



# TOWN OF ROCKLAND

## Board of Selectmen

Town Hall  
242 Union Street  
Rockland, Massachusetts 02370

*Chairman:*

James F. Simpson

*Vice Chairman:*

Lawrence J. Chaffee

*Selectmen:*

Michael E. Zupkofska

Michael P. Johnson

Deborah A. O'Brien

Telephone: 781-871-1874

Fax: 781-871-0386

*Town Administrator:*

Allan R. Chiocca

Executive Session Minutes for

January 20, 2009

10:10pm

The BOS voted by roll call vote to go into Executive session for the purpose of discussion of ongoing litigation and for the purpose of negotiations.

Atty. Clifford reviewed the meeting and discussions at the Joint Labor Management Council and the pending grievances filed by the Fire Department.

Atty. Clifford also distributed an opinion relative to comments being made in open session by Selectman Zupkofska (see attached).

**Mr. Zupkofska requested the following be inserted into the minutes:** *Selectmen Zupkofska stated his public comments have been directed concerning the practice of compounding the "Bump" and not the actual bump itself.*

There was discussion regarding reimbursement to Rockland for lost services and time by the Plymouth County Retirement Board. A letter would be sent by to the County seeking compensation.

Atty. Clifford, and Mr. Chiocca to meet with Police and Fire Chiefs to discuss the "bump" factor in some members contracts.

Motion to adjourn by Mr. Chaffee, 2<sup>nd</sup> by Mr. Johnson, roll call vote 5-0.

Meeting Ended 10:50p.m.

Allan R. Chiocca  
Town Administrator

Lawrence J. Chaffee, Vice Chairman  
Board of Selectmen

**Confidential – Executive Session Material**

To: Board of Selectmen  
From: John Clifford, Town Counsel  
Date: January 9, 2009  
Re: Discussion of Collective Bargaining Issues in Open Session

I have been asked by the Chair to provide an opinion relative to comments made by Mr. Zupkofska at recent meetings. These comments pertain to the longevity increase or “bump” as it has been called. I will discuss the details of this collective bargaining agreement language separately. The collective bargaining agreements between the Town and its unions expired on June 30, 2007, and negotiations remain open until a successor collective bargaining agreement is signed by both parties. Given that the Town lacks sufficient funds, we are currently not putting forward a wage offer, which has negotiations at impasse. Both the police and fire unions have filed with the Joint Labor Management Committee (JLMC) as a means of resolving the open contract. Given that the “bump” is a very expensive benefit, the Town has made proposals to both police and fire to modify the language in the collective bargaining agreement.

Collective bargaining in Massachusetts is governed by M.G.L. Chapter 150E, and section 10(a)(5) of that statute mandates that the parties bargain in good faith. In Town of Marion Board of Selectmen v. Labor Relations Commission 7 Mass. App. Ct. 360 (1979) a finding of a prohibited practice against the Town was upheld where the Selectmen insisted on conducting collective bargaining in public. The Labor Relations Commission had found that the Board had not bargained in good faith and the court upheld that finding. (Note: The Massachusetts Open Meeting law, M. G. L. c. 39, explicitly exempts discussion of collective bargaining matters from the general requirement that all business be conducted in open session.) It should be noted that at the onset of bargaining, both parties sign ground rules that state negotiations are closed to the press and to the public. If a charge were to be filed with the Labor Relations Division (LRD, formerly the Labor Relations Commission) regarding public comments on collective bargaining issues, there is a strong likelihood that we would be found to have bargained in bad faith. The principal sanction may only be a public admonishment of the bad faith bargaining and an order to refrain from this behavior going forward. Even if there were no financial penalty, the Town would be forced to defend the action, resulting in higher legal costs.

In the JLMC proceedings with police and fire, we may find ourselves before a neutral arbitrator to resolve the contract impasse. Bad faith bargaining by either party may

negatively impact the Town's position before a neutral arbitrator, possibly resulting in a more costly contract award.

There are practical concerns to the public comments as well. It is a fairly small group of employees that received the "bump," since it only impacts some members of the police and fire departments. Most of our clerical, administrative, and public works employees have not received any increase since 2006. We are seeking significant concessions in all of the collective bargaining agreements, but those concessions can only be gained with the cooperation of the unions. Any comments that are perceived as anti-union in general make it much more difficult to achieve our goals at the bargaining table.

In conclusion, I recommend against this type of comment in future meetings, as it is likely to result in a prohibited practice charge against the Town, as well as having a negative impact on negotiations for more favorable collective bargaining agreements.