

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
EXECUTIVE SESSION MINUTES
JULY 7, 2015

Members Present: David S. Feldman, Vice Chairman
Christopher P. Mitchell, Clerk
Virginia M. Coppola
John R. Gray

Others Present: William G. Keegan, Jr., Town Manager
Ms. Mary Beth Bernard, Assistant Town Manager
Attorney Leo Peloquin
Chief O'Leary

The meeting was brought to order at 6:30 p.m. by Vice-Chairman David Feldman

A motion to enter into Executive Session to conduct strategy sessions in preparation for negotiations with union personnel or to conduct collective bargaining sessions or conduct negotiations with union personnel – Student Officer Litigation and return to regular session at the conclusion was made by Christopher Mitchell. Seconded by John Gray. **The motion carried 4-0-0. Roll Call Christopher Mitchell – yes, John Gray, - yes, David Feldman – yes, Virginia Coppola – yes**

Attorney Peloquin stated that Bill Keegan advised the Board along with an E-Mail about the Appeals Court decision in the Student Officer case.

The legislature many years ago created legislation that a Student Officer cannot do any police work until they are trained at the Police Academy.

The essence of statute is that you don't get the pay or benefits of a police officer. They are exempt from collective bargaining and are not eligible for 111F. The court interpreted one phrase "provided you will be paid the regular wages to the position to which you were appointed" and read it as "except for the wages as a police officer" and therefore the Town was obligated to pay Steven McGrath a first step salary of a police officer.

Attorney Peloquin thinks this is ridiculous as Steven McGrath is not a police officer. The legislature didn't do anyone any favors.

The court felt if they wanted an entry level rate of the police department they didn't do this with clarity and that it applied to everything but the base salary.

The appointing authority shall determine the reasonable expenses.

Attorney Peloquin had another line of defense; the Police Collective Bargaining Agreement. The union and town voted a long time ago that speaks of Student Officers (46.9 6b), this is in the collective bargaining.

The salary is in the Collective Bargaining Agreement. If the court says the Collective Bargaining Agreement sets the salary, then for more than 15 years the town has paid a student officer a student officer rate so this has been past practice and never was stopped by the union.

The court did not want to hear the idea of arbitration; they stated it was a wage claim.

The town is in a situation if not reversed under the Wage Act; Steven McGrath would get triple the amount of pay for 2006 and 2007 than what the town paid him. The difference would be roughly \$200 a week and he was in the academy for 26 weeks so the total would be \$5,200. This is not discretionary.

No one has determined there has been a wage act violation.

The Superior Court favored the town. The rate in the police contract cannot govern only the wage in the by-law so the court said to send this to court to proceed with this decision.

$\$5,200 \times 3 \text{ (years)} = \$15,600$. On top of that would probably be 12% interest. Every year it doubles the amount of the principal which from 2006-2012 would be over \$30,000. Worse yet, the Wage Act states attorney fees are automatic. Going to Superior Court and Appeals Court at a minimum would be \$30,000 (if not north of that) in attorney fees.

The town also would have the potential of any student officer in the three year statute of limitations window (starting today) to bring a claim against the town.

Mr. Keegan stated there were five (5) student officers during that timeframe.

Mr. Keegan stated that the numbers increased because the contract amount increased faster than the by-law.

Mr. Gray stated that the town could be looking at \$200,000 by the time this is done.

Attorney Peloquin stated that there is the potential that if the town decided at some point in time to cut a check for the principal amount they may not go to court.

Mr. Gray asked if it was unusual for Andy Gala to have written the appointment letter and did the letter always come ahead of the Student Officers showing up at the academy. Attorney Peloquin stated that this was not unusual and that there are three phases to the conditions:

1. Physical Exam
2. Medical Exam
3. Completing Academy

If someone went to the academy for only two weeks they wouldn't have met the conditions. Mr. Gray stated that this happened many times and the letter was clear. Attorney Peloquin stated the problem isn't letter; the statute doesn't take the letter into account. The Civil Service doesn't have a classification for a student officer. The statute overrides whatever you are appointed to, the Town Manager appoints you to being a police officer subject to the conditions.

Not every town pays less than the contract rate. There are even towns that put into the contract an academy rate. According to this court even if you put that in the contract you still have to pay the police officer rate.

Attorney Peloquin reached out to the Massachusetts Municipal Association (MMA) to have them write a "Letter of Interest" before the court hears this case and was successful because any town paying an academy rate is in peril to what happens here in Foxborough. Attorney Peloquin is going to attach this letter to the Petition.

Mr. Gray asked if the academy time was pensionable, Attorney Peloquin didn't believe so.

The irony is that their first argument was the Collective Bargaining Agreement has no place there and now the court says the Collective Bargaining Agreement determines the rate. If it determines the rate and past practice the student rate is what the town has approved.

They think the first position is correct.

In 2009 they filed a grievance and told the court they weren't applying the right rate. Attorney Peloquin stated there is a backup; they didn't do any of that. The court stated they don't have to go through grievance.

Mr. Keegan stated that they do not get sworn in until they come before the Town Manager.

Mr. Feldman asked if they were under the umbrella of the union. Mr. Keegan stated they are under the umbrella of the town.

Attorney Peloquin stated the court bought into the idea but it provides the measure of collective bargaining to find the police officer rate. Mr. Gray asked if training wages were regular.

The position to which they are appointed is "Police Officer" is what the court bit on. The Appeals Court implies that the Student Officer is exempt from Collective Bargaining but is a little bit under the umbrella by getting the base salary and nothing else. Attorney Peloquin asked why the legislature didn't just say that. The legislature wasn't as precise as they should have been.

The MMA states in their Letter of Interest that they want to file a brief with the court. Attorney Peloquin stated that the MMA's law firm may do this for nothing as this is in the public interest for many cities and towns.

Attorney Peloquin stated that their brief is filed and the next step is they will have a legal argument.

There are additional costs to put together this petition but the lions share has been spent.

Steven McGrath wouldn't take \$5,000 to go away because his lawyers are saying you may get double/triple the damages and the attorney wants to give the town a bill. He has nothing to lose going forward.

If the Appeals Court deny the petition then it goes back to Superior Court and then you have a Wage Act violation. It has turned into a sledge hammer for anything they can hold over your head. If you state you will pay them when they leave and then pay them a week later you are in violation and then you are looking at attorney fees, etc.

Officer McGrath got a letter saying he was going to be paid a Student Officer rate. Attorney Peloquin stated it got decided initially what the current wages were. They thought the Appeals court would follow and they didn't.

Ms. Coppola asked how long after graduation did he file this appeal. Attorney Peloquin stated three years. Ms. Coppola stated for three years it didn't bother him being paid the Student Officer rate. Attorney Peloquin stated that someone thought they could get this for Officer McGrath. The union dropped out when they got to Superior Court so it is now McGrath versus the Town of Foxborough. Sandulli Grace is the attorney (they also represent union), they saw a potential here.

Attorney Peloquin looked at the background of the judges and one judge represented only employees and unions. She was the most assertive and questioning. He didn't feel good going out of there. She basically wrote the unions brief. The decision reads exactly what she stated.

The Board asked if anyone has filed. Attorney Peloquin stated they haven't filed at this point in time but once this gets out they might.

Attorney Peloquin didn't think the union thought they had a strong case if the Arbitrator asked what the town has been paying for Student Officers. They took a shot that the court would see this differently and they did.

Mr. Feldman stated Officer McGrath received an appointment letter which is a contract and he still willfully agreed to this and then down the road he decides he didn't like the terms.

Attorney Peloquin stated the Appeals Court states pay a certain amount but now he has a legal decision from an Appellate Court and the ball got rolling.

Mr. Mitchell asked going forward would legislature be needed to change the law. Attorney Peloquin stated that the MMA needs to get involved. They have to amend the statute to make it clear and this is not effective going backwards.

Mr. Mitchell asked if the town loses is there something town-wide they can do to tighten the language. Mr. Keegan stated it had to be done by legislature.

Mr. Keegan stated that they had done everything they were supposed to do and they changed the rules after 15 years.

Mr. Gray asked if the town would submit an Amicus Brief in which Attorney Peloquin stated no, that would be from the MMA.

Attorney Peloquin stated that we are submitting submission for further Appellate review. If they don't agree to take a look at the case no briefs will be going forward.

Mr. Keegan stated the Board of Selectmen need to approve Attorney Peloquin submitting the petition.

Attorney Peloquin stated if the court says no, they won't look at it then Attorney Peloquin will have to review the case.

Mr. Keegan stated that from a public policy perspective this is wrong, the court misread it and we have to push this.

Attorney Peloquin stated that the only good part is at next level, if the court won't look at it, we will know quickly.

Attorney Peloquin stated that the court doesn't take a lot of these cases and they will have to frame it that there is a broader interest.

Ms. Coppola asked if what the female judge wrote is that apparent can they say she is biased. Attorney Peloquin stated that it didn't say she wrote it and that they will say it was a three judge panel. There are a few pieces in there even if they think it was right they could say it should have gone to grievance procedure. The biggest argument was that they misinterpreted the statute.

They were very specific for what they weren't covered for but left the wages ambiguous. The other side of the argument would be to at least give them the wages.

Motion by John Gray for Attorney Peloquin to submit the Appellate case Steven McGrath versus the Town Seconded by Christopher Mitchell. The motion carried **4-0-0. Roll Call Vote: Christopher Mitchell – yes, John Gray – yes, David Feldman – yes, Virginia Coppola – yes.**

Motion by Christopher Mitchell to adjourn Executive Session at 7:10pm and go to Regular Session. The motion carried **4-0-0. Roll Call Vote: Christopher Mitchell – yes, John Gray – yes, David Feldman – yes, Virginia Coppola - yes.**