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February 7, 2017

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Town Council
Town of Union
3111 E. Main Street
Endwell, New York 13760

Subj: REPORT OF PERSONNEL INVESTIGATION (EXECUTIVE SUMMARY)

Dear Town Council:

1. Background. Coughlin & Gerhart, LLP (“C&G”) was retained to conduct a personnel investigation into complaints made by Town of Union (“Town”) employees that Town Supervisor Rose Sotak (“Supervisor Sotak”) allegedly created a hostile work environment at Town offices and made threats to certain Town employees. (“Investigation”).

2. Conduct of the Investigation. The Investigation consisted of the following:

- a. Review of Town policies;
- b. Initial meeting with all Department Heads on January 25, 2017;
- c. Interview of witnesses (Town Council, Town Attorney, Department Heads and other current and former Town employees) from January 25, 2017 through February 3, 2017; and
- d. Report to the Town Council with findings and recommendations on February 7, 2017.¹

3. Summary of Town Policies. The Investigation was provided with certain Town policies found in the Employee Handbook. Among these policies are the following:

¹ I am retaining the complete report which contains the summaries of confidential employee interviews.

a. Section 407 (Corrective Discipline) – “Employees will be subject to disciplinary action for engaging in misconduct including but not limited to, the following...[i]ntimidation, coercion, threatening...other employees, Elected Officials, residents of the Town, or any other person [and] [e]ngagement in any form of harassment.”

b. Section 905 (Fair Treatment) – “It is the policy of the Town to treat all employees with fairness, respect, and dignity. The Town will not tolerate harassment or discrimination of any kind in the workplace.”

4. Witness Interviews. Twenty-two (22) witnesses were interviewed, including current and former Town Council members, the Town Attorney, Department Heads, and current/former Town employees. The vast majority of those witnesses interviewed (seventeen (17)) corroborated some or all parts of the complaint.

5. Interview of Supervisor Sotak. Supervisor Sotak (through her legal counsel, Al Millus, Esq. of Hinman, Howard & Kattell, LLP) declined my written request for an interview by claiming initially that she “did not have enough information”² about the complaint and then later claiming that she did not want to “legitimatize the process.” Through her legal counsel, Supervisor Sotak has denied the allegations.

6. Findings. Based on the witness interviews, the Investigation established credible evidence summarized as follows:

a. Supervisor Sotak, over several years,³ regularly and repeatedly used loud, profane⁴ and patently offensive language towards certain members of Town Council, the Town Attorney, several Department Heads and other Town employees in the course of her duties.⁵ Supervisor Sotak also directed demeaning and humiliating comments to certain Department Heads and Town employees. For example, she told employees that they were “useless”; that an individual belonged “in a mental institution”; that no one “knows what you do”; that she “could do [the employee’s] job”; and questioned why she had to “do [the employee’s] job?” Witnesses reported that Supervisor Sotak’s frequent mode of communication was a profane “one way” uninterrupted tirade, which was characterized as “yelling and screaming,” and that her comments were often loud enough for other employees and customers in Town building to hear.

² I am aware that Town Council advised Supervisor Sotak about the substance of the complaints and I also advised Attorney Millus about the substance of the complaint in one of our two phone conversations.

³ Some witnesses reported the abuse got worse since the last election in November 2016, while others reported it was the same since Supervisor Sotak took office. The last incident in January 2017 appears to have triggered this Investigation.

⁴ Virtually every witness has recollection of the word “f_ck” being used in some manner.

⁵ Supervisor Sotak seemed to target employees who served in “at will” status or who had to be re-appointed by the Town Council (i.e., Department Heads, Town Attorney, etc.), as opposed to Town employees who were members of a union (and who are afforded due process rights prior to termination of employment).

b. Supervisor Sotak, on various occasions, threatened at least three (3) Department Heads,⁶ the Town Attorney, and other Town employees with the loss of their employment.⁷ Her statements included the following variations:

- (1) “You’re done” or “I am going to fire you” or “I have the votes to get you fired;”
- (2) “We are getting a new [position held by incumbent];”
- (3) “I am the only thing between you and the [Town Council];”
- (4) “You better be looking for a new job;”
- (5) “You may be on the outside looking in;”
- (6) “The [Town Council] is looking to hire” or that they are “interviewing” for the employee’s replacement.
- (7) “Are you going to retire?” or “you should retire.”

c. When Supervisor Sotak made threats to Department Heads, she would frequently represent that a majority of the Town Council (3 of 5 voting members) supported the termination of the employee. However, such representations may not have been accurate or truthful as members of the Town Council denied that they were even polled by Supervisor Sotak regarding a termination vote. In fact, every Town Councilmen interviewed confirmed that they would not have voted to terminate any of the Department Heads who were threatened by Supervisor Sotak. If this is true, Supervisor Sotak made threats to Town employees that they would lose their jobs based on false representations that the Town Council actually supported her position.

d. The overwhelming majority of the witnesses interviewed (even those not threatened) described Supervisor Sotak as being “volatile,” “erratic,” “unpredictable,” “unstable” and “paranoid.” These witnesses recalled that it was difficult to figure out what would “set her off.” Reasons included an employee’s excused absence from work or the employee’s travels outside the office; the perceived failure by an employee to apprise Supervisor Sotak of the employee’s whereabouts or the employee’s perceived failure to relay some piece of information, no matter how trivial; or the perceived failure to invite Supervisor Sotak to a meeting. A number of employees reported that they dreaded having to meet or even talk with Supervisor Sotak. Several employees

⁶ The total number of Department Heads threatened may be closer to five (5). While two (2) Department Heads denied receiving threats, other Town employees reported that they either heard Supervisor Sotak threaten them or that these 2 Department Heads confided in them about receiving threats from Supervisor Sotak.

⁷ The Investigation was provided with contemporaneous notes (by date and event) of some of these threats.

reported that they “gave up” trying to correct Supervisor Sotak even though her assumptions were erroneous. Other employees reported that they were resigned to just waiting for it to be “their turn” again for the verbal abuse and threats. One former Town employee reported that the employee retired rather than be subjected to the verbal abuse and threats by Supervisor Sotak. Based on my experience as a labor and employment attorney, manager and retired Marine officer, these reports, if true,⁸ would constitute a hostile and unhealthy work environment which requires remediation.

e. In this Investigation, I have credited the opinions of a few employees who believed that Supervisor Sotak “loved” and was “passionate” about the Town or may have believed that her toxic management “style” was motivated by good reasons. Even if this were the case, Supervisor Sotak failed to treat all Town employees with “fairness, respect and dignity” and engaged in repeated harrasive and threatening conduct directed at certain Department Heads, the Town Attorney and certain other Town employees. Importantly, the relevant Town policies broadly prohibit maltreatment of Town employees, irrespective of a violation of federal law (i.e., Title VII). By reason of her conduct and statements, Supervisor Sotak created a toxic work environment and violated Town policies, including Employee Handbook Section 407 (Corrective Discipline) and Section 905 (Fair Treatment).

7. Recommendations. The adverse impacts on an employee who has to deal with a manager that creates a toxic work environment should be fairly obvious and are addressed in my complete report. Normally, a manager who subjects his/her subordinate employees to repeated and pervasive loud, profane and patently offensive language and/or who demeans, humiliates and threatens certain employees would be subject to discipline or other adverse actions. Based on the serious and protracted nature of the abuse and the threats made, I would recommend that a manager who was found to have engaged in the conduct should be dismissed. Lesser discipline (in which the manager is retained) would normally involve conditions of continued employment such as anger management counseling, respect in the workplace and anti-harassment training. However, Supervisor Sotak, as an elected official, may only be disciplined (i.e., removed) under Public Officers Law § 36, which is extremely difficult to accomplish. As such, and given these limitations, I would recommend the following actions be taken:

a. **Institute a new complaint reporting system which utilizes an outside HR consultant to investigate and respond to future personnel complaints of abuse and threats made against the Town Supervisor.** There is currently no mechanism to effectively handle personnel complaints made against the Town Supervisor. Under the recommended system, the HR consultant would report back to a standing committee of Town Council with findings and recommendations;

⁸ I found no reason to question the veracity of the 17 witnesses who confirmed all or part of the complaints; of those few witnesses who had no direct knowledge of reported abuse or threats, all but one indicated that they were “not surprised” by the complaints made.

b. **Continue to offer affected employees with the right to have another individual present for meetings with the Town Supervisor.** While cumbersome, it is imperative that an employee not feel helpless and “trapped” by a superior, especially one who has been the subject of a personnel complaint. This would also allow for another person (preferably a member of Town Council) to witness the interactions between the Town Supervisor. With time, and if things change, this policy could be modified.

c. **Provide anti-harassment and respect in the workplace training to Town Council and all other Town employees.** Annual (or at least bi-annual) training is a best practice. While Supervisor Sotak cannot be compelled to attend this training, it would be wise for her to do so;


d. **Consider a resolution re-affirming Town Council’s commitment to anti-harassment and respect in the workplace.** It is imperative that Town Council publicly re-affirm that it values its experienced work force, the employees’ contributions to the Town and the Town Council’s commitment to providing a positive and harassment-free work space;

e. **Revise existing policies to strengthen the Town’s commitment to anti-harassment and respect in the workplace.** In addition to adding a Violence in the Workplace policy, revise current policies to expressly prohibit the specific comments and threats allegedly made by Supervisor Sotak. I also recommend adding an anti-retaliation policy.

f. **Without impairing the at-will nature of some Town positions, adopt policies that provide for annual employee evaluations.** All of the Department Heads, the Town Attorney and certain Town employees fully understand that they are re-appointed annually at either the pleasure of the Town Council or, in certain cases, serve at the pleasure of the Town Supervisor. On the other hand, these employees, like most private and public sector employees, value their professional reputation and accomplishments and are entitled to know “where they stand” based on their past performance. Alleged poor performance and short-comings should be documented. Policies which provide for annual feedback are a best practice. In the case of an adverse counseling of a Town employee by the Town Supervisor (or Council member), the counseling should be reduced to writing and the employee should be allowed an opportunity to submit a written rebuttal or explanation.

Respectfully submitted,

COUGHLIN & GERHART, LLP


By: Paul J. Sweeney
Partner