

MINUTES
BOARD OF SELECTMEN MEETING
MAY 19, 2005

Selectmen John Clayton, Jr., chairman, Kathleen K. Farrell, Edward R. Perry, Jr., Janet G. Wheeler, Town Administrator, William Wrigley, Town Counsel, Karen Meyer, Esq. and Linda Hathaway, Town Clerk and recording secretary were present when Mr. Clayton called the meeting to order at 7 p.m.

Also present: Hearing Officer James P. Lampke, Esq.

Susan Hosier, Administrative Assistant was present in the audience.

Selectman Carole A. Makary was present in the audience. She did not sit at the Selectmen's table. Her counsel, Mark Burrell, Esq., was present.

Action/Discussion

Mr. Clayton explained to the Board, and the audience that filled the Warren room, this was a meeting of the Board to consider and vote, up or down, on the recommendation of the Hearing Officer, Mr. Lampke, to accept the Statement of Resolution to a grievance filed by an employee in December and the hearings the Board started in January. This meeting is not a public hearing and no public input will be taken.

Mr. Clayton read the cover letter from Mr. Lampke, dated May 11, 2005, addressed to the Board of Selectmen, Re: Mediation of Personnel Bylaw Grievance. (Attachment 1) Mr. Clayton then read the Statement of Resolution. (Attachment 2)

Mr. Clayton stated he was in receipt of a letter, dated May 19, 2005, from Susan Flint Hosier, Administrative Assistant to the Board of Selectmen and employee filing the grievance, requesting the Board approve the Resolution of the mediator, Mr. Lampke. (Attachment 3)

Mr. Perry moved the Board vote to accept the recommendation of the Hearing Officer and approve the Statement of Resolution. Seconded by Ms. Farrell.

Discussion:

Ms. Wheeler had several questions about the process. She wanted to clarify if Mr. Lampke stated that the agreement was accepted by all parties. The agreement was not accepted by all parties.

Ms. Meyer explained, if the Statement of Resolution is executed by the Board of Selectmen and the employee, "then the Statement of Resolution will have been adopted, and therefore become a statement accepted by those parties, the employer and employee."

Ms. Wheeler asked, "...how can the Board sign something to which they have not been participants? None of the board members except for Carol have been part of the mediation".

Also she questioned if the steps of the grievance process were properly followed. Ms. Wheeler feels Step 1 didn't happen and the mediation process in Step 2 did not result in a signed

statement between the participants. Ms. Makary did not agree to sign the document and a hearing was not held.

Mr. Lampke explained that the dispute is a matter between the employer, the Town of Stow, and an employee who filed a grievance. The Resolution involves both parties. There may be other participants in the process, who may not agree to the Resolution, but it is a matter of a grievance between the employer, the Town, and the employee and those are the parties to a grievance. The employee is in favor of the Resolution. If the employer, through its chief executive board is in favor of the Resolution then it is Mr. Lampke's opinion that is sufficient and within the Board's authority to approve the Statement of Resolution.

Ms. Wheeler asked, "If the grievance was against the employer, the Town of Stow, why wasn't the Board of Selectmen not a part of the mediation process?" Mr. Lempke stated that the board was free to participate if it chose to do so. Town Counsel was present and participated in the mediation. The member of the Board who was involved in the matter was present, referring to Ms. Makary. Ms. Wheeler stated that she was not aware that she could participate.

Ms. Meyer explained that the Board voted in January to authorize the Town Administrator and Town Counsel to engage a Hearing Officer to hear this matter and address it. The Board voted in January to authorize the Hearing Officer to conduct a hearing or take appropriate action to address the grievance. The Board's vote in January was an appropriate action, and the suggested outcome is also appropriate.

Ms. Meyer also explained that Mr. Lampke has heard the grievance through a mediation process that was established, occurred with numerous contacts with the parties involved and resulted in a document, which the employee who brought the grievance agrees to. The Board, as the employer, is now being asked to agree to the mediated document and endorse it.

Ms. Wheeler asked why Town Counsel had not updated the Board since the date of the mediation meeting held on February 3rd? Ms. Wheeler is concerned about signing something when she hasn't been part of the process.

Mr. Wrigley offered an analogy. He is designated by the Board of Selectmen to hear grievances. He does not engage the full board when hearing grievances and makes his own determinations. Once the Board gives the authority to its designee to hear the grievance, the designee has the authority to do so and to make a decision. The Board voted to give the authority to its designee, Mr. Lampke, to hear the grievance. The Board also voted that the designee would come back to the board with a recommendation. Mr. Lampke has done so and it can vote on his recommendation.

Mr. Clayton asked Ms. Meyer if all the proper steps were taken in this process. Ms. Meyer replied in the affirmative.

Minutes
Board of Selectmen
May 19, 2005
Page 3

Mr. Perry stated he had no reservation with signing the resolution. This is a difficult period for the Board and the parties directly involved. The message coming out of the resolution is the need to show more respect for each other especially when it comes to treating our professional staff. That is what the resolution is saying. He thinks it is appropriate and urges the entire board to sign the resolution and all of the parties involved sign the Resolution. Ms. Farrell agreed that it was important to move on and allow the board to get on with the Town's business. She also agreed with Mr. Perry that 'there was nothing in the statement that doesn't make sense.'

Ms. Makary asked if she could comment. Mr. Clayton gave her the floor. Ms. Makary read a prepared statement. (Attachment 4)

Mr. Perry stated he could disagree with a number of Ms. Makary's statements point by point, but the Board needs to move forward and put this issue in the past. He feels the process, as painful as it has been, it has been done to process and procedures. It is fair and we have no other choice than to move ahead and put this behind us."

Mr. Clayton called for the vote: Mr. Clayton, Ms. Farrell and Mr. Perry in favor. Ms. Wheeler opposed. Motion carries.

Mr. Clayton, Ms. Farrell, Mr. Perry, Ms. Hosier, Mr. Lampke, and Mr. Wrigley sign the Statement of Resolution.

Mr. Clayton asks for a motion to adjourn.

Ms. Makary brings to the Selectmen's table, her legal bill from Attorney Burrell for \$11,133.75, incurred through 4/22/05, which she submits for payment. (Attachment 5)

Motion to adjourn.

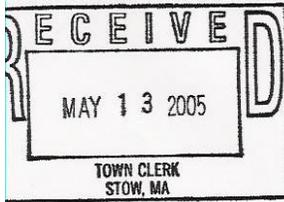
Respectfully submitted,

Linda Hathaway, recording secretary

(The documents attached are true copy. Attest.)

Approved as amended June 28, 2005

Attachment 1



LAW OFFICES OF
LAMPKE & LAMPKE
115 NORTH STREET
HINGHAM, MASSACHUSETTS 02043
(781)749-9922
FAX (781) 749-9923

A TRUE COPY
#1232
Prude E. H. Lampke
TOWN CLERK STOW, MA

HULL OFFICE
(781)- 925-1587
Please reply to Hingham Office

JAMES B. LAMPKE, ESQ.

Writer's Direct Email:
jlampke@massmunilaw.org

May 11, 2005

Board of Selectmen
Town of Stow-Town Building
380 Great Road
Stow MA 01775

Re: Mediation of Personnel Bylaw Grievance

Dear Members of the Board of Selectmen:

As you may recall, I was engaged as the Hearing Officer for a grievance filed under the town's Personnel Bylaw, Article 11, Section 17. At the scheduled grievance hearing, those in attendance agreed to attempt to mediate the dispute, which is generally a preferable way to resolve such matters. Face to face and private meetings were held that evening. There have been numerous subsequent discussions to reach a written statement.

After much discussion and upon evaluating the input from those participating, I prepared the attached statement of resolution. The employee has indicated her willingness to sign it. I am informed that the Selectman most involved in the subject matter of the grievance no longer wishes to sign the statement. Although I have requested that her counsel provide me with language with which she would be comfortable, I have not received anything further. Nevertheless, in light of the fact that the legal "parties" to the grievance are the employee and employer, I believe that the Board may vote to accept the statement without her signature.

The discussions that occurred between the participants and with me privately were very helpful. I believe that everyone has gained a better understanding of the others' viewpoint. Like most mediations, this process has involved compromise and so may not be exactly what any of the participants wish, however, I believe the resolution statement is fair and appropriate. It allows the employee and employer to move forward. "Blame" is not assigned or accepted to or by any party. The concepts expressed in the statement are fairly neutral.

I recommend that the Board of Selectmen vote to accept this statement.

Should you have any questions or comments, please do not hesitate to contact me. Thank you for your attention to this matter and for the opportunity to be of service.

Very truly yours,
James B. Lampke
JAMES B. LAMPKE
HEARING OFFICER

cc: Town Administrator
Susan Flint Hosier

Mark Burrell, Esq.
Karen Meyer, Esq., Town Counsel

Attachment 2

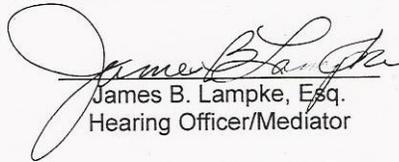
The undersigned having been appointed by the Appointing Authority for the Town of Stow as a Hearing Officer, this matter came before me pursuant to the Town of Stow's Personnel By-law as a grievance hearing on a grievance dated December 22, 2004 filed by Susan Flint Hosier, Administrative Assistant to the Board of Selectmen, grieving generally the way in which she believed she was being treated while working for the Board for Selectmen.

On February 3, 2005 the parties and the undersigned met for the purpose of said hearing. Present were Susan Flint Hosier, employee, Erica Bigelow, Esq., counsel for the employee; Karen Meyer, Esq., Town Counsel; Carole Makary, member of the Board of Selectmen involved in the subject matter of the grievance; and Mark Burrell, Esq., counsel for Ms. Makary.

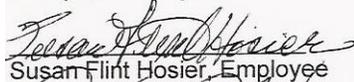
Prior to commencement of the hearing, the parties discussed the feasibility of seeking to resolve the matter through voluntary mediation. All parties agreed to attempt to resolve the matter through voluntary mediation, using the undersigned as the mediator, with the understanding that if mediation efforts did not result in a resolution of the matter, the matter would proceed to a hearing with the undersigned as the Hearing Officer.

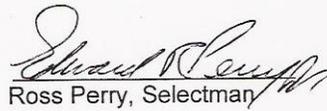
All parties actively participated in good faith in the mediation and in a sincere effort to resolve this matter. As a result of the efforts of the parties and the review of the matter by the Board of Selectmen, the matter has been resolved through mediation. This resolution involves a recognition that:

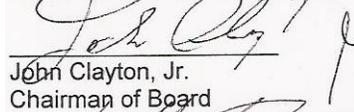
1. All parties recognize the need to and will strive to show respect, courtesy and patience in public and in private communications
2. The parties agree to work in good faith to honor this agreement for the benefit of the community to resolve this matter and best serve the Town of Stow
3. The Board is currently working on policies for minutes and agendas and will continue to do so.


 James B. Lampke, Esq.
 Hearing Officer/Mediator

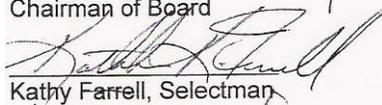
Accepted and agreed:


 Susan Flint Hosier, Employee

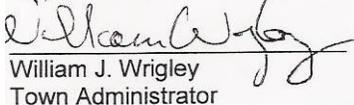

 Ross Perry, Selectman


 John Clayton, Jr.
 Chairman of Board

 Carol Makary, Selectman


 Kathy Farrell, Selectman

 Janet Wheeler, Selectman


 William J. Wrigley
 Town Administrator

Date: May 19, 2005
 511055.43p

A TRUE COPY
 ATTEST

 TOWN CLERK

Attachments

*Rec'd 5/19/05
Board of Selectmen
MTB*

779 Great Road
Stow, MA 01775

May 19, 2005

Dear Board members,

I respectfully request that you approve the settlement statement proposed by mediator James Lampke.

Attorney Lampke's proposal and recommendation to the Board are the result of Selectman Carole Makary's and my agreement to try to mediate a resolution, in lieu of a public hearing.

When I filed this grievance last December, I had two alternatives: to ask for relief from Carole's behavior toward me or to quit a job that I needed and very much wanted to keep.

As it is intended to, filing the grievance and following the appropriate process eventually helped solve the problem.

I believe the statement captures the spirit of how Town employees and Town officials should work together. I hope the Board will accept this agreement and allow us all to move on with our work.

Sincerely,

Susan Flint Hosier
Administrative Assistant
Board of Selectmen, Town of Stow

Attachment 4

Rec'd 5/19/05
BOARD of Selectmen's mtg

CAROLE MAKARY
156 Taylor Road
Stow MA 01775

A TRUE COPY,
AT TEST:
Randi E. Hathaway
TOWN CLERK STOW, MA 2 pages

If the Board of Selectmen votes to accept the statement of resolution (see attached), the Board will have ignored not only Step 1 of the Personnel ByLaws, Article 11, Section 17, but now will have also ignored Step 2.

Step 1 says "Grievance filed in writing with department head who shall hear the grievance and shall answer in writing within 5 working days. This does not preclude oral discussion or informal conferences between the supervisor and the employee. The job description for the Administrative Assistant clearly states that the employee is directly responsible to the Selectboard Chairman and is supervised on a daily basis by the Town Administrator. Neither prior nor subsequent to the receipt of the grievance letter did the Chair or the Town Administrator ever approach me, either verbally or in writing, with the intent of resolving the grievance in Step 1.

Step 2 says that if the employee is not satisfied with the results of Step 1, she may file in writing with the Board of Selectmen within 5 working days after completion of Step 1. The Board of Selectmen, or its designee, shall hear the grievance as presented by the aggrieved employee within 14 calendar days following receipt of the grievance and shall answer the grievance within 5 working days following the conclusion of the hearing.

The Grievance written by the employee on December 22, 2004 has never been heard by either the Board or their designee. At the first meeting in February with the Hearing Officer, he proposed that the parties attempt mediation in the hopes of avoiding the hearing process. 3 ½ months later, 4 draft Statements of Resolution later and tens of thousands of dollars later...the grievance has never been heard...by either the Hearing Officer or by the Board of Selectmen.

From the outset, I have argued that the grievance should have been against the Board. I, as a single Selectman, have no power to set policy. I, as a single Selectman, have no power to set process. I, as a single Selectman,

have no power to amend and approve minutes. Instead, since December 29th when I was informed by the Chair as to the existence of the Grievance, I have spent time and money for the privilege of defending myself...Town Counsel represented the entire Board...except for me. My constant insistence that the process be open and above board has cost me individually and dearly...in terms of time, in terms of money, in terms of my reputation as I have defended myself against the grievance charges. The grievance has cost the taxpayers dearly in terms of the costs associated with both the Hearing Officer and Town Counsel.

I ran for a seat on the Board of Selectmen this time last year because I value open government, I believe in facilitating public dialogue; I encourage resident participation and citizen input. At every step of the way during the last year, I have been vilified and bullied...both in public at Board meetings and in written public documents, such as e-mail. The arrival of the grievance just provided another avenue to distract and harass me. On January 4, Selectmen characterized the grievance as a very grave matter.....recommending changes to the minutes during the Board's public meetings is my job...not a grave matter. A matter so grave in January and yet one that now can be signed away by Selectmen who have neither participated in the mediation process nor the review and negotiation process related to the statement of resolution and who have never heard the grievance.

The timing of tonight's meeting is curious...almost 6 months have passed since the writing of the grievance letter...and yet, here we are 4 days before Election Day and the subsequent sitting of a new Board of Selectmen. Now, after all of the expenditure of time, effort and monies, the Board stands poised to approve and sign a statement of resolution without due process.

Attachment 5

BURRELL, FENNIMAN & SUMMERS, P.C.

ATTORNEYS AT LAW
282 CENTRAL STREET
P.O. BOX 962
ACTON, MA 01720-0962

Rec'd 5/19/05
Board of Selectmen
MTC

TELEPHONE: (978) 263-0066

MARK BURRELL, ESQ.
TODD D. FENNIMAN, ESQ.
CATHLEEN H. SUMMERS, JD, RN

TELEFAX: (978) 263-6466

OF COUNSEL
SHARON L. BURRELL, ESQ.

Board of Selectmen
Town of Stow
Town Hall
Stow, MA 01775

A TRUE COPY
ATTORNEY
Rachel E. Williams
TOWN CLERK, STOW, MA 4 pages

May 1, 2005

RE: Susan Hosier Grievance

Professional Services

12/30/2004	MB	Telephone conference with client regarding situation with grievance filed by employee; Review statutes regarding open meeting laws; Review town correspondence; Determine strategy	437.50
12/31/2004	KAJ	Prepare engagement letter to client	18.75
01/03/2005	MB	Review statutes regarding open meetings and executive sessions; Telephone conference with client regarding same; Preparation of letter to Selectmen regarding request for open hearing	700.00
01/04/2005	MB	Telephone conference with client regarding upcoming hearing; Prepare for and attend Selectmen's hearing; Conference with press regarding same	875.00
01/05/2005	MB	Telephone conference with district attorney's office regarding open hearing; Telephone conference with state public documents department regarding grievance letter; Review e-mail correspondence; Telephone conferences with client regarding strategies for presentation and public review of case	743.75
01/06/2005	MB	Review newspaper article; Telephone conference with client regarding same; Review additional e-mails and other correspondence	393.75
01/07/2005	TDF	Telephone conference with Atty. Dinwoodey regarding Town Counsel information and hearing determination questions for Atty. Burrell	50.00
	MB	Telephone conference with Attorney Karen Meyer regarding making investigation process open to public; Telephone conferences with client regarding same	175.00

SCA

J/2005			
	MB	Draft letter to press regarding grievance letter; correspondence with Attorney Karen Meyer and client regarding request to settle with private mediation	656.25
I/11/2005			
	MB	Amend draft minutes of January 4, 2005 Selectmen's meeting; Amend and forward letter to newspapers with client comments; Telephone conference with client regarding same	218.75
I/12/2005			
	MB	Telephone conferences with client and Attorney Karen Meyer regarding need for public solution to grievance; Review e-mail correspondence regarding same	350.00
I/13/2005			
	MB	Telephone conference with client regarding open meeting on evidentiary hearing; Review Massachusetts code on grievance hearing; Preparation of letter to Attorney Karen Meyer regarding evidentiary hearing; Telephone conference with District Attorney's office regarding open evidentiary hearing	700.00
I/17/2005			
	MB	Telephone conference with client regarding recent e-mail correspondence	43.75
I/19/2005			
	MB	Review Town's grievance by-law; Telephone conference with Attorney Karen Meyer regarding hearing procedure; Telephone conference with client regarding same	262.50
I/20/2005			
	MB	Telephone conference with client regarding media coverage and upcoming evidentiary hearing; Telephone conference with Attorney Karen Meyer regarding procedural aspects of upcoming hearing	218.75
I/25/2005			
	MB	Telephone conference with mediation Attorney Lampke regarding procedure for evidentiary hearing; Telephone conference with client regarding same	175.00
I/26/2005			
	MB	Telephone conference with mediation Attorney Lampke and client regarding postponing evidentiary hearing	43.75
I/27/2005			
	MB	Telephone conference with client regarding alternate hearing date; Review e-mail regarding selectmen's handling of meeting minutes	87.50
I/28/2005			
	MB	Telephone conference with mediation Attorney Lampke and Attorney Karen Meyer regarding upcoming hearing	87.50
I/31/2005			
	MB	Numerous telephone conferences with client regarding upcoming hearing; Telephone conference with Beacon Villager newspaper regarding hearings; Telephone conference with hearing officer and opposing counsel regarding continuing hearing date	262.50
'01/2005			
	MB	Telephone conference with Attorney Bigelow regarding background information to hasten settlement	87.50

act

:005			
MB	Telephone conference with Attorney Bigelow regarding upcoming hearing; Telephone conference with client regarding same; Review e-mails and documentary evidence; Attend grievance mediation hearing		1,575.00
:005			
MB	Telephone conference with client regarding press release, settlement, and next hearing date; Telephone conference with Attorney Meyer regarding schedule for hearing date; Prepare e-mail message to mediator regarding rescheduling hearing		175.00
:005			
MB	Telephone conference with Attorney Meyer regarding scheduling final conference		43.75
:005			
MB	Telephone conferences with client regarding possibility of settling by telephone; Telephone conference with Attorney Meyer regarding settlement; Telephone conferences with mediation Attorney Lampke regarding telephonic settlement; Telephone conference with Beacon Villager newspaper reporter M. Kerr regarding recent developments		393.75
:005			
MB	Prepare for and attend telephone conference regarding settlement		437.50
:005			
MB	Review of draft settlement statement; Revisions to draft settlement statement; Further revisions to same; Telephone conference with client regarding need to revise settlement statement		350.00
:005			
MB	Review of e-mails from client regarding response to draft settlement agreement; Revise settlement agreement		131.25
:005			
MB	Revisions to settlement agreement; Preparation of letters to J. Lampke and K. Meyer regarding settlement; Telephone conference with K. Meyer regarding proposed settlement agreement		262.50
:005			
MB	Amend letters to Attorneys Meyer and Lampke after conferring with client regarding draft settlement and letters		87.50
:005			
MB	Preparation of e-mail to J. Lampke regarding need for conclusion to settlement		43.75
:005			
MB	Preparation of e-mail to client regarding status of matter		43.75
:005			
MB	Telephone conference with client regarding March 31st deadline to settlement		43.75
:005			
MB	Review of draft settlement; Preparation of e-mail to clients with need for revisions to same		87.50

JH

.0/2005			
MB	Review of revised settlement; Preparation of draft letter to W. Wrigley; Telephone conference with client regarding revised settlement draft; Telephone conference with K. Meyer regarding settlement		393.75
/01/2005			
MB	Telephone conferences with client regarding status of settlement; Telephone conference with J. Lampke regarding modifications to settlement agreement		131.25
/19/2005			
MB	Review of e-mail correspondence; Preparation of draft letter to J. Lampke regarding mediation status; Telephone conference with client regarding response to settlement		131.25
/20/2005			
MB	Review of recent amended settlement agreement		87.50
'21/2005			
MB	Preparation of e-mail to J. Lampke; Telephone conference with client regarding amended settlement agreement		43.75
'22/2005			
MB	Telephone conferences with J. Lampke and client regarding settlement agreement		175.00
	For Current Services Rendered		11,093.75

Disbursements

03/2005	Obtain copy of Town of Stow Charter and By-laws		<u>40.00</u>
	Total Disbursements		40.00
	Total Current Work		11,133.75