

Select Board Members Present:

Joseph Michaud-Chairperson
Diane Gilbert
Nathalie Dias

Robert W. Carney, Vice-Chairperson
William J. Trimble

The Chairperson called the workshop meeting to order at 6:30 p.m. on December 29, 2008 in room 304.

Members of the Executive Administrator Search Committee were introduced to the Select Board and the viewers.

All Board members were notified by a Town resident that there was a Town Meeting article approved in 1999 ruling all members who serve on Committees, Commission or Boards must be a Dartmouth Town resident. It was called to the Board's attention Sharon Wulf is a primary resident in Framingham.

Edward Goulart, Mary Louise Nunes, Bernard Roth introduced themselves to the Board. Absent were Mark Eisenberg and David Ferreira.

Selectperson Diane Gilbert also asked Sharon Wulf to introduce herself and speak to the Board about her accomplishments.

A motion was made by Selectperson Diane Gilbert and seconded by Selectperson William Trimble. It was voted (3) three in favor and (2) two opposed (Vice-Chairperson Carney and Selectperson Dias) to rescind the vote of Sharon Wulf to serve on the Executive Administrator Search Committee.

A motion was made by Selectperson Diane Gilbert and seconded by Selectperson William Trimble. It was voted (3) three in favor and (2) two opposed (Vice-Chairperson Carney and Selectperson Dias) to appoint Bernard Roth as permanent to the Executive Administrator Search Committee.

Discussion of Correspondence from Attorney's Murphy, Hesse, Toomey and LeHane, LLP. regarding changes to employment contracts.

The Chairperson read several letters into the record pertaining to employment contracts. (see attached documents)

The Select Board discussed the job protection clause in some of these employees contracts.

The Chairperson suggested this is not in the best interest of the Town.

Other Business:

The Chairperson stated they would like to adopt a new policy to approve Executive Session Meeting Minutes.

The Chairperson proposed a person from the Select Board office maybe Linda or Pam to take Executive Session Meeting minutes.

Selectperson Dias stated she would like to see the Executive Sessions held at 5:30 so the Town doesn't have to pay a person to stay until the end of the Open Meeting.

A motion was made by Selectperson Nathalie Dias and seconded by Vice-Chairperson Robert Carney. It was voted unanimously to ensure that Executive Session will be held at 5:30 p.m.

A motion was made by Selectperson Trimble and seconded by Selectperson Gilbert not to require a written request and waive the fee for Meeting Minutes.

Amending the motion Selectperson Dias felt we should charge a nominal fee of .20 cents per page.

Selectperson Gilbert stated that all minutes are supposed to be on file with the Town Clerk's Office.

A motion was made by Vice-Chairperson Robert Carney and seconded by Selectperson Trimble, it was voted unanimously to table this matter.

With no further business to discuss, the Chairperson declared the workshop meeting adjourned.

Attest:


Michael J. Gagne, Executive Administrator

Transcribed by: Linda Torres

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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 Katherine A. Hesse
 Michael C. Lehane
 John P. Flynn
 Regina Williams Tate
 Edward P. Lenox, Jr.
 Mary Ellen Sowyrda
 David A. DeLuca
 Ann M. O'Neill
 Michael F.X. Dotan Jr.
 Donald L. Graham
 Andrew J. Waugh
 Geoffrey P. Wernuth
 William P. Breen, Jr.
 Doris R. MacKenzie Ehrens

Mary L. Gallant
 Lorna M. Hebert
 Joseph T. Bartulis, Jr.
 Clifford R. Rhodes, Jr.
 Kathryn M. Murphy
 Stacey G. Bloom
 Thomas W. Colomb
 Monica Swanson Tesler
 Rebecca L. Andrews
 Jennifer N. Geosits
 Michael J. Pacinda
 Jason M. Gesing
 Bryan R. LeBlanc
 Quinn H. Vandenberg
 Kathryn M. Martin
 Kevin P. Brennan
 Kathleen E. Yaeger

Please Respond to Quincy

February 23, 2006

Michael Gagne
 Executive Administrator
 Town of Dartmouth
 Dartmouth Town Hall
 P. O. Box 75399
 Dartmouth, MA 02747-0985

Re: Changes to Copley Employment Contract

Dear Mr. Gagne:

This letter serves as follow-up to the meeting you and I had with two Select Board members, Ed Iacaponi, and Doris Copley. At that meeting, I was directed to further prepare employee-protection language to the contracts of Doris Copley and others. The intent of these protections was to shield these employees from performing their jobs in a political fashion (with an eye toward addressing a concern of one or more select persons) and instead perform their jobs without fear of political reprisal or whim of a particular Board of Select Persons. You also indicated that the sitting Select Board, as a whole sees merit to shielding these jobs from the political process and has apparently agreed to add language to one or more of the current individual, department head contracts which it hopes will give the affected employees some additional piece of mind. While I am usually in the position of affording management, not the employees, with the most protections, and while I am not usually asked to bind a Town with more restrictive contractual language, since you have indicated that the Select Board wants to accommodate Ms. Copley's concerns regarding funding, just cause protections, negotiable wages job security issues, and renewal language, I have drafted some clauses which you and the Board might find useful to meet your shared objectives. As to the negotiability of wages, I am aware

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Michael Gagne
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that the Town has previously taken the position that it would not do that and that it has asked the Town Meeting to approve a higher wage for Ms. Copley. Whereas that approach has been used in the past, the issue becomes under what authority the Town could now deviate from that practice if it wished to do so to accommodate Ms. Copley's request to do so. I will defer to Town Counsel on that point. However, I am aware that since the Town apparently believed it could negotiate the wages with Ms. Copley and others when it vested MMA with the task of setting up a pay scale for the three years of Ms. Copley's prior agreement (using figures which Ms. Copley indicated were not tied to anything in Schedule A,) it appears that they might be able to do likewise again -- since there have been no interim changes to the Town Charter or Bylaws since that was done, at least not that I am aware of.

While I have made all of the requested changes, I want to point out that I am concerned about the indefinite automatic renewals. First, it appears that the parties would have to negotiate each year or two over the next year's wage increase and because it serves to effectively afford these higher paid town employees job protections that are not commonly afforded by most communities. Second, and more problematic still, is the fact that if the contracted-employee's job is eliminated, the Select Board and Ms. Copley have asked for language in the contract which ensures she will get some other management job at the same rate of pay. Assuming this same language was in a number of different contracts in the Town, the Town could have a staff of potentially over-paid individuals doing less important management jobs, conceivably, just because the Town agreed not to let them go without just cause. Virtually every contract, even the union contracts which afford just cause protections, have management escape clauses which afford the employer the ability to terminate an employee at-will for lack of work, etc., as determined by the employer. This one does not. (In the past that language was not needed because there was no automatic renewal language.) All of that said, I suggest that there be some mechanism that allows the Town the ability to release the employees' at-will at some time. If there is any interest in adding some at-will escape clause for the Town please let me know. In any event, I wanted to point out my concerns.

Please review the attached and let me know what, if any, changes or additions you and the Board agree should be added, changed, or deleted.

Very truly yours,

Joseph T. Bartulis, Jr.

JTB/jfs
Enclosure

Mr. Gagne,

While I am told by Ms. Copley that the Town uses similar contracts with all of its higher ranking town employees, and while I am also told that the changes being made to the Paralegal Specialists contract will likely be made to the others as well, I was only given the Municipal Paralegal Specialist's contract. As such, I am only able to make the changes requested by the Select Board to that contract. I will defer to you and the Select Board as to whether these changes do or do not translate into those contracts as well.

Looking at the Paralegal Specialist's Employment agreement dated May 23, 2005, the following changes should be made to reflect the desires of the current Select Board.

Page 1:

In first paragraph, change date as needed.

Page 2:

In the Section entitled "Term"

Subsection "a" should be changed to read:

- "a. EMPLOYEE is hereby appointed for a term of three (3) years commencing (add date) and continuing through (add date.)

Subsection "c" should be modified so that both of the thirty (30) day references are changed to reflect "ninety (90) days.

Subsection "d" should be replaced with the following:

- "d. The TOWN reserves the right to terminate employment for "good cause" under this agreement upon sixty (60) days written notice to the EMPLOYEE. Good cause as referenced herein shall be equivalent to "good cause" as defined in Section 6-9 of the Town of Dartmouth Town Charter. In the event the TOWN seeks to terminate the contract for one of the above reasons, it shall serve on the EMPLOYEE written notice that termination of the contract is under consideration. Such notice shall be accompanied by a written statement of reasons. Within fifteen (15) days after receipt from the TOWN of written notice that the contract termination is under consideration, the EMPLOYEE may file with the TOWN a written request for

a hearing before the TOWN which shall be held within twenty (20) days after receipt of such request. The TOWN shall render its decision within fifteen (15) days of such hearing and shall send a copy of its decision setting forth the reasons and evidence relied on to the EMPLOYEE. The TOWN'S decision shall be based on the evidence presented at the hearing.

Such hearing may be in executive or public session, at the option of the EMPLOYEE. The EMPLOYEE shall have the right to her own counsel, at the EMPLOYEE'S own expense, and she shall have the right to present evidence in her defense.

New: Add the following as Subsection "f"

"f. The parties, by mutual consent, may terminate the contract at any time.

Page 3:

Add the following to the end of Section 3 Compensation or as an addendum:

"For purposes of this agreement, the phrase "subject to the availability of Town appropriations" shall be understood to mean that the TOWN will make every reasonable effort to secure the necessary appropriation to fully fund this position. The Select Board will have an affirmative duty to budget for the position and to speak in favor of funding this position in total. It is also understood that if layoffs or staff cutbacks are needed in the Town, this EMPLOYEE'S position will only be decreased or eliminated after the Town has already undertaken to decrease or eliminate other positions which add up to the amount of the annual salary of this position first. In the event that the funding for the position of EMPLOYEE is not appropriated or is otherwise decreased or eliminated during the life of this agreement, it is further understood between the parties to this Agreement that EMPLOYEE will be offered another management position in Town, if any exists, as determined by the Executive Administrator, for the same pay and benefits which inure to him/her under this Agreement, for the remaining duration/term of this written agreement. In the event that EMPLOYEE declines to accept and work at the new job offered to her by the Executive Administrator, all obligations of the TOWN under this Agreement shall immediately cease.

It is further expressly understood that the EMPLOYEE'S job duties under this Agreement are not the sum total of two or three separate jobs that the TOWN may or may not have otherwise had now or in the past. Rather, it is a distinct job which, by virtue of its duties, overlaps a cross-section of different job duties which may or may not also be performed by one or more other individuals in the TOWN'S employ or other job's job-descriptions. As such, it is understood that the position held by EMPLOYEE is not subject to challenges regarding the posting of any other position which may or may not remain vacant at the time of this agreement or during the life of this Agreement.

Page 5:

New: Add the following as Section 10:

"10. RENEWAL:

This agreement shall be renewed under the current terms, except for "good cause" as defined in the Dartmouth Town Charter, Section 6-9. The EMPLOYER is under no obligation to renegotiate over changing the terms of the agreement. However, in the event that this agreement is renegotiated to completion prior to, but not executed by, the expiration date of this agreement, the EMPLOYEE shall continue employment under the full terms and conditions of then-expired contract until such time as the new agreement is executed. EMPLOYEE shall be entitled to retroactive payment of any salary and/or benefit increases which occurred due to the late execution of the agreement. It is understood, however, that if the parties do not settle on the changed terms of the successor agreement prior to the expiration of the most recent contract, retroactivity will only be applicable if the parties agree to it as part of their negotiations, and shall only go back as far as the parties agree.

New: Add the following as Section 11:

"11. ARBITRATION:

EMPLOYEE agrees that any and all claims arising out of a suspension, an involuntary transfer to lower paid position, or termination of employment, other than a claim for unemployment or Workers' Compensation benefits, shall be submitted for final and binding resolution to arbitration under the rules of the American Arbitration Association. The Arbitration fees charged by the American Arbitration Association and the fees of the Arbitrator shall be paid in equal halves by the TOWN and the EMPLOYEE. Each party shall pay the costs to present its own case. The Arbitrator shall have all of the authority that a court would have

if reviewing the same issues. Appeals under the Massachusetts Arbitration Act may be taken. Both parties, in consideration of this agreement, waive any and all rights to litigate these matters in any other forum or under any other statutory authority, including tenure and anti-discrimination statutes, and to submit any and all such issues to arbitration as provided herein.”

New: Add the following as Paragraph 11

“12. GENERAL PROVISIONS

- a. If any part of this Agreement is invalid, it shall not affect the remainder of said Agreement, but said remainder shall be binding and effective against all parties.
- b. This contract contains the entire agreement between the parties. It may not be amended orally but may be amended only by an agreement in writing signed by both parties. Commencing upon signing, it supersedes all prior agreements between the parties.”

DARTMOUTH MASSACHUSETTS



Office of the Select Board

Joseph L. Michaud - Chair

Robert W. Carney, Vice Chair

Diane Gilbert

Nathalie L. Dias

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Michael J. Gagné

Executive Administrator

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December 23, 2008

Mr. Michael Gagne, Executive Administrator
Town of Dartmouth
400 Slocum Road
Dartmouth, MA 02747

Re: Correspondence of February 26, 2006

Dear Mr. Gagne,

I requested the documentation concerning the drafting, review and execution of a series of contracts currently at issue from the offices of Murphy, Hesse, Toomey, & Lehane, LLP. As you know, they were retained by the town to prepare the aforementioned contracts and provide a review of same with the Select Board. I have been provided with the following correspondence addressed to you from Attorney Joseph Bartulis.

The attached letter indicates that Attorney Bartulis had significant concerns about several provisions contained in the contracts that were ordered by yourself, Ed Iacaponi, Doris Copley and "two Select Board" members.

I have several questions regarding this letter. First, was this letter ever presented to the full Select Board for review and comment? If so, I am formally requesting the minutes from any session, public or otherwise in which the terms of this letter were discussed and voted. Two, who were the two Select Board members that were present at the meeting with Attorney Bartulis in which the employee protection clauses were directed to be included in the contracts. Finally, whether town counsel was provided with a copy of this letter prior to being requested to approve the contracts as to form.

I have directed that this letter be included on the Select Board agenda for the December 29th 2008 meeting so that same can be discussed.

Very truly yours,

DARTMOUTH



MASSACHUSETTS

Office of the Select Board

Joseph L. Michaud - Chair

Robert W. Carney, Vice Chair

Diane Gilbert

Nathalie L. Dias

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Michael J. Gagné

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Joseph L. Michaud
Chair, Selectboard

Cc: Howard Greenspan
Anthony Savastano



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December 29, 2008

Chairman Joseph Michaud
Select Board Members
Dartmouth, MA 02747

Dear Mr. Michaud:

Please be advised that I'm in receipt of your letter to me dated December 23, 2008 regarding your request for certain materials, information and answers to certain questions. Due to the nature of the information requested, I will need to research certain files to respond to your inquiries. Due to the holidays and personal time I have to take, I wish to advise that I will fulfill your request as soon as possible and make it high priority. I will put all the materials in a document for the Select Board's review.

As my staff advised you early last week, I have a personal matter this Monday evening, and I will not be in attendance at your meeting.

Respectfully,

Michael J. Gagné
Executive Administrator
Town of Dartmouth