

APPROVED

POLICE COMMISSION MEETING

Minutes of the Meeting of Wednesday April 15, 2009

The Hooksett Police Commission held a public hearing on Wednesday April 15, 2009, at the Hooksett Town Hall. Present were Chairperson David Gagnon, Commissioner Henry Roy, Commissioner Mary Anne Maksalla, Chief Stephen Agrafiotis, Attorney James Higgins, Attorney Elizabeth Bailey, Attorney William Cahill and Officer Jason Defina.

Chairperson Gagnon called the meeting to order at 5:30 p.m.

The Pledge of Allegiance was held.

Public Session

Personnel Grievance Report #08-04:

1. Commissioner Roy wanted to revisit grievance 08-04, and wanted the public to be aware that the Police Commission is not privy to any of the grievances before hand and received this information Monday night.

Commissioner Roy asked for clarification about the relief requested by Officer Defina and he was asking that the word blatant be eliminated, and they were asking for an immediate change to the CBA. He asked if there was any precedence set for amending a CBA, seeing that this CBA expires June 2010.

Attorney Cahill stated that the parties by mutual agreement can interpret a particular article that would benefit both parties.

Personnel Grievance Report #08-05:

1. Commissioner Roy asked how long Officer Defina has been on the Hooksett Police Department. Attorney Cahill stated 10 years this July.

Personnel Grievance Report #08-05 Continued:

Commissioner Roy inquired if Officer Defina's past personnel records would be out of line as far as a questioning at these hearings?

Attorney Cahill stated that he thinks it would be out of line as it was not something that was presented and was not offered as an offer of proof. There was mutual disclosure between both parties.

Commissioner Roy inquired if there is such a thing as a habitual offender rule like there is in a court of law? Is this something that is not germane to a union?

Attorney Cahill stated that management has a right to bring discipline but also have a right to stay within the contract to make sure it is for just cause.

Commissioner Roy inquired if each grievance should stand by itself, and past tense has no bearing on the discipline that has been served.

Attorney Higgins stated that Article 6 of the CBA deals with Commissioner Roy's question. It deals with what you can consider and what you can't consider with regards to the past misconduct of a particular grievance at a hearing. Certain serious offenses can't go away and can be considered when you are considering what to do with a grievance, and certain less serious offenses after a period of time do go away, and marked in the grievance personnel file as resolved in which they would not be considered.

Attorney Bailey stated that with the purpose of the grievances this week there has not been any issue of looking backwards into Officer Defina's personnel records. The parties have disclosed information to each other and the information that Officer Defina was given by his superiors and the Chief. They have attempted to identify their reasoning and what they based their reasoning on, which did not include looking into other personnel material.

Commissioner Roy stated that if he reads Article 6 it appears that you can go back 5 years under the CBA.

Attorney Higgins asked the point of view of council about where the Commission can look back whether or not they are presenting anything.

Attorney Bailey stated that she was not presenting anything other than what was disclosed to Attorney Cahill. For purposes of the grievances before the Commission she does not believe that an interpretation of Article 6 is needed.

Attorney Cahill stated that he is getting the feeling that Commissioner Roy thinks that if someone has had some disciplinary even thou Commissioner Roy has not seen him in two years, that some how he should be adjudicated by a tribunal, that is suppose to be

Personnel Grievance Report #08-05 Continued:

independent and unbiased, as having been found responsible for everything just because the department brought it forward. Attorney Cahill thinks that is a corruption of the theory that they are there under. They are a tribunal, and the Police Commission is suppose to be looking at the facts, and that is where the union stands on this.

Attorney Higgins stated that they are talking hypothetically, not that a particular grievance is guilty now because he was guilty in the past, but if he was found guilty now would the Commission be within its right, and should it look to what the past conduct had been of the grievance in assessing the punishment.

Attorney Cahill stated from his perspective he would want the personnel records of the people that were giving the discipline and see where they were coming from and see if they had had suspensions and how those worked out. He was focused on the delivery of these grievances and he believes that Attorney Bailey has stayed on point with what they had agreed were the issues at hand.

Commissioner Roy stated that he had brought it up because of what he had stated before that being the Commission was presented with this package on Monday night and there is a lot of information to digest and they were not privy to any of this before the hearing. That was his reason for discussing it.

Personnel Grievance Report #08-06:

1. Attorney Bailey gave a brief overview of Lt. Cline's recommendation of a 5 day suspension for Officer Defina.

It stems from issues related to Officer Defina's reporting of an incident that took place in one of the schools on December 11, 2008.

All paperwork was reviewed and discussed in reference to this grievance.

An altercation had taken place between two students at the school, Officer Defina was working at that time. He knew about the incident and did not report the incident to Lt. Cline and he did not complete a report.

There was a meeting before the Police Commission on December 16, 2008 and a discussion was held in public about what was going on in the schools. Chief Agrafiotis asked Officer Defina as the School Resource Officer, and Officer Warhall to be there to answer questions as they arose. A discussion related to concerns that had been raised publicly in the newspaper and there was dialog of what was happening. Chief Agrafiotis asked Officer Defina whether or not there were any incidents that he was aware of that had not been reported? Officer Defina answered no. Lt. Cline and Capt. Cecilio were also at this meeting. The problem with that answer was that the December 11, 2008

Personnel Grievance Report #08-06 Continued:

incident between the two students had happened and Officer Defina knew about it and he had not reported it.

Then on December 17, 2008 there was an issue at the same school involving a hate crime. Lt. Cline went to the school and worked with Officer Defina, at no time did Officer Defina let Lt. Cline know that the same students involved in the December 17th incident, where the two students that had been involved in the December 11th incident. Lt. Cline learned this from the detectives who had been assigned to the case. Officer Defina did submit a written report to Lt. Cline for the first time on December 19th. This posed some very serious concerns to Lt. Cline. Lt. Cline's recommendations explaining his reasoning as to why he thinks the five day suspension was warranted. Chief took into account this recommendation and would uphold the recommendation.

Attorney Bailey stated that looking at the contract, discipline must be done for just cause. Under these circumstances Article 18 has not been violated.

Attorney Cahill stated that Officer Defina was called to the school around 2:00 pm for a report of inappropriate material on a person's cell phone which is called sexting which can be a felony. He immediately called his supervisors but they were conducting oral boards, and he spoke with Det. Sgt. Pinardi who initially told him to stay past this shift to find out what was going on. Dispatch did get a hold of Lt. Cline and Capt Cecilio and were told there was an incident that was going on, and while Officer Defina was on the phone with Det Sgt. Pinardi, he was told to leave the school there would be no overtime.

Attorney Cahill stated that the school handled it by expelling the students. December 12th Officer Defina was off duty, was called by the department, and gave the information that should have been given the night before but he was told to go home.

Reference to the Commission Meeting in December the assault was still being investigated by Officer Defina. Attorney Cahill stated that he did not believe it is proper protocol to talk about ongoing investigations about juveniles at a public meeting. Attorney Cahill stated that in his write up Officer Defina was asked by Chief Agrafiotis if there were any reports that the police department was unaware of. The way it was written out on the form was disputed. Lt. Cline went to look for the tape from this meeting and was advised that it had been destroyed.

Commissioner Gagnon asked what Officer Defina thought the question was.

Officer Defina stated from reading the minutes the Chief asked if there are any problems in the schools that have been portrayed to them. Officer Defina stated that he cautioned Lt. Cline on submitting the paperwork because that was not what he remembered what was said.

Personnel Grievance Report #08-06 Continued:

Commissioner Gagnon asked if this incident rose to the level of a safe school report. Officer Defina stated yes and a report was done on the 19th.

Commissioner Gagnon asked Lt. Cline what happened the day of the incident. Lt. Cline stated Officer Defina was sent home because there was an understanding that the incident occurred in Manchester and that Manchester would be handling it, and before he went home he was instructed clearly to brief the detectives.

Attorney Bailey stated they are here for a grievance on Officer Defina's conduct. It seems like Officer Defina and the union would like to talk about everybody else's responsibilities and everybody else being at fault. Officer Defina did not report the December 11th incident to Lt. Cline on December 11th. Lt. Cline learned about it for the first time on December 17th.

Attorney Bailey stated that an answer for the Commission at the meeting when this issue did come up, would have been he knew an assault existed to indicate that it was pending. That is the basis why Lt. Cline has asked that this discipline should be upheld there has been no violation of Article 18.

Attorney Bailey stated that a body in New Hampshire does not need to audio tape a meeting there is no requirement that it does so under RSA 91:A. The Commission was following its protocol as it had for all its other meetings based on its understanding of some guidance put out by the local government center. There should not be any inference read into this as she thinks people are trying to create. There was not anything inappropriate that happened here on account of the tape being taped over. The fact is Officer Defina did not tell his supervisor as he was required to do about this assault.

Personnel Grievance Report #09-01:

Attorney Cahill stated that this grievances was from two separate suspensions. Officer Defina was not given the opportunity of overtime during his suspension. The suspension specifically stated the exact dates on the orders, and there were two shifts on that weekend that were opened and he believes that he was entitled to the compensation as people were being forced to work.

Attorney Higgins stated that a grievance has to be related to the contract. He is trying to see where in the contract it requires the Chief to call back Officer Defina.

Attorney Cahill discussed the suspension with the Commission and stated that it was unjust discipline.

Attorney Bailey stated that management determines who will work overtime shifts. The

Personnel Grievance Report #09-01Continued:

police department does have the discretion of who they are going to assign overtime too.

The fact he asked to work the overtime does not mean he is entitled to it, and the same goes for any other officer in the department.

Attorney Bailey asked that the Commission deny the grievance.

All paperwork was reviewed and discussed with the Commission.

Commissioner Gagnon asked for a five minute non-meeting with council at 6:51 PM. , seconded by Commissioner Roy. Motion carried unanimously.

At 7:04 pm the hearing was called back to order.

Grievance 08-04:

Commissioner Roy stated he does not think that it is a practical matter to attempt to change the verbiage of the collective bargaining agreement. Negotiations will be coming up this summer this can all be discussed at that time. Commissioner Gagnon agreed. No comments by Commissioner Maksalla.

Commissioner Roy motioned that grievance #08-04 be denied, seconded by Commissioner Gagnon. Motion carried unanimously.

Grievance #08-05:

Commissioner Maksalla stated that she sees this as a contract issue, and the time to address this would be at negotiations time.

Commissioner Roy stated that this was a convoluted grievance; he thinks Officer Defina had some legitimate questions. Commissioner Roy was suggesting one day suspension.

Commissioner Gagnon agreed and goes with the recommendation of one day suspension, and gave one day suspension back. Seconded by Commissioner Maksalla, motion carried unanimously.

Grievance #08-06:

Commissioner Roy asked for more time to review what was discussed tonight and reconvene tomorrow evening. All Commissioners agreed.

Grievance 09-01:

Commissioner Roy stated that Officer Defina should not be compensated for any lost wages and benefits. Commissioner Maksalla agreed and Commissioner Gagnon stated it should stand as is.

Commissioner Gagnon motioned that Grievance 09-01 stand as is. Seconded by Commissioner Roy, motion carried unanimously.

Commissioner Roy motioned to reconvene tomorrow evening at 5:30 pm to hear grievance report #08-06, seconded by Commissioner Gagnon motion carried unanimously.

A motion to adjourn was made by Commissioner Gagnon at 7:15 P.M.

Drafted by: Executive Assistant Francine Swafford