okay if can proceed—all the truck drivers who have pulled the Hot Box have qualified under D, the other requirement of 120 hours within a 24 month period?

Mr. MacLean

Yes.

Commissioner Moriarty

They have all met that qualification. And so, the only other question would be whether a CDL-A is a requirement or not. Is that?

Mr. MacLean

Yeah.

Commissioner Moriarty

And you're saying--

Mr. MacLean

Yes, per our PDFs a CDL-A is not required.

Commissioner Moriarty

And so that would be something that I guess the Superintendent or the City Attorney may want to elaborate on because the way I read this it doesn't say, and Commissioner Shea I may disagree with you on this because the way I read this is that the employee can operate the Hot Box or have the CDL-A. It doesn't say "and" like he has to have the CDL. That's my interpretation, but I don't know that just the way I read this. It doesn't say "and" must have the CDL-A license. So, if they operate the Hot Box and they meet the qualifications of the hours, then they should be okay. I'll be interested to hear how the City responds to this as well.

Mayor Donchess

Anyone else? All right. Commissioner Schoneman.

Commission, Shannon Schoneman

It was my understanding that some of, as you said some of the Hot Boxes don't require a CDL-A so, it's the individuals who both pull the Hot Boxes and have the CDL-A that want additional remuneration, and those that pull the Hot Box that don't require a CDL-A, and they don't have a CDL-A, are they also part of this group that is seeking a grievance?

Mr. MacLean

No. So if we were using the Hot Boxes that didn't require the CDL-A, our stance of this grievance there isn't a grievance. This grievance is because there are select few, I want to say I'm pretty sure the Street Department only has maybe two or three drivers that come in already with their CDL-A, and the way that this is now is when they find out that they have somebody with an A, they just make them, the lowest guy always gets mandated to the Hot Box. It's generally how it goes. So, the lower person, so sometimes the lowest person might have a B, but if they want that A Hot Box, it could be two or three guys above him that get mandated because they have their A. So, it is, we are going by that they have to have their CDL-A to tow the Hot Box, but they're only compensated for the Hot Box. They're not compensated for also utilizing their CDL-A. If that make sense and answers the question the way the way you were looking. Yes.

Mayor Donchess

Commissioner Lemen.

Commissioner, June Lemen

Thank you. So in this Paragraph D, it says employees who operate the sweeper they get a dollar differential?

Mr. MacLean

Yes.

Commissioner Lemen

All right, okay.

Commissioner Lemen

To me I'm finding with Commissioner Moriarty on this because it says this condition, a dollar differential, second condition dollar differential or who operates a vehicle required by State or Federal law to be operated by a CDL license. Those are three different groups, right? That get a dollar differential. And what you're saying is that if you have both the CDL-A and you're doing the Hot Box you should get two dollars?

Mr. MacLean

Yes ma'am.

Commissioner Lemen

Okay. Thank you.

Mayor Donchess

So before the new contract provision.

Mr. MacLean

Yes.

Mayor Donchess

You got a dollar for pulling the Hot Box.

Mayor Donchess

Yes, Sir.

Mayor Donchess

But, if you were driving a piece of equipment that required the CDL-A, you did not get anything.

Mr. MacLean

There was no such compensation for a CDL-A prior to this new contract. No.

Mayor Donchess

And, can you give an example of a piece of equipment that requires a CDL-A that an operator would have operated under the old contract that would not have been compensated?

Mr. MacLean

Towing any trailer that is over, with a combined GVW weight of 26,000 pounds. So, the tractor trailer, we have a low bed to move a piece of equipment. That gets compensated a dollar now, that was never compensated a dollar before. So, basically at any point if anyone is towing a piece of equipment to or from a job site they get compensated a dollar or compensated a dollar for any trailer combination that is over 26,000, that requires your CDL-A.

Mayor Donchess

So the language, with the language accomplished was to make sure that someone who was driving a vehicle, not a Hot Box, that required a CDL-A would now be compensated one dollar.

Mr. MacLean

Yes.

Mayor Donchess

But, the provision does not say that if you're doing two of these things you get two dollars.

Mr. MacLean

It does not.

Mayor Donchess

Anybody else have questions? All right, management or I don't know, Mr. Ibarra.

Jon Ibarra, Superintendent, Street Department

Thank you, Mr. Mayor. Commissioners, good afternoon, Attorney Bolton. Jon Ibarra, Superintendent of Street Department. So as Alex alluded to this all occurred during our last contract negotiations. There were changes within the contract. The CDL-A was a requirement. As an example, to run a sidewalk tractor was an operator job. Well, we eliminated that as an incentive needing more bodies to get in those tractors to clear the sidewalk during the winter. Anybody with a Class B, is now able to get trained and run that machine. So that opens that overtime up to anybody within the Division. It started as an incentive in that aspect so, it affected the snow program, and then it went into the Hot Box as an incentive to get guys to take that. We do have a percentage of guys on the Department and through the Division that do hold a CDL license, CDL-A, excuse me, and as an incentive to get them in there this language was incorporated to the change in the contract. So, I'll read it one more time because I'm also hung on that word "or" and that's my interpretation I share that with you folks.

"Employees who operate the sweeper, drives pulling the Hot Box,
or operates a vehicle required by State or Federal law to be

operated by a CDL-A license, and who have met the qualification period specified in Paragraph D above, will be paid a differential of one dollar per hour above the rate of the position, in addition to any shift differential, which may be appropriate while operating such equipment."

The shift differential would be the sweepers, they come in at \$3.45, so there's a shift differential there. So they're the only ones that get in addition to that dollar an hour. Everybody else is just for utilizing their Class A, if they're going to pull anything. Actually, it's a combination vehicle of anything over 10,000 pounds. So, that could be even an F-350 pulling a 10,000 pound gross load or greater. Okay. So, that's where that comes in. And, really that's all I have as far as a comment to that, and I'd ask Attorney Bolton if he had anything he would want to add to that.

Steven A. Bolton, Esquire, Corporate Counsel

I think you've covered it.

Mr. Ibarra

Okay.

Mayor Donchess

Does anybody have questions for Mr. Ibarra? Commissioner Schoneman.

Commissioner Schoneman

I don't know if this is specifically for Mr. Ibarra, but what is the grievance seeking? Or what would be the result of the class action if it's approved versus denied.

Mr. Ibarra

My interpretation would be they're looking for two dollars an hour. One for utilizing a license, and one for pulling a Hot Box.

Commissioner Schoneman

From now on or back pay?

Mr. Ibarra

Well if you awarded that, that would be back pay and from moving forward.

Commissioner Schoneman

I see. Okay, thank you.

Mayor Donchess

Commissioner Lemen.

Commissioner Lemen

How much does it cost to get a CDL license?

Mr. Ibarra

Well, the rules just changed. I'm not exactly certain, but I heard a number around \$3,800.00. That's run through the State now. It used to be you could gain employment and train under somebody that had that Class A license that was 25-year-old or greater, like I did back in the day. And, you get your permit, your ride with them and you go get a road test. Now there's more stringent requirements through the State and they have attached some revenue generation through it.

Commissioner Lemen

So if somebody comes here and they already have a CDL-A license they have a leg up?

Mr. Ibarra

Sure.

Commissioner Lemen

Okay. And, but if you, you're working here and you want to get your CDL-A does the City help with that or are you on your own or how does that work?

Mr. Ibarra

Glad you asked. In the past we have, but now with the new rules and regulations we're seeking ways to get that done. The City has made arrangements, we've put on a couple guys without a CDL license, we're going to get them their CDL license. I believe that's running through Risk, but there' stuff that I'm not aware of as far as those regulations—

Ms. Fauteux

--just the distinction between a CDL being a CDL-A. So, we working with them to get CDL-B's.

Mr. Ibarra

Yup.

Ms. Fauteux

Correct.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

When someone is hired or when they receive their CDL-A in terms of like the pay grade is there a difference there at a base rate for an employee who has their CDL-A?

Mr. Ibarra

No. They're all hired at the same rate as a driver. That would be an incentive. So it's called out in the morning as a seniority. We go out on the floor and we say who would like to pull a trailer or Hot Box today. If they all decline then we would by contract mandate the bottom guy into it. The lowest CDL-A holder.

Commissioner Shea

Thank you.

Mayor Donchess

During the negotiations, I assume this provision, the additional language for this Article 70 was discussed with the AFSCME.

Mr. Ibarra

That correct. They signed off on it.

Mayor Donchess

During the negotiations did anyone from AFSCME suggest that this would mean that a person, an employee would be double paid for CDL-A license, plus the Hot Box?

Mr. Ibarra

I was actually part of the negotiation team and that was not the intent at the time, and I heard no objections at the time myself.

Mayor Donchess

Thank you. Anyone else? Commissioner Moriarty.

Commissioner Moriarty

My thoughts on this whole process is that if the City is in the wrong I have no problem going in favor of the grievance, but I don't see where the City is in violation when I read 7E. It seems like they follow the contract. So, the wording may not be what the Union would like to see, but then the wording has to changed. But, as I read this I don't see any violation. That's just my, that's my opinion.

Mayor Donchess

All right, well I think, does anybody have any other questions either of the Union or of Management? Is there a motion regarding the disposition of Grievance 21-17?

MOTION: Commissioner Moriarty move to deny the Grievance.

Mr. Ibarra

Thank you.

Mayor Donchess

Any discussion? Commissioner Schoneman.

Commissioner Schoneman

Obviously, the reason we're discussing this is because the wording is confusing. The wording is not clear. There were several interpretations floating around of what that "or" signifies. I think if we deny this grievance we definitely need to look into going back over the language and stating very clearly yes it means you can be paid for each stipulation or no there is no cumulative effect of having these three conditions. And, I think to prevent further issues will have to be addressed right away. I would think.

Mayor Donchess

Well, I mean in reality the language doesn't get changed except in the context of the negotiation of a new Collective Bargaining Agreement. That's generally how things go.

Commissioner Schoneman

So is this--

Mayor Donchess

--you'd have to reopen negotiations--

Commissioner Schoneman

--come up again?

Mayor Donchess

Pardon?

Commissioner Schoneman

So is this grievance going to come up again until the next Collective Bargaining?

Mayor Donchess

Well the, Attorney Bolton can correct me if I'm wrong, but this could go to arbitration and the arbitrator decides one way or the other. Were the Board to deny the grievance the arbitrator would decide in a binding fashion what the contract means.

Commissioner Schoneman

So the City's intention when they made this Paragraph E was to pay for one of the three, a dollar extra for one of those three not cumulatively. And that was the Cities intention and the Union signed off on that, and that's what everyone is in agreement here, and so that's going to be the language going forward and the result of this discussion that that's what it means. That there's no double paying. That this is for one--

Mayor Donchess

Unless an arbitrator were to rule otherwise. All right the motion, you've heard the motion is there any other discussion? The motion that the grievance be denied.

MOTION CARRIED: Unanimously.

B. Grievance No.: 21-52

Chairman, James Donchess, Mayor

Now we're going to go to Grievance 21-52.

Alex MacLean, President/Chief Steward, AFSCME Local 365

21-52. This is for Solid Waste Department. The Solid Waste Department kept summer help beyond October 31, to perform work that full-time employees signed up for. According to Article 2 of the Collective Bargaining Agreement, posted agreement, management posted a temporary assignment for the soft yard waste season identifying a need for help with the soft yard waste. Soft yard waste season within the Solid Waste Department that runs from November to the first Friday in December. Volunteer sign-up sheets were posted Division wide in which AFSCME employees signed up for. There were a number of employees that were denied the opportunity to be a part of the Yard Waste season. By denying these employees the temporary position, management backfilled the positions with summer help in violation of Article 2, which states:

"No summer help will remain employed beyond the end of October and through the first Friday in December except, to fill remaining unfilled temporary work assignments for soft yard waste."

Mayor Donchess

Anybody have questions? Commissioner Shea.

Commissioner, Paul Shea

Do we have some manner of record of the employees that have signed up and were declined the opportunity to do the work?

Mr. MacLean

I do not have that on me, no. But, there is, there should be an archived record of who signed up for the soft yard waste season, yes. I do believe management keeps that on file.

Commissioner Shea

Thank you.

Thank you.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

And so, can you elaborate on what you are seeking to make all monies whole?

Mr. MacLean

I believe most of the employees that would have been denied the opportunity to go over to the Solid Waste Department, they work at a lesser rate than the CEL rate, the Collections Equipment Operator. Generally, it is at the time of this, I'm not sure what the rate was, we would have to go back and look. It's generally like a \$1.50 more, depending on the truck driver position. I believe it was mostly truck drivers that were denied.

Mayor Donchess

Well, so the summer help doesn't drive the trucks do they? Do they? No.

Mr. MacLean

No, but it is the position of a Collections Equipment Operator to not only pick the trash, but also drive the truck.

Mayor Donchess

Now, there might be other ways of doing it, but as I recall seeing it there is somebody driving the truck and there is someone riding on the back who gets off, and then picks up the barrel of soft yard waste and puts it in the back of the truck.

Mr. MacLean

Yes.

Mayor Donchess

And, is it usually a two or three man crew who does this?

Mr. MacLean

Two.

Mayor Donchess

And you're saying that what a truck driver asked to be on the back of one of the trucks, or--

Mr. MacLean

No, so they post the temporary job assignment because we get inundated with soft yard waste through the month of November. So, they sent a sign-up sheet and there are quite a number of us that volunteered to go over there to actually ride on the back of the truck and pick the soft yard waste, yes.

Mayor Donchess

And at what rate are you saying you would have been paid? At the truck driver rate?

Mr. MacLean

No, so a lot of these guys are already the 120 hours minimally qualified for the rate of pay, and, I mean I can look right back here and tell you what the difference is for the two. It's a, a truck driver makes, a truck driver right now makes \$24.87 and a collections equipment operator makes \$25.70, so almost a full dollar more.

Mayor Donchess

Even though the truck driver, I don't quite I get it. But, the--

Mr. MacLean

The truck driver not only drives the truck, but also picks the soft yard waste.

Mayor Donchess

I thought the guy on the back of the truck did that.

Mr. MacLean

Yes--

Mayor Donchess

--you're saying they both get off the truck.

Mr. MacLean

You switch off duties with the other person. Like if it was myself and Matt Davidson, Matt would drive for a little while and I would pick, and then we would swap and I would drive for a little while.

Mayor Donchess

And does the summer help? Are they allowed to drive the truck?

Mr. MacLean

No.

Mayor Donchess

So, when you've got the summer help on there the truck driver always drives the truck?

Mr. MacLean

Not generally, no. I myself when I'm over there I get out and help my summer help.

Mayor Donchess

And then you'd get back in and drive.

Mr. MacLean

Yes.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

Was there any reason given to these employees that they were not selected for shifts that they signed up for?

Mr. MacLean

Their management's reason is written in the responses.

Commissioner Shea

And so, are the employees, sorry--

Mayor Donchess

--yeah, go ahead.

Commissioner Shea

And so, are the employees who have filed this grievance, were they otherwise assigned, and so, they weren't denied hours. They were denied this particular task and the differential? Is that correct?

Mr. MacLean

Yes, as well as overtime. So, this was filed as a class action. This is for, this is and it has always been the way that we have done this. It has gone to a temporary signup sheet, and those wanting to go were to go. And, then it fills that department and helps alleviate the Yard Waste season, and with the new wording in the contract again, it was added that summer help would not stay for the whole backfill, and so before summer help had a cutoff date of November 1, and then they were gone. And then, we came over to help, and now it was put in there that they could stay as long as everybody else was given the opportunity, and we had employees that were not allowed to go. So that's why this grievance is here today.

Mayor Donchess

Commissioner Schoneman.

Commission, Shannon Schoneman

Could you explain the City's response to this grievance?

Mr. MacLean

I can step down.

Mayor Donchess

Could we finish with Mr. MacLean if anybody has questions for him and then we'll go to the City. Commissioner Moriarty.

Commissioner Moriarty

Yes right, once again I'm trying to interpret as you all are a contract, right? So your grievance says they're not supposed to work beyond October 31, but yet the contract says the first Friday in December they're allowed to work until.

Mr. MacLean

Yeah, if you continue to read that section it states that only to otherwise fill the positions as needed. So no summer help will remain employee beyond the end of October through the first Friday in December except, to fill remaining unfilled temporary work assignment for soft yard waste. So they kept summer help all the way through to December and denied employees the opportunity to go over there.

Commissioner Moriarty

Again, I'm trying to interpret what exactly that means. It doesn't seem like. Did they work beyond the first Friday in December? The temps.

Mr. MacLean

No.

Commissioner Moriarty

Okay, so there's no violation there as far as time.

Mr. MacLean

As far as--

Commissioner Moriarty

--the time when they stopped working. They didn't work beyond the first Friday in December?

Mr. MacLean

They did not work beyond that.

Commissioner Moriarty

So, that's not a violation. You're just saying it wasn't right for the temps to stay on and do that work?

Mr. MacLean

It is, they could stay on, but how can they stay on if there were other, they were there to fill an opportunity that was denied to X amount of guys. Let's say it was eight, you know, eight guys, there was eight more guys that could have been utilized to the point where yeah, you could have then kept summer help, but by denying those guys how can you keep summer help because it clearly states that it is, summer help is only to stay to fill the unfilled work assignment--

Commissioner Moriarty

--unfilled work assignments, and then the City said that they put up a list for you folks to sign--

Mr. MacLean

--yes--

Mr. MacLean

--so if you didn't sign then they had to fill it. But, you're saying that didn't happen.

Mr. MacLean

No, no, we signed the list. There was a whole list of guys. Let's say there was ten of them okay for the sake of this. Eight were allowed to go, two were not and they continued to keep summer help. So that therein lies the violation of the contract. Because they're showing a need for more than what they actually took off of the work assignment list. Make sense.

Mayor Donchess

So, did any of the summer help do anything other than pick up after the cutoff deadline, which was October end of October. Did any of the summer help do anything other than pick up soft yard waste?

Mr. MacLean

Yes. Recycling and trash.

Mayor Donchess

All right. And, the full-time employees who requested the Yard Waste job and were not assigned to it, was there other work for them to do? Were they doing something else or what were they doing?

Mr. MacLean

They stayed in their position. So, if their position was in the Street Department they stayed at the Street Department and did their daily assignments there.

Mayor Donchess

Which would be like what?

Mr. MacLean

Day-to-day, it changes every day.

Mayor Donchess

Well give me an example.

Mr. MacLean

They could be driving a truck one day. They could be laboring one day. Filling potholes.

Mayor Donchess

Okay. All right, any other questions? Commissioner Shea

Commissioner Shea

Is there any grievance that we are going to hear relative to the employees working beyond October 31, the seasonal help? There's no--I'm hearing that there are employees who were temporary, summer help that did work beyond October 31 in tasks other than oft yard waste collection. Am I understanding that correctly?

Mr. MacLean

Yes.

Commissioner Shea

So they did trash collection and other stuff.

Mr. MacLean

Yup. That is the normal functions of a collections equipment operator, which was the temporary job assignment, yes.

Commissioner Shea

And, this was the summer help working beyond October 31, when they really shouldn't be, but I imagine that's because we were short staffed? I know that that's not relative to this grievance, I'm just interested to know.

Mr. MacLean

Yes, and I, I understand your point. They could. I'm not saying that they can't stay until the first week of December. It's how do we allow them to stay and deny our guys to go and do that job. That is where we have the issue. Not so much in what they were doing day-to-day or that they were here. If all of those guys had went this grievance you would have never of seen.

Commissioner Shea

And so, the grievance I relative to the two out of ten that signed up for a specific shift that a temporary seasonal employee was otherwise assigned to.

Mr. MacLean

Yes.

Commissioner Shea

Okay.

Mayor Donchess

All right, any other questions for Mr. MacLean? All right, could we hear from the Solid Waste Department.

Jeff Lafleur, Superintendent, Solid Waste Department

Thank you. Jeff Lafleur, Superintendent, Solid Waste. This grievance doesn't just hurt, you know, affect the Solid Waste department it affects the whole Division as you hear that we're borrowing help from every department. If we were to allow every person that signed up for it this past year, we would have depleted some departments where they would be crippled to do any work at all. That's where management rights has to be able to assign jobs, and accept or deny saying that we can take seven people from Wastewater. Let's say Wastewater Department signed seven guys signed up and they wanted to come over here. The Union side is saying that we would have to take all of them before I could keep my temps. Well, the Wastewater Department needs so many employees to operate correctly. We would borrow as

many as possible for operational needs, and then backfill with our summer help. That's basically what happened. We took all the candidates that applied for the position. We took what we could from each department without being detrimental or being hurtful with operations in each department, and then we backfilled with my summer help. We're looking out for the best interests of the City. Doing it operationally that way. We've done this for years as far as denying people for them being needed in their jobs. I've had roll off operators that were out and someone wanted to sign for Yard Waste Season. I told them no. They can't sign for Yard Waste season because they're needed in their position. The job needs to get done. That's the basis of this grievance is that, operational needs. We just can't deplete other departments.

Mayor Donchess

Commissioner Lemen.

Commissioner, June Lemen

I have a question. So, I'm thinking about this. Yard Waste gets picked up Monday through Saturday?

Mr. Lafleur

Monday through Friday.

Commissioner Lemen

Monday through Friday. So this is during regular work hours?

Commissioner Lemen

Okay, So, and is there, I'm assuming you would not get overtime if you worked at the sewer treatment plant and you went over to pick up Yard Waste. It would just be an hour-for-hour exchange? I'm just curious.

Mr. Lafleur

They would get the shift differential. Whatever, which ever rate was higher they would get paid so long as they met the 120 hours in their contract.

Commissioner Lemen

Okay, and so, during Yard Waste season how many extra people do you use?

Mr. Lafleur

To be honest with you I keep as many soft yard waste trucks as possible out there. Some days we're picking up 100 tons of yard waste. So, we would want as many employees as possible on every truck that we have. I could have 20 people there. I could borrow 20 people. We just don't have the manpower to steal from every department or 20 employees.

Commissioner Lemen

Thank you.

Mayor Donchess

Commissioner Schoneman.

Commissioner, Shannon Schoneman

So when individuals are signing up for the soft yard waste hours, they're not extra hours, these are, they sign up with the knowledge that they'll be taken out of their usual paid position and put in a different place. This isn't I'm going to pick some extra hours after my shift.

Mr. Lafleur

Correct to some extent. There's opportunities if there is overtime. Those employees that are temporarily assigned to my department would get it before anyone else in the Division. So, theoretically they're working their 8 hour shift, but they also get the opportunity if there is overtime to say yes I'll stay before everybody else in the Division.

Commissioner Schoneman

Okay, so when they're signing up they know that this is—I might be assigned this position if I can be spared from my regular position.

Mr. Lafleur

Exactly.

Commissioner Schoneman

Okay.

Commissioner Moriarty

So, I--

Mayor Donchess

--go ahead.

Commissioner Moriarty

I guess why would an employee leave their regular job to do soft yard waste? Is it easier? Is that why or why would they do it? It's not more money right?

Mr. Lafleur

Well, it is for some employees. Some employees would get another dollar or two an hour because it's a higher rate of pay and the opportunity of getting an overtime shift. It is a benefit

for them to sign to cover over, but again we have to manage the departments to keep our operations running.

Commissioner Moriarty

In this instance do you remember, do your recall how many on the list? I know Mr. MacLean said about ten.

Mr. Lafleur

I think he's correct around that, I don't keep them during years, just a record that I don't--

Commissioner Moriarty

--(inaudible).

Mr. Lafleur

But, I do want to make one point that--

Commissioner Moriarty

--sure.

Mr. Lafleur

That this whole wording in the contract came about where there has been years that I don't get anyone to sign for help. That nobody wants to sign. There's been four or five years that I've asked for this from October to December. Nobody in any of the Division would sign so then I'd be mandating six guys that have to come up or eight guys, or ten guys. Again, depending on what we need to operationally run the Division, and I'd be out of luck. So this came about saying listen at least I have some safety that I will have some employees. I started off the year with seven temps this year. I'm down to three right now so, I'm going to have to backfill or use whatever I can get. I have the signup sheet right now. Who knows how many are going to sign for this. We just don't know. And, I have to collect yard waste. It's a service to the City--

Commissioner Moriarty

--right, right, yeah. Once again the wording could be much better in this contract because it should say something that if you know the employees you can spare from your regular duties, I mean, I was under the impression that you were using the temp workers when there were people who were sitting at home and wanted to work. I didn't understand, but the way this written it is very confusing, but these are already people working and they wanted to soft yard work. Okay.

Mr. Lafleur

And, again if 30 people applied for yard waste season we couldn't deplete a whole division, a whole department. Parks Department still has all their fall cleanup that they have to do. If took six guys from their department their department would shut down. They wouldn't have enough to do all their work that has to be done.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

And so do I understand correctly that if we were to pour over people's hours and the shifts that are relative to the grievance that people were not signed on for, we would find that all of the employee were working in their normal roles for these shifts that they are filing the grievance about? Maybe I could have worded that a little better. So, so, do I understand correctly that every instance of an employee being declined to work a shift they were already schedule to work their regular role and could not be pulled away from that without being a detriment to the function of their relative area?

Mr. Lafleur

Exactly. When we do take a list of employees we do it by seniority. I take by divisional seniority and go right down the list an take the senior guys that wanted it first. So unfortunately, it's the lower senior people that get bumped off that don't get to come over. They're needed in their positions.

Mayor Donchess

Attorney Bolton.

Steven A. Bolton, Esquire, Corporate Counsel

Jeff, and I correct in understanding that there are temporary assignments throughout the year other than for soft yard waste?

Mr. Lafleur

Occasionally, the Division does do that, yes, for certain position that need work. Yes.

Attorney Bolton

And if someone who is essential in another area signs up are they kept in the area where they're essential or do they get the temporary assignment? They're kept in their essential position.

Attorney Bolton

And that's, as far as you know that's been true throughout the Division since time immemorial.

Mr. Lafleur

Yes, sir.

Andrew Patrician, Assistant Director, Division of Public Works

If I could. Andy Patrician, Assistant Director of Public Works. I've been with the City for quite a long time. I was denied late back in the 90s when I worked at Solid Waste, an equipment operator to go on yard waste. It was common practice. It's been common practice since I can remember, that if people are needed in their essential jobs, then they are skipped over. We've skipped over mechanics before, we've skipped over welders before that all signed up on the list and they were deemed needed in their job, and that's been common practice as long as I can remember.

Mayor Donchess

All right, anyone else? Questions for anyone? Either the Union or Management? All right, is there a motion on this Grievance 21-52? Commissioner Shea.

MOTION: Commissioner Shea to deny the Grievance 21-5.

Mayor Donchess

Discussion? Go ahead, please.

Discussion:

Commissioner Shea

I would ask that in the next iteration of the contract that--I understand the problem, and I appreciate that you can't be pulling employees out of their essential areas, that just doesn't make sense. And, I would ask that that be further elaborated in the contract going into next year. I understand why the grievance would arise, but in terms of the language and in term of the decision-making process, I'm in agreement with Management. I just think that on this and the other previous issue that we heard we need to further elucidate these kind of conflicts in the decision-making process. Thank you.

Mayor Donchess

Anyone else? All right, the motion is to deny Grievance 21-52.

MOTION CARRIED: Unanimously.

C. Grievance No.: 22-9

Mayor Donchess

Next, we're going to do Grievance 21-51? No sorry, sorry,

Commissioner Moriarty

22-9.

Lisa Fauteux, Direction, Division of Public Works

22-9.

Mayor Donchess

22-9, I'm sorry. 22-9.

Alex MacLean, President/Chief Steward, AFSCME Local 365

22-9. This is for Steve Pecoraro. Steve put in for a foreman position at the Wastewater Treatment Facility where he has worked for 16 years, but the City awarded the position to a 6-month tenured candidate that did not meet many of the qualification, or possess a New Hampshire Wastewater Treatment Plant Operator License for the job.

I do also have Mr. Pecoraro here if you guys want to ask him any questions or let him speak as well.

Mayor Donchess

Could you, sorry I was looking at the contract. What was the last sentence you said?

Mr. MacLean

Did not meet many of the qualifications or possess a New Hampshire Wastewater Treatment Plant Operator License for the job.

Mayor Donchess

All right, questions of Mr. MacLean? Commissioner Shea.

Commissioner, Paul Shea

Is it Mr. Pecoraro?

Mr. MacLean

Yes, Mr. Pecoraro.

Commissioner Shea

So, Mr. Pecoraro believes that he was the best candidate for the job. Management does not believe he was the best candidate for the job?

Mr. MacLean

Yes, sir.

Commissioner Shea

And, Mr. Pecoraro is available to I guess make his argument for why that it the case?

Mr. MacLean

Yeah, yup, he's--

Commissioner Shea

If he'd be interested in doing that, I'd be glad to hear his thoughts.

Mr. MacLean

Yeah. Steve.

Steve Pecoraro, Employee, Wastewater Treatment Facility

Steven Pecoraro, Wastewater Treatment Plant. I'm a collection system tech. I believe the real reason why I was denied the position is because a number of years ago, me and another gentleman that worked at the plant, we went to Concord to the Department of Environmental Service and laid out a list of grievances and issues with the plant in Nashua, and management found out and I have been forever denied a promotion. Basically, that's what it is.

Mayor Donchess

How long ago was this?

Mr. Pecoraro

2014.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

I appreciate that insight. In terms of why you are the best candidate over the one that was choose, can you speak to that?

Mr. Pecoraro

Well, like it was mentioned the guy that was promoted he doesn't have, well he does now, but at the time he did not have a New Hampshire Wastewater Operator's License. I have a Grade 4, which is the highest you can get. I've had that for several years. I was a plant operator. I have a collection's Grade 4, I have a Bachelor's degree. This other guy as far as I know he doesn't have a Bachelor's degree. He's never worked in a wastewater plant. I've been there, I've been with the City it will be 20 years this January. I don't know what else I could say.

Commissioner Shea

Did he have a certification from another state that's equivalent, or?

Mr. Pecoraro

Nope. He came from Methuen, Mass and I believe their collection system or their collection people in wastewater he worked with two other guys, and it was said that he was a foreman. I don't know if he was or not. I think he was just the more senior employee.

Mayor Donchess

Anyone else? Questions? Commissioner Moriarty.

Commissioner Moriarty

Just out of curiosity, I'm reading this and it said there were four candidates initially, and then two went back for a second interview. Were you one of the two?

Mr. Pecoraro

No.

Commissioner Moriarty

Okay.

Mr. Pecoraro

I was denied a second interview. The other one that was offered a second interview he just, he recently resigned from the City. He had only been in wastewater for I think 3 or 4 years, and he had a Grade 2. So I don't know.

Commissioner Shea

It's not necessarily material to this, I think it really comes down to the argument over merits. Given that the City's response, or the management response was relative to that, but I'd be interested to know what the issues were raised with the State, and if they have been since addressed, and if your action there resulted in a solution to the problems.

Mr. Pecoraro

Well, I have the letter that I gave to the State, it's a five page letter outlining numerous issues with the plant. They came down, maybe Lisa could probably speak to this because she was here. The superintendent at the time, he resigned soon afterwards. I don't know exactly what the State did. Maybe somebody else, maybe Lisa or somebody else could speak to that.

Lisa Fauteux, Director, Division of Public Works

It's Step II, Mr. Pecoraro did tell me about that. I had no knowledge of that prior to that. There's no, it's no secret that we, the plant certainly had some issues, and we worked very hard to turn those around. Some of you may know that. Commission Moriarty you certainly know that. Worked very hard so we are fully in compliance and things are running great. We've got lots of redundancy, and I mean we certainly can speak to that another day, but there were a lot of things that needed to be upgraded at that plant at that time. We've made a tremendous amount

of progress. I was not, I did not know of Mr. Pecoraro's letter or his going to DES until he told me recently at Step II meeting.

Commissioner Shea

The City was compelled to some extent on these issues by the State, or?

Ms. Fauteux

As a result of Mr. Pecoraro's letter?

Commissioner Shea

Not necessarily as a result of his letter, but was the impetus for addressing the issues as a result of State action.

Ms. Fauteux

No.

Commissioner Shea

No, it was internally addressed?

Ms. Fauteux

Yes.

Commissioner Shea

Okay.

Mr. Pecoraro

I can provide the name of the person I talked to with DES. She's still employed there. I can give you her phone number, if you'd like to talk to her.

Commissioner Shea

If, I may, one more question. So when raising these issues to the State, to what extent and what did it look like in terms of raising those issues internally, and what was the outcome of raising them internally before going to the State?

Mr. Pecoraro

Well, I talked to, and many people talked to the superintendent, Marion Leclair at the time, and he just wanted it hushed up, and he didn't respond. He continued to do what he was doing.

Commissioner Shea

And, these things have since been addressed. Is that correct?

Mr. Pecoraro

A lot of it has been.

Commissioner Shea

And the rest is in process? Presumably.

Mr. Pecoraro

Yeah, I mean I haven't been an operator in a number of years. I believe some of them would still have complaints about things that have been going on, but I won't address that any further here, anyway.

Commissioner Shea

Thank you.

Mr. Pecoraro

Welcome.

Mayor Donchess

Commissioner Moriarty.

Commissioner Moriarty

Just a couple of questions. In your grievance you mentioned Article 11 and 3, and so, I'm just going to Article 3, which is non-discrimination. I'm just wondering if you felt that you were discriminated against due to sex, race, color, national origin, religion, lawful political, or employee's organization affiliation, age, marital status, or non-disqualifying disability?

Mr. Pecoraro

No. I was discriminated against because I blew the whistle is what it was. I mean of course, management is going to deny knowing this. I've been told by at least one individual that is was disclosed that, or it was revealed to management that I was the one, or one of the guys. The other person I went with his name is Oscar Wright. He's since deceased. So, he couldn't come and speak to this, but I was told that I would never get a promotion by this person. Of course, this is hearsay, and of course, it will be denied, but if you look at my record I have no disciplinary issues. I don't know.

Mayor Donchess

Is there a provision of Article 11? So you've cited Article 3 and Article 11, I think. Maybe this is for Mr. MacLean, I'm not sure. You cited Article 3 and Article 11. Which section of Article 11 do you think supports the grievance?

Mr. Pecoraro

I have a question. Maybe Attorney Bolton could answer this. Is it illegal for a whistleblower to be harassed, not harassed, to be discriminated against.

Steven A. Bolton, Esquire, Corporate Counsel

Well, whether it is or isn't that's not what's claimed in the grievance. Well, let me put it another way. The grievance is for violation of the contract, not for violation of some other law, which may or may not apply.

Mr. Pecoraro

Okay.

Matt Davidson, Chief Steward, AFSCME

So, 11 B, the City may administer testing procedures to determine the qualification of the applicants for the posted vacancy. I don't think they administered any testing procedures.

Mr. Pecoraro

(inaudible) written tests.

Mr. Davidson

Written test. Okay.

Mr. Pecoraro

Given at least to the three of us that initially applied for the position.

Mr. Davidson

But that was the only one (inaudible).

Mr. Pecoraro

Yup.

Mr. Davidson

If in a permanent job in the department is not abolished the job shall--

Commissioner Moriarty

Can you highlight what you're reading, please. What letter.

Mr. Davidson

Okay so that would be little A 11. Small A. (11(a))

Commissioner Moriarty

Thank you.

Mr. Davidson

Job shall within said 90 days be posted on the bulletin boards in the respective departments together with the title of the classification discussed, the duties involved, sorry I don't have my glasses--

[Group Laughter]

--rate and (inaudible) location, and shift.

Mr. MacLean

Sorry about that.

"All applicants shall then be considered on a basis of minimum qualifications, seniority, experience, and ability. If an applicant qualified by reason of such minimum qualifications, seniority, experience, and ability the job will be filled within 30 days following the closing of the posting period."

[Off record chatter between Ms. Fauteux and Attorney Bolton]

Mr. MacLean

So, basically the qualifications and Seniority. The Union feels was not taken into--

Ms. Fauteux

---speak to that. That is for AFSCME positions. That is not for--this is a UAW position that we're speaking to. So, what would apply to this would be Article 11 (a) Section E.

"The city agrees that members of the union may apply for any vacant or newly created supervisory or administrative position, and will receive full consideration according to their qualifications. However, final selection of such persons shall be the sole prerogative of the City."

That's what applies. This is a UAW position. This is not another AFSCME position. Just to be clear.

Commissioner Moriarty

Thank you because this contract is totally confusing, it says nowhere in there UAW.

Mr. MacLean

Would you like me to step down for management's side?

Mayor Donchess

Pardon?

Mr. MacLean

Would you like me to step down for management's side of this?

Mayor Donchess

Anybody got any other questions?

Commissioner Moriarty

Just so, are we in agreement with that what the Director just said then? We're talking about Article 11 (e).

Ms. Fauteux

Yes.

Commissioner Moriarty

The grievance said there was no violation of Article 3, which is discrimination as in the contract.

Mr. MacLean

Yes, as it's outlined in the contract, but he--

Commissioner Moriarty

--well that's right--

Mr. MacLean

He has feelings.

Mayor Donchess

All right. Wastewater plant.

David Boucher, Superintendent, Wastewater

Thank you, Mayor. Dave Boucher, Wastewater Superintendent. Just for clarification, I started in 2018, I had no prior knowledge to anything that occurred with Mr. Pecoraro and the State. So none of that information was used in the decision-making. We did, he did come to me and let know after we had already chosen a candidate. So, I had no prior knowledge. We did have four internal candidates. We did interview, we did test all, they all came with varying qualifications. Like I mentioned in my response, we did chose the two best candidates, we though. We sent them to the Director for our second interview and one was chosen.

Discussion:

Mayor Donchess

Commissioner Shea.

Commissioner Shea

So, I asked Mr. Pecoraro to make his case in terms of why he felt he was the best employee or candidate for the position. Can you speak to--so put forward two candidates.

Mr. Boucher

Correct.

Commissioner Shea

Can you speak to why those two candidates were superior candidates over Mr. Pecoraro?

Mr. Boucher

We did have testing, and the testing involved like real scenarios in the wastewater field, different scenarios on how you would respond as a manager. They responded better, these two other candidates to all the test questions. They also did come with stronger backgrounds of management and that's what we were looking for a management position. So that's why we chose the other two.

Mayor Donchess

And, this was a foreman's job, right?

Mr. Boucher

Correct.

Mayor Donchess

And, that's not within the AFSCME Bargaining Unit?

Mr. Boucher

No, that's UAW.

Mayor Donchess

Anyone? Is there a motion on Grievance-- does Mr. Bolton have something?

Steven A. Bolton, Esquire, Corporate Counsel

Well, I, I, just think to reiterate what Lisa had to say, and maybe a little different way. The Subsection E, is essentially what this situation is, and what this binds the City to do in

Subsection E, is to consider members of the Bargaining Unit for promotion to a supervisory position. I don't think there's any dispute that a foreman is a supervisory position. And the gentleman was considered. He was interviewed, he was given a test, he was considered. The salient point though is in the last sentence of Subsection E, where it says:

"Final selection of such persons shall be the sole prerogative of the City."

It doesn't say the best candidate will get the job. It doesn't say the most senior candidate will get the job. It doesn't say current employee will always get the job. It says the final selection will be the sole prerogative of the City. The contract was followed. There's no violation of the contract.

Mayor Donchess

All right. Anyone else? Questions, comments? Is there a motion on Grievance 22-9? Commissioner Moriarty.

MOTION: Commissioner Moriarty to deny Grievance 22-9.

Mayor Donchess

Discussion from Commissioners? Commissioner Shea.

Commissioner Shea

I'm in agreement with the motion to deny the grievance. It concerns me that Mr. Pecoraro would feel that his action, which was in the interests of the public good would put him at a disadvantage so many years later. He may have had, especially during that early time some experiences shortly after the event that have left him feeling that way. I want to express gratitude for Mr. Pecoraro's efforts to advance the wastewater treatment and ensure that we are doing what we should be doing here in the City. I think that that is commendable. So thank you for that. I don't see any instance within the contract, and I don't that an argument has been made that any parts of the contract were violated. I take Mr. Boucher at his word that he had no knowledge of that prior event, and thus could not have possibly used that as part of his decision-making process. But, if Mr. Pecoraro does feel that he has been retaliated against for that action, I would encourage you to pursue that outside of the contract grievance process. In the event that some past treatment has left you feeling this way, despite the people who treated you that way no longer being with the City, I feel for you, and I appreciate that. And, if it is those past events that have led you to feel a bit leery, especially when being considered for promotions, and it's not necessarily something material that has left you feeling that way. I'm sorry that you have had that trouble and have gone through that because that's not a good feeling I imagine. But, I'll just circle back and say I really do appreciate that there are people in the City who are willing to step out and raise issues like you have because these things are very important so, thank you for that.

Mayor Donchess

All right. Any other discussion?

MOTION CARRIED: Unanimously.

D. Grievance No.: 22-10

Mayor Donchess

Now we move to Grievance 22-10. Would--please introduce yourself.

John Lyons, Vice President AFSCME Local 365

I'm John Lyons, I'm the Vice President of AFSCME. I have two individuals that would have gotten paid for this in the audience. If you have any questions beyond what I present as well. Just give a brief description on what it is and then go from there.

On Friday, April 8, the Street Department was called in to block the Mines Falls Bridge by Nashua South School. It was decided by Ms. Fauteux to use concrete barricades in the grievance discussions that we've had before. To do this, per the watchman's agreement, which I have a copy here if you need to look at. Any damage in park/unsafe the Park Department is to be called. When we were not called with the idea. We do not have the equipment to move the barricades, our backhoe, which is the equipment that we have at our shop. Obviously, the Street Department has frontend loaders. The backhoe can lift over 6,000 pounds, and the barricades are roughly around 3,000 to 3,500. We have many barricades at the Park Department. We have a bunch that are around our yard that are out back by the gardens. There's also a stash over near Spine Road, which is just outside of Mines Falls as well that could have been used, and our personnel could have been used for that. Our backhoe like I said has lifted the barricades as well.

Mayor Donchess

So, just so that we have the context, I'm not sure everybody knows all about this. The bridge in the Mine Falls was damaged.

Mr. Lyons

Correct.

Mayor Donchess

We think by possibly a vehicle was driven over it, not by the City Parks or anything like that—

Mr. Lyons

--from age and everything else, and wear and tear on--I'm not denying. Wear, tear, vehicles it's everything--

Mayor Donchess

Whatever happened--

Mr. Lyons

--it's everything environmental issues, yes.

Mayor Donchess

it began unsafe.

Mr. Lyons

It became unsafe, correct.

Mayor Donchess

Then the decision was made to purchase at some considerable expense a couple hundred thousand as I recall, the temporary bridge, and that was installed, and the decision was made to block it with the barrier to make sure that if a vehicle did damage the first bridge that that wouldn't happen again.

Mr. Lyons

It was the, the barricades were put there to stop anymore, the general public to cross over or to use that bridge.

Mayor Donchess

Use the old bridge--

Mr. Lyons

Use the old bridge.

Mayor Donchess

Use the old bridge. Okay.

Mr. Lyons

Correct.

Mayor Donchess

All right.

Mr. Lyons

It was to stop any general public whether they're walking, biking or whatever else as a safety measure to make sure that they weren't going to go across.

Lisa Fauteux, Director, Division of Public Works

I can just add to that. So, Engineer Hudson received a report from a structural engineer that said that the bridge was deemed unsafe and that we should close it immediately—

Mayor Donchess

--the idea--

Ms. Fauteux

--it was a very, a very huge safety concern and an emergency to close it.

Mayor Donchess

So the idea was to keep people off the bridge so that no one would get--

Mr. Lyons

--correct. Which there's no argument on any of that.

Mayor Donchess

All right, any questions? Any questions by Commissioners for Mr. Lyons?

Commissioner, Kevin S. Moriarty

I'm still not clear on the issue. I guess you're saying that it should have been done by Park employees?

Mr. Lyons

Correct.

Commissioner Moriarty

And not by the Streets.

Mr. Lyons

Correct. So I have, like I said I have a copy of the watchmen's agreement because this was called in on overtime so, any issue so, anything like a tree in a road, tree down and wires, facility, security issues, pool safety issues, park irrigation problems, or which is what this category is damage in park/unsafe they are to call the foreman at the Park Department so the Park Department would call our employees in to handle it. The only ones that do not require a call are light issues or flag issues. It's put into a report and then handed to us the next day.

Commission Moriarty

And, the Park employees have the equipment.

Mr. Lyons

We have, like I said we--

Commissioner Moriarty

--you could have done that without needing the Street Department.

Mr. Lyons

Correct. Yes ma'am.

Commissioner, June Lemen

So, that document you have is the Division of Public Works Call Response Guide and Contract Information? Is that what we're referring to?

Mr. Lyons

Correct.

Commissioner Lemen

Section 3.

Mr. Lyons

Yes ma'am.

Commissioner Lemen

Could you read Article 9, Section H, since I don't have that?

[Off record chatter between Commissioners Lemen and Moriarty]

Mr. Lyons

Section H:

"Overtime work which is scheduled in advance or which requires employees to be called in for unscheduled work shall be offered first on a rotating basis among all qualified employees by classification and department of the Division, which normally performs the work. Except as modified in Paragraph 1 below, if the overtime situation requires additional employees then such overtime shall be offered to any qualified employee in the department then to any qualified employee in the Division, and then assigned to the qualified employee in the order of reverse seniority within the department."

Mr. Lyons

Yes--

Mayor Donchess

--Commissioner Shea.

Commissioner, Paul Shea

Are the barriers that Parks has deployed for some purpose or are they just there?

Mr. Lyons

The one, we have them there. The ones particularly at the Park Department were put there years ago, with the idea of potentially if anybody was going to go into the gardens at some point. We have never had anybody, and we've never--we've had other things that have blocked that access point. The ones that are on Spine Road have never been used, along with there's a couple other ones at other locations that have not been used.

Commissioner Shea

So the Spine Road ones are staged there?

Mr. Lyons

They're just sitting there.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

You said something about flags and lights. Can you elaborate on what that means?

Mr. Lyons

No, I was just going through everything that is listed on the Call Response Log. That's all.

Commissioner Shea

Is that like if a flag--

Mr. Lyons

-so if a flag comes lose or if it--one of the clips on the bottom breaks free and it's only held by the top cleat, then they'll put in a report, kind of like I said, then the next day if it's a regular day we would handle it. If it gets to the point where it is going to rip off or if it gets ripped off or causes a safety issue then we would get called in for that. Because then it would be unsafe.

Mayor Donchess

Commissioner Lemen.

Commissioner Lemen

In the article that you just read to me an emergency, in the case of emergency it still goes to the division that--

Mr. Lyons

--it goes to the department that normally performs the work.

Commissioner Lemen

Okay, thank you.

Commissioner Moriarty

Mayor, if I--
Mayor Donchess

Yes, Commissioner Moriarty.

Commissioner Moriarty

Mr. Lyons so, before the superintendent comes up, I just want your opinion on his response.

Mr. Lyons

Okay.

Commissioner Moriarty

Because his response said, paraphrase "in addition the Park Department does not perform the work of placing Jersey Barriers and does not possess barriers or the equipment to move them. The Park Department does not have the barriers or the equipment required to the close the bridge."

Mr. Lyons

Right, which I have, we have the equipment and we have the barriers. And we have moved barriers in different locations. The operator that is here helped move a barricade at one of our parks 2 months ago, roughly that we were told to move the barricade, so.

Commissioner Moriarty

Thank you.

Mr. Lyons

Yes.

Commissioner Shea

What kind of precision, you said it was a frontend loader you're saying could be used to move Jersey Barriers?

Mr. Lyons

I said that's what the Street Department used, correct.

Commissioner Shea

That's what the Street Department used, and what would Parks use?

Mr. Lyons

We would use our backhoe.

Commissioner Shea

And do you think that the precision of placement is comparable between those two pieces of equipment?

Mr. Lyons

I don't have an issue with either. Like I said the lift capacity is 6,000 pounds so, lifting basically half the weight you still have full maneuverability and function of the equipment.

Commissioner Shea

You could place them close enough with that piece of equipment--

Mr. Lyons

Yes.

Commissioner Shea

--that a person would not be able to squeeze through.

Mr. Lyons

Correct. Because normally you would put them down and then you can use the forks to slide them in that much closer.

Commissioner Shea

Okay.

Mayor Donchess

Any other questions? Commissioner Shea.

Commissioner Shea

So in the, I mean an emergency response would not dictate one department over another. I can imagine this is being argued as an emergency response on the part of management. It seems to be that both departments could be equally available for, or somebody already on for Streets is that--was somebody already on or was somebody from Streets called in?

Mr. Lyons

No, because like I said it's--the issue I that because it happened within a park. So anything that happens within a park, the Park Department itself is called. For basically we go fix our own problems. The Street Department gets called for any problems with on the streets and the sidewalks of Nashua because that's their normal function, and obviously within the respectable departments and what they normally do.

Commissioner Shea

I guess my questions is there any difference in availability of the persons between departments on the basis of an emergency. So, if somebody from Parks wouldn't be able--

Mr. Lyons

No, because we're all working the same shifts. So, where actually both departments were already home--

Commissioner Shea

--okay--

Mr. Lyons

--and we all had to get called in, in order to deal with, in order to deal with this.

Mayor Donchess

The temporary bridge. It goes from Mine Falls across the canal to School Department property.

Mr. Lyons

It still goes Mine Falls. Actually, if you know the area, rough I'd say at least 60 if not 100, probably over 100 feet before you hit a gate, which at that point that gate blocks off Mines Falls from the school.

Mayor Donchess

All right.

Mr. Lyons

So, the bridges that are in Mine Falls are strictly in Mine Falls on Park, considered Park areas.

Mayor Donchess

Anyone else?

Mr. Lyons

Does anybody have any questions for the individuals I brought or just the verifications or anything?

Mayor Donchess

Commissioner Shea.

Commissioner Shea

The 3 hours mentioned, is that the minimum for--

Mr. Lyons

--that's the minimum for a call-in. That's the, so, we set this up. The Street Department only brought in two individuals, an operator and another body to assist, so that's why this grievance only has two people, an operator and another body that would have assist, so we're going equal parts. So, a 3 hour call-in for both, for the individuals for two individuals.

Commissioner Shea

Thank you.

Mr. Lyons

Yup.

Mayor Donchess

All right, if there are no other questions for Mr. Lyons, then we will ask the Street Department or the Division. I don't know who's going to respond.

Lisa Fauteux, Director, Division of Public Works

I think, the Assistant Director--

Commissioner Shea

I mean if the employee is personally interested in--

Mayor Donchess

Yeah, yeah, come on up. So, if you have something to add then we'll hear that and then we'll ask the Department.

John Lyons, Chapter Chair, AFSCME

My name is John Lyons. I'm the Chapter Chair for the AFSCME. Years ago the City used to have watchmen. Two, I believe, there's two at the Street Department, two at the Landfill. The City decided to get rid of the watchmen and came up with a plan for an on-call process. I was part of the negotiations for the on-call process. The Street Department has a phone that they give to one person. They carry it for a whole week and if call come in you go to that, that person is to go to this, the matrix that everybody is talking about. And that's how it was negotiated. And that's where it goes from that phone, that person calls and says hey I've got an emergency over at Mine Falls, the bridge has collapsed we need somebody to in to it. He's supposed to go this check it out and who is going to be called. He will then call that department's foreman, that foreman will call in everything, people that are needed. That's how the process of this has come about and that's how it was negotiated. And that's how we feel it should have gone.

Mayor Donchess

All right.

Mr. Lyons

Do you have a question for me--

Mayor Donchess

--just remain just in case we have questions, by Ms. Fauteux do you have a—

Ms. Fauteux

--no, I just, I, this never got to the Watchmen's Agreement. This was something that I received the call. I believed that the public was in danger. Our residents were in danger. I was very concerned about that, and I immediately called Superintendent Ibarra from the Street Department because the Street Department, when we talk about normally performing the work, the Street Department normally performs that work. If needed Jersey Barriers placed on Main Street when we do road closures, when we do any of that we'd always, always the Street Department would be the ones that would do that work, that would place barriers. They can also do it the most efficiently. Could Park and Rec have done it, probably, they don't normally do that work. It would have taken them longer. There's no question the Street Department is set up to do that. They know how to do that and because this was an emergency situation and because I was really concerned about somebody getting injured that's why this came about. I also just want to mention that the UAW foreman also filed a grievance. They withdrew their

grievance when they heard that this was an emergency situation, and that it was a safety concern. I just wanted to add that, just to explain to why it happened this way.

Mayor Donchess

All right, any questions?

Mr. Lyons

All set.

Mayor Donchess

Anyone? All right, thank you very much. Now does the I don't know Mr. Patrician want to speak on this?

Andrew Patrician, Assistant Director, Division of Public Works

All right, Andy Patrician, Assistant Director. Just a couple of things to the Director said. A few of the things that I wanted to say, but, you know, the superintendents and the City are here, you know, after AFSCME leaves and some things do come in. I think one instance was a paving problems I can remember up on Broad Street where Jon Ibarra was still on the clock and in a case like that you don't go to the watchmen list. He has the right to call who he needs and what he needs to get a job done after AFSCME leaves. That is our job. So, I got the call from Engineer Hudson that the bridge needed to be closed immediately. In a case like that we knew exactly what the problem was so, we took our, we went ahead and did what we had to. This wasn't a call coming in saying there was something wrong in a park where somebody had to go investigate. The investigation was already done a structural engineer so we knew what we had to do. Again, the Street Department has the equipment to do this. We set Jersey Barriers all the time for detours, events, and other things. We have the same equipment at the Street Department that Weaver Brothers has when they set the barriers on Main Street, and what it is it's like a scissor thing it goes on top and then you can just swing it around. You know when you have a barrier on forks it's not idea for moving them because you have to try to shimmy it off and slide it off. The precision to try to place a barrier with forks is not idea. The equipment that the Street Department has is what we use for that stuff. That is normally performed by Street Department. I don't know if Superintendent Ibarra has anything else to add.

Jon Ibarra, Superintendent, Street Department

Hello, again. Short and sweet, I just wanted to add a safety value or safety factor in this equation. So, Jon was right the lifting capacity on that backhoe is about 6,300 pounds. Where he was off a little is the weight of the barriers that we use. They're 5,200 to 5,500, depending on the mix. So you'd be taxing that machine and we haul those over the road. The loader that we used that night has 18,000 pounds lifting capacity. So for us there's a safety value in that.

Mayor Donchess

What's the capacity?

Mr. Ibarra

18,000.

Mayor Donchess

Any questions?

Mr. Ibarra

And, I'm happy to answer any questions.

Mayor Donchess

Commissioner Moriarty.

Commissioner, Kevin S. Moriarty

First of all I'm happy that no one was hurt and the emergency was taken care of. What I'm curious, where in the contract does it say during an emergency the City can supersede and act without following the contract. I mean where is that in the contract? I don't know. Is there a clause in the contract that states the City has the right not abide because it seems like in my opinion, that there was a violation and from Park's testimony, Parks and Rec were qualified to do it and they weren't called to do it. So I'm just wondering where in the contract is there somewhere in the contract where it says, well no, it was an emergency, which it clearly was, but then so that allowed you to supersede that. That's my only concern. I'm trying to follow the contract.

Mr. Patrician

Andy Patrician, Assistant Director. I think when he read the I don't know what article it was, but on overtime who normally performs the work. Street Department normally performs that work. So, when it comes to a case of overtime, since they normally perform putting out barriers and stuff like that that would be considered their job. I don't know if that answers your question.

Commissioner Lemen

I'm have a little problem here. All afternoon we've been really sticking to the contracts. We've been, and some of us have been (inaudible) sympathy with things than others, but this to me Parks has a real, the people who brought the grievance have a really reasonable point of view. I am very appreciative that it was an emergency situation and that Director Fauteux was just looking for people's safety, but if this contract the way it's written if it doesn't work, then we need to change it, but right now I don't see how this is not a correct grievance.

Mayor Donchess

Attorney Bolton?

Steven A. Bolton, Esquire, Corporate Counsel

Thank you Mayor. Again, and I think I agree with what is most recently been said. You have to follow the contract. You have to follow the contract. The provision of the contract that applies is in Article 9, Section H and it says:

"Overtime work which is scheduled in advance or which requires employees to be called in for unscheduled work shall be offered first on a rotating basis among all qualified employees by classification in the department of the division which normally performs the work."

It doesn't say if it's in a park is has to be the Park Department. It doesn't say anything else other than the department which normally performs the work. The only thing I've heard is the Park Department may have been capable of utilizing their equipment somehow and managing to get it done. But, the department that normally performs the work of moving and placing Jersey Barriers is the Street Department, and that's what this work was. It's moving bringing the barriers from one location to the location where they were needed and then setting them in the appropriate place to perform a function of blocking off access to this bridge. It seems to me that what we've heard, the only testimony that we've heard is that it's the Street Department which normally performs the work.

Mayor Donchess

Commissioner Schoneman.

Commissioner, Shannon Schoneman

It seems to me that the call should have gone to Mr. Conant after Mr. Patrician as the head of Parks and Rec. I'd be interested to know if the superintendent of Parks and Rec has any agreement with the grievance or agreement that this should have been sent to Streets right away. I mean if the emergency was in Streets they wouldn't call in Parks, but if the emergency is in Parks it seems like you would go to Parks first. At least to the superintendent because it's his jurisdiction. I apologize for putting Mr. Conant in the hot seat, but I would like to know.

Bryan Conant, Superintendent, Parks and Recreation

Good afternoon. Bryan Conant, Superintendent of Parks and Recreation. Commissioner to answer your question I think based on the emergency that I think was—that took place I would consider that people were at risk, you know it's a hazardous situation I think we needed as a division we needed to act as quickly as possible. So no, I think the Assistant Director made the right call by he handled as quickly as possibly it could have been handled. So, I agree with what transpired.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

Did you have a follow up? So, regarding 9 H, I am in agreement with the idea that the Streets Department normally performs this work. It sounds like Parks far and few between, maybe every couple of years is moving Jersey Barriers for one reason or another or you guys, are you moving Jersey Barriers every now and again? How often does that happen?

Mr. Conant

I've been here since this past February. I honestly, in an honest recollection I don't believe we moved any in the time I've been here.

Commissioner Shea

And so for me, I'm in agreement on the issue of who normally performs the work being the Street Department. In terms of an area of domain, you know, but, but I understand raising the issue of going to Parks on this, but I don't understand how that might relate to the contract and what section that might relate to. Is there a space in the contract where you feel like that is the case? I know that there's like this pecking order or manual, but is that referred to in the contract? Can somebody speak to that? I don't. I, I could see where if that is somewhere in writing that could be the basis for the grievance, but I, I don't see that it has been the case has been made for that. I don't know who would answer to that or maybe there is no answer to that. Maybe there is nothing in this contract relative to going to Parks specifically. The section seems to be who performs the work. I've not seen something that is relative to area of the various departments being very cut and dry. Can anybody speak to that? I, I guess the onus is on the employees to make that argument, if it can be made.

Ms. Fauteux

Well it's--if I may Mayor. It's very important for us in the best interests of the taxpayers of the City to work together, all departments. It does bode well to say, you know, this is--it's all Public Works work. We are very sensitive to providing the overtime opportunities to those who normally perform the work because if we don't that's a grievance. I think honestly I think the Street Department would have a grievance had Park and Rec done this work because Street Department is the one who normally performs the work and who normally puts our Jersey Barriers. I think that it really rests on that, that whoever normally performs the work and that would have been the Street Department, and that's who did the work. It shouldn't matter whether it's in a park, it shouldn't matter if, you know, where it is. What should matter is who normally performs the work, and who, because whoever normally performs the work can also do it more efficiently. So, I think we followed the contract in this case. And, we've had several grievances on that very issue of who normally performs the work.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

Just to kind of wrap around, wrap my head around something that might be parallel. When we do paving of pathways in Mine Falls do we contract that out? Is that done by the City? Who puts down the asphalt when we pave a walkway in Mine Falls?

Ms. Fauteux

I don't know that we've ever--

Mr. Conant

Not since I've been here.

Mayor Donchess

Well I, I was--

Ms. Fauteux

--Ibarra do you know that?

Mayor Donchess

--I have a similar question, which is we did a ton of work in Lincoln Park. Fixed the playground, ball fields, hundreds of thousands of dollars. A lot of in-house work. Who, was it Streets or Parks that did that?

Jon Ibarra, Superintendent, Street Department

Jon Ibarra, Superintendent, Street Department. We do a lot of Bryan's work. It feels good to say that actually. No we assist as a division. I haven't paved in Mine Falls, but we have paved in other parks. So, Street Department would perform that work because we do it all the time.

Mayor Donchess

And, in Lincoln Park who did the work there?

Mr. Ibarra

Street Department.

Commissioner Shea

I'd be interested to hear Mr. MacLean.

Alex MacLean, President/Chief Steward, AFSCME Local 365

Please, for a moment. As Mr. Patrician just said a minute ago, when this was called out as the operator that came in to perform this function, there was a watchman from the Street Department that was called in as that's who I reported to and got the phone call from. So, we followed the Watchmen's Agreement even though Mr. Patrician just stated that we did not. Mr. Patrician also stated that we have the clevis to lift up the Jersey Barriers, that was not used. We used forks to drive them out into the--so I just don't want you misled in that. That's not how it went down. As I was the one, like I said I was the operator called in to perform the job from the Street Department.

Commissioner Shea

And your department normally performs this work.

Mr. MacLean

Street Department puts down Jersey Barriers in the streets, correct. So, had Parks Department been called to put Jersey Barriers in the street, Street Department would have an issue, but I would have been very unlikely to see a Street Department grievance come across for something that was performed in the parks.

Mayor Donchess

Is there any other situation where barriers have been placed in parks?

Mr. MacLean

There are barriers placed in parks across the City.

John Lyons, Vice President AFSCME Local 365

I know the reference, it was you're, you're asking--your questions is one that would kind of tie in to what you're stating was the Eaton Street Bridge. That was closed down. They had us put up fencing to block that off to stop the general public from going through.

Mayor Donchess

Could you use barriers in that situation?

Mr. Lyons

Barriers were brought in later only because the general public actually were cutting through the fence and climbing over the fence to continue on their pathway. Barriers were brought in, the fencing was reinstalled, but again people at their own will were still going through that location.

Commissioner Shea

And, who placed those barriers?

Mr. Lyons

The Street Department did.

Commissioner Shea

Thank you.

Mr. Lyons

But, again we were called first to actually block off that bridge.

Mayor Donchess

Yes, Commissioner Lemen.

Commissioner Lemen

All right, so, the whole, to me this whole argument seems to be based on two things. One is who normally performs the work, and then this Division of Public Works Call Response Guide and Contract Information Section 3. So, I'm very happy that nobody got hurt, that appropriate action was taken, but we arguing over 3 hours of missed pay--

Mr. Lyons

--for two individuals so, six hours total--

Commissioner Lemen

Six hours of missed pay, and so you were saying that if the Street Department hadn't gotten called they would have filed a grievance, and I think this is a totally appropriate grievance. If we are going to follow, if we are not going to following this Call Response Guide or we're going to have different rules for certain things in the response guide, I think the response guide should be changed so that employees are not led to believe that if an opportunity for overtime in the parks comes up they will not be the first called. And, I understand all the concerns about the Jersey Barriers and things, but if we have this document and it's everybody's responsibility to follow it, then we should follow it.

Mayor Donchess

And where is the reference to that?

Commissioner Lemen

In my packet it's under, it's a handwritten thing right after the grievance 22-9.

Mayor Donchess

I guess I make one--

Ms. Fauteux

--so can I, yeah go ahead--

Mayor Donchess

--go ahead.

Ms. Fauteux

No, I was just going to say so, that really is for call ins that are coming from the general public, or the police or something. Not something that we are handling directly. So, something that would need to be investigated. So, if there were something a sinkhole or there was something in a park, although, I think Street Department actually did fix a sinkhole in a park once, but if there was something that needed to be investigated then the Parks Department would get that, would get that call, and then take the appropriate action. It would be the foreman, the UAW foreman, not AFSCME in that case. But, this wasn't that, this was something that came directly to our attention whereby management actually was aware and we knew what the situation was, and then needed to respond. So, it's a little bit different than the actual call in.

Mayor Donchess

I think we are dealing--

Ms. Fauteux

--(inaudible)

Mayor Donchess

--with more than just this situation in the sense that okay, if barriers need to be in parks again, if the Board rules that that's Park Department work, then the Street Department can't ever put barriers in a park. Can they?

Mr. MacLean

Nope.

Commissioner Schoneman

No, not necessarily the case.

Mayor Donchess

Because how's that not Parks Department work if barriers in parks are Parks Department, then whenever a barrier is needed in the Parks Department, you've created a grievance if you call the Street Department. Right?

Dan Hudson, P.E., City Engineer

Mr. Mayor?

Mayor Donchess

Yeah, so I mean this has value in terms of the future. This has implications for the future as well.

Dan Hudson, P.E., City Engineer

Yeah, and that's if you wouldn't mind. Dan Hudson, City Engineer. That's why I rose to spoke because this was a safety issue, a critical safety issue and a timing issue. When I went to Mr. Patrician with the issue I am thankful that he responded with what could be done, most immediately, and with the best tools basically to accomplish the task at hand. I hope that if we have another situation like this we're not going to delay things by trying to review who, you know who can possibly do this with some piece of equipment they have. The urgency of this was critical and it was responded to quickly in a professional manner by people that routinely do the work, and so, that's why I hope, I'm glad we did, and I would hope we would do every time in a future situation like that. Thank you.

Mayor Donchess

Commissioner Schoneman.

Commissioner Schoneman

I guess what I can't fix in my mind is when the question says the division that which normally performs the work. Is it the work? Parks does the work in Parks or Streets always does the work of Jersey barriers? And that's what we're trying to decide, and we are setting a precedent and I think it's a very, very hard question. At this point we have to just decide one way or the other.

Ms. Fauteux

Well. So, Parks doesn't always do all the work in a park. In fact, we're working at Atherton Park right now. Street Department is doing the majority of that work right now. So, it's not that Parks always does all of the work in Parks certainly. It's a team effort. And, honestly that's how we've saved the City a tremendous amount of money by working together on some of these projects. If we subcontracted all of that out it would be very costly. Whenever possible other departments come in and help each other so that we can leverage our resources and get these projects done more efficiently and more cost effectively. And, Atherton is a good example. Lincoln Park, Mayor, that you mentioned is another. It's very common. We always work together. Street Department often works in Parks.

Commissioner Lemen

I have a question. So, are you telling me that it is never appropriate or if we let the Park Department put a Jersey Barrier down somewhere in a park by themselves that is somehow going to set a precedent for all time? Or if that never happens?

Ms. Fauteux

No. I don't know that this ever happened. I can't think of any time when the Parks Department, but certainly, no there would be nothing that would preclude the Park Department from doing something like that if at some point in time--

Commissioner Lemen

--the opposite argument seems to be that if we say that this grievance is justified that we're setting a very dangerous precedent for the opposite. Which I think is personally to me it's very confusing. It's like you can't have it both ways. If it's going to that, you know, letting the Street Department do this and, you know, says one thing, but if we have the Parks Department do it that's a problem. I mean, what if there were the opposite situation. Say that something happened on the streets, the go to call the Street Department, nobody is there, and the Park Department Superintendent is there and does something that the Streets Department normally do? So, would that be like so now they get to do that all the time?

Ms. Fauteux

Well it depends what that was. So there's no grievance regarding a Park Department employee moving a Jersey Barrier. If it were my response would be the same. If it were in a park, Street Department could grieve that. I mean they certainly--but the important--we need to work together with these projects. That's really important, but when you're looking--it really boils down to who normally performs the work, and it is-- whether it's a safety issue, whether it's an emergency, those are all really important factors, but there have been times when we've done things and we've known that we might get a grievance and we'll just pay the grievance because you know it's a safety issue, and that's more important right now than anything. In this particular case though, Street Department normally would perform that work. So, that's really what this I feel boils down to.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

For snow clearing on the sidewalks what department generally does that?

Ms. Fauteux

That comes out of the Street Department, but they all participate.

Commissioner Shea

Is there a Parks sidewalk cleaner that is used and a Parks employee in French Hill on Locke Street?

Ms. Fauteux

There could be, but all of the sidewalk clearing is either done by the Parking Department, which is downtown or through the Street Department. So, the Street Department will initiate that, but certainly there could be Park employees that are in those sidewalk tractors, absolutely.

Commissioner Shea

I just recall, talking about the safety of French Hill and the initial response was that the Street Department did not have a piece of equipment that was adequate to clear those sidewalk with obstructions—

Ms. Fauteux

--right--

Commissioner Shea

--and on further assessing out the issue there happened to be a piece of equipment that was under the Parks Department that had a foot less of clearance instead of 4 feet it was 3 feet wide, and the initial resistance to using that equipment for a thing that's outside of the Parks, delays addressing a safety issue, and for me I very much appreciate the point of using all of the resources to the best of our ability, and addressing safety problems. I don't know that

precedent matters in terms of what the crux of our decision is here. I don't know, I don't think that precedent matters. I think what we're here to talk about today is the contract and the language of it, and I don't see that an argument has been made that there's been any violation of the contract, and I think on the contrary a good argument has been made regarding who normally performs the work. I appreciate that the Parks Department has come or individuals from the Parks Department have come here to raise this issue so we could talk about, but I just don't know that an argument, a good argument has been made on behalf of the grievance, and I would not be supporting it.

Mayor Donchess

Commissioner Moriarty

Commissioner Moriarty

I'd like to say in each grievance so far we've found issue with the contract that could be improved upon, and both parties agreed. And, here again when the parties negotiate again to have an emergency clause would be a nice thing to have in the contract. That being said, we've heard testimony from the City that the Street Department normally performs the work, and so if that is the case then there is no violation of this contract.

Mayor Donchess

I was just generally commenting on the ambiguities in the contract.

Commissioner Moriarty

Right.

Mayor Donchess

These are old contracts. I mean these things go way back, and the difficulty for both sides. I mean negotiations are usually about wages and benefits and a few critical issues for each side. So, in a situations throughout the contract where ambiguity, if the City says well I'd like to straighten out the ambiguity of the City's direction, then the Union says okay what are you going to give me--

Commissioner Moriarty

--right--

Mayor Donchess

--in order to get that clarification. On the other hand if the Union says they want it resolved in their direction, then the City says okay, well, what are you going to give up to get that clarification. So in the end, both sides kind of leave the ambiguity because it's not that important. They're talking about other issues that are far—pay, benefits, the snow plan, on-call, call time or on-call time, you know. other things that are far more significant. And, that's why often these legacy contracts if you want to call it that don't have a lot of things in them--that's very antiquated and in the end don't get straightened out ever for a long time. So, I just am sort

of trying to defend the City and the Union for allowing these, some of these ambiguities or imperfect language to continue on year after year.

All right, well, we've discussed this one for a while. Does anybody have anything else to say on either side from labor or management? And what about the Commission? Do you have any other points or questions or anything? Okay, I there a motion on this? Commissioner Shea.

MOTION: Commissioner Shea to deny Grievance 22-10.

Mayor Donchess

The motion is to deny the grievance 22-14. Ah, sorry, 22-10. Sorry, I've already turned onto the next one. 22-10. Any discussion by Commissioners on the motion?

MOTION CARRIED: 4-Yea – 1 Nay (Lemen)

E. Grievance No.: 22-14

Chairman, James Donchess, Mayor

We'll now go on to Grievance 22-14. Who's coming forward? My Lyons?

John Lyons, Vice President AFSCME Local 365

Sorry, you get to deal with me again. Hopefully, this one will be a lot quicker as you stated. 22-14, this was a tree on Artillery Lane. On May 18, a tree on Artillery Lane was trimmed by a contractor. This is a job that Park and Recreation normally performs. We have roughly \$1 Million in tree equipment. We have two bucket trucks, three chippers, and at the time two chip trucks, and we have multiple chain saws that could have done the work. The tree only needed to be trimmed and to have dead wood removed. Something that any of the maintenance men that we have could have handled. Something that you wouldn't have had to have needed a certified arborist for. If being a critical situation, we could have done the tree that day. We have the equipment, and the ability to have done the job.

Discussion:

Mayor Donchess

All right. Commissioner Shea.

Commissioner Shea

And, what is the--how would you define being made whole?

Mr. Lyons

Basically, to stop bringing in the contractors to--

Commissioner Shea

--to do (inaudible)--

Mr. Lyons

--for, for, we bring in we, and I do not--will differentiate. We do bring in contractors for specialty work. Whatever else where they need a crane or other equipment that we do not normally hold, or if in the worst case scenario if they are not able to get someone to perform the job. But, normally our department does all tree work. From there is spreads out. If we don't get enough people in our department we go ahead and call through the different departments to get employees to do everything.

Mayor Donchess

Commissioner Lemen.

Commissioner Lemen

Was this the tree on Artillery Lane where the woman so vocal on social media?

Mr. Lyons

Yes ma'am.

Mayor Donchess

What are--so what do you think should occur? I mean can the department decide that for whatever reason a licensed arborist should be used in a situation? And if so, can they call--there's none on the City payroll I don't think. So, can they call in an outside firm to provide an arborist if it seems--

Mr. Lyons

--we have--

Mayor Donchess

--advisable?

Mr. Lyons

--does the City in the past if my recollection is correct, we have brought in an arborist to inspect and to look at a tree, but then if any work that was done they actually pointed out what needed to be done and our department did the work. It has only been done maybe twice in the 24 years that I've been working with the City.

Mayor Donchess

Commissioner Lemen.

Commissioner Lemen

Why did it need to be a certified arborist?

Mr. Lyons

That's, I believe that was the City's decision to quell the person complaining on the situation.

Commissioner Lemen

Thank you.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

I, I, could fathom where the City might also enlist an arborist for this task to prevent potential litigation and action against the City should something happen with this tree in the future given the sentiment of the person who raised the issue, and the extent to which they felt strongly about it. The arborist side, I appreciate that, and I think that that was absolutely the right thing to do. In terms of the tree work it sounds perhaps--and I'd be interested to hear the argument to the contrary. It sounds like perhaps that would could have been done at the direction of the arborist by City employees, that's what your argument is here.

Mr. Lyons

If an arborist was needed, yes.

Commissioner Shea

Yes.

Mr. Lyons

But, normally like I said we go to multiple locations, like I said with the equipment that the City has provided my department alone for what we do. We've definitely advanced from when I first started. We had an old fire department bucket truck that maybe could do 40 feet, and now we've got a 65 foot and a 75 foot bucket truck that we are called upon to cut multiple trees.

Mayor Donchess

What was ultimately done with the tree? It was trimmed or what?

Mr. Lyons

It was trimmed and the dead wood was removed from that tree.

Mayor Donchess

And was there a lot of the dead wood or was it just--

Mr. Lyons

That I'm--they were there with a one-ton or a 550 with a chipper. Basically, literally the same equipment that we (inaudible)

Mayor Donchess

And the idea there was to prevent these dead limbs from falling.

Mr. Lyons

It was to remove any dead--

Mayor Donchess

(inaudible).

Mr. Lyons

--and any limb that were problematic for the homeowners that were in that location.

Mayor Donchess

All right. Commissioner Shea

Commissioner Shea

What was the height of this tree?

Mr. Lyons

The overall height? That tree is over 100 feet.

Commissioner Shea

And, the damage to the top of that tree if I recall is really wind burned on the upper most limbs, kind of from the clearance of the winter air. This is my impression of the tree anyway. I thought way too much about this, but like, you've got all these buildings along Amherst Street, houses that shelter wind from coming through, and it seemed to me what that tree was up against is that once you get past the height of the adjacent house you've got this winter wind coming through and when you get very cold days with fast wind and a very low wind chill you have trees that are affected where the wind hits them. Like you could have arborvitae that the top half of the arborvitae because it's next to a fence gets killed every winter and then the bottom half is quite fine. It seemed to me on that tree that's what happened, and the limbs that needed to be addressed were the uppermost limbs.

Mr. Lyons

The only problem with that argument is the company that dealt with it, Northern Tree showed up with a tree to my belief looking at it was a 60 to a 65 foot bucket truck.

Commissioner Shea

Do you know that that was the case or that--

Mr. Lyons

--I have a picture of the, we have a picture in the truck. I did not bring it with me, but it was literally—it's maybe a 65 foot so that's why I'm saying--that's why there is an issue. I wouldn't have an issue if the tree company showed up with a crane or something that reached 100 or 125 feet because that is out of our spec. So if--since I know for a fact that what they brought was literally identical to what we have that is the issue for the grievance, but then also bringing in a contractor in to do it is also the other half of that issue. So, like I said before that we've had other issues with trees. Tree company Pioneer or some other companies are brought in. They have a crane and whatever else so which case is beyond our spec. This was within our area.

Commissioner Shea

That's like—so they must have taken 40 feet off the top of that tree?

Mr. Lyons

They didn't.

Commissioner Shea

And, they have a 65--

Commissioner Shea

They cleared lower branches off of that tree--

Commissioner Shea

--and they did not cut the top branches?

Mr. Lyons

No. Their bucket truck won't even come close. Neither would ours.

Commissioner Shea

That leaves me to wonder if we have adequately addressed the issue because it seems like a lot of dead wood was way up at the top of that tree. But, that's a separate issue.

Mayor Donchess

All right, questions from the Commissioners? Commissioner Moriarty.

Commissions, Kevin S. Moriarty

I just thought Mr. Lyons. Looking at your remedy to have Park Department do all required work, tree work as required, but yet every year this Board approve a contract for an outside contractor to cut and trim through Mine Falls Park, and I've never seen any--

Mr. Lyons

You're talking about Glen Cole. He drives the tractor and has a special cutter, a what is that called? Brush mower that goes ahead and grinds everything that's going through. He's actually working us currently right now. We bought a tractor just a couple of years ago knowing that he is going to be retiring. We bought something not as basically well as what he has, but what he has requires a lot more maintenance, so we have already bought something to assist with that.

Commissioner Moriarty

Very good. So may be doing that in the future.

Mr. Lyons

And another--one of my other co-workers was doing it today.

Mayor Donchess

In Mine Falls. I don't know that this is terribly relevant, but along the road there's a big tree down that's been cut.

Mr. Lyons

Which, where, what's the location?

Mayor Donchess

No, excuse me not Mine Falls, Greeley. You go through Greeley. You walk from Concord Street up the hill and on the right there's a tree that has a diameter about that big that fell and has been sectioned to some extent.

Mr. Lyons

Usually with, for most of the pars and everything else as long as it's within 15 or 20 feet from the edge of the road or the normal walking path we will leave that depending on if it falls on its own. If we take it down then usually we will remove it.

Mayor Donchess

All right, this one is--

Mr. Lyons

So there's multiple ones. If you take that same road and on the left hand side there's multiple red oaks that have fallen.

Mayor Donchess

This one--

Mr. Lyons

--as well--

Mayor Donchess

This one has been cut into big sections. Anyway, okay. Anybody else? Commissioner Schoneman.

Commissioner Schoneman

Is there any specific part of the contract that you feel has been violated?

Mr. Lyons

It', it's mostly the idea that in most cases it's becoming a norm that they're bringing in contractors to do our work. So, it's a--to us it's a violation that you're having that happen without allowing us the opportunity to do that work first. We do understand there are special circumstances where contractors are brought, but like I said, where they're bringing the same stuff that we have, and we have the ability, that's where at least where our argument is.

Mayor Donchess

But, is there a contract provision that you think prohibits the department from bringing in contractors?

Mr. Lyons

If you constantly bring in contractors then yes. Because you're, like I said, you're taking work away from your own people from your own labor force.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

I understand the sentiment. Can you point to a specific part of the contract, like a section in the contract that you would be referring to?

[Extended pause.]

Alex MacLean, President/Chief Steward, AFSCME Local 365

So, it's in the Recognition, Article 2 Recognition. It would be the entirety of it. I can read it for you.

"In the Public Works Division the Director or City Engineer, Deputy Engineer, Assistant Engineer, Secretary or the Clerk Board of Public Works, the Superintendents, Foremen, Timekeeper, Summer Help, and other employees classified in supervisory or clerical job are excluded from this working agreement. Summer help working in the division outside of the Solid Waste those persons are temporarily employed—"

Oh, no, I'm sorry. I'm sorry. The very first section.

"This City hereby recognizes the Union as the sole and exclusive representative of the regular full-time employees of the above division subject however to the exclusion listed in Paragraph A below."

So then you would go into Paragraph A below that and you could read through there. So it, the very first line is the City hereby recognizes as a sole exclusive representative for regular full-time employees. Wait. Yeah, so that's our bargaining unit work. So that's where the contract is being violated. That is our work to do tree work, and that was well within the scope of our work, so we should have been allowed to do our job.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

So, my interpretation of this is that the City is recognizing the Union as the representative of the full-time employees. That would not be relative to contract work. Right? I mean this is about the Union being the entity that represents employees and their interests. I don't know that it has to do with contractors or some matter of exclusivity. The exclusivity in my interpretation of this is the Union being the representative of the employees.

Bobby Jones

Forgive me, I think I have every contract. I recognize, memorize, and normally what is considered your Preamble is in the Recognition clause above this so, Mr. Lyons (inaudible).

Mr. Lyons

It is the intent and purpose of the parties here though--

Mayor Donchess

Wait. Now, what are you reading from? Just so we can follow.

Mr. Lyons

The Preamble.

Mayor Donchess

Okay, thank you.

Mr. Lyons

It is the intent and purpose of the parties here though that the agreement will promote and improve industrial and economic relationships between the City and the Union and set forth herein the basic agreement covering the rates of pay, hours of work, and conditions of employment to be observed between the parties here though. The City agrees to apply all terms and conditions of employment in a fair and consistent manner to all bargaining unit employees.

Commissioner Lemen

So, it is your position that having contractors come in is being unfair to the employees of the City when they are capable of doing the work?

Mr. Lyons

Yes, ma'am.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

Sorry, I'm reading the Preamble and I am seeing that the purpose and the core of the meaning of the Preamble is that it describes what this document is, and it says that the City is going to agree to apply the terms of the document and the conditions of employee that are laid out in it equally to all employees. I don't see how that section also, is relevant to any idea of exclusivity on the part of the Union employees. I do understand the sentiment. I understand the idea of fairness and what your feeling is on this I'm just still not seeing something in the contract that outlines.

Mr. Lyons

Like Alex read was the recognition. The City hereby recognizes the Union as a sole and exclusive representative of the regular full-time employees of the above division subject to however. But, basically the Union is the City's workforce. That's what basically what it breaks down to and so, yes we know that once in a while we will have to bring someone in, but normally you're not bringing somebody in to do a job that you normally could handle with your ability. Is what I'm trying to reiterate.

Commissioner Shea

I know. I understand what you're saying, I just don't believe that these words mean what you're saying. The Union is a group of employees that have gathered to agree to collectively represent their interests and the City recognizes the Union as the entity that will advocate for those interests. And, that that Union includes all full-time employees with exception to management,

right, and the temporary summer help. I understand what you're saying I don't think that that is what this section or the Preamble means. I mean I could be wrong in my interpretation of this, but I just don't see where it means what you are saying that it means, and feel that you, like on a philosophical argument I can understand where you're coming from. I just don't see where this language applies to that philosophical argument. And so, what we're talking about is the contract. And, I could be wrong. I could be way wrong. I could be wrong in the way that I'm reading this, but I just don't see where these sections are relevant. The Union, I read this, I see the Union is the exclusive representative of the employees. This does not to me mean that the Union is the exclusive group of people doing the work. The Union is the body that is representing the full-time employees.

Mayor Donchess

I believe what this means is the Union has the right to negotiate exclusively on behalf of the employee. So, the City could not pick somebody out and say well, you know, president of the union, we don't care, we're going to go over and negotiate with this other guy. Or separately negotiate a contract with an individual employee. We would not be allowed to do that.

Mr. Lyons

Correct.

Mayor Donchess

Because the Union has exclusive right to represent all of the individuals and each group of employees within the bargaining unit.

Mr. Lyons

Right, it's an agreement with the City with the workforce--

Mayor Donchess

--and you can represent them on grievances. Like now. I mean we couldn't say sorry we don't want to hear from the Union on this. You have the exclusive right to represent the employees when their interests are involved. You have the right to bring grievances, you have the right to negotiate. We cannot go around you in those respects. But, I think that's the meaning. I believe that's the meaning of these paragraphs.

Commissioner Shea

And, if I may further. If the Parks guys wanted to have their own representative the City would not be recognizing them as we are recognizing you here today. Because we recognize the Union we wouldn't recognize a lawyer that was hired on the behalf of a certain sub-sect of full-time employees.

Mayor Donchess

We would never do that unless some how they got separately certified as a bargaining unit. Someone else tries to negotiate forget it we don't do, you know this says we can't, we cannot entertain that at all. Or if an employee comes to us and well, I want a separate deal. You know,

I want my own contract. We can't entertain that. I think that's what and in doing so we would violate these provisions. That's what I think it means.

Bobby Jones, Representative AFSCME

Mr. Mayor, if I may.

Mayor Donchess

Yes.

Mr. Jones

Speaking to the Preamble and looking what Commissioner Shea is looking for the Preamble outlines that this is the document of governance, but under R.S.A. 273:A, which we follow under public employees. The conditions, the terms and conditions of employment are mandatory subjects of bargaining. So, although the PDFs are not contained within the document of the contract the PDFs themselves delineate that that work is ours. When you look at a PDF for what John does it's going to delineate that that's his work. So the Preamble leads to outside the document. The PDFs would say that's our work.

Mayor Donchess

What's a PDF?

Mr. Jones

That's their job descriptions. Where again, we're not arguing that in the instance where you thought they took off the top of the tree, that a contractor couldn't be brought in for that because as John stated that's out of the scope of what we capable of doing. What was mentioned time and time again, over all of the grievances this afternoon was who's qualified to do the work. Who has the qualifications. They clearly have the qualifications. Yet the City went out and contracted for the work that they could easily has performed. And, we just argued Streets performing normal work. Tree work is normally performed by--so I don't see how all of a sudden we argue with a case in one grievance and then we're forgetting about that argument when we reach a second grievance.

Commissioner Shea

Two points of clarification.

Mayor Donchess

Yes.

Commissioner Shea

One being. On further review of management's response. My sentiment about the tops of the tree and the way that that tree should be cared for is perhaps immaterial because that has nothing to do with the argument that was put forward or the response that was put forward by

management. In terms of forgetting I don't know that the issue is forgetting so much as asking for the specific piece of the contract to be referred to relative to this grievance. So it's not that I'm forgetting all the other sections that we've touched on, I'm just not thoroughly and intimately familiar with this document, and I'm looking for the Union to identify the basis for the argument within the contract. And so, you're saying that the second, what was it Section 9 H, this is relative to overtime work? No, what, what's the section relative to the people that normally do the work?

Mr. Jones

Well that's delineated in the overtime clause, but throughout the contract there are different articles of the contract that talk about being qualified or minimally qualified to do the work, and that definitely applies in this instance as well. Again, if we were talking about a hundred foot tree, they're not qualified or capable of doing that. But, that wasn't it, and as John testified to or explained, forgive me, the equipment that they used was no different than the equipment the City already owns.

Commissioner Shea

Can you refer to the article and section?

[Extended pause]

Mr. Jones

So in Article 7 Wages under Section B it talks about employees being assigned to work in a higher classification and needing to accumulate 120 hours within a 24-month period to be considered eligible for that.

As we discussed in the prior grievance, Article 9 overtime letter H talks about qualified employees by classification in the department or division that normally performs the work.

When we talk about Article 11 Vacancies, Promotions, and Transfers. It states all applicants shall then be considered on the basis of minimum qualifications, seniority, experience, and ability. So, throughout the contract there' differing articles that lead credence to what our argument is.

Mayor Donchess

All right. We should hear from the Department on this, but or we could come back, but--

Commissioner Kevin S. Moriarty

--I just have a comment--I just had a comment. Folks listen we're the Board of Public Works. We want Public Works doing everything in the City. We want Parks doing the trees. That's what we want. We're constantly in arguments with the Mayor because he has other people doing stuff that we want—should be doing. We should be doing. We're here to help you. And so, in this situation, my recollection is the woman was irate. She had arguments with various City employees. It was a hot issue. We're trying to deal with it as quickly as we can--it's my recollection. She wanted the thing cut down immediately. We had to get an arborist in there to

say okay, no this is a beautiful old tree we want to try and preserve it. A lot of things happened quick. So, it just, you know--

Mr. Lyons

But, that the point. (inaudible) to me it dropped the ball trying to rush ahead of yourself by bringing in--all right well we're just going to bring in this person to do everything versus us doing at least doing our part or our portion of the job.

Commissioner Moriarty

You know, I wasn't there at the situation, but I don't know. Decisions were made. We're here, we want you doing the work so don't, you know—

Mr. Lyons

--I, I and I know management will say in their rebuttal of that that we've got three to six months of backlog. In the past, we've been up to 2 years on a backlog of trees. So three to six months is actually minimal on any backlog for us.

Commissioner Moriarty

Listen, if we waited one more day that lady would have put a fire to that tree. That's how hot she was. So, I'm glad it was taken care of and I'm sorry that you folks didn't do it.

Mayor Donchess

All right. Now--

Mr. Jones

It's going to be quick, Mr. Mayor. I feel I have to respond to Commissioner Moriarty.

Mayor Donchess

All right, go ahead, go ahead.

Mr. Jones

Because the prior grievance we talked about we picked the best people based on an emergency, and now we're placating a citizen is what it was. We've listened to various people both management and the Union side say if it's an emergency we grab the people that we need to do it, and we do the job. So why didn't we grab the people from the Parks Department to take care of that tree? That's the bottom line.

Commissioner Moriarty

Well let's find out from the City.

Mayor Donchess

All right, Mr. LeBlanc.

Matt LeBlanc, Operations Manager

Thank you, and good evening. I'll keep it short and sweet. We do not have a certified arborist in the City. As we've brought up--sorry, Matt LeBlanc, Operations Manager. As we brought up already it was a very high-profile tree. It hit social media. We really felt like it was in our best interests to act on it as soon as possible, but it was a delicate tree. A very old tree, big tree. We didn't want to just make any decision and just you know shoot from the hip. We wanted to make sure we got it right because there were safety issues as the resident said.

Mayor Donchess

What kind of a tree was it anyway?

Commissioner Schoneman

Silver Maple.

Mr. LeBlanc

I believe it was a large Silver Maple. So, with the concerns of the resident, going into this winter we did have a backlog of tree work, upwards of two years. We did work together pretty well throughout the winter to knock that down. We got it down to three to six months, but coming into May the middle of May, I mean that's a pretty busy season for our Parks Department. So, everybody was working. They were working on fields and leaf pickup and getting everything that they typically do in the fall done, not to say that we don't do tree work in the spring, summer or fall, but with this one tree; with the safety concerns that were brought us we brought the arborist in to work with us; to see kind of what course of action we should take, and it was at that time that we got the paperwork back from the arborist stating selective pruning and cutting. We needed to get this work done under the supervision of the certified arborist. We did it during the normal work hours. We did it between the hours of 8:00 and 2:00, I believe. That way we didn't have any obstruction from school children or anything crossing. So, that's why we did what we did. Throughout the whole division and the whole year, we use contractors maybe not daily, but monthly, quarterly however you want to look at it. With snowplowing we all work together with contractors. Throughout the year we have other contractors that work with us to do some of the tree work. Whether it's too big of a tree and we need to crane it out. For whatever reason. Our Traffic Department we do lawn striping, we work together with contractors throughout the year. That's why when this came about we decided to contact a certified arborist due to the nature of what actually came through. It obviously hit us as a huge safety concern, so we wanted to act right away. Again, we didn't want to just make any decision we wanted to make the right decision. Thank you.

Bryan Conant, Superintendent, Parks and Recreation

Yeah, I got a couple things I'd like to say. Bryan Conant, Superintendent of Parks and Recreation. Yes, the resident was adamant that this tree come down. A Silver Maple tree, probably about 100 or 120 years-old, something like that. It was late May. I could tell. I got a

Bachelor's degree from U-Mass Amherst plant, soil, insect science, and took a lot of plant ID classes, arbor classes. Could tell the tree was healthy. The resident was very vocal that they wanted the tree down. I would have been all for that if it was hazardous. It wasn't so we had a track assessment done from Northern Tree Service that said the tree was healthy. From there to ensure that the health of the tree did not decline, okay, there was cuts made by a certified arborist. It wasn't supervised. The guy that was in the buck was a certified arborist. So that means your cuts are going to be perfect, okay. Because if you prune a tree incorrectly you will induce the decline of the health of the tree, and that was a part of it. We could go back and forth on the equipment, I think that the equipment that they had was similar. I just wanted to mention that. Okay, if there are any questions I'd be happy to answer them.

Mayor Donchess

Commissioner Lemen.

Commissioner Lemen

We have a lot of trees in the park space in the city. Is there a reason why we do not have a certified arborist because it seems to me that might really help situations going forward.

Mr. Conant

I think that's a great idea and a great suggestion. Being here in February I'm new. I do believe that Parks is under staffed, okay, I think that's part of the issue. Hopefully, we can solve that going into the future.

Commissioner Lemen

So you would be in favor of hiring an arborist. I mean I've been in Nashua for a long time. It seems to me that many of the biggest fights we have had in the city have been over trees. I mean all of us in this room have seen some of those fights. So if you had had a certified arborist on staff who could have been in your guy's buckets, would you have gone that way?

Mr. Conant

Yes.

Commissioner Lemen

Thank you.

Mr. Conant

I look at a lot of the tree work we do is hazardous tree removal. Whether it's a tree that's fallen down, a tree that's blatantly dead. That's what we do. If we were to drive around the city I could point out numerous, numerous trees that have, that want to be pruned. In looking at this tree in late May the leaves were just leafing out, I could tell that yeah, there was a lot of dead wood, it had never been pruned. We're talking about 120-year-old tree. That was part of the issue.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

I'll be brief on this because I don't know that it's germane, but I believe it's the Arbor Foundation has a set of standards that cities can adopt and qualify for a designation as Tree City USA or--

Mr. Conant

We are a tree city.

Commissioner Shea

We are a tree city.

Mr. Conant

We are.

Commissioner Shea

We already have designation.

Mr. Conant

Yes, we do. The Mayor signs it every year.

Commissioner Shea

I did not know that. In any case, I also just want to say as far as all the grievances that we've heard today each of these grievances has had a good outline--there was a decent argument that could be made for what section its relevant to. I don't feel that the Union has made an argument for any specific section of this contract. I take the letters in response from management regarding the backlog of work and I think that that' adequate, but I would just ask that more, a more concise argument be made on behalf of these employees and their grievances with a specific citation of a section and a clear concise argument as to why it's a grievance, and why it's in violation of specific language of the contract because I'm spinning around in circles up her and took up a lot of time and I'm going to stop now, but it would be much appreciated if more attention was given to that as grievances are presented. That's all.

Mayor Donchess

Commissioner Schoneman.

Commissioner Schoneman

There's an old saying when you're getting tree work done. That there are guys who know a lot about trees and that there are guys who know a lot about saws, and that it's always wise to go

with the people who know a lot about trees, and it sounds like that's what the Superintendent and the Director did in this case. It wasn't simply placating an individual, it was considering the health of this tree, the safety of the neighborhood, and taking the advice of a specialist who knew how to keep this tree healthy, and the whole neighborhood safe, not just considering the actions of one person. I think it was entirely appropriate for the City to bring in a specialist.
Mr. Conant

Thank you, Commissioner.

Mayor Donchess

All right. Any of the Commissioners have additional questions? Is there a motion on Grievance 22-14? Commissioner Moriarty.

MOTION: Commissioner Moriarty to deny Grievance 22-14.

Mayor Donchess

Motion is to deny. Any discussion by Commissioners?

MOTION CARRIED: Unanimously.

Mayor Donchess

Motion passes and Grievance 22-14 is denied.

F. Grievance No.: 22-16

Mayor Donchess

Now we'll move to Grievance 22-16, which I believe is the next in order.

Alex MacLean, President/Chief Steward, AFSCME Local 365

Alex MacLean, AFSCME Union President. I'd just like to skip right ahead to the next one for just one second and say that the Union is going to remove that grievance. The employee is no longer with us. So, we only have one more to hear.

Mayor Donchess

All right. So you are dropping Grievance 22-21?

Mr. MacLean

Yes. 22-21 will be dropped.

Mayor Donchess

All right, so, we're going to take up 22-16?

Mr. MacLean

Yes, so we can move to 22-16, and that will be the last one that we hear today.

Mayor Donchess

All right, go ahead with your thoughts, your presentation.

Mr. MacLean

So, 22-16, it cites the Preamble and Article 12. On 6/10/22, Mr. Deluca was assigned to asphalt curbing crew and to ride to the job with a co-worker. He expressed his discomfort in riding with this person, and asked his foreman to take his own City vehicle. That request was denied. Mr. Deluca then rode and worked with that person for the entirety of the day. A written warning for insubordination was then given for performing these assigned tasks throughout the day. On 7/19/22, Director Fauteux agreed to reduce the written warning to a verbal, and take away insubordination, as he did what was assigned of him on the morning 6/10/22. Her response to the grievance on 8/4/22, backdated to 7/29/22, did not state she was removing insubordination, and that is the reason we are here today. He did what was asked of him, that is clearly not insubordination. Yes, ma'am.

Discussion:

Commissioner Lemen

Can you define what insubordination is?

Mr. MacLean

Insubordination is the defiance of doing a task that you are required of by your upper management.

Lisa Fauteux, Director, Division of Public Works

May, I-- point of clarification. I did reduce Mr. Deluca's written warning to a verbal, but I did not agree to take out the word insubordination. So, if there was a misunderstanding,--

Mr. MacLean

--there must have been--

Ms. Fauteux

--may have been, but, I, but I did not, the intent was not to remove--

Mr. MacLean

Yeah, and that's why we're here today. It's, you know, insubordination is a very big word, and it's a very--that is definitely not something that anybody should be labeled unless they are in fact insubordinate. If our employee was defiant to what his tasks were for the day, then he would

have been insubordinate and I could support the write-up, but riding with the employee, doing what was asked of him for that day, I don't see how we leave that word in, insubordinate.

Ms. Fauteux

I think it might make sense to have the foreman who deal and the Superintendent who dealt with the situation that day maybe explain what happened and let the board decide.

Jon Ibarra, Superintendent, Street Department

Hello, again, Jon Ibarra, Superintendent of Street Department. This is Brian Annese he's my, one of my street foreman, and he's the individual that assigned Mr. Deluca that morning and had the engagement that he had. I'll preface it with it was a very disrespectful engagement. That also is a definition of insubordination. Discipline is one of my least favorite things to do. I get no pleasure out of it. But, when you have what occurred that morning between Mr. Deluca and my foreman, I can't tolerate that kind of behavior within my working environment. It just makes for a negative vibe to go through the shop. Again, disrespectful. Failure to comply. Every day we delegate priorities for operations. He as a foreman goes out and assigns his crew. I'll let you speak from there what happened.

Brian Annese, Foreman, Street Department

So, I went out to assign the guys. As I was speaking to Mr. Deluca, I told him that he'd be riding with one of his employees. He said that he did not want to ride with his employee. He would take his own vehicle. I said that we don't need that many vehicles out there. We're taking one vehicle. You're going to be riding with him, and he just continued to just look at his phone and not look at me as I gave him other directives. I also told him to help with the burn machine with the trailer, hook it on the truck, which I did with a couple of the other guys. He did eventually get up. He did eventually get in the truck with that employee. I had already talked to Jon about the situation, and ultimately I feel that he just didn't do what I was asking. It took me multiple times of talking to him while he ignored me. And, the other guys were smirking and just of like just shaking their head upon this so, that's how I feel.

Mr. Ibarra

Ultimately, he did not hook up the trailer with the crew as he was assigned. Yes, he goes back and says he did get in the truck and comply at that time, but by the time my foreman has to come to my office and tell me what's going on, it's already occurred. The insubordination. So, it's written up as an after-the-fact, and I did bring Mr. Deluca in and speak to him, and just say it's unacceptable behavior. You just can't be like that during the course of our operation. In justice and fairness to the taxpayers of the city, all employees shall be required to report to work on time, shall not leave the job early, shall be prompt in reporting to their duties, and shall faithfully perform their duties. I would say that was a delayed response. It took him four efforts or multiple efforts to get him engaged and going in the morning. And again, I don't enjoy doing this. I wish we didn't have to be here on this, but we are, and I don't want to see this going forward. We went to a Step II, so he could plead his case to the Director and she agreed given the environment and the occurrence that she would reduce it to a verbal warning from a written. And, now here we are.

Mayor Donchess

Commissioner Shea.

Commissioner, Paul Shea

Has the employee improved his behavior in responsiveness this that time?

Mr. Annese

He has.

Commissioner Shea

That's good to know. Thank you.

Mayor Donchess

Commissioner Lemen.

Commissioner, June Lemen

I'm a little bit confused because you said it was reduced to a verbal warning.

Ms. Fauteux

Yes.

Commissioner Lemen

So, if it was reduced to a verbal warning, then the way the City works that written stuff doesn't get taken out? Or you get written up as having a verbal warning?

Mr. Ibarra

It's still insubordination but a verbal warning level. So we have progressive discipline.

Commissioner Lemen

Okay.

Mr. Ibarra

And, given what occurred I started at an elevated and then the Directors often reduce it to a verbal.

Mayor Donchess

So I think what you're asking is, it is documented in writing that it was a verbal warning. Right?

Ms. Fauteux

It's, it's, yeah.

Mayor Donchess

So there's a documentation--

Ms. Fauteux

--documentation--

Mayor Donchess

So, there a piece of paper, but it's the first step of discipline which is verbal.

Ms. Fauteux

I think--

Mayor Donchess

--the next step would be written, which would also be documented, but now it's kind of snip—

Commissioner Lemen

Okay, I understand--

Mayor Donchess

One level higher.

Ms. Fauteux

I'll ask the Union to correct me if I'm wrong, but I think the issue here is not, I think they would accept the verbal warning. All they want out of this is the insubordination, which I didn't feel, I don't feel is appropriate. He was insubordinate, and that doesn't make somebody a bad employee. It's just he was having an off day, but there's impacts to that, and it makes it really difficult for our staff to be able to do their jobs when people respond that way. And, I think in this case Mr. Deluca was treated fairly by having a written warning reduced to a verbal.

Commissioner Lemen

When you have a verbal warning in your packet what happens? If you're a good employee? I assume it never goes away.

Ms. Fauteux

It does.

Commissioner Lemen

It does.

Mr. Ibarra

It does actually, yup.

"All documentation of written warnings and suspension shall be removed from an employee's personnel file after 3 years, provided the employee has had no infraction of discipline within that period. All documentation of verbal warnings shall be removed from an employee's personnel file after a 2 year period, provided the employee has had no infraction of discipline within that period.

Mayor Donchess

And which provision? Where are you reading from?

Mr. Ibarra

I am reading that out of Article 12, Section C.

Commissioner Kevin S. Moriarty

I tell you, it goes back to this contract. Again, there's nothing in there that says insubordination. Is there? I mean as for disciplinary action--

Mr. Ibarra

--(inaudible) rights. As far as title or just cause it would be under Management's Rights.

Commissioner Moriarty

Okay.

Steven A. Bolton, Esquire, Corporate Counsel

I think even more particular, Article 12, Section B.

Commissioner Moriarty

B?

Attorney Bolton

In the last line, it mentions specifically insubordination.

Commissioner Lemen

I don't--oh, failure--okay.

Commissioner Moriarty

Got it. Thank you.

Mr. Ibarra

Thank you, Attorney Bolton.

Commissioner Moriarty

And, do we know why the employee refused to go with the other employee? Did he--

Mr. Ibarra

During the grievance process at Level II, or Step II, he said that he didn't feel safe riding with that employee. And, maybe that's why the Director lowered it to a verbal. But, again the behavior had occurred. We carpool every day, The professional drivers, and given the fuel costs, we try and take the least amount of vehicles that we can to get to the job. So, you're going to have to ride with somebody and you may not like the person sometimes.

Ms. Fauteux

Mr. Annese.

Mr. Annese

Yup.

Ms. Fauteux

It was my impression at Step II, the Step II grievance that that was not mentioned--safety was not mentioned to you.

Mr. Annese

Not in the morning, no.

Mr. Ibarra

No.

Ms. Fauteux

Yeah.

Mr. Ibarra

That was during the grievance process itself.

Commissioner Moriarty

And again, it wouldn't make sense for the employee to drive his own car if he's under city time and--

Mr. Ibarra

--liability--

Commissioner Moriarty

--liability of course, work comp, right?

Mr. Ibarra

--you have to be in a city vehicle.

Commissioner Moriarty

--right, so that wouldn't fly. I understand that.

Mr. Ibarra

We have to transport the tools to do the job.

Mayor Donchess

Any other questions or either the Union or the Department? All right. Is there a motion on Grievance 22-16?

MOTION: Commissioner Schoneman to deny Grievance 22-16.

Mayor Donchess

Any discussion on the motion? Commissioner Shea.

Commissioner Shea

I don't see anywhere within the contract, and I don't think an argument has been made. Again, this cites Article 12, I don't see anything, nor is anything specifically been raised regarding Article 12. And, I don't understand why the Preamble is listed as part of this grievance. And, for that reason, I support denying the grievance. It seems that it's an issue of disagreement as to whether or not the employee should have been disciplined in the first place. I certainly don't think that we should be micromanaging the decisions of the management and the Director in terms of employee discipline, and for those reasons, I'll support denying the grievance.

Mayor Donchess

Discussion?

MOTION CARRIED: Unanimously.

Mayor Donchess

The motion is granted and Grievance 22-16 is denied. And I think that's all the grievances.

Mr. MacLean

Correct.

Mayor Donchess

All right, thank you. All right, well thank you for coming and presenting as you did.

VI. SOLID WASTE DEPARTMENT

Chairman, James Donchess, Mayor

We now will move onto the remainder of the Agenda. Next, we have the Solid--Thank you Attorney Bolton.

Steven A. Bolton, Esquire, Corporate Counsel

Thank you.

A. To Approve Change Order No. 1 To The contract With ClearSpan Fabric Structures of Glastonbury, CT in the amount of \$33,871.00. Funding For This Change Order Is Through Department: 168 Solid Waste; Fund: Bond; Activity: SW Equipment Coverage/Storage.

Mayor Donchess

We have the Solid Waste Department, Item A. Commissioner Shea

MOTION: Commissioner Shea To Approve Change Order No. 1 To The contract With ClearSpan Fabric Structures of Glastonbury, CT in the amount of \$33,871.00. Funding For This Change Order Is Through Department: 168 Solid Waste; Fund: Bond; Activity: SW Equipment Coverage/Storage.

Mayor Donchess

Mr. Lafleur.

Jeff Lafleur, Superintendent, Solid Waste Department

Jeff Lafleur, sorry, Jeff Lafleur, Superintendent of Solid Waste. So as you know I came before you for a contract to build a cover-it to cover all our vehicles at the landfill. While going through the building permit plans, I found out that my building was too big, and if it--because of the size of the building I would have had to put in sprinkler systems. For whatever reason through the building permit. At that point, trying to put sprinkler systems in an outside building with the cold weather they wouldn't work properly. The expense would have been crazy. I took it upon myself to look into doing three smaller buildings that the vehicles would all fit in. This change

right here is actually one truss to each building. So now it is going to be three separate buildings side-by-side the correct distance apart for fire department, fire safety. I need these three trusses to build it so I can get all my vehicles underneath. It's basically the easy answer for it.

Mayor Donchess

Any discussion, questions?

MOTION CARRIED: Unanimously.

B. To Approve A Contract With Simplicity Equipment and Service of Westfield, MA in the amount of \$40,500.00. Funding For This Is Through Department: 168 Solid Waste; Fund: Solid Waste; Account Classification: 55 Other Contracted Services.

Mayor Donchess

Next, we have Item B. Commissioner Schoneman.

MOTION: Commissioner Schoneman To Approve A Contract With Simplicity Equipment and Service of Westfield, MA in the amount of \$40,500.00. Funding For This Is Through Department: 168 Solid Waste; Fund: Solid Waste; Account Classification: 55 Other Contracted Services.

Mayor Donchess

Go ahead.

Jeff Lafleur, Superintendent, Solid Waste Department

This piece of equipment that we'd like to rent is the grinder that I spoke about a few months--three or four months ago about trying to grind up our C&D. I went out to bid to try to ship some our C&D offsite. No qualified people wanted it. Nobody wants our C&D. So seeing that the construction and demolition materials that comes into our landfill takes up 20% more airspace than our MSW, we're going to look into trying to grind our C&D and get the pile down smaller, so it will compact tighter. This is for a one month rental. Again, it's just a trial. We're going to try it for a month. We're going to see if I can get that whole pile ground down. See how we like it. The actually machine that we're looking at renting is a million dollar machines. So, right now it does make sense for us to buy one unless I can justify using it enough to gain our million dollars back on this machine. So, again, I'm going to rent it. Right now I have it setup for December 1 through January 2. We're going to run it the amount of time that we can to hopefully condense my whole C&D pile.

Commissioner, June Lemen

Is this grinder affected like if there were a giant snow storm or freezing rain is this grinder supposed to operate in all kinds of weather?

Mr. Lafleur

Yes. This machine, is a big diesel engine that will run and it will grind up everything. It will also separate out any metals that are in the grindings. So, I don't know how much we'll get out of nails and stuff like that, but we'll get some metal out of it, which will go into our metal pile and be shipped out. So we'll get some revenue off of it. But we could you this year-round. Rain, snow, sleet, they use them out west out in Minnesota and everything so, yes this piece of equipment can run all the time.

Mayor Donchess

Anyone else?

MOTION CARRIED: Unanimously.

VII. ENGINEERING DEPARTMENT

A. To Approve The Sewer Service Permits And Fees As Submitted.

MOTION: Commissioner Moriarty To Approve The Sewer Service Permits And Fees As Submitted.

Mayor Donchess

Any discussion?

MOTION: Unanimously.

B. To Approve Pole License Petition No. 21-1624.

Mayor Donchess

We have Item B.

MOTION: Commissioner Lemen To Approve Pole License Petition No. 21-1624.

MOTION CARRIED: Unanimously.

C. To Approve The Purchase Of Manhole And Catch Basin Frames And Grates From Concord Winwater Co. Of Concord, NH In The Amount Of \$316,125.00. Funding Is Through Department: 164 Wastewater; Fund: Wastewater; Activity: Sewer Structures.

MOTION: Commissioner Shea To Approve The Purchase Of Manhole And Catch Basin Frames And Grates From Concord Winwater Co. Of Concord, NH In The Amount Of \$316,125.00. Funding Is Through Department: 164 Wastewater; Fund: Wastewater; Activity: Sewer Structures.

Mayor Donchess

Mr. Hudson.

Dan Hudson, P.E., City Engineer

Thank you, Mr. Mayor. As part of our paving work, we replace broken structures. The ones that don't meet our current standards. This contract is to purchase the materials. We then provide those materials to the paving contractor to install. That way we ensure our consistency in materials. We did bid this material out and I received two bids. The low bidder is Concord Winwater. I'd be happy to address any questions about that.

Mayor Donchess

Anyone? Commissioner Lemen

Commissioner, June Lemen

Is this many manholes and catch basin frames? I'm just curious as to how many you get for \$316,000,00.

Mr. Hudson

Yeah, it's a lot. I mean they average \$400.00 or \$500.00 apiece. This is a big number so it is still a large number, but we do keep quite a stockpile at our Street Department so they're available in a timely fashion for our paving work.

Commissioner Lemen

Okay.

MOTION CARRIED: Unanimously.

D. To Consider The Hardship Request From Liberty Utilities To Excavate To Replace Critical Gas Valves In Brook Village Road At The Intersection With Spit Brook Road.

Mayor Donchess

We now have on the next page Item D.

MOTION: Commissioner Schoneman To Consider The Hardship Request From Liberty Utilities To Excavate To Replace Critical Gas Valves In Brook Village Road At The Intersection With Spit Brook Road.

Dan Hudson, P.E., City Engineer

So this says request from Liberty. You can see the attached letter to the request. They have a couple of valves which they tried to exercise and they were frozen so they're requesting replacement of these valves. They do exercise these valves yearly, and before paving, which they did, but for whatever reason they're currently not working and they've asked us to bring this forward for review and approval so they can replace them. Do to the critical nature there is not a Liberty Utilities representative here today. I did ask earlier today and I don't think knew that we weren't using Zoom so they couldn't Zoom in, so childcare issues or whatever they couldn't be here. So, should the board want to table this until Liberty can be here to speak to this I think

that'd be appropriate. But, if you find it uncomplicated then certainly they'd be happy to move it forward as well.

Mayor Donchess

Commissioner Shea.

Commissioner, Paul Shea

You might know the answer to this. Are these valves something that would be used in an emergency to shut off the gas to that section of town?

Mr. Hudson

Yes, they would. If these can't be closed because they're stuck open they would have to go to the next valve in the system, which would be further away. It would expand the area of the issue sort of speak in terms of a shutdown. I would note that this very recently paved, kind of in the limit of a paving project. We do intend to continue and go forward and we'll keep going back and repaving this issue because it will be at the match to the extended project. The city will be coming and doing paving in this area in the near future. It's most likely that rather than have them make a full repair that we would incorporate it into our paving project and take a contribution from them. But, regardless they did want to bring this request forward. And, again, if should you want to table it so they could speak to it then that's certainly your purview and I would understand that.

Mayor Donchess

Commissioner Moriarty.

Commissioner, Kevin S. Moriarty

I was just wondering how it came to their attention. Was there an odor issue?

Mr. Hudson

No, I believe they were just going out to do their yearly exercising of valves. I'm not aware of a particular issue which led them to this. I think they just went out a part of their routine yearly exercising of valves and found these to be frozen open. So they reached out to us and it was only a few days before the deadline for this agenda actually, so we kind of rushed to get this on the agenda, and fortunately they missed the part that they would have to be in here in person, and they had conflicts this evening.

Mayor Donchess

Commissioner Schoneman.

Commissioner, Shannon Schoneman

You said these were inspected before the paving of the road?

Mr. Hudson

Yes, that's what they have indicated to us and I believe that to be the case.

Commissioner Schoneman

And, there's no leak?

Mr. Hudson

There is no leak. No.

Commissioner Schoneman

Okay. And, this road is brand spanking new.

Mr. Hudson

Yes as of July of last year. Yes.

Commissioner Schoneman

Thank you.

Mr. Hudson

You're welcome.

Mayor Donchess

Commissioner Shea.

Commissioner Shea

How far in is it from the area to be paved?

Mr. Hudson

The paving that's been done in the area, we've paved along Spit Brook Road and that ends at Brook Village Road, and then Brook Village Road was paved and that ends at Spit Brook Road. It is kind of right at that intersection. These are right in the intersection where the two roads come together. The paving, like I said, in both cases was kind of at the limits of those paving projects with Brook Village Road being the most recent one, and it just goes beyond. In order to dig this up and make those replacements or repairs, I guess they're going to replace it, yeah. They will have to cut into that end or apron basically of the new pavement.

Commissioner Shea

So it's maybe like under 100 feet or so?

Mr. Hudson

Oh, definitely, definitely under 100 feet. They did include a graphic depiction on the thing, but I'm not seeing exactly how much into the new pavement it is on this, but in each case it's a 6 by 8 excavation to cut out and replace the existing valve.

Commissioner Shea

So, we could either, I mean we could table it that's an opinion, but we could either make them wait until the moratorium period is over having these valves be frozen for 5 years, or we can allow them to address it, make a contribution to the paving fund, and we'll have--it' not going to impact the long term lifespan of this road because we are going to be able to, because of the way it is situated address it with fresh pavement.

Mr. Hudson

Yeah, correct. I mean I don't know exactly. Since they have these valves that they can't operate I'm not sure what PUC Regulations they're under, it's not the same as a leak, which is the 6 month or same calendar year requirement. But, there may be other requirements that I'm not familiar with that they need to comply with on some sort of a timeframe. But, I don't know. They would have to answer those questions.

Commissioner Shea

It sounds uncomplicated to me. Thank you.

Mayor Donchess

Anyone else?

MOTION CARRIED: 4-Yea – 1 Nay (Schoneman)

E. Street Opening Permits Issued For Streets In Moratorium.

Chairman, James Donchess, Mayor

We now have, well Item E is simply an informational issue, informational item. Any discussion on that?

VIII. WASTEWATER DEPARTMENT

A. To Approve The User Warrants As Presented.

Chairman, James Donchess, Mayor

All right, we'll go to the Wastewater Department. Mr. Boucher, but we have Item A.

MOTION: Commissioner Moriarty To Approve The User Warrants As Presented.

MOTION CARRIED: Unanimously.

B. To Approve Amendment 2 To The Contract With Wright-Pierce For The Final Design Plans And Specifications For The Dry Well Valve And Pipe Replacement Project In An Amount Not To Exceed \$448,500.00. Funding For This Contract Will Be Through Department: 169 Wastewater; Fund: SRF Loan; Activity: Wastewater Plant Dry Well Valve Replacement.

Chairman, James Donchess, Mayor

Item B. Commissioner Lemen.

MOTION: Commissioner Lemen To Approve Amendment 2 To The Contract With Wright-Pierce For The Final Design Plans And Specifications For The Dry Well Valve And Pipe Replacement Project In An Amount Not To Exceed \$448,500.00. Funding For This Contract Will Be Through Department: 169 Wastewater; Fund: SRF Loan; Activity: Wastewater Plant Dry Well Valve Replacement.

Mayor Donchess

All right. Mr. Boucher.

David Boucher, Superintendent, Wastewater

Dave Boucher, Wastewater Superintendent. This project consists of replacing three-stories of 36 inch piping, along with the associated valves. Just due to normal wear and tear. The biggest part of this project is bypassing 50 Million gallons a day. Potentially 50 Million gallons a day when there's a storm event. Wright-Pierce is the company that did the preliminary work. Engineering design on it. They've completed that. They've also identified this project in our facility plan. This particular motion brings us through the final design of this project, and also covers the bidding process. They'll oversee that. I'll take any questions.

Mayor Donchess

Anyone?

MOTION CARRIES: Unanimously.

IX. DIRECTOR'S REPORT

Chairman, James Donchess, Mayor

Now we'll move on to the Director's Report.

Lisa Fauteux, Director, Division of Public Works

On August 24, Sunshine Paving installed a leach and catch basin on Seal Street and riprap on St. Joseph Drive to help manage stormwater runoff.

This is Queensway Circle. We installed final wearing course pavement on August 17.

Commissioner Moriarty

It didn't change, Director?

Ms. Fauteux

Oops. See this is my, Diane is usually here, she's unfortunately sick.

Commissioner Shea

No waters either.

Ms. Fauteux

This is why I don't do this myself.

[Group Laughter]

Multi-tasking.

Mayor Moriarty

Do you want me to come over?

Ms. Fauteux

No, it's okay, thank you. I'll try to manage. I'm also tired from the last session.

This is final paving on Harris Road, which was completed on September 8.

This is the Canal Street bridge. This picture was taken on August 19, soon after the concrete repairs on the Canal Street Bridge were completed. The repairs were necessary as this bridge has been on the NH DOT Red List bridge due to substructure issues, which is concrete deterioration and erosion. The work involved dewatering, chipping away concrete in poor condition, and then replacing that concrete. And also, a bridge barrier on the top of the bridge had been damaged by a vehicle impact and was replaced and the next slide is a picture of that. There was a crash in July 2021, so that repair was made.

So we have been, the City Engineer especially has been involved in the Brian S. McCarthy Middle School. This is the construction that started. Also, we have the access road, D 'Antonio Drive, which will be a public street has been installed with gravel and as you can see the building frame is taking shape.

The Park and Rec has been very busy lining and mowing fields. We have 80 acres of athletic turf, and here on the left is Mine Falls and on the right is Dunstable.

We had a very successful Wheels N Wings. We had nearly 4,000 people attend. That event grows each year. It was a great day for one, and we had trucks and race cars, and electric cars, and antique cars, helicopters, planes, all sorts of things. We also invited 68 Hours to End Hunger to collect both food and cash donations to support their work. Very successful event.

You may have noticed that we have a new live tree on Library Hill, and we had more landscaping to the installation. They will be taking care of it so hopefully, it survives. We have such a hard time putting up a, you know, a dead tree area. We're really hoping this time the superintendent is taking great care to try to make sure that we get through it. We added nutrient soil and we're watering it and Morin is really caring for it. We're hopeful.

Our fall plantings are almost completed. The superintendent will be planting some flowers and actually not pansies, but--

Commissioner, Paul Shea

Impatient?

Ms. Fauteux

No.

Commissioner Schoneman

Chrysanthemums?

Ms. Fauteux

No, the flower that you plant in the spring it's not a pansy, but I told you Mayor, do you remember?

Mayor Donchess

You did? Tulip? I don't know.

Ms. Fauteux

No.

Commissioner Schoneman

Probably Petunias.

Ms. Fauteux

No, the hardy flower that will last. I'm very excited to see this. He didn't want to put mums in—

Mayor Donchess

You told me, I don't remember this.

Ms. Fauteux

I did tell you. Yeah because I was a little afraid because we weren't putting in mums, but these plants will last until it freezes in November sometime, so we're very excited. Those should be going in I think in the next week or so. It's escaping me only because--

Commissioner Lemen

--I just want to tell you a number of people have told me how impressed they were with how the city looked this summer.

Ms. Fauteux

That's awesome.

Commissioner Lemen

They were like are you putting something special in the water and I'm like I have no idea.

[Laughter]

But they liked the flowers.

Ms. Fauteux

That's great. I'm glad to hear that. We're trying to improve every year and the superintendent did a nice job this year.

Our Bitty Basketball signups have started. Of course, this is our most popular rec program. We usually have about 1,500 kids that participate. It's the biggest program in the State. Families can signup on Rec Desk for that.

The Street Department removed all of the broken bollards. You probably notice on the Rail Trail. Those have been replaced. That's a great improvement. That's it. That's another example of us doing work that would cost a lot more if we subcontracted it out. There's a lot of great things despite what you heard that are going on throughout the city.

Another example here is the Atherton Field renovations. The Street Department has been doing a tremendous amount of work there. Screening materials and prepping the fields, and putting in the parking lot. We also have plans for a playground. This is going to be a great improvement to this neighborhood. People are so, residents are so happy to not have cars parked along the street. I don't expect this will be done until spring, but nonetheless, we've been working diligently on that. It's just another example of the crews installing some curbing around the monument and the new parking lot.

We cleaned up the Veterans Memorial Parkway. We're cutting brush away and we're picking up some trash. We try to do that as much as we can. We've had a lot of overgrowth this year. We're trying to get that trimmed back.

This is, we're redoing the basketball court at Field Grove that was badly needed. That's another project that the Street Department is doing in a park.

The pump station upgrades are ongoing. This is a picture of Spaulding on the left and Northgate. We have only a small amount of finish work left on Spaulding Street, and on the

Northgate you can see where the new forms are up for the loading dock. And, the loading dock is needed due to the fact that the pump station is raised and the loading dock will be needed for the loading and unloading of equipment.

This is a pump station upgraded at Blackstone. Some outside work has been completed, including louver installation, and inside new pumps have been installed, and a new control panel.

This is the Santerre pump station.

This is our laboratory staff performing some river sampling, which they do twice a year as required by our EPA permit.

The Digest Coating Project is almost complete.

This is the wastewater employees shown here replacing a belt on one of our three belt thickeners. These belts allow liquid to pass through while solids stay behind on the belt, which helps in the solid retrieval process.

You may or may not have heard there was a fatality at the Keene Wastewater Treatment Plant. It was a reminder for all of us, even folks that have been doing this work for 20-plus years, that you can never be too safe. And so, our risk department did some electrical training for our staff, just as a refresher.

This is our aeration basin cleaning. We do this annual maintenance. Each tank gets taken down annually and cleaned. They're working on one of four of them right now. These tanks are about 30 feet deep and hold more than 1,500 diffusers, and they are all hand scrubbed by staff. So, this is really labor-intensive work.

And, I just want to mention that the Mayor will be hosting a meet and greet at our wastewater treatment facility, which will include a tour on Thursday, October 6, starting at 5:30. There are a limited amount of spots so we encourage residents to give us a call if they're interested in that. The Mayor is going to tell us about all the great things happening in the new city, right. And then, the tour of the wastewater treatment facility as an added bonus.

Commissioner Shea

Is there any age restriction on that?

Ms. Fauteux

No.

Commissioner Shea

We might be--our 3 year-old has a fascination with the sewers and where everything goes.

Ms. Fauteux

Oh, absolutely--we'll sign--yeah--

Commissioner Shea

--might love it--

Ms. Fauteux

--let us know, yeah that's great. You know who else has a fascination is Tim Cummings our Economic Development Director. His little guy is just absolutely fascinated with wastewater and sewer.

Commissioner Lemen

My sister became a sewerage treatment plant operator because she was always fascinated by waste.

Ms. Fauteux

It is really very interesting.

Commission Lemen

Yeah.

Ms. Fauteux

It's a fun tour.

Our next Household Hazardous Waste collection will be held on Saturday, October 8, from 8:00 to noon at Crown Street.

The curbside collection of oversized items and appliances will be ending for this season. The last date to request a pick-up will be Friday, October 21, and collections will end Friday, October 28.

This is just a picture of our recycling table at the Nashua Goes Back to School event. We try to get out there as much as we can to encourage residents to recycle.

I wanted to let you know that we have now an American flag drop box. You can bring your used flags and put them in the box and they will be disposed of properly.

Commissioner Lemen

Where is that?

Ms. Fauteux

That is right now at the landfill, which is near the entrance at the landfill. The solid waste office now. It will be moved when we have our--when our new building opens we'll be moving it in front of our--

Commissioner Shea

--whose idea was that?

Ms. Fauteux

Actually, mine, sort of.

Commissioner Lemen

Good idea.

Commissioner Shea

That's a really good idea.

Commissioner Lemen

It's a really good idea. I mean I've had questions. If you were raised as a Girl Scout like I was. When I see people like with their flags on the ground-- you know--

Ms. Fauteux

--yeah.

Commissioner Lemen

You know, and they're tattered, they should not be up when they look that bad--

Ms. Fauteux

--right, right.

We have our new water truck was delivered in August. This replaces the old truck that had been in service since 1990.

The Four Hills landfill will be closed on Indigenous Peoples Day. Trash and curbside collection will be delayed a day that week.

And that's it. Any questions?

X. COMMISSIONER'S COMMENTS

Mayor Donchess

All right. Questions or Commissioner's comments? Anybody have questions or comments.?

Commissioner Lemen

I have one. I think--

Mayor Donchess

Commissioner Lemen.

Commissioner Lemen

We should think about getting an arborist. I mean I don't know what an arborist costs. I must say, but I really think. I have seen so many fights and I say all the social media about that tree, it would be great if we had a city arborist who could just (inaudible) we're a tree city. We have lots of trees. It would be a real service to people in the city.

Commissioner Moriarty

I think, wasn't Superintendent Caggiano an arborist?

Ms. Fauteux

He was not a certified--he was a tree warden, but he wasn't a certified arborist. I think we did have a certified arborist on staff though years ago, but he retired and that position was never replaced. The superintendent alluded to the fact that Park and Rec is understaffed and it is. So that's an issue, but yeah, I mean I would be in favor of that certainly, Commissioner Lemen as long as we could find the funding--

Commissioner Lemen

Yeah.

Ms. Fauteux

--that's always the issue, right?

Mayor Donchess

Commissioner Shea.

Commissioner Shea

I just want to note that even though we did not approve or come to some middle ground on any of the grievances today that I appreciate that we have an environment where these issues can be raised, and we can talk about them in a civil fashion, and we can review the terms of the contract openly and publically, and explore the merits of the arguments, and I appreciate that the city employees feel comfortable doing that. Because it is important that we have an open dialogue with our employees and that they feel like they can raise an issue when they see an issue. Whether it's perceived or actual in relation to the contract. This is one thing, but the fact that we have this culture and that the Union comes to represent employees and we can work through the issues, I think it is really important and I appreciate all the time that everyone here spent including city employees to explore those and come to a determination. So, thank you to all the city employees and thank you to my colleagues for taking the time this evening.

Ms. Fauteux

And one thing that you didn't see is there were many, many, many, many, many more grievances that we worked through that didn't come here before you so, there's been a lot of time spent and I don't think that this group represents the majority, in fact I know they don't so, that's why I would like to say the publically. I think we have a really great group of people who are extremely reasonable and work really well together and understand that our purpose for being here is to serve the taxpayers of the city. And, that's our only reason for being here. Otherwise, we don't need to exist and that's really important to remember.

Xi. PERSONNEL

A. To Accept The Retirement Of Robert Chick, Truck Driver, Effective September 23, 2022.

B. To Accept The Retirement Of Terrance Gilcreast, Truck Driver, Effective September 29, 2022.

C. To Accept The Retirement Of Kathleen Berube, Operations Supervisor, Effective September 28, 2022.

D. Motion: To Accept The Retirement Of Erick Faulkner, Grounds Maintenance, Effective September 16, 2022.

E. Motion: To Accept The Resignation Of Paul Pellerin, Mechanic At The Wastewater Treatment Facility, Effective September 21, 2022.

Mayor Donchess

Any other Commissioner's comments? All right we have Personnel. Now in the interest of time, we could consolidate five motions to accept resignations into one to accept all five. It's five resignations and a non-public, I think.

Commissioner, Kevin S. Moriarty

Okay.

Lisa Fauteux, Director, Division of Public Works

There are four retirements I think, Mayor, and one resignation.

Mayor Donchess

Four retirements and one resignation. Unless someone objects that would be the motion. Commissioner Shea.

MOTION: Commissioner Shea To Approve Motions A Through E As Written In Our Agenda.

Mayor Donchess

To accept the retirement of Robert Chick, the retirement of Terrance Gilcreast, Kathleen Berube, Erick Faulkner, and the resignation Paul Pellerin. Any discussion on that motion?

MOTION CARRIED: Unanimously.

XII. NON-PUBLIC SESSION

Chairman, James Donchess, Mayor

We now have a Non-Public Session. Commissioner Moriarty.

Commissioner, Kevin S. Moriarty

I don't have it, but I could just--

Lisa Fauteux, Director, Division of Public Works

--I think you do, I think I gave it to you—it should be there.

Mayor Donchess

All right, Commissioner Moriarty.

Commissioner Moriarty

Yes, thank you, Mayor.

MOTION: Commissioner Moriarty To Move By Roll Call To Seal The Minutes Of Board Of Public Works Personnel Non-Public Meeting Of August 25, 2022, Until Such Time As The Majority Of The Board Votes That The Purpose Of The Confidentiality Would No Longer Be Served.

Mayor Donchess

Could you call the roll?

Mayor Donchess

Yes.

Commissioner Moriarty

Yes.

Commissioner Schoneman

Yes.

Commissioner Shea

Yes.

Commissioner Lemen

Yes.

XIII. ADJOURNMENT

Chairman, James Donchess, Mayor

Commissioner Moriarty.

MOTION: Commissioner Moriarty To Adjourn.

MOTION CARRIED: Unanimously.

The meeting of the Board of Public Works of September 22, 2022, adjourned at 6:49 p.m.