

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: PERSONNEL

DATE: OCTOBER 7, 2015

COMMITTEE MEMBERS PRESENT:

SUPERVISORS TAYLOR
KENNY
SOKOL
MERLINO
DICKINSON
GIRARD
VANSELOW
WOOD
SIMPSON

OTHERS PRESENT:

REPRESENTING THE HUMAN RESOURCES & CIVIL SERVICE ADMINISTRATION:
JACKIE FIGUEROA, COUNTY HUMAN RESOURCES DIRECTOR
REPRESENTING CAPITAL FINANCIAL GROUP, INC.:
JOHN WEBER, PRESIDENT
KRISTY LANEY, VICE PRESIDENT
LORI BURCH
ERIC HATT
KEVIN GERAGHTY, CHAIRMAN OF THE BOARD
PAUL DUSEK, COUNTY ADMINISTRATOR
AMANDA ALLEN, CLERK OF THE BOARD
FRANK THOMAS, BUDGET OFFICER
SUPERVISORS BEATY
BROCK
CONOVER
FRASIER
MCDEVITT
MONROE
SEEBER
STROUGH
WESTCOTT
ROBERT IUSI, PROBATION DIRECTOR
MIKE SWAN, COUNTY TREASURER
JEFFERY TENNYSON, SUPERINTENDENT OF PUBLIC WORKS
JOHN LIGUORI, LAW FIRM OF TOWNE, RYAN & PARTNERS P.C., *LEGAL COUNSEL FOR PAUL DUSEK*
RON MONTESI, TOWN OF QUEENSBURY RESIDENT
GEORGE STEC, TOWN OF QUEENSBURY RESIDENT
DON LEHMAN, *THE POST STAR*
THOM RANDALL, *ADIRONDACK JOURNAL*
SARAH MCLENITHAN, DEPUTY CLERK OF THE BOARD

Mr. Taylor called the meeting of the Personnel Committee to order at 9:00 a.m.

Motion was made by Mr. Simpson, seconded by Mr. Dickinson and carried unanimously to approve the minutes of the prior Committee meeting, subject to correction by the Clerk of the Board.

Copies of the meeting Agenda were distributed to the Committee members and a copy of same is on file with the meeting minutes.

Commencing the Agenda review with Action Agenda Items 1A-B, privilege of the floor was extended to Jackie Figueroa, *County Human Resources Director*, who reviewed the Report on tracking of salary implications for positions filled since the last Committee meeting, as well as the County Human Resources Department's 2016 Budget Request; *copies of both the Report and the 2016 Budget Request can be found on file with the meeting minutes.* At the conclusion of the Budget review, the Personnel Committee voiced their approval of same with no suggestions for revision.

Moving on to Agenda Item 2, Mr. Taylor outlined a request from the Criminal Justice Committee, *Probation*, to create and fill the new position of Probation Officer Trainee #1, *Grade 18, Annual Base Salary \$39,004*, as well as to decrease the salary for the Probation Officer #2 position to \$3,500 effective

October 19, 2015 and amend the Table of Organization and Salary Schedule accordingly. Robert Iusi, *Probation Director*, explained this request came as the result of a retirement within his Department and would offer the opportunity to hire a lower level Probation Officer Trainee who would then be promoted to a Probation Officer position after one year of employment. He explained that a Probation Officer Trainee's salary was \$3,500 less than that of a Probation Officer; therefore, he continued, he sought to fund the Probation Officer Trainee position at the lower salary and retain the Probation Officer position funded at \$3,500 so that the additional funding was already in place with the Trainee was ready to be promoted.

Motion was made by Mr. Kenny, seconded by Mr. Dickinson and carried unanimously to approve the request and the necessary resolution was authorized for the October 16th Board Meeting.

Mr. Taylor announced Agenda Item 3 included a referral from the Health Services Committee, *Mental Health*, seeking to create the new position of Children and Youth SPOA (*Single Point of Access*) Coordinator, *Annual Salary \$53,500*, effective November 1, 2015 and amend the Table of Organization and Salary Schedule accordingly. He noted this was a mandated position required by the New York State Office of Mental Health which would receive 100% State reimbursements. In light of his affiliation with the Mental Health Committee and the Office of Community Services, Mr. Taylor asked Mr. McDevitt to speak on this request; Mr. McDevitt commented he believed this was a fairly straightforward request for a new position required by State mandate. Mr. Kenny questioned whether the State reimbursements would include coverage for health insurance benefits and Mr. McDevitt advised that was his understanding.

Motion was made by Mr. Kenny, seconded by Mr. Dickinson and carried unanimously to approve the request and the necessary resolution was authorized for the October 16th Board Meeting.

Continuing, Mr. Taylor advised Items 4A-B consisted of referrals from the Public Works Committee, *DPW*, which he outlined as follows:

- 4A) Request for ratifying authorization for enrollment in a job related course: Maja Tlokinska-Scroggins, Senior Account Clerk, to attend AS Accounting Courses at SUNY Adirondack which began in the Fall of 2015 and will conclude in December of 2015. This course is being taken in furtherance of Ms. Scroggins' accounting degree program at a total cost of \$2,250 for which the County will provide reimbursement for 50% upon completion of course with a grade of "C" or better.

Motion was made by Mr. Dickinson, seconded by Mr. Merlino and carried unanimously to approve the request and the necessary resolution was authorized for the October 16th Board Meeting.

- 4B) Correcting the vacation accruals for Employee No. 6112 to immediately credit 17 days of vacation, make payment in the amount of \$2,415.75 to the aforementioned employee, authorize retroactive use of the corrected vacation time during a prior payroll period when said employee was off the County payroll, and to adjust the employee's earned service credits during this period.

At Mr. Taylor's request, Jeffery Tennyson, *Superintendent of Public Works*, explained this request was derived from a situation that had occurred with an employee who had left County service and then returned. Mr. Tennyson apprised that as per the Union agreement, an employee who left County service and then returned to work for the County once again was eligible to recoup their accrued rate of vacation upon completion of two years employment. He continued that in this case, the employee had returned to work, but the County had failed to account for this contractual allowance after two years of service; therefore, Mr. Tennyson stated, the employee was owed leave time.

Motion was made by Mr. Dickinson, seconded by Mr. Vanselow and carried unanimously to approve the

request and the necessary resolution was authorized for the October 16th Board Meeting.

Next, Mr. Taylor addressed Agenda Item 5 which included a referral from the Support Services Committee, *County Attorney*, to create the new position of Legal Assistant #3 for training purposes. Privilege of the floor was extended to Martin Auffredou, *County Attorney*, to explain this request. Mr. Auffredou distributed copies of a job description for the Legal Assistant position, as well as an email from Ms. Figueroa providing salary information for same; *copies of both documents can be found on file with the meeting minutes*. He explained this matter was being raised in relation to a retirement within his Office which he anticipated would occur at the end of January 2016. Mr. Auffredou said that ideally, he would like to fill the new Legal Assistant #3 position in mid-December to allow for some training time before the retirement became effective. He added that he envisioned hiring an experienced and well qualified individual for the position in accordance with the salary information provided.

Motion was made by Mr. Girard, seconded by Mr. Dickinson and carried unanimously to approve the request and the necessary resolution was authorized for the October 16th Board Meeting.

Mr. Taylor apprised Agenda Item 6 consisted of a referral from the Tourism Committee to temporarily appoint Joanne Conley as Tourism Coordinator for a period of six months (10/19/15 - 4/19/16) pending a decision by the Tourism Committee to fill the position of Tourism Director. He noted that for this appointment, Ms. Conley was to receive an additional amount not to exceed \$3,000 in 2015, nor \$5,000 in 2016.

Speaking as Chairman of the Tourism Committee, Mr. Merlino expressed there was a need to identify leadership for the Tourism Department while awaiting the results of an RFP (*Request for Proposals*) for consulting services to perform a study of tourism in Warren County. He noted this need would be met by temporarily appointing Ms. Conley as the Tourism Coordinator and compensating her commensurately. Mr. Kenny interjected that while he had no doubt about Ms. Conley's capabilities, he felt the Director position was critical to the Tourism Department and that six months was too long to leave the position vacant. Mr. Dickinson apprised the intent was for Ms. Conley to fill in as Tourism Coordinator for up to six months with hopes that they may be able to fill the vacancy sooner; he added that it would take some time to prepare the RFP and obtain the right services for the County. Mr. Kenny replied with his opinion that the RFP would have no bearing on the need for a Tourism Director and he pointed out this position had been vacant since June. Mr. Vanselow suggested that the request be amended to reflect that Ms. Conley would be appointed for a term of up to six months, as Mr. Dickinson had indicated that was the intent of the Tourism Committee.

Motion was made by Mr. Dickinson, seconded by Mr. Merlino and carried by majority vote, with Mr. Kenny in opposition, to appoint Ms. Conley as Tourism Coordinator for a term of up to six months and providing for the aforementioned compensation, and the necessary resolution was authorized for the October 16th Board Meeting.

Mr. Taylor indicated Agenda Item 7 included requests/items to be discussed by the County Administrator, specifically relating to review of renewal terms for employee health insurance which he asked Paul Dusek, *County Administrator*, to address. Mr. Dusek advised he had been working with John Weber, *President of Capital Financial Group, Inc.*, and his staff in reviewing the County's health insurance program options for a number of years during which they had been successful in controlling program costs and building a reserve. He noted that due to these efforts and the good work they had done to control costs his Office was able to project 4% increases in health insurance costs over the next few years in their Five-Year Plan. Mr. Dusek then introduced Mr. Weber and Kristy Laney, *Vice President of Capital Financial Group, Inc.*, who were in attendance to provide a more thorough review of the insurance options available.

Ms. Laney provided a review of the insurance renewal proposal provided by Capital Financial Group, Inc., *a copy of which can be found on file with the meeting minutes*, during which she indicated that the County would receive an overall savings of 6.5% if they included all current Westmount employees or 12.4% if they were excluded. Ms. Laney also advised the Committee would need to make a determination in relation to Health Care Reform regulations which would require all employees working 30 hours or more per week to be offered health insurance coverage. She explained the County currently had 22 employees who worked 30-34 hours per week that were considered part-time but were not offered benefits; she added that under the Health Care Reform Act, these 22 employees would now be eligible for health insurance benefits. Ms. Laney apprised the County could choose to proceed in one of two fashions, the first being for the County to maintain their current routine of refraining from offering coverage under the provisions that “substantially all” or 95% of employees working over 30 hours per week were offered coverage. The problem with this direction, she stated, was that if the percentage of employees offered coverage fell below 95% they County could face certain fines for each employee, regardless of whether or not they had elected to participate in the County’s insurance program. The second option, Ms. Laney advised, was to offer insurance coverage to all 22 employees. She said that in this scenario, some of the employees may elect to maintain alternate coverage rather than switch to the plan offered by the County and she noted that the insurance cost projections provided included the costs of coverage for 10 additional employees, based on the assumption that some of the 22 employees effected by the Health Care Reform Act would elect to participate in the County’s insurance offerings. Ms. Laney reiterated that while Capital Financial recommended offering coverage to the 22 employees in question in order to avoid any scenario where fines could be levied, this was a decision the Committee would ultimately need to make. At the conclusion of her review, Ms. Laney advised Capital Financial’s suggestion would be for the County was to renew coverage with the existing health insurance carriers (*Blue Shield EPO Plan for active employees; CDPHP/Empire BlueCross for retirees; and Delta Dental for dental coverage*).

Motion was made by Mr. Sokol, seconded by Mr. Merlino and carried unanimously to accept the recommendations of Capital Financial Group Inc. and renew coverage with the existing health insurance carriers, as well as to offer health insurance benefits to the 22 employees affected by the change in Health Care Reform Act regulations, and the necessary resolution was authorized for the October 16th Board Meeting.

Before resuming his review, Mr. Taylor announced there was one item to address which was not included on the Agenda; he then introduced John Liguori, *of the Law Firm of Towne, Ryan & Partners P.C.*, who advised he was in attendance to speak in representation of Mr. Dusek. Mr. Liguori then proceeded to make the following statements:

“I am here to speak on behalf of Paul Dusek and to comment on the accusations that have been made in the report/investigation from the Warren County Sheriff, all pertaining to the development of the Westmount co-gen facility. I thank you for having me and I thank you for hearing me.

“First, the charges - since the Sheriff’s findings were disclosed, and to date, the media outlets together with certain public officials have unfairly focused and blamed Mr. Dusek as County Attorney for the differing profit expectation of an alternative electric and natural gas facility. This was a facility that was developed much like, and actually the same as, facilities in neighboring counties and throughout upstate New York and the northeast, and in fact developed by the same engineering firm, The Siemens Company which is a world-wide company.

“County Attorney - Mr. Dusek at the time was a County Attorney when this transaction was taking place. The County Attorney is not elected, he is appointed. He or she does not set policy and they do not vote on different matters that are placed before them. Only the Board and the Board of Supervisors can do that. County Law Section 501, and I will quote from it, states “The County Attorney shall be the legal advisor to the Board of Supervisors”. Nowhere in that statute does it say that the County Attorney shall be a financial advisor, a business advisor or an engineering advisor in any way,

shape or form, yet we now have the Sheriff and certain members of this Board that accuse Mr. Dusek of being just that; that he should have been a financial advisor, that he should have been an engineering advisor and he should have been a business advisor - he was a legal advisor, he was the County Attorney.

"The report, and if you look beyond the headline grabbing accusations that have been touted throughout The Post Star as early as this morning, is devoid of any facts that establish any misrepresentation of Paul Dusek's competence in negotiating the contracts for this co-gen facility, nor were there any issues in the energy performance contracts offered by the developers, Siemens Corporation. I point out certain aspects of the Sheriff's report - the Sheriff refers to some meeting minutes back in October of 2007 wherein Mr. Dusek, as County Attorney, recommends approval by a Committee of Guaranteed Cost Savings Reports and the Sheriff's investigator then questions how much scrutiny Mr. Dusek gave these reports. Interestingly, in that report, the Sheriff's instigative report, the investigator indicates that at that meeting these Cost Savings Reports were analyzed by an independent accounting firm, an independent engineering firm and were also buttressed by the engineering findings of the Siemens Corporation, which at that point no one had any indication to think would be other than given in good faith. Yet, Mr. Dusek, as the County Attorney, is now blamed for these aberrations that took place in the engineering and in the financials.

"The report itself had misrepresentations. The report goes on and the newspapers have picked up that this co-generation transaction has cost the County millions of dollars - that's not true. This County has contracts with Siemens for other cost savings and other energy savings projects that have been successful and continue to date and they continue to pay for. The co-gen facility was an aberration and a situation where the profitability and the cost savings was something that nobody could predict - it was done on a good faith basis and it was done on numbers given to the County Attorney and presented to this Board by an independent engineering firm, again, Clough Harbour Associates, as well as the Siemens Corporation.

"What speaks and provides the biggest window into Paul's character and his trustworthiness as County Attorney then, and as County Administrator now, is that he freely spoke with the Sheriff's investigator on his own in response to this inquiry. He was asked what was his duty as the County Attorney here and he responded "to give legal advice" and that is completely in compliance with the County Law - not financial advice, not engineering advice, not business advice. He further, and again this speaks only to his character and trustworthiness, states to the investigator "yes, I was unclear as to the calculation of the savings and the cost savings numbers" not that he did not understand the ramifications of those numbers or what they meant to the County, but that he was unclear as to the mathematics and the science, the calculus, the trigonometry, the physics that goes into them, but, even as noted in the Sheriff's report, Paul wasn't relying on his own personal knowledge with regard to these numbers - he was relying on an independent engineering firm, Clough Harbour, he was relying on the numbers provided by Siemens at that time, and he was also relying upon an independent accounting firm.

"From this report, and from these statements, the Sheriff makes a giant leap to criminal charges. He charges official misconduct, Section 195 of the Penal Law. This charge of official misconduct is groundless, it's reckless and it's defamatory. Number one, the charge requires that there be an intent for Mr. Dusek to obtain a benefit from his actions in this transaction. Nowhere in the Sheriff's report is it even alleged that he had the intent to obtain a benefit because of this transaction or that anybody was deprived of a benefit of this transaction. Second of all, the elements of this charge require that he have been derelict in some of his duties that are inherent to the position of County Attorney. The position of County Attorney, again, is one to provide legal advice, to provide the contracts, the mechanisms, the documents to facilitate the transaction to the best benefit of the County. To say that he was derelict in any of these duties is nowhere - this report is devoid of any facts that he did that. Taking that aside, the most telling and the most forceful and the most credible determination on this

issue is that the largest investigatory law firm in the State of New York, the New York State Attorney General's Office, reviewed this transaction and it found no indicia, no evidence of any criminal conduct on the part of anybody and closed its investigation, yet the Sheriff continues the investigation, a conflicted investigation, involving this Board, members of the Board, public officials, this Board that provides the Sheriff's funding and this Board that also sets policy for the Sheriff.

"Presumably, after this meeting you are going to retire to executive session or executive committee to discuss your confidence in Paul Dusek as the County Administrator, and frankly you are going to be judging him, that's what you're going to be doing, you're going to be sitting in judgement. You're going to be judging a man with 27 years of service to the community - a preeminent and exceptional municipal attorney and a exceptional public servant. You're going to be judging a lifetime of tireless public service against one transaction that took place with regard to a high-tech alternative energy co-generation facility that had been developed by neighboring counties throughout the northeast - the closest one in Saratoga County - and you're going to have to compare his trustworthiness, his lifetime of service, his ability to conduct a job. I am going to ask that you come back with a finding of confidence for Paul Dusek, and when you do, I am going to ask that it be publicized with all the fanfare that all of the negative comments have been publicized in. He deserves that; with his 27 years of public service he has earned that. What I am also going to ask you to do when you're meeting and you're discussing confidence, I am going to ask you to discuss the confidence of your Sheriff and the Sheriff's Office. You have a Sheriff that continues in an investigation, a criminal investigation, which is clearly in conflict with other County officials; the District Attorney's Office realized that well in advance and washed their hands of the matter, yet your Sheriff continues to go forward and make these baseless claims of criminal conduct.

"Next, with regard to the integrity of the Sheriff's report and the confidence you should have in it, this report was conducted and the investigation spearheaded by an investigator who is the husband of a member of this Board that is now going to sit in judgement of Paul Dusek's career with the County - that in itself is an inherent conflict. The biggest, and you can call it the 800lb gorilla in the room but I have to say it again and to close up on it, finally, the Sheriff is continuing on this investigation despite the fact that a superior law enforcement agency with law enforcement and prosecutorial authority, the New York State Attorney General's Office, completely vetted this transaction and found no criminal conduct at all on the part of any of the actors here. The Sheriff's Office continues with its "criminal investigation" into this matter; however, they are now jeopardizing what the Attorney General's Office has proposed as a potential civil recovery against the Siemens Corporation which can only benefit the members of the community here in Warren County. That should be questioned, that is reckless conduct, that is poor judgment and that is something that you should consider when you are considering the confidence of your Sheriff.

"Thank you on behalf of Paul for hearing me out and thank you for your consideration."

Travis Whitehead, *Town of Queensbury Resident*, approached the podium to address the Committee but was advised by Mr. Taylor that the Committee would be entering into an executive session to discuss the employment history of a particular person; Mr. Taylor indicated that comments from the public would be entertained when the Committee reconvened in open session. Mr. Whitehead stated Mr. Liguori had recited a number of half-truths which he wished the Committee would allow him a brief opportunity to dispute. Mr. Taylor reiterated to Mr. Whitehead that he would be given the opportunity to make his statements when the Committee reconvened from executive session.

Mr. Kenny asked the Committee to consider holding this discussion in an open session as although they would be talking about the actions of an employee, that employee was the County Administrator. Secondly, Mr. Kenny said that, with all due respect, he would ask that Ms. Seeber recuse herself from any discussion because he believed it was impossible for her to be objective and unbiased when her husband was the investigator.

Mr. Westcott requested that Sheriff York be called to address the Committee before they entered into executive session, given the serious claims Mr. Liguori had made. He said that out of respect and in order to keep the discussion fair and balanced, he felt Sheriff York should be offered this opportunity.

Mr. Auffredou stated that while he agreed with Mr. Westcott's statements, he would suggest that the Committee convene in executive session to receive his comments, and then proceed further in respect to whom else they would like to hear from. Mr. Auffredou said he was unsure whether Sheriff York was prepared to speak on the matter.

Mr. Vanselow made a motion to enter into an executive session to include Ms. Seeber. Mr. Auffredou requested clarification as to whether the purpose of the executive session would be to discuss the employment history of a particular person and Mr. Vanselow replied affirmatively. Mr. Simpson seconded the motion and it was carried by majority vote, with Messrs. Dickinson and Kenny voting in opposition, to enter into an executive session for the aforementioned reason, pursuant to Section 105(f) of the Public Officer's Law.

Before adjourning to executive session, Mr. Westcott stated he felt it was highly unfair not to let Mr. Whitehead, or anyone else for that matter, speak. He continued that he had never met Mr. Liguori and as far as he was concerned he was no different than any other citizen, yet he had been allowed to make his statements when no one else was given the same opportunity. Mr. Westcott requested further clarification as to why Mr. Liguori was allowed to speak and Mr. Whitehead was not. Mr. Taylor answered he was asking for members of the public to hold their comments until after the executive session. Mr. Beaty stated if this was the case, then he felt Mr. Liguori should have held his comments, as well. Mr. Taylor accepted the blame for this oversight and stated it was certainly not his intent to prevent anyone from speaking; he reiterated that anyone wishing to speak publicly on the matter would be allowed to do so once the Committee reconvened and he announced the Committee would now enter into executive session.

An executive session was held from 10:17 a.m. until 11:57 a.m.

Upon reconvening, Mr. Taylor announced no action had been taken during the executive session.

Based on the express advice of the County Attorney, Ms. Wood made a motion to authorize the Chairman of the Board, with the advice and recommendation of the Chairman of the Personnel Committee, to retain counsel for two purposes, the first being to represent the Board of Supervisors in connection with the personnel matter of the County Administrator, and the second being to obtain an attorney or attorneys to review the investigative report on Siemens and to provide advice and counsel to the Board of Supervisors. Mr. Kenny seconded the motion which was then carried by unanimous vote to refer same to the Finance Committee to determine a source of funding.

Mr. Taylor asked if there was anyone in attendance who would like to address the Committee; however, no one came forward.

There being no further business to come before the Personnel Committee, on motion made by Mr. Dickinson and seconded by Ms. Wood, Mr. Taylor adjourned the meeting at 11:59 a.m.

Respectfully submitted,
Sarah McLenithan, Deputy Clerk of the Board
As transcribed by Amanda Allen, Clerk of the Board

Note: The Committee refrained from reviewing the list of vacancies filled since the last meeting, however, that information was included on the Agenda under Item IV.