

**Question 1 Explain how salaries for town employees are set. Include the role of Town Meeting, the Town Manager, and the Board of Selectmen. What impact does the creation of a new position or new band have on this process?**

First I would like to begin by distinguishing town employees from school employees and employees serving under independently elected boards, commissions or committees, in Westford. The latter employees are specifically exempt from Town Manager oversight by the Town Charter. The sections referenced below are from the Town Charter.

SECTION 9. Except as otherwise provided by this act, the town manager shall appoint, based upon merit and fitness alone, all department heads and officers, subordinates, and employees under his direct supervision; and officers, subordinates and employees for whom no other method of selection is provided in this act except employees of the school department and persons serving under officer, boards, commissions and committees elected directly by the voters of the town.

The remaining town employees fall into three groups. In the first group are those with an individual employment agreement or contract, consisting of the positions of Town Manager and Chiefs of Police and Fire. The Fire Chief has no contract at this time. Another group, whose compensation plan is derived through collective bargaining agreements, are union employees. The Town, including schools, has six unions. All others fall within the Wage and Classification Plan or salary bands. Today, there are 28 out of an approximate 1200 employees of the Town of Westford and schools whose compensation is fixed by the Wage and Classification Plan. It is important to note, the Town Manager has responsibility for setting a salary band for persons appointed by independently elected boards, but no authority for merit review or actual salary within the band for employees of the independent boards.

The Board of Selectmen appoints and negotiates compensation for and with a Town Manager. Typically, a survey is conducted, by the Human Resources department, of “market basket” or similar communities with regard to form of government, responsibility, experience and date of hire. The policy is to offer the median of the survey results, more with more experience and less, with less experience. The salary is subject to appropriation by Town Meeting. Town Meeting appropriates the Town Manager’s compensation within the budget.

SECTION 7. The town manager shall receive such compensation for services as the board of selectmen shall determine, but it shall not exceed the amount appropriated therefor by the town.

Collective bargaining agreements are negotiated solely by the Town Manager with ratification by the Board of Selectmen. The Board of Selectmen may set general policy and approve the use of special counsel. The Board may not dictate the actual terms of any collective bargaining agreement. Occasionally, a selectman may accompany the Town Manager to a bargaining session for support. Town Meeting accepts the agreement

through Town Meeting vote of the budget. Skill in negotiating collective bargaining agreements is one of the most important attributes of a good Town Manager. Approximately seventy five percent of the Town's \$90M budget comes from personnel costs in collective bargaining agreements. Prior to adopting a professional Town Manager form of government with the Town Charter in 1989, union contracts were negotiated by teams of two selectmen. The minutes reveal an average annual salary increase of up to 7%, during this period. Today's contracts are aiming toward a 2.5% increase in the third year and it has taken three contract negotiation rounds to bring this increase in line.

SECTION 10. The personnel management powers, duties and responsibilities of the town manager shall include, but are not intended to be limited to, the following: (a) to administer and to adopt, in consultation with the personnel board, personnel policies, practices, or rules and regulations, any compensation plan and any related matters for all municipal employees and to administer all collective bargaining agreements, except for school department agreements, entered into by the town; (b) to fix compensation of all town employees and officers appointed by said town manager within the limits established by appropriation and any applicable compensation plan or collective bargaining agreements; (c) to be responsible for the negotiation of all contracts with town employees over wages, and other terms and conditions of employment, except the employees of the school department; such contracts shall be subject to the approval of the board of selectmen. Terms and conditions of employment of the library director and assistant library director shall remain with the library trustees 2. Said town manager may, subject to the approval of said board of selectmen, employ special counsel to assist in the performance of these duties.

The final group of employees fall within the Wage and Classification Plan and usually, but not exclusively, include department heads. This is a great question in that the actual practice differs from the procedures outlined in the Town Charter and Town of Westford Bylaws, Chapter 38. Personnel. The Town Charter authorizes the Town Manager as follows:

Appointment of all department heads, officers, subordinates, and employees shall be subject to personnel policies, practices, or rules and regulations adopted in accordance with section ten of this act.

Chapter 38 of the Town Bylaws, Personnel, were adopted in 1966, over thirty years before the Town Charter established a professional form of management. Prior to their adoption, independently elected Boards were authorized to hire and set salaries, resulting in no control over the personnel budget or consistency of salary between positions of similar responsibility and authority. The Personnel bylaw was adopted to see that salaries were fairly and equitably administered. Oversight was given to Town Meeting, the legislative branch of government and enforcement to the Board of Selectmen, the executive branch.

§ 38.1. Purpose and intent. The purpose of the personnel bylaw is to establish fair and equitable personnel policies and to establish a system of personnel administration based

on merit principles that ensure a uniform, fair and efficient application of personnel policies.

Town Meeting has oversight to see to salary band maintenance and that positions of similar responsibility across all departments receive equal compensation. Town Meeting does not appropriate with a yes or no vote on the salary band. Town Meeting appropriates by a yes or no vote on a budget line item. This is where the practice differs from the written procedures, as salary band compensation levels are frequently debated and amended on the Town Meeting floor. Town Meeting has no authority in this case. Town Manager has the authority to set compensation, granted through the Town Charter. The Town Charter overrides the Town Bylaws and any inconsistency defaults to the hierarchical document.

Through an amendment to the Personnel Bylaw in 1991, the right of Town Meeting to ratify a new position's classification or reclassification of an existing position was reinstated.

§ 38.5. Adoption of policies. [Amended 5-9-92 ATM Art. 7] A. The Town Manager is empowered and authorized by this chapter to adopt personnel policies defining the rights, benefits and obligations of employees subject to this chapter, provided however, decisions made by the Town Manger to classify a new position or to reclassify a position shall be subject to the ratification of Town Meeting.

Neither the Town Charter or Personnel Bylaws grant Town Meeting authority to set compensation levels for any individual employee. Compensation is limited by appropriation to the budget.

In the spring of 2006, the Personnel Advisory Board was reinvigorated by vote of Town Meeting, to advise the Town Manager, in matters of personnel policy. The Human Resources Director is an *ex officio* member of the Board.

§ 38.6. Personnel Advisory Board. [Replaced 05-06-2006 ATM Art. 23] There shall be a three member Personnel Board appointed by the Board of Selectmen for the purpose of providing advice to the Town Manager who is ultimately responsible for all personnel management powers, duties and responsibilities.

The steps to creating a new position or band or reclassifying an existing position are as follows:

1. The Town Manager and Human Resources Director create a job description.
2. The job description is evaluated by the Personnel Advisory Board, focusing on responsibility, authority and compensation levels. The Personnel Advisory Board assigns the position to a Wage & Classification band and makes their recommendation to the Town Manager.
3. The Town Manager approves or modifies the recommendation and presents it to the Board of Selectmen.
4. The Board of Selectmen evaluates the recommendation on the basis of compliance

with the Personnel Bylaw and policy. The Selectmen cause the position, band or reclassification to be brought before Town Meeting.

5. Town Meeting ratifies an amended Wage and Classification Plan.

The Board of Selectmen has an indirect role in personnel matters and compensation. To perform this role effectively, I would ensure that the new Town Manager be especially adept at negotiating contracts with unions and has sufficient resources, such as labor counsel. I will support the personnel policy recommendations of the Town Manager, provided, of course, their basis is sound. I would appoint members to the Personnel Advisory Board with human resources experience when possible. I would recommend a Charter change to strengthen the role of the Town Manager with oversight and performance review for all Town employees, including those appointed by independently elected boards.

**Question 2 A subgroup of two selectmen is charged with performing a task for the Board. Are the operations of this subgroup subject to the requirements of Open Meeting Law? Why or why not?**

Open Meeting Law was adopted in Massachusetts in 1958 and the law has undergone significant revisions since, most notably in 1975. The purpose of the Open Meeting Law remains unchanged throughout the years and that it provides the general public with transparency in governmental deliberations on matters of public policy. Compliance with Open Meeting Law requires consistency in three areas; meetings must be open to the public, notice of such meetings need to be publicly posted and a record of the meeting must be maintained and made available to the public. If an elected official keeps to the three objectives and the overarching goal of avoiding “secret” deliberations, they will not inadvertently violate the intent of the law.

For municipalities, Open Meeting Law is listed in the Massachusetts General Law, chapter 39, section 23A through 24. The law defines the terms:

Meeting – any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

Governmental body – every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of a local housing, redevelopment or similar authority; provided, however, that this definition shall not include a town meeting.

Deliberation – a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

Quorum - a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

The District Attorney has responsibility for enforcing the law. In Massachusetts, District Attorneys are elected public officials and interpretation of the law may change with each new administration, therefore it is important for municipal elected officials to stay current on guidelines issued by that office. For the purpose of answering the above question, "Open Meeting Law Guidelines", Middlesex District Attorney's Office, Gerard T. Leone, Jr., January, 2007 edition will be used as a reference.

The operations of a two member subgroup of a governmental body may or may not be subject to the requirements of Open Meeting Law depending upon whether or not (1) the subgroup is a quorum of a governmental body, (2) the subgroup has a specific task or charge and (3) who the appointing authority is and statutory responsibility.

Whenever a subgroup is a quorum of a governmental body, Open Meeting Law guidelines must be followed. A subgroup of two selectmen on a three member Board of Selectmen must meet publicly, duly post and keep a record at all times. *The commonality of independently elected officials, with different backgrounds, is all matters before the governing body and it is only human nature to discuss such matters whether or not an agenda item.*

A non quorum subgroup of a governing body, two members out of a five member Board of Selectmen like Westford's, needs to follow Open Meeting Law when the subgroup has a specific task or charge, even if the task is advisory to the whole {Nigro v. Conservation Commission of Canton, 17 Mass. App. Ct. 433, 436 (1984)}. A non quorum subgroup of the selectmen does not need to follow Open Meeting Law guidelines when meeting with a staff member(s) for informational purposes.

Who the appointing authority is and what the statutory responsibilities of the authority are also determine when Open Meeting Law applies. This is best explained with an example. A Town Charter grants statutory responsibility for hiring staff to the Town Manager. The Town Manager may invite a non quorum subgroup of the selectmen to participate in an interview process. Since the hiring is a statutory responsibility of the Town Manager, the interview does not need to follow Open Meeting Law, {Connelly v. School Committee of Hanover, 409 Mass. 232, 235-238 & n.8 (1991)}. This exception may not be used as a loophole in Open Meeting Law. If the governing body's intention is to charge a subgroup with a task, a town official may not be used to make appointments in order to avoid public meetings.

An individual of a governmental body does not constitute a subgroup or subcommittee, {Pearson v. Board of Selectmen of Longmeadow, 49 Mass. App. Ct. 119, 124 (2000)}. The law and District Attorney guidelines do not provide written guidance on the application of Open Meeting Law when an individual is authorized to act on behalf of the whole and "invites" a non quorum subgroup to attend or observe for the purpose of

teaching or passing on institutional knowledge. The DA's office verbally advises adherence to the will of the whole governing body without discussion by the subgroup.

A non quorum subgroup or special purpose committee may meet in executive session or behind closed doors giving the appearance of secrecy. Executive session is defined as "any meeting of a governmental body which is closed to certain persons for deliberation on certain matters." There is an exclusive list of nine exemptions by which executive session may be called and generally involve matters of negotiation and litigation. (*I will not list all nine exemptions.*) When a non quorum subgroup invokes executive session privilege, Open Meeting Law guidelines must be adhered to. The meeting must be held in a public place, duly posted and recorded. The meeting convenes in "open session" and then is closed to the public by roll call vote specifically stating one of the nine exemptions and whether or not the subcommittee will reconvene in open session. A record of the meeting is kept secret until the lawful purpose of the meeting has reached a conclusion and no longer.

Compliance with Open Meeting Law has a learning curve and it is often difficult to consistently follow the law's requirements if unfamiliar with procedure. As an elected or appointed member of a governing body, I have made every effort to learn about and comply with the intent of the law. I admit I need gentle reminders to follow the precise demands of the law, such as announcing, "we will come out of executive session only to adjourn." As a subcommittee member, I will remind a chair of posting requirements and offer to take care of it. I will not attend an open meeting if it is not duly posted. As chair of the Board of Selectmen, I will remind subgroup members to adhere to the law, provide them with resources and training and lead by example. I take full responsibility, as current chair of the Board of Selectmen, to train appointed committees to the Board, by arranging and attending the first meeting, preparing a package of committee charge, contact information and resources, "how-to" guides for arranging meeting space and posting, and providing a minutes template for the clerk. If I cannot attend myself, a staff member, such the Town Clerk is enlisted. When committees are given the proper resources, compliance issues are nonexistent, and the overall experience of serving the community is rewarding.