

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE ADMINISTRATIVE & PERSONNEL COMMITTEE MEETING HELD ON WEDNESDAY, JUNE 2, 2010

1

I. CALL TO ORDER AND ROLL CALL

2

3 The meeting of the Administrative and Personnel Committee was called to order at 9:00 a.m. on
4 June 2, 2010, in the Emergency Operations Center, 355 S. County Road, Palm Beach. On roll
5 call, Chair Richard M. Kleid and Committee Member David A. Rosow were present.

6

7 Attorney Joseph A. Vassallo represented Mr. John Fallon; Attorney Peter Sampo represented the
8 Administrative and Personnel Committee; Attorney John Randolph represented the Town of
9 Palm Beach.

10

11

II. APPROVAL OF AGENDA

12

13 **The Agenda was approved as presented.**

14

III. PRESENTATION OF DIRECTOR OF RECREATION JAY BOODHESHWAR'S CASE [JOHN C. RANDOLPH, ATTORNEY]

15

16 Town Attorney John Randolph provided exhibits and noted that he would make a brief opening
17 statement. Attorney Vassallo also made brief opening statements. The witnesses were
18 sequestered and ordered not to discuss the case or any matters relating to the case while outside
19 of the hearing. Town Clerk Cunningham administered the oath to those providing testimony.

20

21 The following witnesses were called:

22

- 23 • Jay Boodheshwar, Director of Recreation
- 24 • Jonathan Luscomb, Dockmaster
- 25 • James Hawkins, Dock Employee
- 26 • John Fallon

27

28 *****The Committee recessed at 12:39 p.m. for a lunch recess and reconvened at 1:45 p.m.*****

29

IV. PRESENTATION OF JOHN FALLON'S CASE [JOSEPH A. VASSALLO, ATTORNEY]

30

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1 Town Clerk Cunningham administered the oath to all those who would be providing testimony.

2
3 The following witnesses were called:

- 4
5 • Allen Dix, Retired Police Detective with the Town of Palm Beach
6 • Sergeant Scott McClure, Town of Palm Beach Police
7 • David Mack, 958 N. Lake Way, Resident and dock renter
8 • Officer Mick Keehan, Town of Palm Beach Police Marine Unit
9 • Mark Rowen, 174 East Inlet Drive, resident and dock renter
10 • Officer Thomas Michotti, Town of Palm Beach Police Marine Unit
11 • John Fallon

12
13 Both Committee Members declared ex parte communications with Mr. David Mack about the
14 case prior to the Committee Meeting.
15

16
17 V. REBUTTAL BY DIRECTOR OF RECREATION JAY BOODHESHWAR [JOHN C. RANDOLPH, ATTORNEY]

18
19 Town Attorney Randolph and Attorney Vassallo each provided a three minute closing statement.

20
21 VI. CONSIDERATION BY THE ADMINISTRATIVE AND PERSONNEL COMMITTEE

22
23 Chairman Kleid announced that the Committee would now go into Executive Session to discuss
24 the findings. He asked Attorney Sampo to explain to the Committee what their directive was.

25
26 Attorney Sampo instructed the Committee that their charge was to determine, in essence,
27 whether there was just cause for Mr. Fallon's termination from employment. That would require
28 them to make findings that were supported by substantial competent evidence.

29
30 Chairman Kleid noted that he was curious about the pension. Apparently, Mr. Fallon was nine
31 months short of being fully vested and he had a few questions for Human Resources.

32
33 Town Clerk Cunningham administered the oath to Human Resources Director Danielle Olson
34 who would be providing testimony.

35
36 Responding to Chairman Kleid, Ms. Olson noted that his original hire date according to his
37 personnel file was May 29, 2001 and his vesting date was May 29, 2011. If he were terminated,
38 he would not receive a pension, but would receive his portion of the contributions plus interest.

39
40 Responding to Member Rosow, Ms. Olson indicated that she would need to step away in order to
calculate the information regarding what his pension would be as of next May when he would
have ten years worth of vesting.

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1 Chairman Kleid and Committee Member Rosow commented that they would go back into
2 Executive Session and would hear Ms. Olson's answer when she was ready, rather than wait.

3
4 Committee Member Rosow stated that this was a very difficult case because the worst witness
5 before us was Mr. Fallon. Mr. Fallon basically acknowledged everything that he had done and
6 understood that what he was doing was in contradiction to the instructions he had been given by
7 his superiors. But Mr. Fallon does not get it at all. He said earlier when he was asked if reinstated
8 would he take a direct order from his superiors he said he would discuss it with them unless his
9 job description was changed. Committee Member Rosow found it fascinating that Mr. Fallon
10 knew more about his job description than he knew about the Employee Manual. Because he did
11 not know anything about the facts in the Employee Manual, which are the basic guidelines for all
12 employees on something that he thought they probably not only had repeated access to, but he
13 believed had repeated seminars on. The most appalling part of all of this was that the major
14 infractions were all for the same reason. It was not like he did this and he was suspended, and he
15 did that and he was suspended and he did that and got a disciplinary action. He had all three of
16 those disciplinary actions because of one particular type of attitude, and that was continued
17 fraternization with owners and captains. The Committee did not talk about the captains that spent
18 a lot of time with him; nor did the Committee hear a lot of testimony about violating another
19 Town rule, which was smoking on duty. All of this, in a cumulative sort of sense is very, very
20 troubling. Mr. Fallon stated that he told his bosses what they wanted to hear. Committee Member
21 Rosow said he was willing to bet Mr. Fallon did not tell the yacht owners or captains what they
22 wanted to hear. He gave them the unvarnished truth. Mr. Rosow did not know who Mr. Fallon
23 thought he was getting his paycheck from. He thinks that Mr. Fallon believes he is above it all.
24 That he did not have to take direction and was just fine doing his own thing.

25
26 Basically, there was a disrespect for his superiors. Committee Member Rosow was concerned
27 too, that if Mr. Fallon had done any work on anybody's yacht, that he did not understand the
28 liability implications for the Town; if he fixed a breaker the wrong way, and the electrical system
29 in the yacht shorted out, that same high powered guy who has 120,000 employees would be all
30 over the Town's back asking for us to pay for that error because it was our employee who did it.
31 He said he was very concerned about that. The final thing that Committee Member Rosow
32 mentioned was much was made about the breaking and entering, but not much was made about
33 the fact that he was asked about it twice and he denied it. Mr. Fallon denied that he went over the
34 wall. We have testimony to that effect. He denied that he went over the wall, and then finally the
35 third time he was asked, "yeah, I did that". That is a fundamental dishonesty that really concerns
36 him. He added that there had been an attempt to try the Dockmaster, here, but he was not the one
37 who got disciplinary action. Mr. Fallon did and he had it for the same reasons as he had before.

38
39 Human Resources Director Olson provided the calculation based on ten years of service with a
40 multiplier of 2.75 and using only base salaries, and it did not include overtime. The estimated
41 annual pension for Mr. Fallon would be \$13,331.00. He would defer that until age 55, as he was
42 currently 51 years of age.

43
44 Chairman Kleid announced that the Committee would go back into Executive Session to discuss
45 the findings. He asked Attorney Sampo to explain to the Committee what their directive was.

1
2 Attorney Sampo instructed the Committee that their charge was to determine, in essence,
3 whether there was just cause for Mr. Fallon's termination from employment. That would require
4 them to make findings that were supported by substantial competent evidence.
5

6 Chairman Kleid said there was no doubt in his mind that Mr. Fallon was a well meaning
7 individual and he had heard a lot of testimony that he was a nice guy who wanted to help people.
8 There was no disputing that. With respect to several of the charges, if they stood by themselves,
9 they were not terminable events, but he should have been rebuked or suspended. The same was
10 true with respect to the time clock. Mr. Fallon was well-meaning but he was a good worker,
11 probably did work during his lunch hour, and was caught with an infraction of the rules.
12

13 Chairman Kleid continued that the problem was that Mr. Fallon was interpreting the rules as he
14 saw fit and he understood that the job description said that there was a public relations factor and
15 they should be ambassadors of good will. Particularly in the Town of Palm Beach, there are very
16 influential people, and they can at times be tough to deal with. He gave the example of the
17 Police Department hiring procedures. They do not only hire good crime fighters, they hire a
18 certain type of person that understand and respect Palm Beach residents. He had spent a great
19 deal of time in corporate life, both as a lawyer and as head of a legal department in a large
20 corporation. He understands that there are rules and regulations in corporations. When he was
21 head of a department, he had an open door policy, and employees were free to argue rule. But
22 once the policy was instituted, that was the way it went. If every employee changed the rules and
23 did what he or she wanted, there would be chaos. Once an employee has been told that is not
24 proper procedure, and he continues to do it, he should be disciplined.
25

26 Chairman Kleid stated that he heard loud and clear in the testimony from Mr. Fallon in response
27 to Attorney Randolph's questions that if he was told not to do something, he would continue to
28 do it for the good of the Town against his supervisor's instructions. You cannot have employees
29 who do that. Everyone has a boss, even the Town Manager. Everyone has to follow rules and
30 regulations, particularly if you were told by your supervisor and the head of the department to do
31 something, you should obey. Chairman Kleid was also concerned that if Mr. Fallon were
32 reinstated, he would continue to not follow instructions. Mr. Fallon provided conflicting
33 testimony. His response to Attorney Randolph early on in the hearing was that he would not
34 listen to his supervisor, but then later stated that he would.
35

36 Chairman Kleid thought Mr. Fallon meant well and did nothing intentional to break the rules.
37 But his mind set causes him problems. He noted that at meetings with his supervisors he did not
38 want to make waves, but that was the time to speak up. There are methods by which to bring
39 forth changes and objections, but Mr. Fallon did not exercise those options. He does not fully
40 understand what he did was wrong and Chairman Kleid did not feel he was capable of turning
41 over a new leaf and changing his attitude.
42

43 Committee Member Rosow stated that having listened to Chairman Kleid's comments and
44 agreeing fully, the only difficulty in all of it was there were people involved. The fact that boat
45 owners were willing to come here, as well as police officers, to testify was all very positive.

1 However, many people do not know that he was once a tenant on that dock. Committee Member
2 Rosow had been in the recreation business almost all of his adult life and understands customers
3 more than most. He understands what it means to take care of customers. He stated that he had
4 run ski resorts, golf courses, tennis tournaments, built yachts and had docked yachts everywhere
5 but fundamentally, he was a businessman. He was not as successful as David Mack but if I told
6 someone how to deal with a customer, they could disagree and discuss it, but in the end, if they
7 did not obey and follow the rules, they would have to leave. At the end of the day, someone
8 needs to be in charge. Committee Member Rosow moved to sustain the termination.

9
10 Chairman Kleid was concerned with terminations and pension rights and he realized that the
11 Town people will foot this particular bill. It was pointed out to him that when you live to age
12 eighty, that is a lot of money. He does understand that, but he also looked at the fact that
13 apparently the Town had no issues in the first six years of his nine years of employment and Mr.
14 Fallon's heart was in the right place. He was reluctant again to take away someone's pension
15 rights, when basically they were a good employee. If someone had stolen, he would have an
16 entirely different philosophy. Chairman Kleid believed that Mr. Fallon was well-meaning,
17 although totally misguided and he did not feel that returning him to the Town would be a service,
18 either to Mr. Fallon or to the Town because he was not convinced Mr. Fallon could change his
19 position. Mr. Fallon had been through this and had been counseled many times. Chairman Kleid
20 stated that all of the facts that were found, he believed were true, but he was again concerned
21 with the punishment. He suggested something along the lines of either a resignation effective as
22 of the date of pension vestment or a termination as of such date. He felt strongly that we not take
23 away Mr. Fallon's pension which he had contributed to and earned.

24
25 Committee Member Rosow was informed by Human Resources Director Olson that on average,
26 Mr. Fallon earned approximately \$40,000 per year and his last year of employment he earned
27 \$48,000. Assuming Mr. Fallon lived for thirty more years, he would have collected \$400,000 in
28 pension funds which was equal to the amount he earned in ten years of salary.

29
30 Chairman Kleid stated that other than the infractions regarding socialization, Mr. Fallon
31 apparently had a good work record. Chairman Kleid did not want to cut him off from his
32 pension even though he was not technically vested.

33
34 Chairman Kleid made a motion to terminate Mr. Fallon and ask that Human Relations give him
35 his pension beginning at age 55.

36
37 Human Resources Director Olson indicated that if the Town Council approved the motion, and
38 the Town Council adopted proposed changes to the pension plans, the proposed benefits may
39 change. As of right now, Mr. Fallon's pension would become "Bucket A" and he would earn
40 approximately \$13,000 per year at age 55.

41
42 Committee Member Rosow said he would support that motion.

43
44 **Chairman Kleid restated his motion that Mr. Fallons' termination be sustained, but**
45 **recommends that the Town Council provide for Mr. Fallon's pension benefits to be bridged**

1 in order to allow him to receive pension benefits as if he had ten years of active service with
2 the Town of Palm Beach as of the date of his termination, the amount to be calculated by
3 Human Resources.

4
5 Attorney Sampo stated that having listened to the deliberations and reviewed the information that
6 had been presented, he recommends the following findings:

7
8
9 **The Town of Palm Beach Administrative and Personnel Committee Findings**

10
11 On June 2, 2010, the Town of Palm Beach's Administrative and Personnel Committee
12 ("Committee") met and conducted a hearing pursuant to Town of Palm Beach Code of
13 Ordinances, Chapter 82, Article III for the purpose of resolving the grievance of John Fallon
14 regarding his termination from employment.

15
16 Having met and considered the evidence presented at the hearing, as well as argument of
17 Counsel, the Committee makes the following findings and recommendations:

18
19 1. Mr. Fallon had prior disciplinary measures taken with regard to his employment
20 before his termination in the following manner: a verbal counseling instituted February 14,
21 2006, regarding excessive socializing on the job; a verbal counseling on March 27, 2007
22 regarding excessive socializing on the job, smoking on duty, and failure to complete assigned
23 tasks; a verbal reminder September 28, 2007, of past counselings and again reminding Mr.
24 Fallon to stop excessive socializing with customers in the office; a written reprimand November
25 2, 2007, regarding continued inappropriate behavior with Town dock customers and yacht staff
26 on the weekend; a two day suspension on April 29, 2008, based on video footage of continued
27 inappropriate behavior with Town dock customers, yacht staff and Town dock staff; and a two
28 day suspension on December 15, 2008, along with a probationary period for an incident
29 involving inappropriate access to an office space and lack of admission of responsibility for the
30 conduct.

31
32 2. In each of the counseling's, Mr. Fallon's supervisor Dockmaster Jonathan Luscomb
33 who was joined on three of the counseling's, by Director of Recreation Jay Boodheshwar, met
34 with Mr. Fallon and reviewed the conduct. Mr. Fallon did not deny any of the conduct alleged
35 and in each instance promised to improve in his behavior.

36
37 3. Despite the prior counselings, on February 7, 2010, Mr. Fallon was found to have
38 engaged in a social visit with a friend at the dock facility and visited the vessel *Southern Comfort*
39 while on duty for a total time of approximately three hours and fifteen minutes; on February 13,
40 2010, Mr. Fallon engaged in an extended social visit for approximately fifty minutes to another
41 vessel at the dock; on February 13, 2010 Mr. Fallon engaged in a social visit with Mr. Terry
42 Smith on the vessel *Lion Heart* for approximately forty eight minutes while on duty; on February
43 14, 2010, Mr. Fallon accepted a gratuity in the form of a bottle of wine from the vessel *Southern*
44 *Comfort*; On February 20, 2010, Mr. Fallon engaged in a social visit with Mr. Terry Smith while
45 on duty for approximately one hour, seven minutes; and on February 20, 2010 and February 28,

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2010, Mr. Fallon directed a subordinate employee to punch his time clock reflecting a departure at approximately 5:00 p.m. in the afternoon, when Mr. Fallon had departed work earlier than that at approximately 4-4:30 p.m.

4. Mr. Fallon's supervisor Dockmaster Luscomb and the Director of Recreation Boodheshwar, met with Mr. Fallon in a pre-determination disciplinary hearing, at which time Mr. Fallon was asked for his version of these events. Mr. Fallon did not deny any of the conduct alleged.

5. On April 6, 2010 Mr. Boodheshwar issued a Notice of Termination terminating Mr. Fallon's employment effective April 6, 2010.

6. The Committee finds that based upon these findings, sufficient cause exists for the termination of Mr. Fallon's employment based upon violations of the following provisions of the Town Employee Personnel Manual:

Section 6-6: CAUSES FOR DISCIPLINARY ACTION, INCLUDING DISCHARGE, SUSPENSION OR DEMOTION:

- c. The employee has violated the provisions of this manual, department policies and procedures, the Town's Administrative Policies, the Information Systems Security Policy, or any other approved rules and regulations of the Town of Palm Beach*
- d. The employee has engaged in conduct unbecoming of an officer or employee of the Town either on or off duty.*
- e. The employee has failed to obey any proper and lawful order or directive given by a superior, or has otherwise been insubordinate.*
- j. The employee has falsified any document used with regards to the employee's application for employment, employee benefits, and/or any action affecting the employee's status or employment with the Town.*
- l. The employee has induced or, has attempted to induce, an officer or employee in the service of the Town to commit and unlawful act or to act in violation of any lawful departmental or official regulation or order.*

Section 7-13.2: Public confidence

Section 7-13.3: Acceptance of favors and gratuities

Section 7-13.7: Responsibility

7. The Committee further finds cause for termination of Mr. Fallon based upon violations of the following sections of the Recreation Department General Employee Handbook:

Code of Conduct: Items 7, 14, and 19.

Both Committee Members indicated assent to the findings.

The Town of Palm Beach Administrative and Personnel Committee
Recommendations

The Committee recommends that Mr. Fallons' termination be sustained, but recommends that the Town Council provide for Mr. Fallon's pension benefits to be bridged in order to allow him to receive pension benefits as if he had ten years of active service with the Town of Palm Beach as of the date of his termination in accordance with the pension plan policies in effect as of that date.

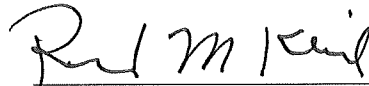
VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

There being no further business, the Administrative and Personnel Committee Meeting of June 2, 2010, concluded at 4:33 p.m.

APPROVED:



Richard M. Kleid
Chairman

Backup Documents 6-2-10