

**BOARD OF SELECTMEN  
EXECUTIVE SESSION MINUTES  
NOVEMBER 19, 2012**

Present: Thomas Creamer, Chairman  
Priscilla Gimas  
Mary Blanchard  
Mary Dowling  
Mary Redetzke  
Shaun Suhoski, Town Administrator

The Chairman called the executive session to order at 10:25 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.

**Mandatory Retirement Age Policy**

S. Suhoski said that he had written a draft of the Mandatory Retirement Age Policy, and emailed it to the Board and to Town Counsel.

T. Creamer said that the Board's position, unanimous in vote, was that the mandatory retirement age of 65 must be enforced in the public safety departments of police and fire (uniformed personnel) because it does not apply anywhere else. The Board's vote was to affirm and direct the Town Administrator to notify the relevant departments of the mandatory retirement age. The tone of the message was that the Board had received information from Labor Counsel that mandatory retirement age applies to all police and fire, whether full time or part time, call or otherwise. He noted that there are no exceptions to that policy. The Board had directed the Fire Chief (because the Town Administrator was absent) to have any personnel in his employ in the Fire Department who were over 65 to stand down and not participate in any work.

M. Dowling said that T. Creamer had initiated a motion that the Board could agree with, which was excellent. M. Dowling said that the Fire Chief wanted to create an administrative job for this one individual that this will impact. M. Dowling wanted it be in a position to go forward and say: "We are enforcing mandatory retirement, but the Board considered this administrative job that the Chief has requested, and if the Board votes "yes" it will be offered as a package; if the Board votes "no" then the Board is in a position to say: "We considered this at the Chief's request, but for the following reasons we are not going that route." She said that she was under the impression that S. Suhoski would come forward with the Chief in executive session, and the Board would be in a position to vote on it before going forward to this individual.

S. Suhoski said that from the prior meeting, his memo dated November 7, 2012 lays out Town Counsel's opinion and the policy questions that the Board is currently discussing. He said that he queried the Payroll Department and department chiefs, and there are no other employees that this is subject to. He said that he had met with the Chief last

week, and he provided a draft position description for the Board's consideration. He noted that there were a few questions about whether it creates a precedent, and whether the position is separate enough from the duties of a firefighter that it avoids all liability regarding the mandatory retirement age.

S. Suhoski read the Fire Chief's input into the record. M. Dowling indicated her disappointment and disapproval that the Town Administrator did not provide, given his absence, either (a) a written recommendation; or (b) a written request that the Executive Session move forward when he could be in attendance. M. Dowling indicated that leadership and guidance was lacking. She stated that enforcing state law is not a matter of policy for the Board of Selectmen but, instead, within the Town Administrator's purview as Chief of Staff. She said that at a minimum, a decision should have been reached with a full Board and the Town Administrator.

S. Suhoski said that he would prefer to wait until December 3<sup>rd</sup>. He said that one of the questions to Town Counsel is regarding liability and compliance to the law, whether it is close to having a civilian operator that has a Commercial Driver License, which is a higher requirement than what is required of firefighters. He said that firefighters are exempt from operating heavy vehicles, but a civilian would need a CDL to operate them. S. Suhoski requested that the Board hold on this until December 3<sup>rd</sup> in order to have Town Counsel's input on the liability question, the precedent setting question, and to allow the Board more time to think about it. He said that he and Chief Senecal will come before the Board and make their case on December 3<sup>rd</sup>. He said that as an employer, the Board is doing the right thing in terms of its vote on the policy. He noted that the information is clear that the policy must be implemented to call personnel as well as full time personnel. The Chief and Captain have said that the individual has qualifications that are still needed for the department.

T. Creamer asked why this position would be part of the collective bargaining agreement. S. Suhoski said that the current call Captain wages are in the agreement. T. Creamer noted that what is being proposed is not a firefighter position, and he would not be open to it being part of a collective bargaining unit. S. Suhoski said that this will be a non-union civilian position. M. Dowling said that she didn't think this position could be in a collective bargaining unit, because legal requirements need to be satisfied.

M. Blanchard noted that the Town uses Kopelman & Paige for all its questions, when it had used Mirick O'Connell for labor counsel at one time. S. Suhoski said that Mirick O'Connell had been used as special counsel when there was a conflict, when Kopelman & Paige was representing the Town of Southbridge.

M. Redetzke asked whether the new position needed to be open to other applicants. If so, how will the Board make sure that this individual will be selected. S. Suhoski said that under the non-union personnel policy there is an internal promotion process, but the job would still have to be posted. M. Dowling said that there is a requirement to post in a certain manner if a position is going to be filled.

T. Creamer expressed concern about creating a long-term indefinite position. He suggested that S. Suhoski look at this as a temporary Assistant to the Fire Chief, or an interim, because he could not support an additional position that is forever. He said that it should be confined to this one case. P. Gimás said that it could still be a precedent, even if it is temporary.

M. Redetzke asked whether someone of this age should be driving such large vehicles to rush to a fire scene. S. Suhoski said that this individual has more training and qualifications than the firefighters, due to his CDL. P. Gimás said that if someone else applies for this position who has more credentials, he would not be hired. She noted that it is a custom made job. T. Creamer suggested asking Town Counsel whether a temporary position could be created solely for this one individual, and do it in a way that it does not set a precedent, and that the position ends when he is gone.

M. Dowling suggested there be a length of term on this position, of one or two years. T. Creamer said that he was looking for limitations, and would not support this as a permanent position, as it is only designed for one person, nobody else. He stressed the need for input from Town Counsel as to what needs to be done to protect the Town. He did not want someone else to bring a lawsuit against the Town because this is being done for this one individual and not for others. Town Counsel should tell the Board what the legal ramifications are in this matter.

M. Dowling asked the Town Administrator for his opinion, as chief of staff. S. Suhoski said that he supports finding an accommodation for this person, and finding an exit strategy to help this individual, who has a very long affiliation with the Town, but protect the Town in the interim by enforcing the mandatory retirement age. He noted that this individual still provides value for the Town.

M. Dowling asked whether the Town Administrator would support the individual's new duties and responsibilities, if Labor counsel indicates that the position is separate enough from a firefighter position in terms of liability. S. Suhoski said that he would support them.

M. Dowling said that she had been uncomfortable at the previous meeting with the Board having to take a vote without the Town Administrator or Fire Chief present to provide their input. S. Suhoski said that he would prefer to wait until December 3<sup>rd</sup>, as he needs answers from Town Counsel. He noted that he had given the Board a memo on November 7<sup>th</sup> which indicated Town Counsel's opinion and the applicability of the retirement law. He noted that there is no case law on this specific issue. He said that the Chief had been on medical leave, and was unable to attend the meeting.

T. Creamer said that he had received a phone call that the individual was very upset that the Board of Selectmen had made a decision to terminate his employment. T. Creamer has not responded yet. He said that it is a decision, not a policy. M. Dowling said that the individual thinks that it was the Board's decision. She said that the Town Administrator should provide guidance on what Town Counsel provides. She said that it

should not appear to be the Fire Chief vs. Board of Selectmen. T. Creamer said that it is not meant to be confrontational. He said that it looks as though the Board had stepped in over the Town Administrator and the Fire Chief. He said that it would have served the Town and the employee better to know that it had come from the Chief and the Town Administrator, and the Board had agreed with their position.

P. Gimas said that when the Fire Chief is present on December 3<sup>rd</sup>, the Board could ask him to step out while the Board discusses it. T. Creamer said that the Chief is not required to be present for the vote; he could be present for the discussion as a matter of courtesy and respect. When it comes times to vote, the Chief could respectfully be asked to leave; then it becomes a policy decision in executive session. It would be the Town Administrator's responsibility to convey that decision to the Chief. He suggested that S. Suhoski say, "Chief, thank you very much for your input – the Board will take it under advisement."

M. Dowling said that she would support having the Chief stay for the entire thing. She said that she would not vote to remove him.

S. Suhoski said that the Chief should be present to advocate as to why he thinks the individual's new position is important. S. Suhoski said that he would support whatever iteration Town Counsel provides, while assuring it is not a precedent setting position; after that, the Chief doesn't need to be party to the Board's discussion leading to its vote. T. Creamer felt that was the right approach. He said that the Board could use this as a learning tool going forward.

### **Executive Session Minutes**

**MOTION: To release the executive session minutes of April 3, 2006; April 2, 2007 amended to remove or redact the paragraph that contains, "Hal White suggested putting pressure on the Chief . . .;" April 18, 2006 amended to redact the paragraph that contains, "Gary Galonek" . . . down to "police collective bargaining agreement;" May 7, 2007 as written; May 21, 2007 as written; June 4, 2007 as written; August 6, 2007 as written; August 20, 2007 as written; September 4, 2007 as written; October 15, 2007 as written; and November 5, 2007 as written, by T. Creamer.**

**2<sup>nd</sup>: M. Blanchard**

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

M. Blanchard noted that on the Gary Galonek one, she just voted "yes" to be accommodating. She did not agree that just because it is phone calls that the Board should redact the whole thing. M. Dowling suggested leaving some of it in, and noted that it is very strong language. She said that the broader issue is still out there. T. Creamer said that anything attorney/client should be redacted.

T. Creamer said that S. Suhoski should reaffirm with the employee that he is not allowed to work in any capacity until this issue is resolved. He suggested that S. Suhoski provide any information from Town Counsel to the Board well in advance of the meeting.

**MOTION: To adjourn, by M. Blanchard.**

**2<sup>nd</sup>: P. Gimas**

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

The meeting adjourned at 11:50 p.m.

Respectfully submitted,

Judy Knowles

---

BOS Clerk

Date