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INSPECTOR GENERAL

## The Commonwealth of Massachusetts

### Office of the Inspector General

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May 31, 2016

*Via Email and U.S. Mail*

Anne S. Awad, Chair  
Municipal Light Board  
South Hadley Electric Light Department  
85 Main Street  
South Hadley, MA 01075-2797

**Re: SHELD's Payout Policies and Wayne Doerpholz**

Dear Chairwoman Awad:

The Office of the Inspector General ("Office") recently received a report related to the leave time balances of the long-time Manager of the South Hadley Electric Light Department ("SHELD"), Wayne Doerpholz ("Doerpholz"). The Office urges you to exercise due diligence. Paying Doerpholz money that is not owed to him would be a waste of public funds.

Doerpholz allegedly claims to have earned and accrued, but not used, 3,248 hours of vacation leave and 3,593 hours of sick leave over his 35-year career with SHELD. Doerpholz reportedly expects a payment of approximately \$223,657.28 and \$247,413.98, respectively, for these balances upon his separation from SHELD. This Office's understanding is that the Board considers May 31, 2016 as the anticipated date of separation of employment.

The Office began a review pursuant to its statutory authority to prevent and detect fraud, waste and abuse in the expenditure of public funds under Chapter 12A of the General Laws. Based on the Office's review to date, Doerpholz's maximum vacation payout would be \$15,149.20 and he is not entitled to any sick leave payout at this time. Even applying the most-generous (but incorrect) analysis, Doerpholz's maximum vacation payout would be \$166,916.64. While this is less than he currently claims, it still would be an erroneous application of SHELD's personnel manual and contrary to his employment contract.

To date, this Office has found significant evidence that challenges the legitimacy of Doerpholz's claimed payout entitlement. First, his claim is not supported by his employment contract or SHELD's personnel policies. Second, even accepting Doerpholz's apparent reading

of his contract and SHELD's policies, his maximum allowable accruals fall below his current claim. Finally, the Office found good cause to question Doerpholz's claimed entitlement because Doerpholz himself was responsible for maintaining SHELD's records, implementing SHELD's personnel policies, and enforcing the cap on carryover vacation days, all of which gave him the opportunity to take advantage of his position to benefit himself.

### **SHELD**

SHELD is a municipal light plant created pursuant to Chapter 164 of the Massachusetts General Laws. Municipal light plants are responsible for the transmission and supply of electricity to residents and businesses within a municipality. The commissioners of a municipal light board and the manager of the plant are public officers of the municipality in which they operate.<sup>1</sup>

SHELD's board of commissioners ("Board") is responsible for appointing, overseeing and setting the compensation for the manager, as well as maintaining and operating SHELD.<sup>2</sup> The Board also has the authority to request a detailed statement of the financial position of SHELD.<sup>3</sup> The Board currently has five members, but during the majority of Doerpholz's tenure, it only had three members. Further, the Board owes a fiduciary duty to its ratepayers and must ensure that any separation payment to Doerpholz is appropriate pursuant to his contract and does not violate the personnel manual.

### **The Town of South Hadley**

SHELD's accounts are subject to inspection by the Town of South Hadley ("Town").<sup>4</sup> The Town's Board of Selectmen may, before approving the payment of a claim or account against SHELD, require any person presenting a claim to swear under oath to the accuracy of the claim. The making of a false oath is punishable as perjury.<sup>5</sup> Additionally, the Town's Board of Selectmen must approve all of SHELD's bills and payrolls before payment is made.<sup>6</sup> The Town's Board of Selectmen may refuse to pay, in whole or in part, any claim that is "fraudulent, unlawful or excessive."<sup>7</sup>

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<sup>1</sup> *Com. v. Oliver*, 342 Mass. 82, 84 (1961).

<sup>2</sup> *See* M.G.L. c. 164, §§ 55 and 56.

<sup>3</sup> *See* M.G.L. c. 164, § 56.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *See Id.*

<sup>7</sup> *See Id.*

### **Wayne Doerpholz**

Doerpholz began part-time employment with the Town of South Hadley in 1970 while still in high school. He appears to have become a full-time employee of SHEL D on August 25, 1975 and was subject to a collective bargaining agreement (“CBA”). On March 17, 1981, Doerpholz was a Staff Engineer for SHEL D. On that date, the Board appointed Doerpholz a Staff Assistant effective March 27, 1981. As Staff Assistant, Doerpholz was responsible for the general operation of the department in the Manager’s absence and was under the general direction of the then-Manager, Wardman K. Brooksbank.

On November 1, 1982, Doerpholz, as Acting Manager, notified the Town Accountant to change his title and salary to Acting Manager effective on that date. On or about November 2, 1982, the Board appointed Doerpholz Clerk of the Board.

On June 21, 1983, the Board appointed Doerpholz Manager of SHEL D.

On October 17, 2000, the Board approved the first of two contracts with Doerpholz.

On May 24, 2005, the Board approved the second of two employment contracts with Doerpholz.

On October 27, 2015, the Board placed Doerpholz on leave and on February 25, 2016 voted not to renew his contract which, by its terms, would terminate on May 31, 2016.

Doerpholz’s current salary as Manager is \$143,228.80 a year. He oversaw a staff of 18 employees. Those 18 employees are both union and non-union. As Manager, Doerpholz had the responsibility to oversee the operation and management of SHEL D, subject to the direction and control of the Board.<sup>8</sup> Specifically, Doerpholz was responsible for the distribution of electricity; the purchase of supplies; the employment of attorneys, agents and other staff; the collection of bills; and the keeping of accounts, among other duties. Additionally, SHEL D’s personnel manual states that the manager is responsible for the maintenance of personnel records for each employee, including attendance and leave records. SHEL D’s bookkeeper kept track of earnings and accrual balances and forwarded them to Doerpholz for compliance with the personnel policies.

### **History of SHEL D’s Leave-Accrual and Carryover Policies**

Until 1991, SHEL D did not allow year-to-year carryover of vacation time; in effect, it was a “use it or lose it” policy. This meant that if an employee had unused vacation time at the end of a calendar year, he could not “carry over” and use the vacation time the following year. Effective July 1, 1991, the union and SHEL D executed a CBA that for the first time included a

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<sup>8</sup> See *Mun. Light Com. v. Peabody*, 348 Mass. 266, 273 (1964) (“management and fiscal operation of the municipal light department. . . are vested in the commission and the manager of the plant”).

provision for vacation carryover. Specifically, Section 12(C) of the CBA stated “Employees who have worked continuously for twenty-two (22) weeks or more may carry-over fifty percent (50%) of their earned but unused vacation allowance to the next calendar year.” All of the superseding CBAs have retained this exact language. It is clear that the carried-over vacation did not go into a separate bank in perpetuity. Doerpholz participated in those CBA negotiations. During the negotiations, it was understood that this carry-over language meant that the maximum allowable vacation carry-over was 50% of one’s annual earnings. It was also understood that employees had to use the time the following year or forfeit it.

In 1994, SHELD created a personnel policy manual. Section 9, “Leaves of Absences,” discusses SHELD’s leave policy. Section 9.22 contains the identical language from the CBA relating to vacation carryover. On June 1, 2006, SHELD updated the personnel policy manual. Section 9.17 again contains the above-quoted language relating to vacation carryover.

SHELD has never had a designated Human Resources Manager. However, two employees of SHELD handled the paperwork for incoming and outgoing employees. Neither of those employees removed excess accruals that violated the carryover policy. Doerpholz as Manager had the authority and responsibility to enforce the policy and to therefore make the required adjustments.

### **Doerpholz’s Employment Contracts and SHELD’s Personnel Policies**

Doerpholz and the Board signed a document on October 17, 2000 entitled “Manager South Hadley Electric Light Department Employment Contract.” On May 24, 2005, Doerpholz and the Board signed another document again entitled “Manager South Hadley Electric Light Department Employment Contract.” Both contracts are identical in relation to vacation leave, sick accruals and payouts. By its terms, the second contract expired on May 31, 2009 and the Board could vote not to renew it upon giving 90 days’ notice to Mr. Doerpholz.

Under Section 7A of the 2005 contract, “[v]acation, sick leave, medical coverage, jury duty, funeral leave, separation rights, and all other benefits shall be in accordance with those provided other SHELD employees.” The following section, 7B of the contract provides that “[u]pon termination of this Agreement, the Manager will either be paid all accumulated sick and vacation benefits or the Manager, at his option, shall be permitted to remain on the payroll of SHELD until all accumulated sick and vacation leave is exhausted. . . .”

SHELD’s personnel manual states that employees with more than 25 years’ of service earn six weeks’ paid vacation each year. The vacation leave policy also provides that “[e]mployees . . . may carry-over fifty percent (50%) of their earned but unused vacation allowance to the next year.” The CBA contains the identical vacation leave carryover policy for union employees. Employees understood the vacation carryover policy to mean that they could carry over up to half of the vacation time they earn in a year to the next year, and must use that time in the next year or forfeit it. The majority of SHELD employees followed this “use it or lose it” policy.

SHELD's personnel manual provides that full-time employees earn 15 days of sick leave per year. Sick days "accrue each year on June 30<sup>th</sup> with unlimited accumulation." The manual further provides that employees who give a minimum of six months' notice of their intent to retire, and who have accumulated more than 150 days of sick leave at the time of retirement, will receive an amount equal to 40 days of pay upon retirement. The sick leave carryover policy under the CBA for union employees is virtually identical.

SHELD also has a policy addressing the abuse of sick time. It states, in part, that upon termination of service, an "employee shall not be entitled to compensation in lieu of accumulated sick leave."

### **Doerpholz's Vacation Accruals**

As stated above, SHELD did not have a policy to permit vacation time carryover until 1991. However, SHELD's records of vacation time balances and carryover are incomplete prior to 2004. The first indication of Doerpholz's carryover balance in SHELD's records is 420 hours at the beginning of 1998. From 2004 through 2016, SHELD records show Doerpholz carrying over all of his unused vacation time each year, ultimately ending 2015 with a balance of 376 vacation days (3,008 hours). On January 1, 2016, SHELD credited Doerpholz with 30 days of vacation time – his entire balance for the 2016 calendar year – giving him a balance of 406 vacation days (3,248 hours).

However, Doerpholz's vacation balance has no basis in SHELD's policies or his contract. Section 7A of Doerpholz's contract states that his vacation benefits "shall be in accordance with those provided other SHELD employees."<sup>9</sup> Under both the personnel manual and the CBA, SHELD employees are allowed to carry over 50% of their unused vacation time from the year before only. The time must be used the following year or forfeited. In addition, Section 9.19 of the policy manual states "[f]or the purpose of calculating vacation leave credits during partial years of service in the year of separation, one-twelfth (1/12) of the leave credit shall be considered to be earned by the employee in each of the months in the period." Applying these provisions to Doerpholz, he currently has a maximum of 5.5 weeks (27.5 days) of vacation time, for a total value of \$15,149.20. Specifically, he was allowed to carry over 50% of his 2015 vacation accrual – *i.e.*, 15 days.<sup>10</sup> Providing that today is his last day, his 2016 vacation leave must be prorated, meaning he would be entitled to 5/12 of his 2016 vacation leave – *i.e.*, 12.5 days.

The Office has evidence that some – but not all – employees carried over and "banked" vacation time indefinitely, thereby amassing large vacation balances over time. To the extent

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<sup>9</sup> Section 7B of the contract, which relates to payouts upon termination, cannot be read in isolation. It must be read in conjunction with 7A of the contract. Under basic contract interpretation, all parts and provisions of an agreement should be interpreted together. The meaning of a contract cannot be understood by isolating words and interpreting them as though they stand alone. Further, no part of a contract is to be disregarded or ignored

<sup>10</sup> This assumes that Doerpholz had unused vacation time to carry over.

Doerpholz applied the vacation policy differently to different employees, he abused his authority. Further, the policy does not contain any “banking” provision that would permit any employee (including Doerpholz) to retain separate vacation balances from year to year. To the extent Doerpholz permitted employees to bank time, he exceeded his authority and violated his duties to the Board and the ratepayers.

Even assuming the personal manual did permit “banking” (which it does not), Doerpholz’s claim to have 3,248 hours of vacation leave is incorrect. Even assuming employees can “bank” 50% of their time, Doerpholz should only have carried over a maximum of 15 days, or 50% of his total earned vacation time, per year. Between 1998 and 2015, however, Doerpholz violated even this (incorrect) reading of the policy by carrying over more than 50% of his accrued vacation time in 12 out of 18 years. Based on the payroll records, if Doerpholz had abided by this erroneous application of the policy and never carried over more than 50% of the vacation time that he earned in any given year, his current balance would be 303 days.

<b>Vacation Leave Carryover</b>	<b>Manager’s Ending Vacation Balance</b>	<b>Potential Vacation Time Payout</b>
Per personal manual: Carryover capped at 50% of annual vacation leave, with proration in year of separation.	27.5 days	\$15,149.20
“Banking” Allowed: Unlimited carryover of up to 50% of annual vacation leave, with proration in year of separation.	303 days	\$166,916.64
Doerpholz’s Alleged Balances: Unlimited carryover of all unused vacation leave, without prorating for the year of separation.	406 days	\$223,657.28

As is evident from the above table, Doerpholz’s currently claimed total vacation balance is only possible if he exempted himself from the personnel policies in contravention of both Section 7A of his contract and the personnel manual. Doerpholz does not have the authority to “exempt” himself from the manual or to apply the personnel policies differently for different employees. To the contrary, he has a duty to the Board and the ratepayers to abide by his contract and to apply the personnel policies both accurately and consistently.

**Doerpholz’s Sick-Leave Accruals**

According to SHELD’s personnel manual, there is no cap on the amount of sick time employees can carry over into the next year. Upon separation from SHELD, employees are not entitled to be paid out for their sick leave balances unless they retire from SHELD and comply with administrative notification rules connected to retirement. If a retiring employee (a) notifies SHELD in writing at least six months prior to retirement of the intention to retire; and (b) has at least 150 accrued days of sick time, then the employee is entitled to 40 days of sick leave payout. Employees receive no sick-leave payout if they leave SHELD without retiring.

To the Office's knowledge, Doerpholz has not provided the requisite notice of intent to retire. Thus, Doerpholz's claim that he is entitled to the \$247,413.98 in sick leave pay if his contract is terminated is not accurate. Following the personnel policy and collective bargaining agreement, if Doerpholz had given his notice to retire, he would have been eligible for a payout of 40 days of sick time, or \$22,035.20.

In the most liberal interpretation of sick time under 7B of Doerpholz's contracts, unlimited payout would only go into effect after the contract had been signed. Based on documents provided by SHELD, the first contract with Section 7B was entered into on October 17, 2000. Prior to this date Doerpholz would have been subject to the 40-day maximum payout in the case of retirement and would get nothing upon other forms of separation. From October 17, 2000 to the present, Doerpholz has accumulated 1,880 sick days and the maximum payout under this liberal application should be no more than \$129,456.80. That number is assuming Doerpholz has not used **any** sick time within the past 16 years. This is \$117,957.18 less than the \$247,413.98 currently on SHELD's books.

#### **Recommendation / Conclusion**

Based on our investigation to date, the Office recommends that the Board of Commissioners for the South Hadley Electric Light Department and the Town of South Hadley exercise due diligence in ensuring that any claims for payment are in accordance with Doerpholz's employment agreement and the SHELD personnel manual and are calculated based on accurate figures. Additionally, any claims for payment should be verified as true and accurate. Failure to exercise due diligence in these claims could constitute a waste of public funds.

Sincerely,



Glenn A. Cunha  
Inspector General

cc: Michael J. Sullivan, Town Administrator, Town of South Hadley  
Town of South Hadley Board of Selectmen