

**BOARD OF SELECTMEN MEETING
SELECTMEN'S OFFICE, TOWN HALL
BROOKFIELD, MASSACHUSETTS**

EXECUTIVE MINUTES FOR Thursday May 9, 2002

MEMBERS PRESENT:

BEVERLY LUND, Chairman

ROBERT PHILLIPS, Clerk

MEMBERS ABSENT:

FLOYD MOORES

The board in open session voted to go into executive session to discuss pending litigation upon a motion by Mr. Phillips, seconded by Ms. Lund. Mr. Phillips voted aye, Ms. Lund voted aye. Motion passed.

Ms. Lund called the executive session to order at 8:10 p.m.

Guests present were Ms. Lisa Adams, attorney from Town Counsel, Kopelman & Paige; Police Chief Ackerman; Police Officers Taylor, Fortier, and Lamothe.

GRAUPNER ET AL VS BROOKFIELD

Mr. Phillips moved and Ms. Lund seconded a motion authorizing Town Counsel to file an appeal of the May 1, 2002 decision of the Commonwealth of Massachusetts Labor Relations Commission. Mr. Phillips voted aye, Ms. Lund voted aye. Motion passed.

Mr. Phillips said in his reading of the decision, there seemed to be few grounds for appeal. The information provided by the Board of Selectmen (Mr. Moores and Mr. Dackson) seemed insufficient to justify its action of firing the three officers. There were no periodic written reviews documenting inadequate performance. The two officers fired for living more than 15 miles from the town were not given the option of moving closer to town yet they could cite a case where another had been given that option. The terminations appeared to coincide closely with the start of union organizing efforts.

Mr. Phillips asked whether an appeal would be "de novo". Ms. Adams said no, any appeal would use only evidence provided in the findings of fact unless new evidence is presented that was previously unavailable.

Chief Ackerman said the DARE fraud investigation is coming to fruition and suggested this should constitute new evidence. The chief is referring to the allegation that Sgt. Graupner forged the Superintendent of Schools' signature on a DARE grant application at a time when the Superintendent had no plans to authorize a DARE program in the Brookfield school. Allegedly Sgt. Graupner then lied to the Board of Selectmen telling them that the town had received a DARE grant. Sgt. Graupner then profited by this non-existent grant, charging his salary time against that account.

Ms. Adams said that one of the few grounds for appeal would be a claim that conclusions were drawn from insubstantial evidence. She allowed there were few conclusions vulnerable to such a claim and that the town's chances of winning on appeal are slim. One such conclusion might be the claim that Mr. Dackson made anti-union remarks at the Cumberland Farm store since that claim is only corroborated by the three plaintiffs themselves. She noted that Mr. Graupner's testimony was deemed not credible in several instances and this should taint his other statements.

She said that the commission did dismiss the 10(a) (1) complaint that town officers had restrained, coerced, or interfered with employees in the exercise of their rights.

Chief Ackerman provided Ms. Adams with a copy of the decision, which he had annotated to suggest other conclusions that were also contestable.

He said the CPAC (? State Police Criminal investigations unit) had recently concluded that the signature on the DARE grant application is indeed a forgery and that hand writing analysis points to Graupner as the forger.

The chief alleged other misdeeds by Graupner: a cover-up after crashing a town police cruiser (?) and a case where Graupner lied about responding to an emergency call which resulted in the victim losing her leg. The latter case was referenced in the decision. Graupner was disciplined by a two-day suspension.

Ms. Adams said such cases where the evidence was known earlier might not be useful. Only evidence that was unknown during the earlier depositions can be entered during the appeal.

Ms. Adams said the claim that the Board of Selectmen took their action because of union organizing activity might be contestable: the record does not show that the Board of Selectmen knew of the union organizing activity, it only says that Officer Ackerman *said* the Board of Selectmen knew, and that is hearsay.

Mr. Phillips said he doubted whether that argument would prove useful. The union organizing activity was underway at the Apple Country Fair in early October and the officers were terminated a month later. An interval of a month was certainly long enough for the selectmen to learn of the union activities.

He asked Ms. Adams when the appeal might be heard. Ms. Adams said perhaps in early winter.

Chief Ackerman provided information about the plaintiffs' current status. Mr. Hayes was working as a police officer in Millville but was fired from that position. He *does* want his job in Brookfield back. Mr. Griffin lives in the Framingham area and would not want his job back. Evidently Mr. Graupner wants to return. After the LRC decision was announced, Mr. Graupner is alleged to have publicly proclaimed at a social function in West Brookfield that he will return and take over the Brookfield PD.

Chief Ackerman pointed out that after Sgt. Graupner was fired, the position of sergeant was eliminated. There was some discussion as to whether, if the town had to rehire Graupner, the position would have to be recreated.

Ms. Adams, returning to the discussion of LRC conclusions based on insufficient evidence, said the town could argue that the plaintiffs had provided insufficient evidence to warrant overturning the Board's right to make its own reappointment decisions. Mr. Phillips said he doubted whether that position would stand. Ms. Adams agreed it is unlikely.

Mr. Phillips said the Board should discuss how best to settle the case. In his opinion the appeal seems quite hopeless and only serves to buy the town time to settle. Mr. Phillips does not want to rehire Mr. Graupner under any circumstances. His alleged misdeeds, bullying, and threats have made him feared and even hated by many residents. The town should buy out Mr. Graupner. In negotiating with him, counsel could attempt to minimize the cost to the town by using the threat of the other impending investigations as a bargaining chip. If necessary, the town should rehire Mr. Hayes and offer to rehire Mr. Griffin, an offer Mr. Griffin will likely decline. Ms. Lund agreed: buy out Mr. Graupner, settle with and possibly rehire Mr. Hayes and Mr. Griffin.

Chief Ackerman said of the three officers, Mr. Griffin is the least objectionable and that Mr. Hayes' dismissal by Millville shows he is not a good police officer. He worried that Mr. Hayes might prove to be a safety risk.

Mr. Phillips said it is extremely important that officers receive regular periodic performance reviews. They should sign such reviews to acknowledge having received them. Officers would only be dismissed after several such unfavorable reviews. He said if the town is forced to rehire one or more of the plaintiffs, it is essential that there be no reprisals in appearance or in fact. Any reprisals would quickly lead the town into further legal difficulty. If the men are not good police officers, their performance reviews will indicate it in due time. It is crucial to have a paper trail to justify administrative actions.

Mr. Phillips said if it would help the negotiations, he would favor inviting the police union into town to hold an organizing election.

Chief Ackerman said he would provide details of the CPAC investigation to Ms. Adams. He also said he would provide payroll information showing how much the officers were earning at the time of their dismissal. Ms. Adams asked how much money the officers might have earned outside of regular time. The chief said less than \$5,000 per year in detail work and nothing in overtime.

Mr. Phillips moved and Ms. Lund seconded a motion authorizing town counsel to gather information from the town to establish a negotiating position and to negotiate with plaintiffs' attorney for a possible settlement. Mr. Phillips voted aye, Ms. Lund voted aye. Motion passed.

Chief Ackerman said townspeople continued to offer stories of terrible experiences they had with Sgt. Graupner. The chief, Officer Fortier and Lamothe, and Mr. Phillips, recounted several such incidents. Chief Ackerman wondered whether it would be worthwhile taking sworn affidavits. After some discussion, Ms. Adams said affidavits of events from over two years ago would be of questionable value. Mr. Phillips worried that any active attempt to collect affidavits might be viewed as harassment by Mr. Graupner.

Ms. Lund thanked the police for their help. Chief Ackerman and Officers Taylor, Lamothe, and Fortier left.

MCMANUS TERMINATION

Ms. Adams reviewed the correspondence from Ms. McManus's attorney.

Mr. Phillips and Ms. Lund said they believe Ms. McManus would like to return to her former position and they would like to have her back. Mr. Phillips said he would like to see her reinstated, paid her back wages, compensated for reasonable attorney's fees, and offered a public apology. He said he would not want to see the town pay damages. Ms. Lund concurred. Ms. Lund added the town should reimburse her COBRA payments.

The selectmen discussed the timing for reinstatement and decided it should be postponed until the May 28th meeting, following the recall election, at which time the board may have three active members.

Mr. Phillips moved and Ms. Lund seconded a motion authorizing town counsel to negotiate with Ms. McManus's attorney to reinstate her and to ensure that this episode has not left her at a financial disadvantage. Mr. Phillips voted aye, Ms. Lund voted aye. Motion passed.

ADJOURNMENT

At 9:42 p.m., Mr. Phillips moved and Ms. Law seconded a motion to adjourn. Mr. Phillips voted aye, Ms. Lund voted aye. Motion passed.

Respectfully Submitted

Robert Phillips

Date Approved _____ June 4, 2002 _____

RELEASED: 10/30/12