

**BOARD OF SELECTMEN
EXECUTIVE SESSION MINUTES
NOVEMBER 13, 2012**

Present: Thomas Creamer, Chairman
Priscilla Gimas
Mary Blanchard
Mary Dowling
Mary Redetzke
Fire Chief Leonard Senecal

The Chairman called the executive session to order at 8:37 p.m. under MGL Chapter 30A, §18-25, Paragraph #3: To discuss strategy with respect to collective bargaining or litigation; not to reconvene in open session.

T. Creamer noted that since Chief Senecal was present, Captain Marinelli was no longer serving as Acting Chief, so he then became a member of the collective bargaining unit, therefore his attendance at the executive session was unnecessary.

Mandatory Retirement

T. Creamer advised the Board to refrain from using the individual's name, as the discussion would be more of a policy issue, as opposed to a personal issue. He said that the question before the Board was regarding an individual who is currently serving on the Fire Department who is over the mandatory retirement age of 65. He noted that the Board had a preliminary discussion at the previous meeting. He said that the Board had received an opinion from Town Counsel, which stated that the Town does have an obligation to adhere to the retirement age, which is set by the state and recognized by the Public Employee Retirement Administration Commission (PERAC).

T. Creamer read into the record the letter from Attorney Joseph Fair of Kopelman and Paige.

Chief Senecal suggested that the individual be put on as Assistant to the Chief, and noted that as of December 30, 2012 the individual will no longer serve as an EMT, and will no longer participate in the activities of firefighting or ambulance work; he does dispatching most of the time, and works at the station as a supervisor.

M. Dowling arrived at the executive session at 8:45 p.m.

MOTION: That the Board allow Selectman Dowling to participate as a member of the Board, by T. Creamer.

2nd: P. Gimas

Roll call vote: P. Gimas in favor; T. Creamer in favor; M. Blanchard in favor; M. Redetzke in favor; M. Dowling in favor.

Chief Senecal said that he was looking at another avenue to keep the individual on at the Fire Department, but not as an active firefighter. He did not know whether the Captain position will change or stay the same. He noted that the individual is of value to the Fire Department, is in good health, and handles emergency responses internally from dispatch. Chief Senecal said that it would be worthwhile to keep him on. The individual is 76 years old.

T. Creamer said that the issue is the potential liability for the Town of Sturbridge, and the precedent that would be set. M. Blanchard did not think this would set a precedent, as each case should be different. She said that the process for special legislation is too long, and did not think the Town would get far with it. She said that the Fire Chief and Town Administrator should meet to discuss the Captain position. She noted that the individual has valuable knowledge, and has always shown drive and dedication; however, the Town does need to enforce mandatory retirement.

T. Creamer said that there were two discussions: (1) Whether or not to enforce the state's requirement for mandatory retirement; and (2) Whether or not the Board is amenable to a non-firefighting position for the individual. M. Dowling said that she preferred to have the discussions together. She would have preferred to have the Town Administrator present to participate in the discussion, as he is chief of staff for the Town and has a duty and obligation to provide his insight as to whether he also agrees, and to work with Town Counsel.

P. Gimas said that the mandatory retirement age is 65, and expressed concern about setting a precedent that when someone reaches mandatory retirement age, the Town will find a spot for him/her, and whether that meets the Town's needs all the time. She was in favor of upholding the mandatory retirement age, and was not in favor of creating a position for this individual.

M. Redetzke was in favor of going with what the law states. She noted that the individual is still working, and he should stop doing EMT work immediately, as the Town is liable as of this moment, as the Board knows.

T. Creamer asked whether there was a light duty provision in the contract. He said that some fire departments have light duty provisions designed so that if a firefighter is injured, he/she can perform administrative tasks. He noted that the fundamental belief in most fire departments is that an individual must be able to do 100% of the job, or do none of the job. He suggested that Chief Senecal and the Town Administrator discuss the matter and present a proposal to the Board regarding the creation of an administrative position. He expressed concern about this individual going out on a call, becoming injured, going out on disability, and then the Town would have to pay 72% of his salary for the rest of his life.

M. Dowling noted that the Town has let this issue go for 11 years. She recommended handling this is a well-thought-out way. She said that it is the Town Administrator's duty

to address this. She suggested that the individual not engage in call duties until the Board has the opportunity to meet with the Town Administrator about it.

Chief Senecal said that he would talk to the individual and eliminate his EMT participation.

M. Dowling said that she would support an administrative job for the individual, and that S. Suhoski must work out the details with Chief Senecal and Town Counsel.

M. Blanchard said that if the individual is told to take the week off, he is not working, so there is no liability. She suggested telling him to meet with S. Suhoski and that the Board be provided with more information for the next meeting.

P. Gimas said that enforcing mandatory retirement would not preclude the Board from talking with S. Suhoski about creating another position.

M. Redetzke asked about the impact on his time and grade, if he is hired as an administrative assistant. Chief Senecal said that he could keep his Captain position, but just do administrative duties. M. Redetzke said that the Board needs to enforce the mandatory retirement age, as per the input from PERAC and Town Counsel. She said that creating new rules regarding letting people work after age 65 could cause problems in the future.

MOTION: That the Board direct the Fire Chief that the on-call firefighter does not work until the Board holds another executive session to discuss two things: mandatory retirement, as well as whether or not an administrative job will be created for this person, or special legislation, by M. Dowling.

2nd: T. Creamer

Roll call vote: P. Gimas: no; M. Dowling: yes; M. Blanchard: yes; M. Redetzke: no; T. Creamer: no.

The motion failed 2:3.

M. Redetzke said that the only reason she voted “no” was because of the legal aspects of this. She suggested waiting until S. Suhoski returns. She stressed the need to obey the law. M. Blanchard said that the Board is not disobeying the law if this individual does not work for a week. She noted that he is on call, not full time.

MOTION: To direct the Fire Chief to instruct all personnel under him who are over the mandatory retirement age of 65 not to work in the Fire Department effective immediately, by M. Dowling.

2nd: M. Blanchard

Roll call vote: P. Gimas: yes; M. Dowling: yes; M. Blanchard: yes; M. Redetzke: yes; T. Creamer: yes.

MOTION: That the Board of Selectmen reaffirm the Town's commitment to the mandatory retirement age of 65 as established by the state and to direct the Town Administrator to ensure that all Public Safety departments are in compliance with the mandatory retirement age of 65, and that there are no employees who are working beyond that, by T. Creamer.

2nd: M. Blanchard

Roll call vote: M. Redetzke: yes; P. Gimas: yes; M. Dowling: yes; M. Blanchard: yes; T. Creamer: yes.

MOTION: To direct the Chairman to schedule an executive session under collective bargaining for November 19, 2012, by M. Dowling

2nd: M. Blanchard

Roll call vote: M. Redetzke: yes; P. Gimas: yes; M. Dowling: yes; M. Blanchard: yes; T. Creamer: yes.

M. Dowling said that Chief Senecal and S. Suhoski should talk and present details to the Board.

MOTION: To adjourn, by M. Blanchard.

2nd: P. Gimas

Roll call vote: M. Redetzke: yes; P. Gimas: yes; M. Dowling: yes; M. Blanchard: yes; T. Creamer: yes.

The meeting adjourned at 9:47 p.m.

Respectfully submitted,

Judy Knowles

BOS Clerk

Date