

HUDSON, NH BOARD OF SELECTMEN
Special Meeting of February 19, 2002

Attorney-Client Session with Atty. Broth from 5:10 – 5:22 p.m.

1. **CALL TO ORDER** by Chairman Ann Seabury at 5:25 p.m.

2. **ATTENDANCE**

Selectmen: Ann Seabury, Rhona Charbonneau, Robert E. Clegg, Jr., and Teresa Stewart

Staff/Others: Paul D. Sharon, Town Administrator; Priscilla Boisvert, Executive Assistant; Labor Relations Attorney, Mark Broth; Call Firefighter Shawn N. Jasper with Attorney Steven Clark; Frank Carpentino, Fire Chief; Shawn Murray, Assistant Fire Chief; Torrey Demanche, Fire Department Executive Secretary; Helen Cheney, Fire Department Secretary; Len Lathrop, HLN

3. **NONPUBLIC SESSION**

Consideration to enter Nonpublic Session under RSA 91-A:3 II (a) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

Chairman Seabury asked Mr. Jasper if he wanted to meeting held in open session or Nonpublic Session. Mr. Jasper replied that he wanted an open session. Chairman Seabury recognized Mr. Jasper's attorney to address the Board.

Chief Carpentino asked Attorney Broth if people's rights were going to be violated if they were going to be talked about without them being present. Attorney Broth didn't think so. If people are being talked about in that they saw something or they were someplace or having some knowledge of events, there isn't any privacy issues there. If they are talking about the contents of someone's personnel file, he expects people would exercise discretion.

Attorney Steven Clark, with Boutin and Associates in Londonderry, said he was representing Shawn Jasper in the capacity of a Hudson Call firefighter in Mr. Jasper's pending grievance with the Town, which is at the Selectmen's level. Procedurally, he and Attorney Broth had some prior discussions. It didn't turn out the way they had originally discussed but it is still pertinent to tonight's proceeding in that he'd like to request that at least two members of the Board recuse themselves from this proceeding, namely, Selectmen Charbonneau and Seabury. Additionally, he asked that the Board appoint a former Selectmen to fill the position of Selectman Jasper so there is a full Board.

Attorney Clark said Mr. Jasper is entitled to a full, fair and impartial hearing and two other members of the Board may feel the need to recuse themselves, as well. When they look at that issue, they are applying a juror's standard. If someone has already developed a position on this matter, it's appropriate that that person not participate in the proceedings. He viewed a number of documents and tapes of the proceedings. The Town Administrator has already admitted that he believes he may have been tainted by the process. He also understands that Selectman Seabury did not feel that she should be judging another member of the Board. Clearly, that tends to lead one to believe she has already taken a position on the matter. With regard to Selectman Charbonneau, there have been previous statements about participating in this type of proceeding. He also understands there was an Ethics Ordinance, that was subsequently amended, but Selectman Charbonneau was a signatory to that. For those reasons, and in going back to look at other Minutes and various correspondence that has been submitted to the Chairman, he noticed that they have been cc'd to Selectman Charbonneau, but not the other Board members. Other members of the Board may feel they are in the same position as the two they have formally requested to recuse themselves. If that is the case, he and Attorney Broth have discussed alternative procedures that would be acceptable to his client.

Selectman Charbonneau said she did sign the warrant article. Two or three months ago, it was said that it was personal; then they took a vote not too long ago and Selectman Jasper said it's not personal, so he would vote on it. How can you be personal one month and not personal the next time they vote? Additionally, he has never spoken to her about this, although he's spoken to Ann, Bob and Terry. The only thing she has ever gotten is the correspondence, which was copied to her. She didn't understand why he was asking her and Ann to step down, but not Selectman Clegg or Stewart because he has been conferring with them all along. She thinks Mr. Jasper feels she might be biased, but other Selectmen might be biased on the other end. She said she is not biased, but is very open-minded. Mr. Jasper has assumed she is biased, but she is not. She cannot understand why, with things that have transpired, he is saying that. She did sign the warrant, but three months ago, it was personal and last month, it was not personal and he could vote on it. How can you say it's a personal issue?

Selectman Clegg asked if the Board could have another Attorney-Client session.

Mr. Sharon said Attorney Clark referred to documents that apparently were specifically copied to Mrs. Charbonneau, as if not copied to others. He has a fairly complete file and he thinks he is the only one that makes those marginal notes. In many of instances it's because the others have received it by email. Attorney Clark said, on that point, Mrs. Charbonneau and the Chair nodded, so that's been cleared up. All he can say is that in looking at a document addressed to the Chairman, on the last page of that document, it is cc'd to Selectman Charbonneau. He didn't know whether or not the full Board is receiving a copy, adding that he was just told that the full Board has been getting them. That's why he made the statement that maybe other members of the Board may feel they've received sufficient ex parte communications on the subject to want to recuse themselves.

Attorney Broth said, for the record and so people will know what was discussed in advance of today, his understanding is that the Board will now consider the request just made on recusal. Some of the members may or may not do so. If no one recuses themselves, they will go forward with the merits of the hearing. If some of the members recuse themselves, it will be necessary to recess so that any remaining members can appoint alternates to hear the case. If all of the members recuse themselves, then there has been agreement that the matter will not be heard by the Board of Selectmen but will, instead, be heard by a third party, neutral arbitrator to be mutually agreed upon by Mr. Jasper's attorney and the Town. He asked if that was fairly stated.

Attorney Clark said there is still no person who has been appointed to fill the vacant position of Selectman Jasper. That needs to be taken care of when the other members recuse themselves. Chairman Seabury asked if he had someone in mind. Attorney Broth said if none of the Board recuses themselves, they are one person short of a full panel, but there would still be a quorum, so the question is if they want to go forward with four members, or if they need to appoint another one to make it five. Attorney Clark said the point was they couldn't go forward this evening without someone appointed. Procedurally, under Chapter 43, the Board would appoint a former Selectman. Attorney Broth asked if the rest of his summation covered what they talked about before. Attorney Clark said he thought so.

Attorney-Client Session was entered into at 5:35 p.m. and was terminated at 5:40 p.m.

Chairman Seabury polled the Board members regarding recusal, starting with Selectman Clegg, who recused himself. Selectman Stewart recused herself. Selectman Charbonneau recused herself. Chairman Seabury recused herself.

Attorney Broth said he would be pursuing the next step with Attorney Clark, i.e., the selection of an arbitrator to hear the case and schedule the hearing. Attorney Clark thought it might be appropriate if a formal vote was taken. Selectman Clegg disagreed, saying a prior understanding was already in place. Attorney Broth asked if it was on the recusal or the arbitration. Attorney Clark said on the arbitration. Selectman Clegg said he wouldn't vote on something that had already been decided upon beforehand. Attorney Clark withdrew his request.

Chairman Seabury thanked everyone. Selectman Jasper took his seat as a Selectman.

4. ANY OTHER BUSINESS

Motion by Selectman Clegg, seconded by Selectman Charbonneau, to ratify the actions they took on February 16 in granting Captain Marshall his turnout equipment as a retirement gift from the Town.

Selectman Jasper asked for an explanation, saying he wasn't objecting, just wasn't aware of it. Selectman Clegg said they gave Captain Marshall his turnout gear at his retirement party Saturday night.

Vote: Motion carried 4-0. Selectman Stewart was out of the room.

5. ADJOURNMENT

Motion by Selectman Clegg, seconded by Selectman Charbonneau, to adjourn at 5:45 p.m. carried unanimously.

Recorded and Transcribed by Priscilla Boisvert
Executive Assistant

HUDSON, NH BOARD OF SELECTMEN

Ann Seabury, Chairman

Rhona Charbonneau

Robert E. Clegg, Jr.

Shawn N. Jasper

Teresa Stewart