

TOWN OF PALM BEACH

Office of the Town Clerk

REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE PRELIMINARY HEARING OF JASON VEGA'S DISCIPLINARY APPEAL

I. CALL TO ORDER AND ROLL CALL

The Hearing was called to order at 9:51 a.m. on Monday, November 5, 2012, in the Town Council Chambers. On roll call, all Committee Members were found to be present.

It was noted for the record that the Appellant and his counsel were not present as his counsel had been delayed at court.

II. APPROVAL OF AGENDA

Motion was made by Committee Member Rosow, and seconded by Chairman Kleid, to approve the Agenda, as printed. On roll call, the motion carried unanimously.

III. ESTABLISHMENT OF PROCEDURAL RULES FOR HEARING

It was the consensus of the Administrative and Personnel Committee (APC) to establish the following procedural rules for the Jason Vega hearing:

1. The APC hearing will be limited to review of the Grievance Resolution Board's (GRB) proceedings and ruling.
2. The Appellant shall be required to submit a brief stating his position and why he believes the GRB's decision was improper.
3. The APC will not rehear witness testimony from the GRB hearing.
4. Time will be allotted for oral arguments.
5. The APC will receive such evidence as presented by Appellant and Appellee. Each party will be responsible for transcribing the portions of the hearing they will be entering into evidence.
6. Appellant must file a brief within thirty (30) days of this hearing. The Town will have twenty (20) days in which to respond. Requests for enlargement of time may be considered for good cause shown.

7. After the brief and rebuttal have been submitted, the Chair will determine the appropriate length of time for oral arguments. The time allotted for oral arguments will include rebuttal.
8. Upon advice from the Chair, Attorney Hanley will contact the parties to coordinate a date for the hearing ensuring both parties are aware of the time allowed for oral argument.
9. The Appellant will present its case first, followed by the Appellee.

Attorney Hanley was directed to use the procedures discussed and described above as the basis for formalizing the procedures for both the Vega Appeal and later appeals from the GRB. Attorney Hanley will communicate the procedures to be used in the Vega Appeal to the parties through their Counsel.

It was the consensus of the Administrative and Personnel Committee (APC) to establish procedural rules for future APC hearings where the Appellant has waived his right to go before the GRB and has, instead, appealed directly to the APC:

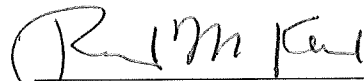
1. The APC will consider these cases as "de novo" hearings. Factual evidence and witness testimony will be heard by the APC.
2. Attorney Hanley was directed to use the procedures set forth by Attorney Kilbride in a GRB hearing (letter attached) as the basis for developing procedures for such de novo hearings.
3. Attorney Hanley will submit the draft APC procedures to APC Chair R. Kleid for review and approval.

IV. PRELIMINARY HEARING MATTERS – None

V. ADJOURNMENT

There being no further business, the Administrative and Personnel Committee Meeting of Monday, November 5, 2012, was adjourned at 10:30 a.m.

APPROVED:



Richard M. Kleid
Chairman

ATTEST:



Susan A. Owens, MMC
Town Clerk

11/16/12
Date

**FOX, WACKEEN, DUNGEY
BEARD, SOBEL, BUSH & McCLUSKEY, L.L.P.**

DEBORAH B. BEARD
GEORGE W. BUSH, JR.
Board Certified Business Litigation Lawyer
RICHARD J. DUNGEY
Board Certified Real Estate Lawyer
M. LANNING FOX
Board Certified Real Estate Lawyer
MICHAEL J. McCLUSKEY
Board Certified Business Litigation Lawyer
JACK M. SOBEL
Board Certified Civil Trial Lawyer

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Board Certified Civil Trial Lawyer
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TOWN OF PALM BEACH
JUN 22 2012
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Board Certified City, County
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SUSANN B. WARD (1951-2008)
JENNIFER ALCORTA WATERS

J. HENRY CARTWRIGHT
GEORGE C. GASKELL
RAYMOND G. ROBISON
Master of Laws in Taxation

AARON A. FOOSANER
Retired
ROBERT L. SEELEY
Retired

June 21, 2012

Margaret M. Cooper, Esq.
Jones, Foster, Johnston and Stubbs, P.A.
Sent via email: mcooper@jones-foster.com

Elizabeth Parker, Esq.
Sent via email

RE: Grievance Resolution Board
Disciplinary Appeal of William Eaton, Police Officer

Dear Ms. Cooper and Ms. Parker,

I will be representing the Town of Palm Beach, Grievance Resolution Board (GRB) as board counsel for the upcoming hearing. The following information is being provided to you as representatives for the parties at the hearing currently scheduled for August 23, 24 and 29, 2012 at 9:00 am. The purpose of this letter is to outline procedures and expectations for the hearing as provided by the GRB ordinance.

It is my understanding that Officer Eaton has selected Board representatives for the hearing, as provided by the Town ordinance. Ms. Christine Cunningham will serve as the peer representative, and Mr. Brian Fuller will serve as the employer representative.

In advance of the hearing, the Board and parties should be provided the following documents:

- Notice of Intent to Discipline
- Notice of Demotion
- Copies of applicable Policies, Procedures, Rules, and Regulations cited within the Notice of Demotion
- Request for Appeal to the Grievance Resolution Board submitted by Officer Eaton

Any additional documents you wish to provide should be submitted to the Office of the Town Clerk no later than the close of business on Friday, August 17, 2012. If you choose to submit additional documents in advance, please submit six (6) pre-marked copies as exhibits. Four (4) copies are for the Board Members and Board counsel, one will be retained by the Clerk for public record, and one will be provided to the opposing representative in advance of the hearing. It would be helpful for each party to provide the other party a copy of the documents directly. Late submissions will disrupt the proceedings, and unless good cause is shown, may not be accepted.

Additionally, if you wish, each representative may prepare a written memorandum providing a brief outline of their position for the case under consideration. This document would also need to be submitted to the Office of the Town Clerk no later than close of business on Friday, August 17, 2012. Five copies, as referenced above, will also need to be provided. Late submissions cannot be adequately reviewed prior to the hearing and may not be considered.

You are free to call witnesses during the hearing. If you wish to call witnesses during your presentation, you will need to provide the Human Resource office with a list of witnesses and the order in which they will be called by Friday, August 17, 2012. You will be responsible for making contact with those named and the coordination of their attendance. However, if the witness you request is employed by the Town and scheduled to work on the dates and times of the hearing, the Town will endeavor to ensure that the witness has time off to testify at the hearing. The late listing of witnesses may result in them not being available for the hearing.

PROCEDURES

The GRB believes the following procedures would be useful and expects them to be followed during the hearing, unless good cause is shown. Your cooperation is expected:

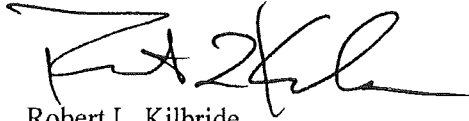
1. The parties may offer an opening statement. The GRB requests that openings not exceed 15 minutes.
2. The Town will present its case first and may offer relevant evidence and testimony. Each witness may be cross examined by opposing counsel and the Board may also ask questions.
3. The Grievant will then present his case in a similar fashion.
4. Rebuttal witnesses may be offered by both parties.
5. The parties may then offer closing statements.
6. The Board will deliberate and issue its decision at the conclusion of the hearing.

Several other rules and procedures apply to the hearing. The Board generally limits its review to the facts developed during the grievance investigation. While the parties are free to challenge the quality or reliability of those facts, it is not the function of the Board to consider new or additional facts regarding the underlying incident(s). Please avoid calling repetitive fact or character witnesses or witnesses who duplicate previous testimony, unless the witness bolsters or supports critical evidence. Keep in mind that the Board's primary function, as a grievance resolution board, is to review the existing record, decide the appropriateness of the discipline and determine whether any adjustments or modifications are warranted.

If you have any questions or concerns about the procedures described herein or if you believe other procedures need to be clarified or followed for this hearing, please contact me no later than July 6, 2012.

We look forward to convening and concluding the hearing allowing each party a reasonable amount of time to present its case. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Kilbride', with a stylized flourish at the end.

Robert L. Kilbride
Board Counsel

cc: Peter B. Elwell, Town Manager
Christine Cunningham, Peer Representative
Brian Fuller, Employer Representative
Kirk Blouin, Director of Public Safety
Susan Owens, Town Clerk
William Eaton, Police Officer
Danielle Olson, Director of Human Resources ✓