

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
EXECUTIVE SESSION MINUTES
SEPTEMBER 22, 2015

Members Present: James J. DeVellis, Chairman
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

The meeting was brought to order at 6:30 p.m. by James DeVellis.

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 5-0-0. Roll Call Christopher Mitchell – yes, James DeVellis – yes, John Gray - yes, David Feldman – yes, Virginia Coppola – yes**

Attorney Peloquin was before the Board of Selectmen 5-6 weeks ago explaining to them that they tried with the MMA to get the Supreme Judicial Court (SJC) to look at this case and they were not successful. There was no explanation; you only receive a one line "Request Denied". They tried to make the case that it had significant implications for other communities. On September 3, 2015 he received a letter from the court which stated they would not review this.

The decision stated that the town has to pay a student officer the first step Patrol Officer Rate in the contract. The only thing you can do to avoid this, is to negotiate a Student Officer Rate in the contract.

When Attorney Peloquin and Mr. Keegan got that decision they had to act quickly because the Wage Act triples the fees and they are mandatory along with attorney fees. They didn't want to get to court and have the judge ask them why they hadn't paid Officer McGrath this along with the interest.

The second reason was that they have other potential plaintiffs out there. They had to look back three years and find out who had the potential to file a Wage Act against the town. Five (5) additional officers were in the academy dating back from today to three years ago and had received the Student Officer Rate, rather than the first step Patrol Officer Rate.

The Finance Department created a spreadsheet and they figured out the difference of pay; then letters and checks were sent to the officers. They did this because state law and statute says they will get triple damages and attorney's fees.

Officer McGrath accepted the check with the right to continue to pursue the case. His counsel doesn't think this will happen.

The checks and letters were put in the other officer's hands after seeing how they had done the numbers and they said that they were not going to take it.

Mr. Gray asked if the act of handing the officers a check helps the town in which Attorney Peloquin stated absolutely.

Mr. DeVellis asked if this was triple damages in which Attorney Peloquin stated no.

Mr. Feldman asked if interest was included in which Attorney Peloquin stated no.

Attorney Peloquin stated that the officers have not done anything to hurt the town's position by not taking the money. The checks are in the Town Administrators office and they will send another note stating the checks are still there.

Mr. DeVellis asked if they were confident that the statute of limitations goes back three years in which Attorney Peloquin stated correct.

Attorney Peloquin stated that if they were in the academy for every week within the statute of limitations they could get the money. They had told Officer McGrath this was going to be his pay and he accepted this. Each week you underpay an officer gives them a basis for a claim.

Most officers had a claim for the full time they were in the academy.

Mr. DeVellis asked when Officer McGrath brought this case forward. Attorney Peloquin stated on October 5, 2009. Officer McGrath filed the Wage Act violation with the Attorney General in middle September 2009 and if you look back three years it is the whole time he was in the academy.

Because Officer McGrath's dates are more recent, his principal amount is less than all of the other officers (\$4,328). Officer Burns is entitled to \$8,800 and the others will get \$6,900. Attorney Peloquin stated that with interest Officer McGrath will receive \$7,420.

The town will end up paying \$40,968.95 in a total payout to all of the officers.

Mr. Gray asked if attorney fees were included in which Attorney Peloquin stated no. Attorney Peloquin stated that with attorney fees there is some discrepancy with the court as to what is reasonable. Attorney Peloquin asked Officer McGrath's counsel what he would be seeking in which he responded \$42,000. The lodestar rate criterion is applied. The attorney has to show

the time he spent as well as the hourly rate to see if this is reasonable with what these cases take for time. The court will look at what was recovered as well as what they spent.

The first reaction of the court may be that Officer McGrath only was entitled to \$4,800. The court also looks at other cases for broader implications. Attorney Peloquin stated that they had touted the fact that this was an important case to other municipalities and it was important to Officer McGrath and other student officers. Attorney Peloquin stated that Officer McGrath's attorney fees are not crazy. Mr. Gray asked if the cost of those implications will be borne by Foxborough in which Attorney Peloquin stated yes.

Attorney Peloquin further stated that these attorney fees are negotiable and if the parties can't agree you go before the court. The \$42,000 is his settlement proposal, he could ask for more in court. The court may give him less but the town will end up spending more than they will save. Attorney Peloquin will try to get him down as low as he can.

Attorney Peloquin stated that he wants the Board of Selectmen to give him the authority to resolve the attorney's fees at the lowest amount but the town may have to pay \$42,000 given all the factors involved.

Mr. Gray asked if Officer McGrath's attorney would have him end this case if they did that in which Attorney Peloquin stated he may and that Officer McGrath has no ammunition at this time. Mr. Gray stated that if the town did this they need something for it. Attorney Peloquin stated that if they are going to settle the case then they will settle it all.

Attorney Peloquin stated that he doesn't think the town would do much better going before a judge and that they had minimized this as much as they could with the other officers not getting triple as well as Officer McGrath not going any further in that Officer McGrath is operating under the old statute and he will have to back off that claim.

Mr. Gray asked if the five other officers that didn't take the checks knew that the checks were coming beforehand. Attorney Peloquin stated they had only found out the day before. Mr. Gray asked if they were not taking the checks because they wanted to talk to counsel. Attorney Peloquin stated the officers think there is some harm and they wanted to explore this. They are supposed to get back to them on Friday.

Mr. DeVellis asked if this was unforeseen in the 350+ other towns in which Attorney Peloquin stated that some of them don't have any rate for an officer in the academy in their bargaining unit but they pay it. Mr. DeVellis asked why Officer McGrath asked for this in which Attorney Peloquin stated that he was not sure. Mr. Gray stated that he had said it was because of the letter from Andy Gala. Mr. Keegan stated that Officer McGrath comes from a family of police officers and his point was that Foxborough's rate was lower than other towns around the area and when he asked his question about this, he didn't get the answer he wanted. Attorney Peloquin stated that it had dawned on Officer McGrath that he should be getting the same thing so someone investigated it for him. The union itself never pursued it, but Mass COP did. Officer McGrath is persuasive and they were afraid not to pursue it.

Mr. DeVellis asked if Attorney Peloquin was confident this actual scenario has not gone through the courts before in which Attorney Peloquin stated that Foxborough is the only town. Mr. DeVellis asked how he knew this in which Attorney Peloquin stated that they had researched if the issue had ever been decided, and it had not. Attorney Peloquin sent a memo to his other clients giving them a head's up.

Most cities and towns didn't think they were obligated to pay this rate. When a student officer completes the academy, then they become a police officer. Student Officers can't even get anything in the bargaining agreements.

Mr. Mitchell asked if the other five officers refusing the checks proceed legally what would happen in which Attorney Peloquin stated they wouldn't have a leg to stand on. The Wage Act is designed that you pay them the money on time and essentially if you pay it before they file a claim they can't collect triple damages. The town has cured this within two weeks when they found out this was the law.

Mr. Keegan stated that the officers walked out of the room for a few minutes and came back and they all said they weren't going to take the checks because they weren't sure of the amounts. Mr. Keegan had told them to check on it and then get back to them.

Mr. Mitchell stated he could understand them not taking them without researching it and asked if this happened last week in which Ms. Bernard stated it was last Thursday. Ms. Bernard gave them the letter, rates as well as the by-law with the original rates that they were being paid at. Ms. Bernard also stated that they introduced the conversation by saying the town had just become aware of this decision and they wanted them to become aware of this.

Mr. Keegan stated that they had bargaining on Wednesday and following the meeting he had told Rich Noonan that he had five checks for the officers. Sergeant Noonan stated that he wasn't part of this and turned it over to Sergeant Grace. As soon as Sergeant Grace had become aware of it, he called the attorney who in turn stated to take the check.

Mr. Feldman asked if they were just looking for direction from the Board. Attorney Peloquin stated that they were looking for approval.

Mr. Gray stated that based on that rationale it made sense to pay it and cut our losses.

Ms. Coppola asked if this stops it, even if Officer McGrath goes further that is a new set of numbers. Attorney Peloquin stated the fees will be based on when the case is over.

Mr. Feldman stated that the Board wants a full release.

Mr. DeVellis stated that it makes sense if they go in that direction. Mr. DeVellis stated that this would not be a formal vote and he wanted this put on the agenda in two weeks for an update.

Motion made by Christopher Mitchell to close executive session and return to regular session at 7:05pm. The motion carried **5-0-0**. **Roll Call Vote: Christopher Mitchell – yes, James DeVellis – yes, John Gray – yes, David Feldman – yes, Virginia Coppola - yes.**