

Fishers Island Ferry District

*Minutes of the meeting of the Board of Commissioners
Fishers Island Ferry District
October 23, 2015*

Present were Commissioners Ahrens, Shillo, Rugg and Bloethe. Also present was Mr. Murphy.

The commissioners appointed Mr. Bloethe as the meeting chairman and a meeting of the Board of Commissioners of the Fishers Island Ferry District was called to order on October 23, 2015 at 2:01 PM by Commissioner Bloethe at the Fishers Island Community Center. Commissioner Bloethe led the pledge of allegiance.

PUBLIC COMMENT/CORRESPONDENCE:

No correspondence received

Warrant:

A single warrant vouchers was presented for review and approval. After a brief discussion and there being no further discussion, a resolution was made to pay the outstanding obligation totaling \$7,260.00.

Moved by: Commissioner Rugg

Seconded by: Commissioner Ahrens

Ayes: All

Nays: None

Mr. Murphy presented a brief report to the board on the state of the required repairs on the Munnatawket's bow thruster. After some discussion the following was presented:

At the October 12th, 2015 meeting of the Fishers Island Ferry District Board of Commissioners, the following resolution was brought by the Board.

On October 2, 2015 the bow thruster of the MU ceased to function. Due the emergency nature of this breakdown and that Thames Shipyard would not be able to dry-dock the vessel in a timely manner the MU was sailed to Fairhaven Shipyard for repairs. The BOC and management agree to the nature and solutions and the need to immediately address the situation without being able to have the work quoted as per the procurement policy.

MOVED by Commissioner Rugg

SECONDED by Commissioner Parker

Ayes: All

Nays: None

NOW, THEREFORE, BE IT RESOLVED, that the Ferry District rescinds the October 12th Munnatawket bow thruster resolution.

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Moved by: Commissioner Rugg
Seconded by: Commissioner Bloethe
Ayes: All
Nays: None

On October 2, 2015 the bow thruster of the Munnatawket ("MU") suffered catastrophic failure with many broken parts lost at sea. After consultation with the Coast Guard, it was determined that the vessel should immediately be hauled for installation of temporary cover plates, and that she could then be in service without a bow thruster until her next biennial yard work. Due the emergency nature of this breakdown and that Thames Shipyard would not be able to dry-dock the vessel in a timely or cost effective manner the MU was sailed to Fairhaven Shipyard for repairs. Given the emergency nature and Coast Guard requirement to immediately address the situation, we approve the work and decisions of management and approve necessary payments without being able to have the work quoted by a third vendor as per the procurement policy.

WHEREAS, the Ferry District located and evaluated several possible suppliers for a replacement Munnatawket bow thruster. Sources were contacted nationally, however only two suppliers (Thrustmaster and Wesmar) responded affirmatively (example: Lemar was unable to build to the required specs) based on that they could meet the timing for installation in the next yard period for the Munnatawket. The Wesmar quote came in at \$46,300. Thrustmaster of Texas, Inc. ("Thrustmaster") was selected based on best price and being able to supply the new unit in time for delivery to the shipyard when the MU is dry-docked in early 2016.

NOW, THEREFORE, BE IT RESOLVED, that the Ferry District accepts the quote from Thrustmaster in the amount of \$24,200 and directs that payments be made when invoiced.

Moved by: Commissioner Rugg
Seconded by: Commissioner Bloethe
Ayes: All
Nays: None

Mr. Murphy along with Commissioner Rugg summarized the 2016 budget process and the budget as it has changed since the August public hearing. Management's goal is to not use Fund Balance for non-capital improvements and noted that none of the capital expenditures would be bondable. At this time there is a deficit to address. Many line items were discussed. It was greed to go with the revised C&S airport lighting budget and have this confirmed with FEMA. Non-commercial vehicle rates were last raised in 2006 and therefore, management was instructed to look into increasing non-commercial vehicle rates for this budget period. It was also requested that management not raise commercial rates at this time. Management was

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instructed to look into reducing certain expenses and reviewing this with the Finance Committee. It was noted that the budget had to be approved at the next BOC meeting.

Mr. Murphy reported that the resolutions on the Hearing Officer's recommendations presented at the last meeting did not address the correct back pay due for a period of time. After consultation with legal counsel Mr. Murphy presented the following;

RESOLUTION ACCEPTING A HEARING OFFICER'S RECOMMENDATION

WHEREAS, pursuant to Civil Service Law Section 75, a Hearing Officer was appointed to conduct a hearing on disciplinary charges that were preferred on or about November 12, 2014 against an Employee ("the Charges") (Town of Southold employee ID number 48530); and

WHEREAS, the Hearing Officer conducted hearings on June 24 and 25, 2015; and

WHEREAS, the parties submitted post-hearing briefs on or about September 2, 2015; and

WHEREAS, the Hearing Officer issued a decision on September 11, 2015 ("the Decision") in which he recommended that the Employee be found guilty of: Charge 1, Specifications 1(aa) and (rr), 3, 4, 5, and 6; Charge 2, Specification 1; and Charge 3, Specifications 1 through 7; and

WHEREAS, the Hearing Officer recommended that the Employee be found not guilty of Charge 1, Specification 2; and

WHEREAS, Charge 1, Specifications 1(aa) and (rr) alleged that, on May 1, 2014 and July 2, 2014, the Employee clocked in early without having any work-related reason for doing so; and

WHEREAS, the testimony at pages 25-33 of the June 24, 2015 transcript and District Exhibits 1-2 demonstrate that the District had a clear policy against clocking in early; and

WHEREAS, the Employee repeatedly violated the policy and was reminded verbally and in writing that he must follow it (*see* pages 33-36 of June 24, 2015 transcript and District Exhibit 6); and

WHEREAS, the evidence demonstrates that the Employee clocked in early on May 1, 2014 and July 2, 2014 (*see* District Ex. 3); and

WHEREAS, the evidence demonstrates that the Employee failed to offer any rational explanation for his conduct; and

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WHEREAS, the Hearing Officer found that the Employee was “clearly on notice” of the rules for clocking in early and failed to follow them; and

WHEREAS, Charge 1, Specifications 3 through 6 and Charge 2, Specification 1 relate to an incident between the Employee and his supervisor wherein the Employee threatened to leave work early, left his post to make a personal phone call (and despite the fact that customers were waiting in line), refused to comply with his supervisor’s directive to advise whether he intended to remain at work and threatened his supervisor with the possibility of calling an attorney; and

WHEREAS, the Hearing Officer found that the Employee “must obey lawful orders from his supervisors...without any guff, lip, backtalk, or argument” (Decision at page 4); and

WHEREAS, the Employee admitted that he engaged in the conduct described in Charge 1, Specifications 4 and 6 (*see* pages 325, 326, 328 of June 25, 2015 transcript); and

WHEREAS, the Hearing Officer properly credited the supervisor’s version of the story and rejected that of the Employee, who unlike his supervisor, did not prepare notes of the incident (*see* District Exhibit 4); and

WHEREAS, the record also demonstrates that the Employee had clocked out, without permission, long before the improper exchange with his supervisor, thereby demonstrating that he had no intention of remaining at work despite having not received permission to leave early (*see* District Exhibit 3 and page 356 of June 25, 2015 transcript); and

WHEREAS, the record demonstrates that the Employee’s proffered reasons for his behavior were not credible and do not excuse it (*see* Decision at pages 5-6); and

WHEREAS, Charge 3, Specifications 1 through 7 relate to the Employee’s failure to account for credit card, ticket book covers and cash as part of his cash register reports; and

WHEREAS, the Hearing Officer found that the Employee was “sloppy and careless” and, despite clear evidence to the contrary, declined to acknowledge his wrongdoing or errors (Decision at page 7); and

WHEREAS, the District, having reviewed the record, has found no indication that the Employee acknowledged his wrongdoing or errors; and

WHEREAS, the District is troubled that the Employee, without submitting any supporting evidence, sought to shift the blame by accusing another employee of, at best, removing and, at worst, stealing documentation and monies from his cash register drawer (*see* pages 314-316 of June 25, 2015); and

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WHEREAS, the District rejects this excuse as irrelevant because the Employee was charged with failing to account for the documentation and monies and not with taking it; and

WHEREAS, the Employee's excuse demonstrates that he has failed to take responsibility for his incompetence; and

WHEREAS, with regard to Charge 1, Specification 2, the District notes that the Hearing Officer's ruling excluded evidence that could have proved the allegations from being introduced into the record; and

WHEREAS, in considering the totality of the evidence, the Hearing Officer found that the Employee is not entitled to back pay and recommended that the Employee be terminated from his employment (Decision at page 8); and

WHEREAS, the record demonstrates that the hearing had been scheduled for December 10, 2014 and was adjourned at the Employee's request; and

WHEREAS, in exchange for the District's agreement to adjourn the December 10, 2014 hearing, the Employee agreed to extend his unpaid suspension to the date on which the hearing commenced (Joint Exhibit 5); and

WHEREAS, the record demonstrates that the hearing had been rescheduled for February 19 and 20, 2015 and was again adjourned at the Employee's request; and

WHEREAS, the evidence demonstrates that the Employee caused the hearing to be delayed; and

WHEREAS, the relevant case law supports the Hearing Officer's recommendation that, under the circumstances presented here, the Employee is not entitled to back pay; and

WHEREAS, the District disagrees with the Hearing Officer's recommendation on the Employee's ineligibility for back pay to the extent that it includes the period during which the District agreed to return the Employee to the payroll (*see* Joint Exhibit 5); and

WHEREAS, the record further demonstrates that the Employee has engaged in a pattern of insubordination, misconduct and incompetence (*see* District Exhibits 5-6); and

WHEREAS, the Employee has failed to show any remorse for his behavior and instead attempted to create what were proven to be non-credible versions of the underlying facts (*see* Decision at page 5; *see, e.g.*, pages 309, 325-326, 328, 341-346 of the June 25, 2015 transcript); and

WHEREAS, the Employee was previously warned that he could be terminated if continued to engage in the behavior underlying the Charges (*see* District Exhibits 5-6); and

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WHEREAS, the District credits the testimony of R.J. Burns that that, if returned to work, the Employee will continue to engage in that pattern because he has not learned from his misconduct (*see* pages 167-169 of the June 24, 2015 transcript); and

WHEREAS, the District further credits Mr. Burns' testimony that, if returned to work, the Employee will also detrimentally impact the District's business, customer service and workforce morale (*see* pages 155-156, 167-169 of the June 24, 2015 transcript); and

NOW, THEREFORE, BE IT RESOLVED, that the District adopts the Hearing Officer's Decision that the Employee is guilty of Charge 1, Specifications 1(aa) and (rr), 3, 4, 5, and 6; Charge 2, Specification 1; and Charge 3, Specifications 1 through 7 and not guilty of Charge 1, Specification 2; and

BE IT FURTHER RESOLVED, that the District modifies the Hearing Officer's Decision finding that the Employee is not entitled to back pay and instead finds that the Employee is entitled to back pay for the period June 24, 2015 through October 12, 2015; and

BE IT FURTHER RESOLVED that, effective October 12, 2015, the Employee is terminated for the reasons set forth in the Hearing Officer's decision and this Resolution.

BE IT FURTHER RESOLVED, that the October 12, 2015 Resolution regarding the Employee is hereby rescinded and replaced with this Resolution.

Moved by: Commissioner Rugg
Seconded by: Commissioner Bloethe
Ayes: All
Nays: None

The next scheduled meetings of the Fishers Island Ferry District Board of Commissioners will be held November 9, at 4:30 to be preceded with a working session at 3:30 at the Fishers Island Community Center.

MEETING ADJOURNMENT

There being no further business to discuss, and on motion made by Commissioner Rugg, seconded by Commissioner Bloethe, and unanimously adopted, the meeting was adjourned at 4:05 PM.