

The Cannon Falls City Council met in a special session on Tuesday, September 7, 2021, in the City Council Chambers. Present were Council Members Bill Duncan, Matt Montgomery, Mary Jill Bringgold, Steve Gesme, and Derek Lundell; Mayor John Althoff and Council Member Laura Kronenberger were absent. Also in attendance were City Administrator Neil Jensen and City Attorney Sarah Schwarzhoff.

Call to Order Mayor Pro Tem Gesme called the special Council meeting to order at 6:00 p.m.

Roll Call Roll call was conducted. Council Members Bringgold, Duncan, Gesme, Lundell, and Montgomery were in attendance. Mayor Althoff and Council Member Kronenberger were absent.

Evaluate the Performance of an Individual Subject to the City's Authority Mayor Pro Tem Gesme reported that Josh Otto has requested that the meeting be kept open.

City Attorney Schwarzhoff provided background information. She stated that normally meetings to evaluate the performance of an employee are closed to protect the employee's privacy. She noted that the employee can request that the meeting be kept open, which this employee has requested.

Attorney Schwarzhoff stated that the purpose of the meeting is to discuss Mr. Otto's inability to work and his inability to complete his job duties. She stated that an incident occurred in January of 2021 that caused some medical issues for Mr. Otto, resulting in his working an average of less than half time since April. She reviewed the process of slowly trying to increasing Mr. Otto's hours, noting that he has not been able to work a full week since March 29, 2021. She stated that when Mr. Otto has been able to work, he has done a good job. She noted that the City needs an employee who can perform the work full-time, especially moving into snowplowing season, during which time employees may be called into work during the middle of the night. She stated that it appears that Mr. Otto will not be able to increase his hours anytime soon.

Attorney Schwarzhoff clarified that the Council discussion does not impact any Workers Comp claims or insurance payments to Mr. Otto, noting that the City does not dispute the fact that Mr. Otto has been injured. She stated that a long-term injury can be considered a disability under the Americans with Disabilities Act, noting that an employee cannot be terminated if they can perform their job duties.

Attorney Schwarzhoff stated that in this case the employee is unable to perform the duties of his full-time position with the City, plus overtime hours when needed. She noted that, under the ADA,

reasonable accommodations have to be offered. She stated that staff has been flexible in working with the employee over the last eight months to try to slowly increase the number of hours. She noted that the employee's type of injury does not lend itself to desk work, adding that this type of work is not available with the City at this time.

Attorney Schwarzhoff stated that City Administrator Jensen has met with Mr. Otto several times over the last few months to see if anything else can be offered. She reiterated that this does not appear to be a case in which any reasonable accommodations can be made by the City.

Attorney Schwarzhoff requested that the City Council conduct a performance evaluation and determine whether any action should be taken. She stated that, because this is an open public meeting, the Council may choose to take action following the discussion.

Council Member Bringgold commented that the employee's situation appears to involve good days and bad days, with the employee unable to tell whether it will be a good day or a bad day. Attorney Schwarzhoff indicated that this is a fair analysis of the situation.

It was clarified that the injury occurred while the employee was working. Medical documentation was referenced. When asked whether he has seen a neurologist, Mr. Otto indicated that he recently saw a neurologist, who wishes to try a different medication.

Gene Grover, Mantorville, Minnesota, introduced himself as the Business Representative for IUOE Local 49, stating that he is filling in for Representative Bryce Bushman, who is on vacation.

Mr. Grover stated that he has spoken with Mr. Otto, noting that it appears to him that Mr. Otto has a serious medical issue. He stated that Mr. Otto has been completing all of the appropriate steps to get to the point where he can return to full capacity. Mr. Grover indicated that he understands the demands of the job and the City's need for this work to be performed. He reiterated that the employee is doing everything he can possibly to do to get back to full-time status or more, depending upon the workload. He expressed concerns that a decision in this matter is being rushed. He stated his opinion that it would be premature to terminate Mr. Otto's employment at this time, based on the information that is currently available.

Mayor Pro Tem Gesme requested clarification of the dates. Attorney Schwarzhoff indicated that the incident occurred nearly eight months

ago. She stated that Mr. Otto worked almost full-time during the weeks immediately following the incident but then began missing work at the end of March. She noted that Mr. Otto attempted to increase his hours during July and August but was unable to do so.

Council Member Duncan stated that the City needs its Public Works employees to be able to work their scheduled shifts plus overtime as needed. He noted that if Mr. Otto's position needs to be replaced, the process of hiring and training a replacement would need to begin soon, in order to be ready for upcoming snowplowing season, which typically begins in mid to late November.

Attorney Schwarzhoff indicated that the City's Public Works Department does not have the ability to staff the hours that Mr. Otto is unable to work, especially during snow events.

Attorney Schwarzhoff reviewed the options for Council action at this time:

- 1) Take no action at this time, in the hope that Mr. Otto will be able to increase his hours back up to full-time and beyond in the near future.
- 2) Allow additional time, at which point the situation can be further assessed and further action taken at that time.
- 3) Place the employee on administrative leave and determine a date of termination of employment, in order to move forward with the hiring and training of a replacement employee.

Council Member Lundell spoke in opposition to terminating Mr. Otto's employment, in light of the fact that he has worked for the City for many years and noting that the incident occurred while Mr. Otto was at work. He added that Mr. Otto met with a new doctor for the first time today.

Council Member Montgomery commented regarding the challenges of the timeline. He noted that the Council cares about the community as well as the employee, both as a person and as an employee, adding that the employee's health is the most important thing. He asked if there would be any way to protect the employee during this process.

Attorney Schwarzhoff commented that this is not an easy decision for the Council to have to make. She discussed the importance of Workers Comp and disability insurance in these types of situations. She stated that this is a tough position for both the City and the employee.

Council Member Montgomery discussed the dilemma of hiring a replacement until Mr. Otto recovers.

Council Member Duncan referenced the City's responsibility. He suggested paying Mr. Otto through the end of September while moving forward with the hiring of a replacement.

Council Member Bringgold asked whether Mr. Otto could be laid off but not terminated. Attorney Schwarzhoff referenced the comments made by Council Member Montgomery in terms of what to do about the replacement employee who would need to be hired until Mr. Otto could potentially resume his full-time status.

It was clarified that this is an hourly position. Council Member Montgomery asked whether Mr. Otto could move to part-time status in order to fill in for vacations and absences. It was noted that Mr. Otto may not be able to work a full eight-hour day in that situation.

A motion was made by Council Member Duncan to place Josh Otto on an immediate paid administrative leave through September 30, 2021, with his employment to be terminated at that time. The motion was seconded by Council Member Bringgold. A roll call vote was conducted. Council Members Duncan, Gesme, and Bringgold voted aye; Council Members Montgomery and Lundell voted nay. Three ayes; two nay; motion carried.

Adjournment

A motion was made by Council Member Duncan, seconded by Council Member Montgomery and unanimously carried, to adjourn the special meeting. The special meeting adjourned at 6:20 p.m.

Adopted by the City Council of the City of Cannon Falls on the 21st day of September, 2021.

John O. Althoff, Mayor

ATTEST:

Neil L. Jensen, City Administrator