PERSONNEL BOARD – TOWN OF CONCORD, MA

MEETING MINUTES

May 10, 2021

Location: Video Conference Call

Present from the Board: Bill Mrachek (Chair), Nancy Crowley, Jim Richardson

Others Present: Amy Foley, Human Resources Director; Stephanie Oliver, Assistant Human Resources Director; Susan Bates, Select Board Liaison; Chris Carmody, Administrative Manager (Zoom Administrator); Mark Howell, Citizen

1. Call to Order

Mr. Mrachek called the meeting to order at 7:03 p.m. and took the Roll Call of Board members present:

   Nancy Crowley: present; Jim Richardson: present; Bill Mrachek: present;

2. Approval of Minutes

Mr. Mrachek said that Mr. Howell would like to offer an edit to the draft minutes of the 3/23/21 meeting. Mr. Mrachek asked Ms. Crowley and Mr. Richardson if they had an opportunity to review the draft minutes. Based on their response Mr. Mrachek said that it appeared the Board was not in a position to approve those minutes and asked for guidance on accommodating Mr. Howell’s request. Ms. Foley suggested Mr. Mrachek could invite citizen comment and then consider those before the minutes were voted on at next meeting. Mr. Mrachek invited Mr. Howell to share his comments.

Mr. Howell explained that his comments were related to the following sentence on p. 4 of the draft 3/23/21 meeting minutes: “Mark Howell commented that he would support an article that removed administration of the classification and compensation system and replaced that role with something else”. He said that he found the words “something else” to be vague and that what he actually said was “other responsibilities”, which he thought was more appropriate for a bylaw. Mr. Howell said that at that time, he alluded to comments made at previous meetings regarding a more strategic and policy-oriented view, so he felt that “something else” was diminutive in terms of the spirit of his comments. Mr. Howell said that if the words “something else” were replaced with “other responsibilities” or expanded slightly, then he would agree that it was an accurate representation of his comments. Mr. Mrachek asked Mr. Howell how he would define “other responsibilities”, and Mr. Howell replied as he had alluded to in previous meeting, those responsibilities would be around policy, governance oversite and strategies with respect to personnel. Mr. Mrachek said that since there would be no vote on the minutes at the meeting, the Board would consider that edit before finalizing the minutes. Ms. Foley asked that if Board members had edits send them to her (not the whole board) and she would compile for next meeting.
3. Article 7 of 2021 Annual Town Meeting Warrant

Mr. Mrachek said the meeting would move on to a discussion related to the 4/27 public meeting where citizens were able to comment on the current language of Article 7 and the 5/3 Select Board meeting with additional citizen input. Mr. Mrachek said citizen comments were appreciated and the Board would consider them. He added that the Board needs to consider and decide the next step: whether to move forward with what has already been presented, make an amendment to Article 7 or recommend no action on Article 7. He noted that citizens seem to prefer the third option (at least those who have been the most vocal).

Mr. Mrachek asked Ms. Bates if she would summarize the Select Board’s comments. Ms. Bates said that some members commented was that the article was the same as last year and that they would have expected some movement and/or to identify the role for the Personnel Board, so they decided to postpone action until after learning the results of this meeting. She added that most Select Board members would prefer to defer and flesh out the Article for next year. Mr. Mrachek summarized that there was not support for simply removing the Compensation & Classification responsibilities from the role of the Personnel Board and deferring discussion of additional responsibilities until afterwards. Ms. Bates clarified that there was no objection to the removal of those duties, but they would like to see something about next steps/future role and if that information were included in the amendment, she thought it would be acceptable. Ms. Crowley said it was clear that there is a lot of controversy around this issue, and that people can see the reason for taking out the Compensation and Classification, but it is unclear what the Personnel Board would do if left in just an advisory role. She asked if perhaps the Select Board should look at the Personnel Board’s role once the Class. and Comp. duties are removed? She acknowledged that there are confidentiality issues that would prevent the Board from getting involved with many HR issues. Mr. Richardson said he thought that removing Classification & Compensation responsibilities was the point from the beginning, and that everyone seemed to agree that time could be better spent doing other things. Mr. Mrachek replied that although there seemed to be almost universal agreement about removing Classification & Compensation, doing that leaves too many unanswered points/questions and is not going to be approved.

Mr. Mrachek asked if the Board should focus on eliminating Classification & Compensation, recognizing that they may not be successful because we have not covered all the bases in terms of the future. He asked if the Board were to amend the article to only pertain to Classification & Compensation, how much would they have to change? We have proposal for an amendment that places responsibility for Classification & Compensation with the Town Manager, but also adds safeguards/oversight/transparency. Ms. Foley responding by first confirming that Mr. Mrachek was referring to the amended agenda (noting that an amended agenda went out that day that added some possible amendments she had developed as a rough draft based on comments/reactions received through the hearings and from employees). Ms. Foley asked Mr. Mrachek if they should go through the potential amendments or if there was anything that should be addressed first. Mr. Mrachek replied that there had been a comment suggesting that the current system was OK because it allowed for retroactive class. and comp. plan approvals, and that in his opinion, retroactive approval should not be a “gold standard”. He said that the system creates uncertainty, inefficiency, and adds possible exposure to litigation. He added that one way the Board has proposed to deal with that is to take classification & compensation administration away from the Personnel Board and give that authority to the Town Manager.
Ms. Foley clarified that the Personnel Board can only approve certain things mid-year, and that she thinks people often get confused about the Classification & Compensation plan vs. the Personnel Bylaw. The Bylaw is the Town’s wage and salary plan, and there are many provisions in there about paid leave that are not part of the Classification & Compensation plan. She gave the example of Juneteenth is an example of something that has to be addressed at Town Meeting, rather than mid-year. Ms. Foley further clarified that not everything in the Bylaw can be approved retroactively—only certain Classification & Compensation items. Mr. Mrachek offered a possible scenario of an employee losing their job because the Town did not approve of the title/pay range, and said he thought the Town should try to avoid such scenarios. Mr. Richardson agreed, adding that that type of situation was an avoidable pitfall. Ms. Crowley said she had never heard something like that happening, but agreed we need to be careful to avoid that kind of liability.

Mr. Mrachek went through Article 7 with the proposed amendments (displayed on screen). Items 1 & 2 would remain the same. The proposed changes to Item 3 would add eligibility criteria for Personnel Board members. A discussion about whether Board members could serve on more than one board/committee ensued. Ms. Bates said that Administrative Policy and Procedure 10 says that people should not be on more than one committee. Mr. Mrachek said in that case, Item 3c probably should be deleted. During the discussion of Item 4 Ms. Bates added that, not allowing a current or former employee of Town to serve has been the practice of the Board but had not been articulated before now.

Mr. Mrachek asked if there were any comments related to the proposed amendments to Item 4 of Article 7, which would delete language stating that the Board “advises at the request of the Town Manager” and add specific obligations of the Board. Mr. Richardson asked about the meaning of “periodically review and advise the Town Manager”. Mr. Mrachek answered that he did not think there was a clear definition of “periodically review” yet, but that he was envisioning a reporting mechanism where a record of activities would be presented to the Personnel Board quarterly or every 6 month, for the Board’s review and comment. Ms. Foley added that if the Select Board or Personnel Board thought there should be a more specific method assigned, it could be done with a charge. Bylaws being very inflexible, her thought was to provide more flexibility/options by not having it the Bylaw.

Regarding Item 5, Mr. Mrachek commented that he hoped the Select Board would become much more active in assisting the Personnel Board and the Town’s citizens in performing and being involved with activities that are meaningful. Ms. Crowley agreed, adding that the Board needs to have something concrete, that they do not have much to do now and no real interaction with employees, and that it would be nice to have a role with more substance, allowing the Board to make a difference.

Moving on to Item 6, Mr. Mrachek said that giving employees the opportunity to review or comment on changes seemed like a “no-brainer”. He added that he was not sure how much of an opportunity there has been for that in the past, but now there is a Personnel Board with the capability of offering sound suggestions, and that there is a wealth of opportunity to make meaningful contributions. Mr. Mrachek said that based on his understanding, the Board could state this as an objective and did not necessarily need to specify it in the Bylaw, or the Select Board could make it a charge. There was no additional discussion from the Board.

Mr. Mrachek asked if there were any citizen comments. Karlen Reed expressed her appreciation for the meeting packet being posted online, and then asked a question about the rationale for preventing former employees from serving on the Personnel Board. She asked if it would preclude people like
herself who have worked as Election Officers. Ms. Reed also asked for clarification on whether Item 4c means that the Personnel Board could reject amendments, in addition to approving them. Mr. Mrachek replied that Item 3b is intended to avoid any real or perceived conflict of interest. He gave the example of an employee coming before the Board with a grievance might feel that there was a conflict of interest if one of the Board Members was a former co-worker and/or had a supervisory/managerial role and was making decisions related to an employee grievance. Regarding Item 4c, Mr. Mrachek said that his understanding was that if there was a proposed change to one of these processes, the Personnel Board would have opportunity to voice its opinion with regard to change and could say no if they did not agree. He asked Ms. Foley for comment. Ms. Foley replied that the proposed amendment was added in response to public and employee comments that expressed concern about grievances, due process and cause protection. She explained that the Town Charter provides cause protection for employees (vs. “at will” employment), and that public employees have the right to due process, which is the right to be given notice and to be heard. Ms. Foley said that this seemed like one of the areas that the Personnel Board could be involved in in the future because it seemed to be of interest to citizens. Ms. Crowley agreed. Mr. Richardson agreed, and added that in his opinion, the role of the Personnel Board would be watered down if they can only offer an opinion. There were no other citizen comments.

Mr. Mrachek said that he thought the Board was at the point of making a choice to 1) leave article as is 2) recommend no action, which would allow for more time for reconsideration or 3) present an amended article. Ms. Crowley commented that she thought people would want more information on the proposed amendments, but that she could go either way at this point. Mr. Mrachek replied that the Board could consider passing out additional information at Town meeting, such as an FAQ document that would provide more detail on #5 and #6, including ideas proposed by citizens and the Board’s suggestions. Ms. Crowley agreed that that would help to clarify. Mr. Richardson commented that it was clear there was not support for moving forward as is, but also clear that the Board does not want to recommend no action.

Mr. Mrachek asked for public comments. Ms. Bates recommended, if not already done, that the Town Moderator be consulted about the revised wording to see if it is still within the scope of the original article. Mr. Mrachek agreed, adding that Town Counsel would also be asked to review the proposed amended Article. Ms. Foley noted her intention to get a communication out to employees and provide them an opportunity to comment. Mr. Mrachek, recapping the discussion, stated that Item 3c was to be removed from the published revised amendment, because it was in conflict with APP #10. Ms. Crowley commented that there there a lot of good Boards and Committees in town, and that she hoped there could be exceptions made in certain situations where a conflict of interest was not likely, such as a short-term task force, but she did agree with the removal of the Item 3c. Richardson also agreed with the removal of Item 3c.

**Mr. Richardson moved to adopt the amended Article 7, minus Item 3c.** Ms. Crowley provided the second.

- Roll call vote: Mr. Richardson: yes; Ms. Crowley: yes; Mr. Mrachek: yes

Ms. Foley said she would assist with next steps by sending the amended Article to Counsel and Labor Counsel for review and would coordinate with Mr. Mrachek about consulting with the Moderator.
Mr. Mrachek offered to arrange a call with Select Board members to answer any questions they might have about the article being presented—the intent being to open up some communication, explain the Personnel Board’s decision, and solicit their time and assistance. Ms. Bates suggested that he contact the Select Board Chair and request to be put on the Agenda for next week as at the last Select Board meeting discussion on the Article had been deferred until after this meeting. Mr. Mrachek indicated he would do as suggested.

Mr. Carmody reminded all that the deadline for Motions is May 21 and the summaries for each Warrant Article are due May 27, making May 17 the last opportunity for Select Board discussion prior to going to print.

Mr. Mrachek asked if there were any additional citizen comments. There were none.

3. Adjournment

Mr. Mrachek said that if there were no additional business, he would entertain a motion to adjourn.

Mr. Richardson moved to adjourn the meeting. Ms. Crowley provided the second.

➢ Roll call vote: Mr. Richardson: yes; Ms. Crowley: yes; Mr. Mrachek: yes

The meeting was adjourned at 8:03 pm.

Documents Used or referenced at the meeting:

- Draft of March 23, 2021 Personnel Board Meeting Minutes
- Draft Amendment to Article 7 for Personnel Board Consideration
- APP #10 Town Board, Committee and Task Force Appointment Policy

Respectfully submitted by Stephanie Oliver and Karin Farrow.

Minutes approved 6/2/2021