

BOARD OF SELECTMEN
SELECTMEN MEETING
TUESDAY, SEPTEMBER 20, 2011 - 7:15 P.M.
SELECTMEN MEETING ROOM

Meeting with came to order at 7:15 p.m. with Selectmen Troy E. Garron, Kim R. Roy and Michael J. Schleiff present as well as the Wage and Personnel Board, John Grace, Chair; Maureen Roger, Clerk; and Tamara Dwyer, Member.

Rogers opened by stating that the Wage and Personnel Board has invited the Board of Selectmen to participate in a discussion for a potential grievance concerning a town employee regarding the interpretation of how vacation earned. The Board was invited here to see how Wage and Personnel came to their decision concerning how vacation time is earned.

AGENDA

Discussion regarding Cathy Miller's grievance

Schleiff wanted to add to the agenda that at the end of the discussion that both Boards vote to appoint Sally Wells to the Wage and Personnel Board.

The following business was discussed:

Roy opened the discussion by saying that the payroll company is interpreting employees vacation time by what is written in the town's by laws. She felt that we shouldn't look at what has been written but what past practice has been. The issue is Cathy Miller will be employed with the town for ten years this coming November and she was under the impression that she would earn four weeks vacation at that time but W&P has interrupted that the written by law states she does not earn the time until the completion her tenth year, which Grace agreed with.

Garron had asked Grace to read the town's by-laws (copy attached hereto and made an official part of these minutes). After reading them Grace felt the way that it is stated is correct and W&P decision was made on how they interpreted the by-laws, which is that an employee needs to work that fifth year in order to get three weeks vacation or that tenth year to get their four weeks vacation.

Garron had asked how many years of employment do you need to complete to get your three weeks vacation and Rogers went on to explain that you need to complete five years to get 3 weeks and ten years to get four weeks.

Grace stated the whole policy from day one of employment is to accrue so the first year of employment (accruing starts in your second month of employment) so at the end of your first year you have vacation time. You need to work that 5th + year in order to get the vacation time that is earned.

Dwyer felt that when you reach your tenth year your get the time you earned. She did not think that Miller needed to hit her eleventh year of employment to get her four weeks vacation that is earned for working ten years.

Miller voiced when she was hired she was not told that when she reached her sixth year or eleventh year she would get the vacation time owed but after five and after ten years.

Rogers did not think that anyone was saying that you needed to complete that extra year to get your time but Dwyer and Garron said that its what Grace is saying and Grace affirmed that's how it is interrupted because it says 5 + years and you get three weeks vacation then 10 + years and you get four weeks vacation and so on.

Garron tried to explain it a bit in steps so that he understood it as well as others who were there. So for instance I start working February 1st and after working two months I would start accruing time correct? yes... then starting July 1st no it's been changed that its not July 1st but now is your date of hire. (changed at Town Meeting 2011). Okay so February of the next year I would have completed my first year...

Dwyer said if you start on February 1, 2000 and the company's policy is that you get one week vacation after a year of employment, the following February (2001) you are entitled to your one weeks vacation.

Miller added that you accrue in your first year of employment then in the year leading to your fifth and the same leading to your tenth. So that on that fifth anniversary or that tenth you get your vacation that you have earned. The wording is incorrect.

Roy suggested that we talk about the accounting side of it.

Sandy Nolan, Town Accountant, said that past practice has been between your fourth and fifth year you would accrue time at a higher rate so that on your fifth anniversary you would get three weeks vacation. Then again between your ninth and tenth year the same would apply and you would get your four weeks vacation on your tenth anniversary. This is the way it has been done and was not as issue until the payroll company looked at the wording of the by-laws and interrupted that the higher rate would not start until after your fifth anniversary and after your tenth anniversary, which was not the practice of the Accountant's Office.

Schleiff said so you are saying that the start of your ninth year one day till your tenth year you are accruing time to reach your four weeks on your tenth anniversary and Nolan stated that is correct.

Roy went on to say that W&P did interrupt the written text correctly but the intention but was to give vacation time earned on the fifth, tenth etc. anniversary.

Rogers went on to say that at Town Meeting the by-laws were changed stating that for full-time employees, vacation time will be accrued based on their date of hire and not July 1st and she did not think there was a discussion about this accrual and asked why would we change anything now and Roy agreed that this was not discussed but said that this has been past practice and explained that in the private sector an employee would get their vacation time earned on their anniversary date, which she thought made more sense.

Seelig wanted to reiterate what has been done in the past regarding vacation time. Before we went to the accrual system, employees were given their vacation time on July 1st depending on how much they accrued. Given the accrual system, we needed to amend it so that when you got to your fifth or tenth year you get what you earned. Seelig does understand how W&P interpreted the text and with what the payroll company has interrupted but he has come up with a fairly easy solution which is that during the employees fifth year they continue to accrue at two weeks per year but on that fifth year anniversary they will get that additional forty hours and the same thing will happen with their tenth anniversary they will accrued during that tenth year at the rate of three weeks which the bylaw says on their tenth anniversary they will get those additional forty hours which will be their four weeks that they were originally promised. Because if you say to that person you have to wait a full twelve months to accrue at a certain rate so that your get four weeks you have changed what we have been doing which was after ten years giving them four weeks and now saying they need to wait for that eleventh year. There is an easy way out of this if everyone agrees but he is not hearing that everyone is in agreement.

Nolan did say that Seelig's suggestion solves the problem of when someone leaves in their fifth year and they are owed vacation time, the employee would get what is owed to them but not at the higher rate.

Garron added that the accrual system was to benefit those who started in the middle of the year so that they did not have to wait a whole year for a day off or a vacation. For example, if you are told you will receive a bonus, time earned etc. after working a year you would expect that after that completion of that year you would get what was promised not the next year. The accrual system does work well but the question is should we continue the accrual system or go with what Seelig suggested.

Rogers asked if an employee had to complete that tenth year in order to get four weeks and it was said no they complete their ninth year and then on tenth anniversary they have completed ten years of employment and get the time that is owed to them.

Nolan explained that your fourth year of employment leads up to your fifth anniversary. Grace said that we all see it that way but the by laws say 5 + years to your tenth anniversary you get such and such time... and Nolan agreed yes that it does state that but past practice has been that in that fourth year leading to an employee's fifth year they earn a higher accrual rate so that when they reach their fifth year of employment they got the vacation time (3 weeks) and again reiterated that this has been past practice and was never questioned but because we now have vacation time listed on the paychecks the payroll company had looked into it and it has been brought to our attention that we have not been following the wording of the bylaws. Miller expected that on July 1st her accrual rate would have increased and when she hit her anniversary date in November her time would be there but when we changed the bylaw to reflect the anniversary date and not July 1st and with the wording of the by-law she now will not get the higher rate therefore her four weeks will not be available to her on her anniversary date (date of hire).

Grace wanted to explain a little about the accrual process and how they came about their understanding of it... if you are accruing in year one whether its one day or two weeks it makes sense to him that when you are in your fifth year leading to your sixth year you are accruing for that third week. Roy does understand how W&P interrupted the bylaw and was not questioning how they come to their decision but asked how can it be fixed. Grace said if we want to continue with the accrual process then a recommendation would have to made to change the by-law (needs to be presented at town meeting) to read... start date to fifth anniversary two weeks; from fifth anniversary to your tenth anniversary you get three weeks as opposed to the 5 + years and 10 + years as stated in the by-laws. Grace was under the impression that the language would need to be changed but Nolan did not think it was as simple as that because in the by-laws there is chart showing the accrual rate and it states that up until your 5th anniversary you will only accrue a certain amount per month so if that is true then on your fifth anniversary you cannot get your additional week because it is not included. We can still have them accrue that amount but on their fifth anniversary give them the additional 40 hours or what their time may be, which is what Seelig proposed.

Nolan added that she was not sure how this could be worded and Karen Fava, member of Finance Committee, asked why do employees have to accrue and suggested that the most sense would be that after your first year one would get a set amount of vacation time but did add that in most companies the accrual system is used for the first year. Rogers said that there is an agreement on this but it is September and there is not a Town Meeting till May so how can it get resolved now and Grace said it would have to wait till then.

Roy said that yes it should be done at Town Meeting and mentioned there would be four employees effected with the interpretation of the by-law and asked if there was a way to grandfather those four so that they are not penalized for this error in the interpretation and questioned what powers does both Boards have in making this decision. Rogers thinks that we need to get a legal interpretation.

Schleiff added that it needs to be brought to town floor and the language needs to be written in the actual intent it was meant to be but to change what was voted cannot be done and he does not think we can grandfather those four employees.

Dick Clark, Water Superintendent, remarked that when he hired Miller she was told that she would get four weeks vacation after ten years of employment and it is not right to change that now and the only reason we are here tonight is because the payroll company pick up on this and if they did not say anything it would have never have been brought up. We should stay with past practice and every other employees he had working for him got their vacation time and that this is not fair or right that she was told something when he hired her and now its being changed.

Grace disagreed they are not changing anything but interpreting what is written and he was not aware of the agreement that was made to Miller from Clark but what he is trying to do....

Clark went on to say that it was not an agreement but that everyone who was hired was told what they would get for vacation. Grace then added that they were told wrong according to the by-laws and Clark did agree yes they were but you can't tell one that they get their vacation time and the other doesn't.

Nolan believes that we should continue to do it and go with what has been done in the past because of past practice and that everyone before has received their time regardless of how the by-law was written and interpreted and felt that W&P has a responsibility to continue with past practice until this gets cleared up. It only affects four people this year and it can be presented at town meeting.

Rogers said the reason why the anniversary date got changed from July 1st to an employee's date of hire was because if someone was hired on November 9th then they lost time earned between their date of hire and July 1st. There was a public hearing, a discussion with Sandy and Kathy and then went to Town Meeting and the change was voted on and was passed.

Nolan said that was not correct and the change that was made at Town Meeting had nothing to do with the interpretation of the by-law. The only reason this has been brought up is because someone from outside looked at the by-law and said we were doing it wrong and that we were giving employees time before it was earned.

Grace went on to say that he would be naive to sit there and believe that the request for the change in the by-law did not coincide with the thought process of when ones anniversary was going to be.

Nolan did not deny that it had something to do with the changing of the anniversary date in the by-law but she is also saying that the interpretation of this is not what has been happening.

Grace said W&P agrees that it was done incorrectly but stated that they are going with what is interpreted in the written by-law but anyone can petition a change in the by-law and present at Town Meeting and he thinks that's the way it needs to be handled. He did not feel comfortable changing it at this time and is not convinced that there is any other way to change the by-law then to bring it to Town Meeting floor.

Roy did agree with Grace but also suggested that we could check with Town Council to see if we could grandfather the four employees that are affected by this in addition to asking how this should be handled.

Grace questioned that if the four employees were grandfather and then at Town Meeting the change in the by-law did not occur then what happens to other employees that this would affect in the future. Roy had a hard time thinking it would fail seeing as Town Meeting is attend by a lot of town employees.

Schleiff added that we all seem to have interpreted the vacation time the same way and are on the same page and pointed out that if we have a Special Town Meeting this fall on other matters we might be able to take it up then. Roy was under the impression that changes could not be done at a special and that it needed to be presented at an Annual Town Meeting and Rogers added that she thinks that Roy is correct.

Garron stated that if this was a union negotiation and it was proved that it was past practice then you would have to give it them. This is non union of course and Grace said that he does not agree with that but Garron is saying that if this has happened in the past if it was to court (not saying that this should or will happen) and it was shown that it has been done for years we may lose the case.

Roy absolutely thinks the by-law should be changed and we need to seek legal opinion as to whether or not it can be changed. Rogers then asked if W&P needed to put a letter together and submit to the Board of Selectmen. Seelig added that at this time the matter is not with the W&P Board but with Board of Selectmen.

Moved by Roy and seconded by Garron, the Board unanimously voted to consult Town Council on whether or not we can grandfather the four individuals as well any other employees who may come up between now and town meeting affected by this and recommend to the W&P Board to look into that section of the by-law to be reworded in the way we have interpreted in the past and present it at Town Meeting in May 2012.

Garron wants to be fair stating that in the past others were given their vacation time and felt that it should remain the same for those coming up in the future.

Sally Wells – Appointment to Wage & Personnel Board

With the recommendation of Wage and Personnel Board member, John Grace, Selectman Troy E. Garron motioned and Selectmen Kim R. Roy seconded, to appoint Sally Wells of 62 Harvard Street to the Wage and Personnel Board effective October 1, 2011, to fill the vacancy created by Tamara Dwyer; with a term to expire June 30, 2013.

The following joint vote was taken:

Board of Selectmen	Troy E. Garron	-	yes
	Kim R. Roy	-	yes
	Michael J. Schleiff	-	yes
Wage and Personnel Board	John Grace	-	yes
	Maureen Rogers	-	yes
	Tamara Dwyer	-	yes

There being no further business, moved by Garron and seconded by Roy, the Board unanimously voted to adjourn the meeting at 7:55 p.m.

Troy E. Garron
Clerk

/pjm