The Board of Selectmen met in Executive Session on February 10, 2009 in the Tisbury Town Hall.

Present: Denys Wortman, Chairman; Tristan R. Israel; and Jeffrey C. Kristal, John R. Bugbee, Town Administrator and Aase M. Jones, Assistant to the Town Administrator.

Also Present: Officers Kelly Kershaw and Michael Gately, Union Steward; Police Chief John A. Cashin.

Call to order: 4:00 p.m.

Mr. Israel noted that this meeting was to hear a Union grievance filed by Ms. Kershaw at Step 2 of the grievance process, and added that Ms. Kershaw has the option to choose to hold this hearing in open or closed session.

Ms. Kershaw stated that she would like to have the hearing in Executive (closed) Session.

Motion: That the BOS go into Executive Session to hear a union grievance appeal at Step 2 of the grievance process, to reconvene in Open Session at 5:00 p.m. Seconded.

Voting: Mr. Kristal: Yes; Mr. Wortman: Yes; Mr. Israel: Yes.

Convened in Executive Session: 4:05 p.m. M/s/c.

Kelly Kershaw Step 2 Grievance Hearing: was called to order by the Chair.

All documents pertaining to the grievance are hereby incorporated by reference.

Town Administrator John Bugbee reported that he received Officer Kershaw’s grievance at Step 1 of the grievance process on December 29, 2008, citing the employer’s refusal to reimburse her for the cost of a Steamship Authority ticket and mileage to a seminar she attended in New Hampshire. Mr. Bugbee reported that Ms. Kershaw submitted for the reimbursement to the Town Accountant, and that each of the two officers attending the same seminar (in New Hampshire), Officer Habekost and Officer Kershaw, was paid half of their submitted travel costs. Mr. Bugbee noted that the two officers did not share a vehicle or take the Woods Hole Town Car.

Mr. Bugbee continued by stating that the grievance was denied by him at Step 1 for two reasons: (1) persons using their own vehicles for Town business, must have approval by the Department Head, and Chief Cashin had not approved such use for Officer Kershaw; and (2) Section 29.6 in the Personnel Manual stipulates that a Town employee traveling on Town business must use the Town Car in Woods Hole. Mr. Bugbee added that the Selectmen’s Administrative Secretary Hillary Conklin who handles bookings and use of the Woods Hole car was not consulted about availability of the car, nor was permission to use her personal car for the trip approved by Chief Cashin.

He reiterated that the rationale for denial of the grievance at Step 1 was based on these criteria: a) that prior approval by the Department Head (Chief Cashin) to use a personal car was not obtained; and b) that the Town Car was not requested.
Officer Kelley Kershaw’s Statement: Ms. Kershaw stated that to date she does not recall having received payment for any expenses associated with this trip from the Town.

Ms. Kershaw stated further that she has never received a copy of the Personnel Manual, which she added has no relevance here as the Police department operates under the terms of a Union Contract.

Ms. Kershaw continued by stating that she has gone off Island before for shooting training, and did not have to use the Town Car, adding that she had no knowledge of any form that she was expected to fill out. She stated further that Detective Santon said he was using the (Woods Hole) vehicle on a Thursday, and reiterated that she never received a copy of the Personnel Manual, and stated that she never made arrangements herself.

Officer Kershaw then stated that nowhere does it say that she has to share a car with another “guy” for a whole week, and commented that she thinks it is “odd” to have to share a car, but concluded by conceding that maybe she did not follow through on this part. She then added that some kind of travel arrangements had to have been approved.

Town Administrator John Bugbee pointed out that the Personnel Manual fills in all gaps in the Union Contract(s), and would provide any area where the Union Contracts lack information or specific provisions. He added that he fails to understand how there is no knowledge of the policy regarding use of the Town Car when Ms. Kershaw herself stated that she spoke with Detective Santon about his use of the Town Car.

Mr. Bugbee continued by stating that if Ms. Kershaw was uncomfortable sharing a vehicle with another officer, he could understand that, but added that the Town would have sent Ms. Kershaw to the seminar at another time if that had been known.

Ms. Kershaw responded by stating that she does not mind being around “guys” as she is around them all the time at work, and added that she does not feel that she should be singled out to have to share a car with another person. She explained further that she does not want to be “chained to” another person for a whole week.

Mr. Bugbee reiterated that if she was uncomfortable with that she could have been sent to the seminar at another time. Mr. Bugbee stated further that Ms. Kershaw stated that she knew that Detective Santon would be using the Town Car, and added that it is not up to the employee to determine who gets to use a personal vehicle when going off-Island on Town business. Mr. Bugbee stated further that it is the Town Administrator’s purview to prioritize who uses the Town Car and who uses his own personal vehicle (if the Town Car is not available).

Ms. Kershaw then stated that she did not have a form to fill out and added that to date she has not seen “a dime” for this trip, and concluded her comments by stating that perhaps it is not such a good idea for her to go away for training to become a better police officer. Discussion.
Mr. Israel commented that the Selectmen also uses the Town Car, and if two Selectmen want the car, but going in opposite directions, one gets to use his personal vehicle and the other the Town Car.

Ms. Kershaw then stated that her understanding of the policy on use of the Town Car is that if it is already being used, she can take her own vehicle.

Mr. Wortman asked for a clarification if it is correct that if Officer Kershaw had asked to use the Town Car and it was already booked for use by another employee, would she then not be authorized to take her own car?

Discussion followed on whether a person should be allowed to take own vehicle to an out-of-State seminar, based on hearsay that the Woods Hole Town Car was already booked.

Mr. Israel suggested that if Ms. Kershaw had stated that she would be uncomfortable being in a shared vehicle for a whole week with another officer, the Board might have considered that.

Mr. Bugbee pointed out that Officer Habekost was reimbursed for half of his mileage expenses, and noted that Ms. Kershaw has not yet received her check, but added that there are other reasons for that, which he offered to go into if so desired, but added that this is not part of this issue.

Mr. Wortman then asked Ms. Kershaw how much she is owed, is it $130?

Ms. Kershaw responded that it is only the mileage and the Steamship Authority boat ticket: $197.73 for mileage and $70 for the SSA ticket.

Chief Cashin was asked about his position. He responded by stating that he always encourages someone to file a grievance when he cannot resolve an issue.

Mr. Israel inquired if it always has been the practice to have the Police Department Administrative Secretary make travel arrangements for the Tisbury Police Department. Discussion followed. It was noted that a new Department secretary has recently been hired in the Tisbury Police Department, but also noted that the former secretary, Linda Handy, usually made travel arrangements for the department personnel.

Chief Cashin then pointed out that there were also other issues with regard to the officers’ taking personal time before the class (Officer Habekost) and Officer Kershaw taking time off with her family after the classes, besides the issue of two officers both taking their personal vehicles to attend the same classes, and not taking the Town Car.

Ms. Kershaw then stated that she had already made a boat reservation to go looking at the fall foliage when the class came up.

Mr. Israel asked if the mileage reimbursement requested included the family trip. It was stated that the IRS reimbursement rate at that time was 58.5 cents/mile. Discussion.

At this point Mr. Israel made the following,
Motion: To close the Step 2 Grievance Hearing.

At this point Ms. Kershaw asked if she could make one more comment, and then stated that while she was “up there” (in New Hampshire) her family came up. She added that she could have gone back home with them, and stated that she had no intention of having the Town pay for her family vacation.

At this point Mr. Israel’s motion was seconded by Mr. Kristal.

Voting: M/s/c. 4:35 p.m.

Mr. Israel noted that in his opinion when working for the Town one is scrutinized, and explained that once he was going to a meeting in Boston, and used the Town Car and prior to going to Boston he took his son for a medical appointment, and was criticized for that.

Mr. Israel stated further that the Town has a policy on use of the Town Car and added that the reason for the car is to save the Town money. He stated further that if Ms. Kershaw had a problem traveling with another officer in the same car we should have been informed about that.

Mr. Israel then stated that he would support not to uphold the decision of Town Administrator John Bugbee (at Step 1), since previously Ms. Kershaw was not informed about the Town Car Policy, although he feels that John Bugbee made the correct decision in denying the grievance, and although we (the Board of Selectmen) did the right thing and so did Suzanne Kennedy, by questioning the payment.

Mr. Kristal then stated that he can understand how this fell through the cracks, but added that he is appalled by the length of time it took for this to come up and be settled. He concluded by stating that the Board needs to make sure that information about use of the Town car is provided.

Mr. Wortman then stated that he feels there is a lack of communication, adding that the Selectmen did by the book what was done.

Motion: (Mr. Israel): To not uphold the grievance. Not seconded.

A brief discussion followed on how much is owed to Ms. Kershaw.

Ms. Kershaw stated that she initially submitted for a reimbursement of $130.00, but added that the R/T mileage and SSA Ticket reimbursement comes to a total of $274.72.

Mr. (Israel asked what the Board should do about Officer Habekost’s mileage reimbursement.

Mr. Bugbee reported that Officer Habekost submitted for his mileage to the seminar, but added that he heard that Officer Habekost was off-Island on personal business prior to the class.

Motion: (Mr. Israel): That the BOS vote to reimburse Officer Kelly Kershaw for the full amount of documented expenses due her for the trip ($274.72), and that Officer Habekost be reimbursed for the balance of his travel expenses that were not reimbursed earlier, and
that Town Administrator John Bugbee look into what reimbursement Officer Habekost is entitled to. Seconded.

Voting: M/s/c.

There being no further business in Executive Session,
Motion: To adjourn to reconvene in Open Session at 5:00 p.m. M/s/c.

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Open Session Minutes are recorded separately.

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Motion: To go into Executive Session to discuss strategy with respect to potential litigation, not to reconvene in Open Session. Seconded.

Voting: Mr. Kristal: Yes; Mr. Wortman: Yes; Mr. Israel: Yes.

Convened in Executive Session: 7:05 p.m. M/s/c.

Payette Willow Trees @ Tashmoo Overlook View Issue: were discussed.

Mr. Kristal reported that he has been talking with Mr. Payette about cutting the willow trees, adding that Mr. Payette has indicated that he definitely wants to start cutting some branches now.

Mr. Israel noted that the Selectmen have heard this before and turned down a similar offer. Discussion.

Mr. Israel then stated that one of the big (willow) trees has to be gone, adding that Mr. Payette has to agree to what the Selectmen want opened up.

The Selectmen studied photos taken by Selectmen Denys Wortman showing the Tashmoo Overlook in different seasons, stating that Mr. Payette must agree to cut the large tree and trim the others and allow the Town to maintain the view.

Mr. Kristal informed the Selectmen that Mr. Payette wants something “set in stone” for the future.

Discussion followed on how the photos presented by Mr. Wortman can become a reference point to accomplish opening up the view.

Mr. Israel reiterated that Mr. Payette needs to show that he is willing to work with the Selectmen on this.

Mr. Kristal stated that he does not want to waste any more time on this issue, and pointed out that Mr. Payette has stated that he is willing to begin to trim the trees and wants to see how they will become bushier at the bottom.

Mr. Israel then suggested that Mr. Wortman bring the photos back next week so that the Selectmen can establish a reference point to open up the view.

Mr. Kristal suggested that a trained arborist is needed to mark the trees, and reiterated that Mr. Payette told him “let’s start cutting”.

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Mr. Israel pointed out that he wants the cutting as well as a reference point for future maintenance of the view.

After a brief discussion, the Selectmen agreed to take a closer look at Mr. Wortman’s photos next week, and then present a request to have the agreement in writing that Mr. Payette will trim the trees and the Town will have the right to go there in the future to maintain the view (easement).

Mr. Israel stated in conclusion, that if Mr. Payette agrees to that, the parties can move forward.

Mr. Kristal stated that the trees and branches to be cut will be marked with orange flags.

There being no further business in Executive Session,

Motion for Adjournment: 7:30 p.m. M/s/c.

Respectfully submitted,

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Denys Wortman, Chairman  Aase M. Jones, Asst. to Town Adm.

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Tristan R. Israel   Jeffrey C. Kristal, Clerk