

IN BOARD OF SELECTMEN
MONDAY, MAY 31, 1977

Present: Chairman John C. Powers, Ira M. Potell, and William F. Toomey

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:30 p.m. by Chairman John C. Powers.

Jurors

Present: Betsey M. Powers, Town Clerk

The Board drew the names of Marc Miranda, 41 Rolling Lane, and Eunice H. Secatore, 551 Concord Road, to serve as jurors at Cambridge Court, commencing July 5, 1977.

Moderator Appointments

Executive Secretary Richard E. Thompson reported that the Moderator had made the following appointments:

To the Finance Committee: Robert Norling for a term to expire in 1980; Alan Grathwohl for a term to expire in 1979; Carol McKinley for a term to expire in 1980; and Anne Donald for a term to expire in 1978.

To the Historic Structures Commission: Jerome G. McGonagle for a term to expire in 1979; Richard C. Hill for a term to expire in 1980.

As representative to the Minuteman Regional Vocational Technical High School District, Thomas A. Welch, for a term to expire in 1978.

To the Housing Study Committee: Eileen Reutlinger, James Goodman, and Charoltte E. Goss.

Mr. Thompson also reported that Linda Glass had been designated by the Finance Committee as that Committee's liaison to the Board of Selectmen.

License--Hawkers and Peddlers--Donald Sutton, 24 Singletary Lane

Executive Secretary Richard E. Thompson reported that the Board, at its meeting of May 23, 1977, had voted to table further consideration of the application of Donald Sutton, 24 Singletary Lane, for the sale of ice cream, confectionery, candy, and tonic in accordance with the Board of Selectmen's Rules and Regulations for Hawkery & Peddlery, until receipt of a revised, more explicit application from Mr. Sutton.

Mr. Thompson reported that he had met with Mr. Sutton on May 24 and had explained the rules and regulations and had helped him redraft his application.

Noting the location behind Hall's Realty on the Boston Post Road, Selectmen Potell questioned whether the location was far enough away from an established business (Sudbury Drug) which sold similar items, as provided by General Laws.

Town Counsel Paul Kenny stated that he was not familiar with such a regulation, and Chairman Powers expressed his agreement with Mr. Kenny.

Mr. Thompson stated that his office would check this matter tomorrow, and, if it is found to be the case, he would so notify Mr. Sutton.

After further discussion, it was on motion unanimously

VOTED: To issue a Hawkers and Peddlers License to Donald Sutton, 24 Singletary Lane, for the sale of ice cream, confectionery, candy, and tonic at locations shown on his application, in accordance with the Board of Selectmen's Rules and Regulations for Hawkers and Peddlers, and subject to any restrictions provided by the General Laws of Massachusetts.

Popcorn Stand

Selectman Toomey commented on the fact that a popcorn stand was often located at The First Parish of Sudbury during Town ceremonies, and he requested that the Executive Secretary make inquiry in this regard.

Chairman Powers stated that it was his opinion that the stand might be run by the church and that one of the operators is a member of that church, and he asked that the matter be handled carefully, as it might be a church-related operation.

It was on motion unanimously

VOTED: To refer the matter described above to the Executive Secretary and Town Counsel for their report.

Extension of the Leave of Absence--Firefighter Michael Dunne--July 1, 1977

Present: Firefighter Michael Dunne

The Board, at its meeting with Firefighter Dunne on May 23, voted to schedule an appointment for Mr. Dunne with a physician of the Board's choosing to examine Mr. Dunne as to his physical capability to return to the Sudbury Fire Department as a full-time firefighter with no restriction; said appointment to be made as soon as possible, so that results would be received before July 1.

Executive Secretary Richard E. Thompson now stated that he had received a copy of a letter dated May 31, 1977 to the Fire Chief from Mr. Dunne, in which Mr. Dunne requested reassignment on June 6, as he and his physician were of the opinion that he could return to work with no restrictions at the expiration of his leave of absence.

Mr. Thompson reported that he had discussed this matter with Mr. Dunne and with Labor Relations Counsel Richard Murphy and that he had drafted a vote for the Board's consideration which would amend Article Fourth, Section B of the Agreement dated May 10, 1976, by extending the leave of absence for Firefighter Michael Dunne from June 6, 1977 to July 1, 1977, due to the time needed for scheduling of a physical examination, by the Board's physician.

Mr. Thompson stated that this examination has been scheduled for June 23 at 3:15 p.m.

Selectman Toomey moved in the words of the Executive Secretary's recommendation.

Mr. Dunne stated that he was expecting counsel at 8:00 p.m., and he would like to discuss this matter at that time, as, in his opinion, there was no provision for an extension of a leave of absence in the contract.

Chairman Powers asked whether it was Mr. Dunne's position that he was not willing to wait until July 1.

Mr. Dunne stated that, as long as there is continuity in his status so that when he came back there would be no problem, he would be willing to wait until July 1, but that he could foresee problems with the possibility that someone within the department might say that there is no provision for extension of a leave of absence and file a grievance in this regard.

Selectman Toomey expressed his opinion that the Selectmen have the right to extend the leave of absence.

As Selectman Toomey's earlier motion received no second, after further discussion, it was on motion by Selectman Potell

VOTED: To table the matter until later in the evening.

(Chairman Powers and Selectman Potell in favor; Selectman Toomey opposed)

Later in the evening, when Fire Chief Frost and Counsel for the Firefighters Association (Joseph Sandulli) were present, it was on motion by Selectman Potell unanimously

VOTED: To remove from the table the above-referenced matter.

Chairman Powers recessed the proceedings briefly to allow Mr. Dunne to confer with his counsel.

When the meeting resumed, Chairman Powers stated that the Board had received a copy of Firefighter Dunne's letter to Chief Frost, which advised the Board that he was requesting reassignment on June 6, 1977, as he and his physician were of the opinion that he could return to work with no restrictions and could perform his assigned duties. Chairman Powers stated that in response to Mr. Dunne's earlier letter dated May 5, which requested reinstatement, effective June 1, 1977 or at the end of his leave of absence, the Board had voted to schedule an appointment with a physician of its own choosing to examine Mr. Dunne as to his physical capability to return to the Sudbury Fire Department as a full-time firefighter with no restrictions and that the appointment was to be made as soon as possible, so that results would be received before July 1.

Chairman Powers stated that the earliest appointment available was June 23 and that the Selectmen would extend Mr. Dunne's leave of absence until July 1 for this reason.

Mr. Sandulli stated that the Board's proposal to extend Mr. Dunne's leave of absence was not acceptable to Mr. Dunne or to him as Mr. Dunne's counsel and that Mr. Dunne does not want to sacrifice the money he could earn between June 6 and July 1.

The Executive Secretary stated that Mr. Dunne's May 5, 1977 letter, requesting reinstatement effective June 1, 1977 or at the end of his leave of absence and that of his physician, dated May 9, 1977, had been conveyed by Chief Frost's letter dated May 16, and that the matter had been placed on the agenda for May 23, which was the next scheduled meeting. Mr. Thompson stated that the Board had been expeditious in this matter, that it was requesting that the examination be done by a neurologist of its own choosing, and that this same procedure has been followed in the past in similar circumstances.

Chairman Powers asked Mr. Dunne if Mr. Sandulli was properly representing him when he stated that this proposal was not acceptable to Mr. Dunne.

Mr. Dunne stated that he would like an earlier doctor's appointment arranged, as it would appear that the delay is because the appointment has been scheduled with a specialist.

Mr. Dunne stated that he was very concerned about receiving an extension of his leave of absence, as, in his opinion, there is nothing in the contract that provides for an extension and that a grievance might be filed in this regard.

The Board indicated that it would have the authority to extend the leave of absence, and Chairman Powers stated that the Selectmen could only act on the question of his reinstatement with a medical report in front of them.

Selectman Potell commented that Mr. Dunne was present at the Board's May 23 meeting at which it was discussed that the results of the examination would be received by July 1, and he asked him why he had not objected at that time.

Mr. Dunne stated that he would be agreeable to the July 1 date if his rights were assured.

Mr. Sandulli then expressed his agreement with the extension until July 1 on behalf of the union and the individual.

After further discussion, it was on motion unanimously

VOTED: To amend Article Fourth, Section B of the Agreement dated May 10, 1976, by extending the leave of absence for Firefighter Michael Dunne from June 6, 1977 to July 1, 1977, due to the time needed for scheduling of a physical examination.

Mobile Home Permit--Robert and Elizabeth Ingersoll, 271 Boston Post Road

Executive Secretary Richard E. Thompson stated that, as a result of an inquiry to his office, a check on the files relating to trailer permits had been made and it had been found that two had expired, one of which was the permit granted to Robert and Elizabeth Ingersoll, 271 Boston Post Road. Mr. Thompson reported that the Board had received a letter dated May 26 from the Ingersolls and that he had asked Assistant Town Counsel to check the bylaws relative to the extension of trailer permits.

Selectman Toomey reported that Mr. Ingersoll is a Police Officer for the Town of Waltham, that the trailer is located to the rear of the house and cannot be seen, and that, as the letter indicates that all available money is going toward restoration of the house, he would recommend a six-month extension of the permit.

In response to Selectman Potell's question, Mr. Thompson reported that the original permit had been issued by the Selectmen on August 25, 1975, in accordance with Article IX, Section V, C of the Town Bylaws for a period of six months.

Chairman Powers commented that the Ingersolls' statement that their first efforts had been directed to the land itself, had bothered him because the permit had a time limit on it and that it would seem that their priorities were not in order.

Selectman Potell stated that the last time the Board voted to issue a permit for a home under construction, he had later realized that he did not approve the action, as, in his opinion, owners of all houses under construction or reconstruction could apply for the same right. Selectman Potell stated that, in his opinion, the granting of such a permit should require a bond.

After further discussion, it was on motion by Selectman Potell

VOTED: To issue a permit to Robert and Elizabeth Ingersoll, 271 Boston Post Road, to park a mobile home on their property for a period of six months, subject to receipt of a bond in the amount of \$1,000.

(Chairman Powers and Selectman Potell in favor; Selectman Toomey opposed)

Town Engineer's Department Report--January-April 1977

After review, it was on motion unanimously

VOTED: To accept the Town Engineer's Department Report for the period of January-April 1977, which included an updated, complete street list for the Town.

Fourth of July Parade

It was on motion by Selectman Toomey unanimously

VOTED: To accept, with thanks, the invitation extended by the Park and Recreation Commission that the Selectmen act as Parade Marshals in the Fourth of July Parade.

Reserve Fund Transfer Request--Police Department Maintenance

Present: Police Chief Nicholas Lombardi

Police Chief Nicholas Lombardi met with the Board relative to Request No. 0735 for a transfer from the Reserve Fund to Account 320-31, Police Department Maintenance. Chief Lombardi stated that their new police cruisers had been larger than those replaced because of concerns for the comfort of emergency victims being transported to local hospitals and that the larger cars had halved the Department's past gas mileage. Chief Lombardi also reported that, when the Police Department's budget had closed out in June of 1976, \$1,841, of which approximately \$1,000 was supposed to go back to the Department to pay their last gasoline bill, had instead been turned back to the Town and that this fact had also contributed to their need for the transfer.

After discussion, it was on motion by Selectman Potell unanimously

VOTED: To approve Request No. 0735 for a transfer from the Reserve Fund to Account 320-31, Police Department Maintenance, in the amount of \$1,400 for the purposes stated on the numbered transfer.

Site Plan Application #77-179, Robert Desjardin, 758 Boston Post Road

Present: Robert Desjardin, applicant

In accordance with Article IX, Section V, Paragraph A of the Sudbury Bylaws, the Board considered the site plan application of Robert Desjardin for property located at 758 Boston Post Road, for retail and office space.

Executive Secretary Richard E. Thompson stated that the appropriate Town officials and abutters had been notified and the following reports received: from the Zoning Enforcement Agent, dated May 4, 1977, who recommended approval; from the Conservation Commission, dated May 25, 1977, who indicated no concern; from the Board of Health, dated May 26, 1977, who indicated approval; from the Sign Review Board, dated May 18, 1977, who found no objections relating to the location of the sign; and from the Planning Board, dated May 18, 1977, who recommended approval.

Mr. Desjardin described the changes, and he stated that he wished to utilize the areas that were shown in white on the plan as his shop on the first floor and a realty office on the second floor.

Noting different height measurements between the earlier approved plan and the plan now under consideration, Chairman Powers asked if there had been any change to the roof line.

Mr. Desjardin responded in the negative, stating that the only alteration has been the portico on the front of the building.

After discussion, it was on motion by Selectman Toomey unanimously

VOTED: To approve Site Plan Application #77-179 of Robert Desjardin for property located at 758 Boston Post Road, for retail and office space.

Certification of the Building Inspector

The Board received a notice from the Executive Director of the State Building Code Commission that Francis E. White had met the criteria established by the Department of Community Affairs/State Building Code Commission and, under the authority vested in the Department by Chapter 802 of the Acts of 1972, he had been certified as a building official.

The Board requested that the Executive Secretary extend its congratulations to Mr. White.

Placement of Stop Sign--Fairbank Road

Executive Secretary Richard E. Thompson reported that, as a result of a communication from Highway Surveyor Robert A. Noyes dated May 5, 1977, which recommended installation of a "Stop" sign on Fairbank Road at its intersection with Maynard Road, a request had been submitted to the Police Chief for his recommendation.

Mr. Thompson reported that a response dated May 18, 1977 had been received from Police Chief Lombardi, who expressed his agreement with Mr. Noyes and Safety Officer Carroll with regard to the need for a stop sign at that location.

After discussion, on the recommendation of the Executive Secretary, it was on motion unanimously

VOTED: To authorize Chairman Powers to sign the appropriate form for submission to the State Department of Public Works.

Middlesex County Advisory Board--Budget Committee Recommendations

Executive Secretary Richard E. Thompson reported that the Board had recently been notified that the Middlesex County Advisory Board (MCAB) had submitted its budget recommendations to the Middlesex County Commissioners and that, since those recommendations were not acted upon favorably by two of the Commissioners, copies of the same had been forwarded to the Governor, the Director of Accounts and all Middlesex County Legislators. The MCAB requested that all its members make these budget recommendations an agenda item with local officials and requested each town's support of their action by its notification to the Governor's Office and the Committee on Counties.

Mr. Thompson recommended that the Board support the MCAB's budget recommendations and so notify the Governor and the Committee on Counties, and he stated that the Governor has already indicated that he would veto any county budget which exceeded that of last year, including reduction of revenue sharing.

After discussion, it was on motion unanimously

VOTED: To support the budget cuts as recommended by the Middlesex County Advisory Board Budget Committee and to so inform the Governor and the Committee on Counties and to send the necessary telegrams and/or letters requesting the support of the local legislators.

License for Public Entertainment on the Lord's Day--Renewal--99 Restaurant,
Theodore S. Hatch, Manager

After discussion, it was on motion unanimously

VOTED: To renew the License for Public Entertainment on the Lord's Day of 99 Restaurant, Theodore S. Hatch, Manager, for a folk singer (one or two) on Sundays for the period of April 17, 1977 through April 9, 1978, from 7:30 p.m. to 12:00 midnight.

Minutes

It was on motion by Selectman Potell unanimously

VOTED: To approve the minutes of the emergency meetings of May 11 and 12, 1977.

(Selectman Toomey abstained from voting as he had not been in attendance.)

It was further unanimously

VOTED: To approve the minutes of the regular and executive sessions of May 23, 1977, the former as corrected, and the minutes of the Town Fathers Forum of May 23, 1977.

Reserve Fund Transfer Request--Loring Parsonage Maintenance

After consideration and discussion, it was on motion unanimously

VOTED: To approve Request No. 0736 for a transfer from the Reserve Fund to Account 340-34, Loring Parsonage Maintenance, in the amount of \$100, for the purpose stated on the numbered transfer.

Sudbury House, Inc.

Executive Secretary Richard E. Thompson stated that, following the Board's May 16, 1977 meeting with Gerald W. Brogna, Manager, Sudbury House, Inc., relative to his application, as holder of a Common Victualler All Alcoholic Beverages License, for a change in the description of the premises, he and Building Inspector/Zoning Enforcement Agent Francis E. White had again met with Mr. Brogna and that the matter would be scheduled on the Board's agenda for June 6.

Massachusetts Municipal Associations--Joint Legislative Office--Legislative Liaison

On the recommendation of the Executive Secretary, it was on motion by Selectman Toomey unanimously

VOTED: To designate Chairman John C. Powers as the Town's legislative liaison to the Massachusetts Municipal Associations.

Municipal Associations--Dues

Selectman Potell questioned the need for the Selectmen to continue paying dues to all of the different municipal organizations, and after a brief discussion, it was agreed to schedule this subject on the agenda for the Board's meeting on June 6.

Appointment

It was on motion unanimously

VOTED: To appoint James V. Merloni to the Operational Review Committee for a term to expire on April 30, 1978.

Special Meeting--Wednesday, June 8, 1977

At the suggestion of Selectman Toomey, it was on motion unanimously

VOTED: To hold a special meeting at 7:30 p.m., Wednesday, June 8, 1977, at the Loring Parsonage for the purpose of considering the Selectmen's remaining appointments.

Regular Meeting Rescheduled from June 13 to June 14, 1977

It was on motion unanimously

VOTED: To reschedule the regular meeting from Monday, June 13, to Tuesday, June 14, due to the unavailability of two of the Selectmen on the earlier date.

Horse Pond School Lease--Memorandum from Assistant Town Counsel

With regard to the May 24, 1977 memorandum from Assistant Town Counsel on the subject of the Horse Pond School Lease, Selectman Toomey stated that he would like to see more research, figures, an opinion from Town Counsel, and an opinion from the Executive Secretary as to what the Board should do.

Chairman Powers stated that the Selectmen had taken a position of no action with regard to the Horse Pond Road School unless and until the School Committee votes that it no longer needed the school.

Chairman Powers expressed his disagreement with Assistant Town Counsel's opinion and he requested that Town Counsel review very carefully the May 24, 1977 memorandum of Assistant Town Counsel and clarify the matter.

It was agreed that an analysis with regard to lease figures, etc., would be requested from the Town Accountant only in the event that Town Counsel rules that the Selectmen should take a position in this matter.

Public Hearing--Application of Douglas R. Lewis, Jr., 9 Old County Road

Present: Douglas R. Lewis, Jr., applicant; Fire Chief Josiah F. Frost

In accordance with Chapter 148 of the General Laws, the Board, acting as the Licensing Authority for the Town, considered the application of Douglas R. Lewis, Jr., Executor for the Estate of Eileen Whitworth, 9 Old County Road, for renewal of the license to store inflammables underground (10,000 gallons diesel fuel).

Executive Secretary Richard E. Thompson reported that Fire Chief Josiah F. Frost had approved the application on May 13, 1977 and that his report dated May 25, 1977 had since been received, which indicated no objection to renewal of the license. Mr. Thompson stated that a report dated May 19, 1977 had been received from the Building Inspector, as well as a report dated May 20, 1977 from Assistant to Town Counsel Thomas French relative to the existing license and his recommendations if the license is to be renewed.

Mr. Thompson reported that the Board had voted, on July 20, 1972, to grant a conditioned license to Eileen Whitworth, who, at that time, was owner of the property.

Mr. Lewis stated that there is, at that location, a repair shop for automobiles (Ted's Auto Repair) and that a private contractor also parks one vehicle (Ford dump truck) there from time to time.

Mr. Lewis stated that he would like to have the first condition (that fuel and oil be for private use only and not for sale to others except those whose vehicles are repaired on a regular basis on the premises) of his present license removed so that he might sell fuel, as there is no diesel station in Sudbury.

In response to Chairman Powers' question as to how many people he might expect to sell to, Mr. Lewis estimated a dozen.

Selectman Potell asked that, if this condition were to be removed to allow the commercial sale of diesel fuel, what, if anything, would be involved.

Chief Frost stated that any diesel station would be treated just as any other filling station.

After further discussion, it was on motion by Selectman Toomey unanimously

VOTED: To renew the license to store inflammables underground (10,000 gallons diesel fuel) at the property located at 9 Old County Road for Douglas R. Lewis, Jr., owner of said property, subject to the following conditions:

- 1) limited to one pump and dispenser, one (1) 10,000 gallon tank or two (2) 5,000 gallon tanks, all to be located as shown on site plan dated June 8, 1972;
- 2) operation is subject to any rules and regulations governing the operation of a filling station; and
- 3) said license will expire on June 1, 1978, and its renewal is subject to the statutory annual filing requirement.

Grievance--Firefighter

Present: Firefighter James H. Jackson, complainant; George Abrahamson, Vice President, Firefighters' Association; Fire Captain James Devoll; Joseph Sandulli, 33 Mt. Vernon Street, Boston, attorney for Firefighters' Union; Fire Chief Josiah F. Frost

Executive Secretary Richard E. Thompson stated that the Board had received a letter dated May 21, 1977 from Firefighters' Association President Peter Devoll which notified the Board that on April 4, 1977, the Firefighters' union grievance committee had received a grievance from James Jackson, who was denied time off in lieu of holiday pay because, against his written option, he had received payment for New Years Day and Martin Luther King Day.

Mr. Thompson reported that, upon receipt of this letter, he had responded to Peter Devoll, by letter dated May 24, 1977, advising him that this matter had been scheduled tonight.

Mr. Thompson also reported that a letter dated May 20, 1977 had been received from the Personnel Board, which confirmed that Board's opinion, as previously stated in its letter dated February 16, 1977, that the Fire Chief has discretion in scheduling time off in lieu of holiday pay and that it is within his discretion to schedule it after July 1, 1977 as stated in his directive D.O.77-89. Mr. Thompson further reported that the Board had also received copies of the following related pieces of correspondence: from the Fire Chief to all Fire personnel, dated February 24, 1977, which voided Section 2 of Department Order 77-86 and replaced it with D.O.77-89, which reads: "The three remaining holidays of this fiscal year, namely Washington's Birthday, Patriot's Day and Memorial Day, will be paid as they are earned unless a request is submitted for time off in lieu of holiday pay. Such time off, if requested, will not be granted until July 1, 1977. All accrued holiday time up to and through December 31, 1976 will be honored for time off if so requested; if not requested, this time also will be carried over to July 1, 1977."; from Michael Callahan, then president of the Firefighters' Association, to Chief Frost, dated April 21, 1977, advising him of the grievance

committee's vote that Department Order 77-89 was in violation of the Firefighters' collective bargaining agreement; from the Fire Chief to Michael Callahan, dated April 26, 1977 relative to the grievance as filed and received in his office on April 22, 1977; and from the Fire Chief, to the Personnel Board, dated April 26, 1977, requesting a meeting with the Personnel Board to discuss the matter of the grievance.

Chairman Powers stated that the Board did not have before it the April 4 grievance letter from Firefighter Jackson, which was referred to in Peter Devoll's May 21 letter.

Mr. Joseph Sandulli, representing the Firefighters' Association, stated that, in his opinion, the grievance involves a principle and a person, that the principle relates back to a letter that Chief Frost posted on December 27, 1976, and that there was a January 5, 1977 grievance letter which was processed through several steps of the grievance procedure.

Chairman Powers again stated that the Board did not have the April 4, 1977 letter in which the grievance was set forth.

Mr. Sandulli stated that Firefighter Jackson had asked for a day off in lieu of a paid holiday and was told he could not have a day off until after June 30.

Firefighter George Abrahamson, Vice President of the Firefighters' Association, submitted to the Board a copy of Firefighter Jackson's April 4, 1977 letter to the grievance committee.

Chairman Powers asked when and to whom the requests had been made.

Mr. Sandulli reported that the two holidays were New Years Day and Martin Luther King Day.

Chairman Powers asked when Mr. Jackson had made his requests.

Mr. Sandulli responded that the requests had been made the first part of the year and that the Chief had paid him against his will.

Chairman Powers asked Mr. Jackson whether he had, on April 4, 1977, requested time off in lieu of pay and whether he (Chairman Powers) was correct in his understanding that Mr. Jackson had received pay for these two days.

Mr. Sandulli stated that, at all times since the Chief's order was posted, the union had felt that the order was improper.

Chairman Powers stated that, at this time (April 4), Mr. Jackson had been paid for Martin Luther King Day and New Years Day.

Mr. Jackson stated that that was correct.

Chairman Powers asked Mr. Jackson whether he had personally protested payment for these two holidays when he had been paid for them.

Mr. Jackson stated that he had requested that he wanted the time off around the first of the year, at the time the Fire personnel had received a questionnaire, which was distributed by the Chief between Christmas Day and January 1.

Chairman Powers asked whether, on April 4, he had had a conversation with the Fire Chief.

Mr. Jackson stated that he had approached his Captain who had, in turn, approached the Chief.

Mr. Sandulli reported that the grievance was filed and received on April 21 by the Chief, that Chief Frost responded by letter dated April 26, rejecting the grievance, that the union then submitted the grievance to the Personnel Board on May 5, that the Personnel Board's response was dated May 20, and that the union had then submitted the grievance to the Selectmen by letter dated May 21.

Chairman Powers asked that the grievance be presented.

Mr. Sandulli referred to page 12 of the Firefighters' contract; specifically, the second sentence of the last paragraph, which reads: "Any permanent full-time Fire employee can request time off in lieu of a paid holiday and will be given a day off with pay at a time approved by this department head."

Chairman Powers asked whether there was anything in the contract that referred to the fiscal year.

Mr. Sandulli responded that the contract runs from July 1 (1975) through June 30 (1976).

The Executive Secretary stated that the contract is still in effect, as no new one has been agreed upon.

Mr. Sandulli stated that the cost of allowing firefighters to take a holiday off in lieu of pay must be funded, so that this is an obligation which the Town has and the money has to be made available. Mr. Sandulli expressed the union's objection to the Chief's having paid for these days, as, in its opinion, such payment was improper.

Chairman Powers asked whether the union's position is that days off could not be carried over beyond a contract year despite the fact that the contract carries over.

Mr. Sandulli referred to GLc150E §7, which provides for funding of contract costs, and he stated that contractual benefits could not be postponed solely because of failure to appropriate sufficient funds.

Chairman Powers asked whether there was anything in the language of the contract in force between the Town and the Fire union which supports Mr. Sandulli's contention that an employee could not get compensatory time off or time off in lieu of holidays after the conclusion of a particular fiscal year.

Mr. Sandulli responded that, in his opinion, the language in Article XI, Section 1 (page 12) of the contract, which reads, in part: "...Any permanent full-time Fire employee can request time off in lieu of a paid holiday and will be given a day off with pay at a time approved by his department head..." is ambiguous and has been given meaning from past practice.

Mr. Abrahamson stated that, last year, Fire employees had been handed a letter around the third pay period in May, which stated that they would have to take holiday time off before June 30.

Chairman Powers asked if there had never before been a situation when the men took compensatory time, but not holiday time.

Mr. Abrahamson stated that, compensatory time for school had been carried over, but not paid holidays.

Chairman Powers asked if the union was essentially basing its case on State statute and past practice.

Mr. Sandulli responded that he was basing his case on both the State statute and the contract, and he again stated his position that the Town could not deny a day off simply because there were no funds to pay for it. Mr. Sandulli further expressed his position that the past practice gives meaning to the above-referenced language in Article XI, that it was his understanding that the discretion of the Chief was to ensure that the Department was adequately staffed, and not a matter to jockey vacations to try to make up for the failure of the Town to fund the contract.

In response to Chairman Powers' question as to the date of the contract, Mr. Sandulli stated that the contract covered the period of July 1, 1975 - June 30, 1976.

Chairman Powers commented that this grievance was not filed until April 4, 1977, many months after the budgeting and negotiating process for the present fiscal year, which is still ongoing, should have been closed according to State law. Chairman Powers further commented that, in his opinion, the fact that no new contract has been agreed upon as yet has some bearing on what expectations are for appropriation purposes.

Mr. Sandulli expressed his disagreement, and he stated that he did not think it reasonable to anticipate that a new contract would produce lesser benefits and that, once the Town was bound by this contract, it must make additional appropriations to comply with it.

Chief Frost stated that the grievance before the Board was filed because he had denied time off to a firefighter and that his reason for the denial was the fact that the firefighter had no time off due him at that time. Chief Frost stated that, in his opinion, that decision was his right as a manager.

Chairman Powers asked Chief Frost what he meant by his statement that the firefighter was not eligible for any time off.

Chief Frost stated that each firefighter earns 11 days in lieu of time off for a holiday; that, in this particular case, the earned holidays from the period of July 1, 1976 through the present had either been taken in lieu of time off or paid for. Chief Frost stated that the firefighters, prior to January 1977, were sent a list requesting information as to whether they wished to be paid twice a year or to take the time off and that, prior to January 1, Mr. Jackson had indicated that he wished to take time off in lieu of pay. Chief Frost stated that, as of January, it was necessary for him to change the order so that the 5 remaining holidays in this fiscal year would be paid as they were earned. Chief Frost stated that the Personnel Board, at that time, informed him that he could get his men to take time off at his discretion, but could not force them to take pay. Chief Frost stated that, as soon as that decision was made, there was another order issued that, if a man wished to take time off, it would be given after July 1, 1977 and that this order was also honored by the Personnel Board.

Selectman Toomey expressed his opinion that the union's case had been very poorly presented, and he stated that, as Town Counsel had taken detailed notes during the discussion, he would ask that the Board refer the matter to Town Counsel for an opinion. Selectman Toomey stated that after receipt of Town Counsel's opinion, he would make his position known.

Chairman Powers asked Mr. Sandulli if he wished to make a response to Chief Frost's comments.

Mr. Sandulli responded that he did not.

Selectman Potell asked Mr. Sandulli whether there was any section in the contract which specifies that anything in particular must be done with those holidays prior to their being earned.

Mr. Sandulli stated that he would again have to look at past practice, that there is a form which the Chief posts for his employees after Christmas, but before January 1.

Selectman Potell asked whether there was anything in the contract that precludes that something must be done prior to the earning of the holidays.

Mr. Sandulli responded in the negative.

Chairman Powers referred to the Personnel Board's May 29, 1977 letter in which that Board agreed with the Chief that he had the discretion to schedule time off in lieu of holiday pay after July 1, 1977.

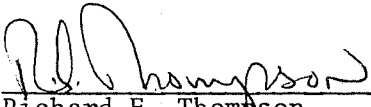
Chairman Powers stated that Selectman Toomey had indicated that he would like a week before voting on this matter and that he would respectfully request that there be mutual agreement to delay further consideration of the grievance until the Board's meeting on June 6.

The union members and Mr. Sandulli indicated their agreement, and it was on motion unanimously

VOTED: To continue, by mutual agreement, until June 6 at 9:00 p.m., further discussion of a communication from the International Association of Fire Fighters, Peter Devoll, President, dated May 21, 1977, relative to a grievance of a firefighter dealing with the question of time off in lieu of holiday pay and whether holiday time off can be carried over to the next fiscal year.

There being no further business to come before the Board, it was on motion unanimously

VOTED: To adjourn the meeting at 10:10 p.m.

Attest: 
Richard E. Thompson
Executive Secretary/Clerk