

Melissa Noe

From: jsylbert@mac.com
Sent: Sunday, March 02, 2014 9:50 PM
To: Town of Monterey
Subject: Performance reviews and merit raises

Dear Select Board,

I am writing in response to statements made at several board and committee meetings concerning performance reviews.

At the ECAC meeting of 10/3/13, the minutes read as follows:

“Mickey suggested that in the future the Committee should reconsider instituting employee evaluations. Muriel reiterated that the reason the Select Board and ECAC decided not to go this route as employee evaluations must be performed in an open meeting. The Board has instead opted to keep their lines of communication between the Board and the Department Heads open for both praise and criticism. Mickey and Larry were concerned that if there weren’t records on file of performance issues, letting someone go could cause problems.”

Mickey and Larry are correct. If the Select Board does not perform regular written performance reviews, the board puts the town at a tremendous liability risk. The board cannot discipline or fire an employee without performance reviews and documented warnings, and if they do so, they may put the town at risk for a lawsuit.

Public performance reviews are a part of public service. The board should not forego them merely because they “must be performed in an open meeting.” That’s the law.

In any case, I cannot find any mention in any minutes showing that the Select Board has ever consulted town counsel about this matter. I hope the board has gotten a written opinion from town counsel in support of their policy to forego performance reviews.

At another ECAC meeting of 12/5/13, the minutes read as follows:

“The committee discussed again how it would be possible to perform evaluations without the written documents being public. It was noted that any documents submitted at a public meeting are public documents. The bigger issue is that anything said or written about job performance would be public and not necessarily true as sometimes the person or persons performing the evaluation don’t have direct knowledge of the job performance on a regular basis of the person being evaluated. The Select Board feels comfortable continuing the process of speaking with employees (good or bad) on an individual basis when the need arises.”

Again, the board seems to have its priorities backwards. Protecting employees from inaccurate performance reviews is not the board’s job. The Select Board’s obligation is to conduct performance reviews of employees in a professional manner and protect the town from lawsuits.

The town is in a much stronger legal position to defend a lawsuit if it has done due diligence than if it hasn’t, and that includes written performance reviews of employees.

Also, at the Select Board meeting of 1/31/14, the minutes read as follows:

“Muriel updated the Board on the last ECAC meeting:

a. The Committee's unanimous recommendation for salary increases (with Muriel abstaining as she would be discussing it with the Select Board) is as follows: a 2% merit and 2% COLA raise for the Director of Operations, Foreman, Highway 2, and Executive Secretary and that Highway 3 will be level funded.

How can the board substantiate raises for employees when they have no record of an employee's performance on which to base those raises?

This omission also puts the town at risk, especially if the board is offering employees differing "merit" raises. Because the board has no record of employees' performances, it runs the risk of being sued for discrimination if any employee feels he or she has been discriminated against in regard to "merit" raises.

Has the board consulted town counsel about whether it is protected from discrimination lawsuits for giving "merit" raises that may be indefensible in court?

Finally, at the Select Board meeting of 2/17/14, the minutes read as follows:

"j. The proposal for raises submitted by the ECAC was discussed. Muriel suggested that instead of the 2% COLA increase that it be 1% as the northeast COLA increase was 1.3%; no decision was made. The recommendation for an additional 2% merit raise can be discussed later."

A "merit raise" is based on an individual employee's performance, therefore each employee must be evaluated individually. If the board gives different "merit" raises for different employees, or does not give an employee a "merit" raise when they give it to others, the board may also be opening itself up to a discrimination lawsuit.

Once again, is it town counsel's written opinion that the board need not perform regular performance reviews, and that the board can give "merit" raises without putting the town at risk of a lawsuit? If not, I sincerely hope the discussion of performance reviews and "merit" raises includes consulting town counsel.

Sincerely,
Jon

Jonathan Sylbert

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