



TOWN OF TYNGSBOROUGH

Office of the Selectmen

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Tyngsborough, MA 01879

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Board of Selectmen Meeting Executive Session Minutes

Approved

Monday August 02, 2010 6:00 P.M.

Town Offices

Member Present: Selectwoman Ashley O'Neill, Selectwoman Elizabeth Coughlin, Selectman Rick Reault, Selectman Rich Lemoine, Selectman Robert Jackson.

Staff: Town Administrator Michael Gilleberto, Admin. Assistant Therese Gay

"The listing of matters are those reasonable anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed, and other items not listed may also be brought up for discussion to the extent permitted by law."

1. Executive Session

The board may move to go into executive session to discuss strategy with respect to collective bargaining, litigation, or exempt negotiations if an open meeting may have a detrimental effect on such subject matters.

- Collective Bargaining
- Contract Negotiations
- Litigation

The Board voted on a motion by Selectwoman Coughlin, second by Selectman Jackson to enter into Executive Session to discuss strategy with respect to collective bargaining, litigation, or exempt negotiations where an open meeting will have a detrimental effect on the subject matter, the Chair so declares. Roll Call Vote: Selectman Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; and Selectman Reault, yes. The Board entered into executive session at 9:45 P.M.

Selectwoman O'Neill and Michael, Town Administrator, sat with the SEIU on Wednesday with the 3 units together. They want hours reinstated 2010. The Board discussed the options and disadvantages to the town. By doing the 3 unions together will save hours and money. This is the first of five meetings for bargaining. The first meeting was for setting the ground rules which are basic. Everyone is comfortable with the way it is playing out and is ready to go to the second session. The Administrator is still working with the Treasurer for the steps some discussion and the Board voted 5-0-0 on a motion by Selectwoman Coughlin, second by Selectman Jackson to restore to normal step. Roll Call Vote: Selectman Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; and Selectman Reault, yes.

The Board had a brief discussion on resolving the PD union petition article #23 by peaceful means with an A&B unit.

The Board voted on a motion by Selectman Reault, second by Selectman Jackson to exit executive session and to return to open session only to adjourn. The Board exited the executive session at 10:50 P.M.

Respectfully submitted,
Therese Gay
Admin Assist

Approved on Monday, September 13, 2010



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July 2, 2010

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BOARD OF SELECTMEN
TYNGSBOROUGH, MA.

Darren Klein
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BY ELECTRONIC MAIL
AND FIRST-CLASS MAIL

Ms. Marjorie F. Wittner, Esq., Chair
Commonwealth Employment Relations Board
19 Staniford Street, 1st Floor
Boston, MA 02114

Re: Town of Tyngsborough and NEPBA (Petition to Remove Sergeants)
CAS-10-3751

Dear Ms. Wittner:

Please accept this correspondence as the Town's supplemental position statement in the above-referenced matter. Since this is a supplemental response, the Town will not repeat the arguments set forth in its initial position statement in this matter, as well as the Police Chief's previous Affidavit, although the Town does reaffirm its reliance on the facts and arguments set forth therein. Further, attached also please find the documents that you requested at the parties' investigation conference.

As detailed at the parties' investigation conference and as further shown in the attached documents, the sergeants' supervisory and management duties have significantly increased in recent years, especially since the time that Chief Mulligan was appointed by the Town. I will highlight some additional examples of this increased responsibility that is demonstrated in the attached documents:

- July 13, 2007 Memorandum – shows that Sergeant's written recommendation on budget expenditure was submitted by Police Chief to the Board of Selectmen;
- Minutes from August 23, 2007 meeting – states that "Sergeants will be taking on greater responsibility. Each Sgt will have assigned duties that will become his responsibility to carry out. Training, Firearms, Accreditation, Evaluations, There will be a Staff Meeting once a month every month";
- Minutes from August 23, 2007 meeting – also show Police Chief's desire to implement contractually obligated performance evaluations;
- Proposed Agenda for September 10, 2007 Sergeants' Meeting – includes references to (1) officers' appraisal guide being done twice a year; (2) quarterly and annual performance appraisal forms; and (3) sergeants new assigned duties list (see attachment);
- Proposed Agenda for December 12, 2007 Sergeants' Meeting – references numerous policies being developed by Sergeants for accreditation;

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- Proposed Agenda for March 12, 2008 Sergeants' Meeting – references policies being developed by Sergeants for Communications and Vehicle Pursuits;
- Proposed Agenda for August 20, 2008 Sergeants' Meeting – references policies being developed by Sergeants for use of Tasers;
- Proposed Agenda for February 9, 2010 – references sergeants' increased new supervisory duties regarding checking on officers who are not at the station for period of time;
- May 6, 2010 Letter from Massachusetts Police Accreditation Commission explaining accreditation process, including on-site assessment report;
- Example of Daily Staff Briefing from June 15, 2010, which is much more in depth report than before Chief Mulligan was appointed, and also requires daily meetings between the sergeants and the Police Chief that previously did not take place;
- Table of Contents for Tyngsborough Police Department Manual;
- Updated Department Organizational Chart.

As demonstrated by some of these documents, as well as by the testimony presented at the investigation conference and the Affidavit of the Police Chief, the sergeants' role in policy making has increased significantly and they have a large role in developing the policies **before** they are ever shared with the union and the patrol officers. Also, the sergeants' direct supervisory responsibilities over the patrol officers has also significantly increased, including the requirement that detailed daily staff briefing forms be submitted and that daily meetings take place to review all of the events that transpired on the prior shifts with the Police Chief. Moreover, it is the shift commander, who is a sergeant on 75% of the shifts, who determines if overtime is needed and will be offered to the patrol officers. Further, as evidenced in some of the attached documents, the Police Chief has wanted to implement a performance evaluation process that is set forth in the parties' contract but has been unable to do so because of the inherent conflict that results from the sergeants and the patrol officers being part of one union. In fact, this inherent conflict has created untenable situations that were described by the Police Chief at the conference whereby sergeants were being reprimanded by patrol officers, who were union officers, for providing information to the Police Chief or where sergeants were being counseled about improper supervision with union officers, who were also patrol officers, present for such discussion. As discussed, the worst result of this conflict was that the Town recently had a major rules infraction by a former patrol officer, who was the union president, which was never reported to the Police Chief.

Finally, the Union has argued that the instant petition should be denied based upon the case of Town of Sharon and Massachusetts Coalition of Police, CAS-08-3724 (2009). However, it is important to point out that the Town of Sharon did not want the sergeants to be in the same unit with the lieutenants. However, contrary to the Town of Sharon, the Town in the instant

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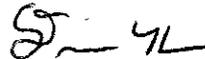
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matter is trying to remove both the sergeant and lieutenant positions from the patrol officers unit and place said positions into one supervisory unit.

As stated previously, the DLR is required to consider "efficiency of operations and effective dealings" of the employer when determining the composition of bargaining units. G.L. c. 150E § 3. This is because "individuals who possess significant supervisory authority owe their allegiance to their employer, particularly in the areas of employee discipline and productivity." Town of Provincetown, 31 MLC at 60. The DLR, in Town of Provincetown, noted that "[s]upervisors and the employees they direct have different obligations to the employer in personnel and policy matters, therefore to retain them in the same bargaining unit would likely lead to a conflict of interest within the bargaining unit in a school setting...this rule applies with no less force to unit determinations involving police departments." Id. With the critical mission of the Police Department at stake, this type of inherent conflict of interest should not be allowed to continue to jeopardize the Department's ability to always operate at an optimal level and to provide the best law enforcement possible to the citizens of Tyngsborough.

Please call me if you have any questions. Thank you for your attention.

Very truly yours,


Darren R. Klein

DRK/jmp
Enc.

cc: Board of Selectmen (w/o enc.)
Town Administrator (w/o enc.)
Police Chief (w/o enc.)
Gary Nolan, Esq.

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