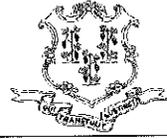


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Mike Brodinsky,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-868

Vincent Cervoni, Chairman, Town Council, Town of Wallingford; Town Council, Town of Wallingford; and Town of Wallingford,

Respondent(s)

July 30, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 26, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE August 14, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 14, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE August 14, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Mike Brodinsky
Janis M. Small, Esq.

2015-07-30/FIC# 2014-868/Trans/wrbp/VDH/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Mike Brodinsky,

Complainant

against

Docket #FIC 2014-868

Vincent Cervoni, Chairman,
Town Council, Town of
Wallingford; Town Council,
Town of Wallingford; and
Town of Wallingford,

Respondents

July 30, 2015

The above-captioned matter was heard as a contested case on July 9, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter dated November 24, 2014 and filed November 28, 2014, the complainant appealed to the Commission, alleging that the respondents violated the FOI Act in the following ways:
 - a. By convening a special meeting on November 12, 2014 (the "pre-meeting gathering"), which meeting was closed to the public, held without an agenda, and for which no minutes were created; and
 - b. By failing to adequately describe the business transacted in an executive session, which session occurred during a November 12, 2014 regular meeting (the "regular meeting").

3. The complainant has requested that the Commission consider the imposition of civil penalties.

4. Section 1-200(2), G.S., provides, in relevant part, as follows:

“Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. “Meeting” does not include: . . . strategy or negotiations with respect to collective bargaining. . . . (Emphasis supplied).

5. With regard to the allegations in paragraph 2.a, above, concerning the pre-meeting gathering, it is found that the Wallingford Town Council held a properly noticed regular meeting on November 12, 2014. It is found that this regular meeting was scheduled to begin 6:30 PM.

6. It is found that, prior to the start of the regular meeting, seven of the eight town council members gathered with certain members of the Board of Education’s collective bargaining negotiation team and with the Mayor. It is found that this pre-meeting gathering commenced at 6 PM and continued for approximately forty-five minutes. It is further found that, once the pre-meeting gathering concluded, the respondents began the regular meeting.

7. In this case, it is the complainant’s belief that during the pre-meeting gathering the respondents may have discussed topics beyond strategy and negotiations with respect to collective bargaining, and, in doing so, exceeded the limits of a permissible meeting outside of the public’s view, pursuant to §1-200(2), G.S.

8. The respondents contend that the pre-meeting gathering was nothing more than an overview of the status of negotiations, and the strategy by which such status was achieved. Specifically, the respondents contend that, while certain factual terms of three tentative collective bargaining agreements were discussed during the pre-meeting gathering, because the agreements were discussed in the context of the strategy implemented to achieve those results and the implication that the tentative agreements would have on future negotiations, the respondents did not exceed the legal limits of §1-200(2), G.S.

9. It is found that, in 2014, the Wallingford Board of Education was engaged in negotiations with the Wallingford Education Association (the “Teachers’ Union”) concerning a new labor contract. It is found that, during the collective bargaining process, the Board of Education and the Teachers’ Union were both represented by separate negotiating teams. It is further found that, during this same time, the Wallingford Board of Education was also

engaged in negotiations with two other unions--Wallingford Board of Educational Secretaries and Educational Administrators' Association of Wallingford.

10. It is found that, on or around October 22, 2014, the Board of Education and the Teachers' Union came to a tentative two-year agreement. It is further found that the Board of Education also reached tentative agreements with the two other unions referred to in paragraph 9, above.

11. It is found that, once a tentative agreement is reached between the Board of Education's negotiating team and a union's negotiating team, the full Board of Education is required to approve the agreement.

12. It is found that the full Board of Education approved the tentative agreement with the Teachers' Union at its November 3, 2014 meeting. It is also found that the full Board of Education approved the tentative agreement reached with the Wallingford Board of Educational Secretaries at its October 27, 2014 meeting and approved the tentative agreement reached with Educational Administrators' Association of Wallingford at its November 3, 2014 meeting.

13. Accordingly, it is found that, at the time of the respondents' November 12, 2014 regular meeting, the Board of Education had approved three tentative agreements.

14. Thereafter, in accordance with requirements of the general statutes, the tentative agreements are presented to the respondent Town Council, which body may reject any such tentative agreement during a public meeting. See §10-153d, G.S. ("The terms of such [tentative] contract shall be binding on the legislative body of the local or regional school district, unless such body rejects such contract at a regular or special meeting called and convened for such purposes within thirty days of the filing of the contract.").

15. It is found that, by letter dated November 4, 2014, the Assistant Superintendent for Personnel wrote to the Chairman of the Wallingford Town Council, requesting that the Town Council include on its agenda for the November 12, 2014 regular meeting consideration of the three tentative agreements. It is found that, at this time, none of the tentative agreements had been executed. It is found that the respondent Town Council added consideration of the three tentative agreements to its November 12, 2014 meeting agenda.

16. It is found that it was in this context that the respondents gathered prior to the November 12, 2014 regular meeting to discuss the tentative agreements.

17. The Superintendent, who was a member of the Board of Education's negotiating team and who attended the pre-meeting gathering, testified that the negotiating team members met with the members of the Town Council and the Mayor in advance of the November 12, 2014 regular meeting to explain "how" the negotiation team was able to obtain the results that it did and what the specific terms of the tentative agreements meant for future negotiations: "our focus was on strategy and the rationale for what was the result of

the negotiations and also what were our next steps for future negotiations.” It is found that the Superintendent’s testimony was corroborated by similar testimony presented by the Chairman of the Wallingford Town Council, as well as by another Town Council member.

18. At the hearing, the complainant contended that that respondents have, in the past, discussed many aspects of strategy with regard to collective bargaining in public and, because these kinds of sessions are informative to members of the public, the respondents should be required to hold these discussions in public. In addition, the complainant contended that, in this case, there seemed to be too much discussion about the factual terms of the tentative agreements and not enough discussion about strategy to permit this particular pre-meeting gathering to qualify as a permissible “non-meeting.” According to the complainant, the respondents should have to bifurcate their discussion of strategy from their discussion of facts so that the public gets the benefit of the factual discussion about the state of collective bargaining.

19. However, it is found that the definition set forth in §1-200(2), G.S., does not provide for a waiver of the right to engage in private discussions of strategy with respect to collective bargaining if, on a previous occasion, some strategic aspect of the collective bargaining process was discussed in public. Furthermore, the FOI Act does not require that a quantifiable portion of the discussion be dedicated to strategy and negotiations with respect to collective bargaining. Finally, as articulated by respondents’ counsel, it would be exceedingly difficult and contrary to common sense to permit a discussion outside of the public’s view concerning the successes and failures of the strategy utilized in the collective bargaining process if such discussion had to be accomplished without reference to the underlying facts and results of the negotiation itself.

20. Moreover, it is found that, while members of the Board of Education’s negotiating team met with members of the Town Council—which entity had the ability to reject to the tentative agreements—and with the Mayor to discuss the strategy implemented during the collective bargaining process and how such strategy could be carried forward to further negotiations, the respondents directly followed this pre-meeting gathering with a thorough public discussion of the tentative agreements in their November 12, 2014 regular meeting. In addition, it is found that, after the tentative agreements were fully discussed in the open meeting, with an opportunity for the public to ask questions and comment on the tentative agreements, the respondents voted to approve the agreements.

21. It is found that the respondents’ pre-meeting gathering was appropriate for the purposes of discussing strategy and negotiations with respect to collective bargaining, pursuant to the provisions of §1-200(2), G.S.

22. Accordingly, it is concluded that the respondents did not violate the FOI Act by conducting an illegal special meeting, as alleged in the complaint.

23. With regard to the allegations set forth in paragraph 2.b, above, §1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies, except executive

sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. . . .”

24. Section 1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: . . . (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled (Emphasis supplied).

25. Section 1-200(9), G.S., defines “pending litigation” as follows:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

26. Section 1-225(f), G.S., provides as follows: “[a] public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.”

27. It is found that, at the November 12, 2014 regular meeting, the respondents moved the meeting into an executive session by way of a proper motion followed by a unanimous vote. It is further found that, according to the meeting minutes, the executive session was convened, “pursuant to Connecticut General Statutes §1-224(f) and §1-200(6) to discuss pending litigation (1-200(9)(c)) relating to the enforcement of noise laws—Law Department.”

28. It is concluded that, what while there is a requirement that a public agency move an open meeting into an executive session by a motion and that such motion made must “state[] the reasons” for convening in executive session, there is no requirement that the meeting minutes detail that discussion that occurred in executive session.

29. Accordingly, the respondents did not violate the FOI Act by failing to detail the discussion that occurred during the executive session portion of the November 12, 2014 meeting, as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.



Valicia Dee Harmon
as Hearing Officer