



TOWN OF TYNGSBOROUGH

Office of the Selectmen

25 Bryant Lane

Tyngsborough, MA 01879

Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

Board of Selectmen Executive Session Minutes

APPROVED

Monday November 8, 2010

6:00 P.M.

Town Offices

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

Member absent: Selectman Rich Lemoine

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."

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**

The Board voted 5-0 on a motion by Selectwoman Coughlin, second by Selectman Reault to enter into a work session with the Finance Committee to proceed with the interview at the end to enter into Executive Session to discuss collective bargaining, litigation, or exempt negotiations where an open meeting will have a detrimental effect on the subject matter, the Chair so declares and to exit the Executive Session and to return to open session only to adjourn. Roll Call Vote: Selectman Jackson, yes; Selectman Lemoine, absent; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; Selectman Reault, yes.

The Board entered Executive Session 8:45 P.M.

The Board received a request from the Highway Administrator asking the Board to appoint Michael Gagnon as a season employee.

The Board voted 5-0 on a motion by Selectman Lemoine, second by Selectman Reault to appoint Michael Gagnon as a seasonal employee to the Highway Department effective start date is December 1, 2010.

The Boar received correspondence informing them that the "Evergreen Clauses" are no longer valid in municipal collective bargaining agreements.

The Administrator, Labor Counsel and Selectwoman Coughlin negotiated with the police union. They have brought forth an agreement for the Board to review. The Board agrees with (1) the 0% raise, (2) Reimbursement mileage to be set at \$.50 (3) 1 year contract, the Commonwealth's portion of the Quinn bill for FY 2011, (4) add language to Article 10, Section H (Master Patrolman), (5) to delete the last sentence in Section A of Article 12, (6) Article 30 (duration agreement) contract for one year, (7a) and the side letter referencing the separation of patrol officers and communication specialists will be represented by the Union, as Unit A, while sergeant and lieutenants will be represented by the Union, as Unit B. (7b) The town agrees that it will fill three lieutenant positions effective July 1, 2011 with a correction by the Board to add one lieutenant per shift. (7c) And the Town agrees that it will withdraw the pending petition from the Division of Labor Relations.

The Board voted 4-1 on a motion by Selectman Reault, second by Selectwoman Coughlin to accept the new memorandum of agreement and to add on (7b) one lieutenant per shift. Selectman Lemoine has voted to not support the memorandum of agreement due to the lack of information on #4 Master Patrolman duties and responsibilities are and defer decision to the next contract.

The Board discussed the Clerical Contract. The Clerical Union wanted a 1.5% raise, 1 year contract, restoration of hours and a change in the Bereavement Language to add an extra day. They said no to the removal of the Treasurer and Accountant from the Union. The two individual do not want to be removed for fear of losing their jobs. To remove the language ICC from the Building Commissioners line and to add that the Health Agent to recertified and add NHA certified sanitarian, to open the contract if some other union receives a raise.

The Board is offering a 1 year contract, 0% wage increase, restoration of hours pending approval at Town Meeting, moving the Council on Aging and Police Custodian to the Highway Union, open contract if base wages are offered to others and remove the grievance.

The Highway Union is asking for 0% raise, 1 year contract, a \$15.00 stipend for cell phones for the next 6 months, and to restore hours.

The Board is offering the Highway Union the 0% raise, 1 year contract, a \$15.00 stipend for cell phones for the next 6 months, and to restore hours pending approval at Town Meeting.

The Board voted 5-0 on a motion by Selectman Jackson, second by Selectman Reault to exit executive session and to return to open session only to adjourn. Roll Call Vote: Selectman Jackson, yes; Selectman Lemoine, absent; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; Selectman Reault, yes.

The Board exited the executive session at 10:30 P.M.

Respectfully submitted,

Therese Gay
Admin Assistant

Approved on _____

MEMORANDUM OF AGREEMENT
TOWN OF TYNGSBOROUGH AND SEIU, LOCAL 888 (HIGHWAY)

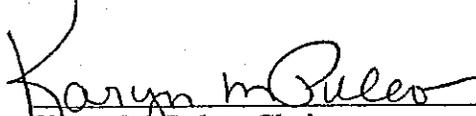
Whereas, there has been a reduction in the work force at the Highway Department;

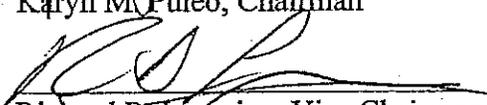
Whereas, temporary assistance would be helpful during the snow season from December 1, 2009 through March 31, 2010;

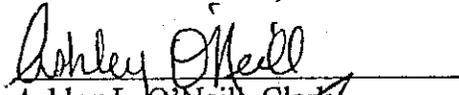
Now, therefore, the Town and the Union agree as follows:

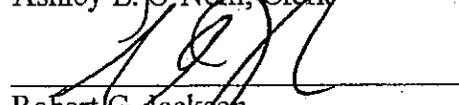
1. A temporary employee will be hired to provide assistance to the Highway Department. The Board of Selectmen, after consultation with the Town Administrator and Highway Administrator, will appoint a suitable temporary employee for the 2009-2010 winter season as described above. The temporary employee may be terminated at any time by the Town.
2. The temporary employee will not be considered a member of the bargaining unit and will not be eligible for any contractual benefits including health insurance, vacation leave, or sick leave. Furthermore, union members will be called for any necessary overtime work before the temporary employee is called.
3. Prior to appointment, the temporary employee must have satisfactorily completed the following: job application, reference checks, CORI check, CDL driver's license and clean driving record, and medical examination.
4. The wage for the temporary employee will be at the rate of a skilled laborer which is currently \$22.73 per hour.
5. The Town will provide the temporary employee with a job description.
6. This memorandum of agreement will be effective on December 1, 2009 and will terminate at the end of day on March 31, 2010.
7. This agreement is not to be construed as setting a precedent, nor can this agreement be used in any forum against the Town, except for the purpose of enforcing the terms of this agreement. This Section will survive the expiration of this agreement.
8. Nothing in this agreement shall be construed as an admission of any fact by any party, or as an admission to or waiver of any position taken by either party during the negotiation of this agreement as to bargaining rights, contract interpretation, or management rights. Notwithstanding, other than for the enforcement of the terms of this agreement, both parties agree that each waives its right with prejudice to file a grievance, complaint, or appeal of any kind related to the express and specific terms of this agreement and/or regarding any of the issues referenced in any way in this agreement. This Section will survive the expiration of this agreement.

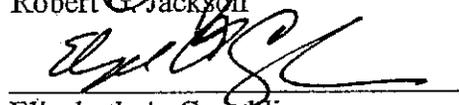
**Town of Tyngsborough
By the Board of Selectmen**


Karyn M. Puleo, Chairman


Richard B. Lefhoine, Vice Chairman

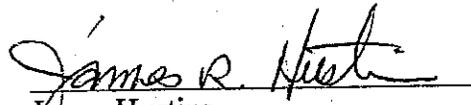

Ashley L. O'Neill, Clerk

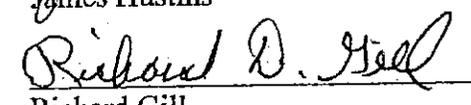

Robert G. Jackson


Elizabeth A. Coughlin

11/2/09
Date

**SEIU, Local 888
By its Representatives**


James Hustins


Richard Gill

11-3-09
Date



TOWN OF TYNGSBOROUGH

Office of the Town Administrator

25 Bryants Lane

Tyngsborough, MA 01879

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November 6, 2009

Michael Gagnon
14 Davis Road
Tyngsborough, MA 01879

Dear Mr. Gagnon:

Congratulations! I am pleased to inform you that you have been appointed as a Highway Skilled Laborer on a temporary basis, effective December 1, 2009 through March 31, 2010.

The hourly salary for this position is \$22.73. The typical work week is 40 hours. However, snow season may add to these hours. There are no benefits with this position.

Again, congratulations. We look forward to working with you. If you have any questions, please speak with Highway Administrative Assistant Ric Flanagan or Interim Highway Administrative Assistant Jim Hustins who begins his job on November 26.

Sincerely,

Rosemary Cashman
Town Administrator

cc: Highway Administrative Assistant
Town Treasurer
Town Accountant



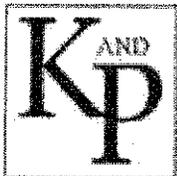
Michael Gilleberto <mgilleberto@tyngsboroughma.gov>

"Evergreen Clauses" No Longer Valid In Municipal Collective Bargaining Agreements

Beverly Perry <BPerry@k-plaw.com>

Fri, Nov 5, 2010 at 12:20 PM

To: "Kopelman and Paige, P.C." <KandPNews@k-plaw.com>



KOPELMAN AND PAIGE, P.C.



ATTORNEYS AT LAW

"EVERGREEN CLAUSES" NO LONGER VALID IN MUNICIPAL COLLECTIVE BARGAINING AGREEMENTS

One common element in many collective bargaining agreements is an "evergreen clause." Such clauses state, in substance, that the terms of the agreement will remain in full force and effect until a successor agreement is signed. A recent Supreme Judicial Court (SJC) decision casts considerable doubt on the enforceability of such provisions in public sector collective bargaining agreements. In Boston Housing Authority v. National Conference of Firemen and Oilers, Local 3, ___ Mass. ___ (October 22, 2010), the SJC vacated the decision of an arbitrator because it found that the arbitrator no longer had the authority to decide the grievance that was at issue where the parties' collective bargaining agreement, and thus the grievance arbitration procedure contained therein, had expired. The SJC reached this conclusion despite the fact that the collective bargaining agreement contained an evergreen clause. In so holding, the SJC reasoned that "[t]he purported policy benefits of an evergreen clause cannot trump the intent of the Legislature, as unambiguously expressed in [G.L. c. 150E.] § 7(a), to limit the term of a CBA to no more than three years." The import of this decision is that a public sector collective bargaining agreement cannot extend beyond a period of three (3) years and an evergreen clause will not serve to automatically extend an expired collective bargaining agreement while a successor agreement is being negotiated.

Although the final impact of this decision is difficult to assess at this juncture given the limited passage of time since the decision was issued and the specific scope of the SJC's decision, at the moment it would appear that an arbitrator does not have the authority to decide grievances that arise after a collective bargaining agreement has expired and a successor agreement has yet to be reached.

Several immediate impacts of the decision are evident, however. First, any pending arbitrations which grieve actions taken after the expiration of the contract may be subject to dismissal. Second, employers



should, in addition to other defenses raised, respond to all new grievances citing the lack of a contract in full force and effect. Third, pending further review, we recommend that municipalities not enter into agreements to extend the terms of a contract without bargaining a new successor collective bargaining agreement. In light of the SJC's ruling, it is expected that many unions will seek to begin successor contract negotiations earlier than in years past and will approach them with a greater sense of urgency, particularly in the face of an expiring or expired collective bargaining agreement.

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