

Minutes for a Special Town Board Meeting held on August 20, 2020 commencing at 5:30 p.m. for Employee Hearing decision and any other Lawful Business

Present: Joseph Giordano, Supervisor
Mark Russell, Councilman
Tom Cunningham, Councilman
Joyce Cooper, Councilwoman (Deputy Supervisor)
Dave Woods, Councilman
Matthew Fuller, Town Attorney
Tonya M. Thompson, Town Clerk

Others: Laura and Mark Wright and Ashley Brand

Deputy Supervisor Cooper opened the meeting at 5:30 p.m.

Resolution #262-2020 brought by Mark Russell, seconded by Dave Woods finding that there is ambiguity between sections 702 and 311 in the Employee Handbook, and based on this finding grant the payment of 94.25 hours of accrued vacation to Laura Wright. **All in Favor** Mark Russell - Aye, Tom Cunningham - Aye, Joyce Cooper - Aye, Dave Woods - Aye. **Opposed** - none. Joseph Giordano - Abstain. **Carried.**

TICONDEROGA TOWN BOARD
COUNTY OF ESSEX, STATE OF NEW YORK

Resolution No. 262-2020
Adopted August 20, 2020
Introduced by Mark Russell
who moved its adoption
Seconded by Dave Woods

RESOLUTION REGARDING APPEAL OF LAURA WRIGHT
PURSUANT TO TOWN OF TICONDEROGA EMPLOYEE
HANDBOOK

WHEREAS, the Town Board ("Town Board") of the Town of Ticonderoga ("Town") is empowered to hear appeals and decide disputes pursuant to §1101 of the Town of Ticonderoga Employee Handbook adopted April 29, 2014 with amendments through January 1, 2020 (the "Handbook"); and

WHEREAS, Laura Wright, a former employee of the Town of Ticonderoga has initiated dispute resolution pursuant to Handbook §1101 and presented a question as to her entitlement to payment for 94.25 hours of accrued vacation pay pursuant to Handbook §702; and

WHEREAS, the Town Supervisor previously determined that pursuant to Handbook §311 because she failed to provide two-weeks notice prior to her resignation; and

WHEREAS, Handbook §311 provides in relevant part: "*Notice of Resignation (Employees) – An employee who intends to resign from employment must submit a written resignation to the employee's Department Head at least two weeks before the date of resignation is to be effective. In order for an employee to meet the criteria for payout of unused paid leave, an employee may not use vacation leave during this two week notice period. All resignations shall be filed in the Town Clerk's Office.*"

WHEREAS, Handbook §702 provides in relevant part: "*Termination of Employment – An employee who resigns, retires, or is laid off will receive payment for unused earned vacation leave to which the employee is properly entitled at the employee's then current rate of pay. In case of the death of the employee, the Town will pay the*

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employee's estate for any unused earned vacation leave.”; and

WHEREAS, it is undisputed that Mrs. Wright resigned immediately effective June 9, 2020 and that she did not provide two-weeks' notice prior to her immediate resignation on June 9, 2020; and

WHEREAS, Mrs. Wright argues that Handbook §702 “*places no conditions whatsoever upon payment of earned, unused vacation time*”; and “*Although §311 does state that employees must submit two-weeks' notice of resignation, §311 does not condition payment of earned vacation days upon providing such notice*”; and that “*the only condition placed upon payment of earned vacation days is that vacation days may not be used during the two-week notice period.*” See letter of Jacob D. Verchereau, Esq., dated June 30, 2020; and

WHEREAS, the Town Board has considered the letter of Mr. Verchereau to the limited extent relevant to the interpretation of Handbook §§311 and 702, as well as the testimony offered at hearing of August 13, 2020.

NOW THEREFORE, the Town Board finds as follows:

1. The arguments that “*Although §311 does state that employees must submit two-weeks' notice of resignation, §311 does not condition payment of earned vacation days upon providing such notice*”; and that “*the only condition placed upon payment of earned vacation days is that vacation days may not be used during the two-week notice period*” are not supported by any reasonable interpretation of the Handbook. Handbook §311 provides very clearly in relevant part: “*Notice of Resignation (Employees) – An employee who intends to resign from employment must submit a written resignation to the employee's Department Head at least two weeks before the date of resignation is to be effective. In order for an employee to meet the criteria for payout of unused paid leave, an employee may not use vacation leave during this two week notice period. All resignations shall be filed in the Town Clerk's Office.*” Emphasis added. For Mrs. Wright's argument to succeed, one must completely disregard the “*during this two week notice period.*” It is clear that the intent of Handbook §311 is to both require the two week notice, and to further require that no vacation time may be used during this two week notice period. Mrs. Wright's arguments to the contrary are rejected based on the plain reading and meaning of the words in Handbook §311. Mrs. Wright did not provide

the requisite 2 weeks notice. In fact she provided no advance notice. Based on Handbook §311, Mrs. Wright would not be entitled to payment for unused paid leave.

2. Turning to Handbook §702, however, the Town Board does find that Mrs. Wright has posed a question as to whether or not she was “properly entitled” to unused vacation leave. Though it is very plausible to interpret these two sections together so as to not render either section ineffective or absurd, and therefore find that Mrs. Wright has failed to comply with the two week prior notice of resignation, Handbook §702 does appear to provide Mrs. Wright with the payment for 94.25 hours of accrued vacation time.


3. The Town Board finds that in reading both Handbook §§311 and 702 together, a disparity and ambiguity between these two sections of the Handbook which is further found to be construed in favor of Mrs. Wright. Based on this finding, the Town Board therefore grants Mrs. Wright's request for payment of 94.25 hours of accrued vacation time payable during the next payroll following the adoption of this resolution.

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4. The Town Board finds the remainder of the letter of Jacob D. Verchereau, Esq., dated June 30, 2020 to be not relevant to the question presented before the Board and rejects the allegations contained in that letter.

Roll Call Vote:

Joyce Cooper, Councilwoman	Aye
Mark Russell, Councilman	Aye
Tom Cunningham, Councilman	Aye
Dave Woods, Councilman	Aye
Joseph Giordano, Supervisor	Abstain

Seal

Tonya M. Thompson, Town Clerk

Mrs. Wright attempted to make a comment and the board explained that there is no public participation at this Special Town Board meeting.

Resolution #263-2020 brought by Mark Russell, seconded by Tom Cunningham to re-advertise for a clerk position in the Ti Court, with announcement in the Press Republican. **All in Favor** Joseph Giordano - Aye. Mark Russell - Aye, Tom Cunningham - Aye, Joyce Cooper - Aye, Dave Woods - Aye. **Opposed - none. Carried.**

Resolution #264-2020 brought by Tom Cunningham, seconded by Dave Woods to advertise for our Ski Program Attendant for the 2020-2021 Ski Season. **All in Favor** Joseph Giordano - Aye. Mark Russell - Aye, Tom Cunningham - Aye, Joyce Cooper - Aye, Dave Woods - Aye. **Opposed - none. Carried.**

Resolution #265-2020 brought by Dave Woods, seconded by Mark Russell to authorize annual membership with American Water Works Association at the 2020 annual rate of \$366.00. **All in Favor** Joseph Giordano - Aye. Mark Russell - Aye, Tom Cunningham - Aye, Joyce Cooper - Aye, Dave Woods - Aye. **Opposed - none. Carried.**

Resolution #266-2020 brought by Mark Russell, seconded Tom Cunningham to award the electric proposal to MidAmerican Energy for a 24-month contract at the rate of \$0.04981 per kWh using GoodEnergy as the town's energy broker effective January 1, 2021 for a 2 year term. **All in Favor** Joseph Giordano - Aye. Mark Russell - Aye, Tom Cunningham - Aye, Joyce Cooper - Aye, Dave Woods - Aye. **Opposed - none. Carried.**

Meeting adjourned at 5:40 p.m.

Respectfully submitted, Tonya M. Thompson, Town Clerk