

City of Olean
Equity and Inclusion Committee
Minutes
Thursday, October 29, 2021
Room 119

Alderman Witte welcomed the committee, started the meeting at 6:30 pm and mentioned that it is being recorded. She said to let the record show that Mr. Gayton was excused and Ms. Daniels may attend.

Alderman Witte introduced Ward Near, the City's Human Resources Specialist and drew the committee's attention to the resolution of the Council which states:

WHEREAS, the Council is desirous of creating a Committee with the purpose of making recommendations on City policy, practice, and procedure in order to ensure fair and equitable treatment for all of Olean's residents and City employees; and

WHEREAS, the Equity and Inclusion Committee will promote inclusion and engagement for all community members with respect to City policies and practices; and

WHEREAS, the Committee would identify and address inequalities facing under-represented populations in the Olean community;

NOW, THEREFORE, BE IT RESOLVED, that the Common Council hereby authorizes the creation of an Equity and Inclusion Committee to be appointed by the Mayor with the advice and consent of the Council. RESOLVED, that this Resolution is effective immediately

Mr. Harvey said that he has a question—he said that there are many groups that are not represented. He added that the Seneca Nation is right down the road and that we are right there with them and they are involved...he said that for an equity and inclusion committee it is not very diverse and the committee would benefit being more diverse.

Mayor Aiello said that he introduced the idea of making the committee more inclusive several meetings ago. He said that he had asked for recommendations, but has not received any.

Mr. Harvey asked if it should be put out like it was when the committee was created.

Ms. Robinson said that we had talked about it but we have not met since then.

Mr. Harvey agreed that it was brought up, but little discussion.

Ms. Robinson said that she thought they were going to recommend members or groups.

Mr. Harvey said that some people expressed interest.

Alderman Witte said yes, an Asian American woman and she shared that information with the Mayor. She add that there should be something in the paper.

Mr. Harvey said if that is the route, if they do not have recommendations.

Unknown asked if there should be a general call or if they should go the recommendation route.

Mayor Aiello said that it is on the agenda and they should follow the agenda. He said that there was a recommendation that the committee follow an agenda.

Mr. Harvey said that he was referencing the item in the resolution.

Alderman Witte introduced Ward Near, the City's Human Resource Specialist, and thanked the members of the Committee for their input in the creation of the position.

Mr. Near explained how he came to Olean and described his municipal experience. He said that he started in the Development Department in Jamestown and worked to upgrade neighborhoods and housing. He then moved to the Board of Public Utilities and was president of the union. He said that he was moved to Human Resources. HE said it was a small office. He said that he did recruiting, hiring, negotiations, and discipline. He said that he handled claims. He explained that the City of Jamestown is self-insured up to \$25,000 deductible to cut down insurance cost. Anything up to \$25,000—he would investigate and make notes in the process of determining who was at fault. He added that big claims would go directly to the insurance company. He was the liaison with PERB, the Labor Department, the Civil Service Board. He added that he was FOIA Officer. He was lent to the City for negotiations with both the police and fire departments. He negotiated with the teamsters and NYSUT. He said that City Council elected, against his advice, to drastically raise the insurance cost for the middle management which was not unionized. He said that NYSUT (the teachers' union) came in and helped the middle management organize. He explained the rules of PERB and the labor relations board regarding organizing as he described the situation. He said that they voted to organize and he was involved in the first negotiation. And described the situation.

He said that he has a draft of the employee handbook. He said that it is only a conversation starter. He said that there has been a serious discipline case since he has been here. And his philosophy is that employees are valuable, an entity invests time and money in them, and you do not want to lose their expertise with termination. He said that this case it did not come to that.

Mr. Near discussed the 207 benefits 207A and 207 C – if someone gets injured—they get paid their full wages. He added that many cases involved and it is important to get best practices is to get it right. He said that he is trying to put together best practices by following the statute and that protecting both the employee and the employer which is a delicate balance. He added that the decision can be appealed by an article 78 to the state supreme court, and it is important not to be arbitrary and capricious. He add that if you say no you have to have some reasons. So he is trying to make a procedure for 207's to protect all parties. Mr. Near asked if there were any questions.

Alderman Witte said that they are looking into the Code of Ethics.

Mr. Near said that there is a model code of ethics that the City did adopt at some point in time and that he noticed that there is guidance from NYS Comptroller DiNapoli and a new model that is more detailed. He said that the biggest part of the code of ethics is financial. He said for example if you have financial interest in a city project. He said that ethic concerns are in the profiting from a city project. He

mentioned confidential information, for example if the city was going to take a city block by eminent domain and a person affiliated with the city used that information for profit.

Mr. Harvey said that he had a handful of questions that may appear disrespectful and he apologized if they appear that way. He said that his understanding is that before he took the position he had been retired.

Mr. Near said that had actually retired a couple of times.

Mr. Harvey continued and asked how long has it been since he has been in an HR role.

Mr. Near said that it was in 2014.

Mr. Harvey said that HR of 20 years ago is different that HR of now.

Mr. Harvey said that the other question that he has is that Mr. Near is looking at polices and the fact that some of these polices have not been updated in the last 10 years and that they were also informed that the City does not follow its own policies at its last meeting. He asked: What does that leave the City open to? He said that if the policy is not updated it is not any good and if it is not being followed it is not good for the employee. So he wants to know how can the committee be sure that whatever new policies that do come that they will be followed and enforced.

Mr. Near explained that is what he is doing for the 207.

Mr. Harvey said that the policies are not being followed – he said that the Mayor even said that...He said that if a policy is not being followed or enforced from the top down.....and Mr. Near stepping into the HR role—he said that if he was a city employee, that Mr. Near would have the best interest of the employee and not the employer and that he is going to be treated fair because we toss out policies. He said that it is a concern of his and that of several people.

Mr. Near said that the buck stops with the Mayor. He said as an HR person he can advise—he can tell departments what he thinks, but he cannot force them to take his advice. He said that regarding the policies, and he does not pretend that he knows all of them—he said that there is creep over time, and policies might get obsolete based on the reality on the ground.

Mr. Harvey interrupted and said that he understands, but the buck stops with the Mayor, and he said a policy is a policy, and it should be followed. And his understanding from the last meeting is that policies are not being followed. He said that the Mayor blatantly admitted that—he said that Alderman Witte said that it is the Council's job to establish that. He said that if nothing is going to be followed and if all Mr. Near can do is advise the employees. He wondered what help he can be for the employees. He asked what Mr. Near is going to constructively and concretely bring, other that hey you really ought to do, or hey you should look at this, hey let me look at you before I say something, now let me talk. He said that that is not productive. He said that right now the employees are supposed to go to the department head if they have a problem. He asked what if I do not want to go to the department head, I should be able to go somewhere else that is unbiased. He said that that is the reality of HR today. He said that is his biggest concern, and that as we continue to look at these policies, if they are not going to be followed that is a whole other conversation and those are his thoughts on it overall.

He said that if the king of the Castle complex is continued to be perpetrated it is not going to be a positive environment—it's just not. He said that you have another puppet in another position. He said it is not positive.

Mr. Near said that there has to be lines of authority in every organization.

Mr. Harvey interrupted and said that he understood.

Mr. Near said that you cannot have any individual running off rogue doing whatever they please.

Mr. Harvey said that they do—he said they told them that in the last meeting.

Mr. Near said that he cannot speak to the last meeting because he was not there. He can only speak about what he is doing and what he intends to do.

Mr. Harvey interrupted and said that that was what he was asking—what is he doing in intending to assure that the policies that are put forth by the City are followed.

Mr. Near said that he gave him an example with regard to the 207 procedure. He said that he is sure that the employee involved is very grateful that the City is starting to carefully follow the statute and get it right. And Mr. Near said that he can assure him that it will be followed. He said that 207 has not significantly changed in the past 10 years. And discussed the decisions made by the court. He said that he has been to PERB and knows many of the judges, he said some may have retired and Mr. Harvey laughed. He said that the principals are based on due process, fair play and the rights of employees and employers have not changed. He mentioned Weingarten rights, and asked if they were familiar with them. He explained that it was a case about Fried Chicken, a lady took a bigger box of fried chicken and the case went all the way to the Supreme Court because she asked for and was denied union representation. The US SC ruled that she was entitled to representation—or the employer would have to stop the proceeding. Mr. Near said that Weingarten rights have not changed in 50 years.

Mr. Harvey interrupted and said that it is good to hear that the City is going to follow to the letter with the 207. He thinks that is outstanding. He said his hope and he doesn't want to misplace a level of confidence, but his hope and confidence is that it will apply to the various things that they are trying to do in this committee as well. To provide safe avenues and positive environments to our employees in the City. He said that that was where that question came from because he said that there were some alarming conversations that took place before this meeting.

Mr. Near said that Human Resources has been his life for many years. He has gone to seminars, he has been written up in national publications for best practices and he wrote to a national publication because that math that a columnist used was incorrect. He actually has the letter that the author wrote back to him. Mr. Ward said that this was not his first rodeo.

Mr. Harvey said that he understood. But reiterated that he felt that there were alarming conversations that he wanted to address.

Mr. Near said that he has been putting out fires as they come up and he feels that that will continue for awhile.

Mrs. Robinson asked if that if the purpose of the committee's hiring of Mr. Near was to find out the protocol when an employee experiences harassment or discrimination. She asked if that was what they

talked about. Mr. Harvey agreed that that was what they talked about. She asked if that was his job as an HR person? And asked Mr. Harvey if that was what they talked about.

MR. Harvey agreed

Mrs. Robinson asked if that was his job as an HR person and Mr. Harvey agreed.

Mr. Harvey added that the committee wants to know the process and if they put a process out (not necessarily we as a committee, but if the City) is it going to be followed? Because right now several are not and they are not providing a safe and productive environment for the employees of the City. And he said now we are talking about making them more diverse, if we are not able to enforce the policies that are put out by the city, it is kind of pointless. And that was where he was coming from. He said that it is one thing to have it look pretty on paper, but if that is not how it is how followed and enforces then it opens up a whole another can.

Alderman Witte called on Ms. Daniels.

Ms. Daniels said that she is the troublemaker and Mr. Near said that he has had plenty of experience dealing with trouble makers.

Ms. Daniels said that they will have the battle of the wills and said that her interest in his experience is that has he ever dealt with and organizational accusations of racial discrimination or sexual harassment and if he has to tell her about that.

And she said that she asks the questions since the committee is about Equity and trying to create an environment of Equity and Inclusion and feeling safe and also to extend to the community the employees are one big happy family most of the time. She said that is why she asks the question.

Mr. Near said that the most controversial was a minority staff member was operating heavy equipment in a dangerous fashion. He said that there were complaints from his coworkers that were not minorities. The said that when the employee had to answer to the dangerous practice claim, he said that he was addicted to cocaine. He said that company sent him to rehab in PA and he was there for thirty days. When he returned he had to sign an agreement that he had stopped using cocaine. Mr. Near said that he had thought the problem was solved. But the first scheduled drug test came back positive for cocaine. Mr. Near said that he had failed. They had to let him go as you cannot safely operate machinery with an addiction.

Ms. Daniels asked if she was to assume that the person was a minority.

Mr. Near said that he considered it a failure because it did not go the way he had hoped it would go. But he had to part ways with the employee in the interest of safety for the other employees.

Ms. Daniels asked if there were other minorities in the company.

Mr. Near said yes, but not in this particular work crew. He said that you always wonder if there is racial animus when a complaint comes in.

Ms. Daniels said that she does not wish to judge his racial inclinations. What she personally wants as a member of this committee is that the kinds of concerns that they have regarding other ethnic groups for their committee. She said that there is an elephant in the room and that she doesn't want him to be

offended, and if so she hopes that he will get over it. But from her perspective, Mr. Near is like that guy right there, (points to Mayor) and says that he is an old white guy. And from that perspective, she would like him to know that that will always be a concern to her. She added that he could understand that from her perspective or from the perspective of the people in the community that he could not understand what they are talking about regarding relationships and could he really understand that piece of the elephant, because it is a big one.

Mr. Near said that he is definitely a white gut, but old?

She said that she is in that group too.

Mayor Aiello said that he believes that that violates our policy.

Alderman Witte said that's what concerned them is what if someone came to the Mayor, Department head or now Mr. Near with a sexual harassment complaint. She asked about the chain of command.

Mr. Near said that you start out with the supervisor and if that is the perpetrator you go to someone else. He thinks it would go to the Mayor and be delegated to him

Mayor Aiello said that it would start with the supervisor. If the employee is not comfortable with the supervisor, then the department head and then to the Mayor's office and now it would go the HR.

Alderman Witte said that the committee had been talking about this and it was something that they wanted to clarify.

Mr. Harvey said that he thinks this would be a good policy to start with.

Mr. Ring said that the City staff members take a very extensive sexual harassment training that is mandated and provided by the state. He said that he has taken it three times. He said that it is a good starting point as an organizational tool. And added that you have to take a test at the end.

Alderman Witte agreed.

Mayor Aiello said that it is state mandated and the City employees have to take it. Mr. Harvey said that they have to take it at the hospital. He added that he believes that all member of the committee would have to take it or show proof that they have taken it. He said that the program that City uses has a different course for staff and supervisors. And it is not something that an employee can skim through.

The Mayor added that the City has adopted NY State's sexual harassment policy. He believes that it was shared

Mr. Near explained that it is a safe harbor, as the State has mandated it and the resources are there at the state level. So the City can use them.

Mr. Harvey said that what was provided to them was not the current State policy.

Mr. Ring said that policies are great but the educational tools are very beneficial when it comes to sexual harassment, social media or even race relations. He added that education is a very powerful tool.

Mr. Harvey agreed.

Alderman Witte said that employees are now beginning to get that you cannot say the things that you used to say in the work place and that there are accountability issues now in place. She added that everyone has to watch the video.

1. Update on Social Media Policy

Alderman Witte said that the City's labor and city attorney looked at the policy and made changes. Mr. Near also looked at it. She drew attention to the 4th paragraph as there was a question about discipline. Mr. Near told her that the policy had been written well and the suggestions for changing it were good suggestions.

Mr. Near said that you are threading a needle. He said that on one hand you have first amendment rights and then the employer desire for a tranquil work place on the other side. It is complicated because we are a municipality. He said that at CUTCO or Olean Advance Product, you can make a policy strict, because they are not as restricted by the first amendment, where as a school or City is restricted because the "government shall make no law addressing freedom of speech, assembly and religion." So as he read it he thought the lawyers did a good job as there has to be a nexus, for example a defined connection between behavior that is not in the workplace and a result that takes place in the workplace. Otherwise the employee outside of the workplace is free to do whatever he pleases. He mentioned a Supreme Court Case about a cheerleader that was cut from the squad and then made a vulgar video. The US SC ruled that the school could not punish her for the video.

Alderman Witte said that they will now take it to the council and hopefully get it passed. She mentioned that situation that brought up the social media policy and discussed that with Mr. Near. But she added that there is a difference between private and public regarding social media.

He added that no one in local government wants to take on this type case as it could lead to a supreme court case, which is expensive to the tax payers.

2. Survey Update

Mr. Brown referred to a report that he passed to group. He said that it was hard to do a statistical analysis as there were not enough surveys done by people of any race other than white. In addition it was predominately male or female and noticed that the responders tended to be female. Most of the responded 30-49. Few younger and older. Mostly long term residents.

Mr. Brown said that feel of safety, comfort and belonging generally is good but lower for people of color. He added that females felt less safe.

Does Olean support of diversity? MR. Brown saw that the responders said that we have the most support for people with disabilities and religion. He noted in the comments that there is a problem with accessibility and he hypothesizes that able bodied people are not affected by the problem.

People of color were less likely to agree that the Olean was supportive of people of different racial identities. He said it is indicative of a blind spot in the responders that where white.

He felt that the design of the survey was faulty in regard to the needs of the community as the responders could not answer the section because the people did not know what was available. This is reference to question 7 and they cannot draw a conclusion to the question.

Mr. Brown said that four themes emerged from the surveys:

1. Comments about activities in public spaces, the desire to see more especially those that attract a diverse demographic, cleanliness of streets and sidewalks.
2. Housing, absentee landlords and blight.
3. A disconnect between the City and the residents...police department, common council and mayor's office.
4. Economic Development—wants progress to continue.
5. A number of comments that the survey was unnecessary.

Mr. Brown said that there are 353 surveys—but not all the questions were answered. Mr. Brown's analysis of the surveys is attached.

Mr. Aiello and Alderman Witte thanked Mr. Brown and said that he did a great job.

Mr. Brown said that the data supports the antidotes that they are marginalized.

Mr. Brown said that many old people did not respond.

Alderman Witte said that she was sorry that more people did not take the survey.

Mr. Harvey agreed but said that there was enough data to support what the Committee is doing.

3. Moving Forward.

Mayor Witte asked if the committee wanted to look into the Sexual Harassment policy or was there another topic that was high on the priority list.

Ms. Daniels said that two things could run through the committee. Ms. Daniels said that they have to get more people on the committee of different races and identities.

Alderman Witte agreed and asked if there was a more sensitive way.

Ms. Daniels said that the language needs to be pleading. Because historically we have said all the right things but have not acted on it—like a window dressing. She said that we need help with this.

Mr. Brown said that the Committee has to define "this".

Ms. Daniels agreed.

Mr. Harvey said that the diverse members of our community need to know that we actually care. He said that like Ms. Daniels said we say all the right things, but where is the sincerity. He said that the committee is checking the box and they cannot keep checking the box.

Ms. Daniels said that people do not get the whole diversity thing. Because we do not have a history of being diverse and equitable and so we are speaking a language that people do not understand because we do not do that.

Ms. Robinson said that there is a trust issue and well.

Ms. Daniels and Mr. Harvey agreed.

Mr. Brown said that if the perception is that someone does not understand the issues and needs of different types of people then the perception is just smoke and mirrors.

Mr. Harvey said that this is just a good ole boys club and if you are not in the club you don't matter. He said that people are not willing to step outside of their norm, unfortunately.

Ms. Daniels said that it is a good old boys club and people have to start speaking language to shift or change that. She said that as a member of the community that they have to get some energy and steam.

Mr. Ring said that he would like to comment on the surveys—they were great, but they do not answer some questions and he thinks that getting additional people on the committee would be a good way to accomplish that goal/

Mr. Harvey thinks the City and/or the Committee should have more town hall discussions. He said that public comment is great, but it is one way and the speaker does not know if he is being listened to. He said that they are just checking the box. He thinks dialogue is important to build the trust and bridge the gap. He said that by doing that they are not saying they have the answers, but are willing to find the answers. He thinks leadership shies away from dialog because they are not prepped to answer questions. And if you want to deal with your community you have to deal with it, often times unscripted, unprepared answers are the best and it is what we have to start doing in our community.

Alderman Witte received a call from an Asian American who did not feel safe. And she thinks that possibly many in that community feel that way. And she thinks that the committee should focus on the small groups of people who are uncomfortable and bring them in and listen. She said that she grew up in Bradford and she had several friends that were African-American. She moved to Eldred and had none. She has lived in Olean for 40 years and said that it is different. And she said that some people push themselves to belong and others just want to stay in their comfort zone. And she said that those individuals should feel safe to come out of their comfort zone.

Mr. Harvey wants to encourage the dialog, but when people start telling us Olean is like this – we cannot tell them that no—Olean is not like this. This perception that everything is fantastic, we really support you, but no not really we cannot do anything to support you....He said that that foolishness has got to stop. It's either we are for the community or we are not....he said that he feels like when people bring complaints the response is, "No that is not how Olean is," He said that is how Olean is and that is why people are saying that – or they are leaving. And he thinks that is an important piece of the puzzle that we are missing. He added that we say all the right things, but that doesn't mean we really care.

Ms. Daniels that there is a different demographic. She said that it used to be the right answer—but it is no longer. She also added that she hopes that they realize that she is not being disrespectful, she is hoping that a sense of where they are coming from and from his years of experience to help them figure out some ideas that they can use as they chip at the elephant.

Mr. Brown said that with the revision that there were be policies –there is a gap regarding harassment regarding bias related – what is prohibited, etc. He would be happy to help with that.

Mr. Near said that it is illegal to harass someone for the use of cannabis. He said that will require a significant change. He said that the state harassment policy is a safe harbor. He added that some of the ideas that they are discussing are already in that policy and the City has to abide by that.

Ms. Daniels asked Mr. Near if he cares if people like him?

Mr. Near said it is always nice to be liked. He quoted John Wayne, and that in essence he prefers to be pleasant, but here are times you have to do unpleasant things.

Ms. Daniels said that she doesn't care if she is liked. She said that there is not a right or wrong answer. She said that we all see the world through different glasses.

4. New Members

Alderman Witte said that she is going to ask the Asian American who called her to come and talk to the committee. She thinks it is important to have people talk to the committee.

She asked if there were any other suggestions. Ms. Daniels added that we have a business that has Mexican American owners and also Chinese. They have an investment in the community and should be included and it is important to get their perspective.

Ms. Daniels suggested people from the various churches in the community. Mr. Harvey suggested different faith groups. He added that there is a perception that there is not a realm of faith in the City and that is not true.

Alderman Witte suggested monthly meetings. There was a discussion about Thursday meetings. Mr. Near cannot come on Wednesday because of an obligation at his church. Ms. Robinson, Ms. Daniels and Mr. Harvey cannot come Thursday. Mayor Aiello suggested a different time on a day. He asked if Tuesday at 5:00. A number of members could not get here until after 5:00.

Mr. Harvey suggested that if they are going to once a month...that even when he pastored a church he missed a service once a month.

Mayor Aiello suggested sending out a calendar to get the best day and best time.

Mr. Brown added that he can get the data from the survey in a different form and Alderman Witte thanked him for the work he did on the survey.

The meeting ended at about 7:20 pm.