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FREEDOM OF INFORMATION



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Robert Dahlstrom and UPSEU Local 911,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-747

Board of Finance, Town of Old Saybrook; and
Town of Old Saybrook,
Respondent(s)

May 25, 2016

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, June 22, 2016**. 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 June 10, 2016**. 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 June 10, 2016**. **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 June 10, 2016**, 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: Robert Dahlstrom and UPSEU Local 911
Attorney Michael E. Cronin, Jr.

2016-05-25/FIC# 2015-747/Trans/wrbp/VB//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Robert Dahlstrom and UPSEU Local
911,

Complainants

against

Docket #FIC 2015-747

Board of Finance, Town of Old
Saybrook; and Town of Old Saybrook,

Respondents

May 12, 2016

The above-captioned matter was heard as a contested case on January 12, 2016, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the hearing in this matter, pursuant to §1-21j-38 of the Regulations of Connecticut State Agencies, the complainants filed, without objection, one after-filed exhibit which was marked as follows: Complainants' Exhibit C: video recording of the respondent Old Saybrook Board of Finance's regular meeting held on October 6, 2015.

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 of complaint dated and filed on November 4, 2015, the complainants appealed to the Commission alleging that the respondents violated the Freedom of Information Act during the Old Saybrook Board of Finance (the "Board") regular meeting held on October 6, 2015 by convening in executive session for an impermissible purpose.
3. Section 1-200(2), G.S., provides, in relevant part, that:

'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 . . .

4. Section 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."

5. Section 1-200(6), G.S., provides, in relevant part, that:

'Executive sessions' means a meeting of a public agency at which the public is excluded for one or more of the following purposes . . .
. (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

6. Section 1-210(b)(9), G.S., provides in relevant part that nothing in the Freedom of Information Act shall be construed to require the disclosure of "records, reports and statements of strategy or negotiations with respect to collective bargaining."

7. At the hearing in this matter, the respondents contended that the executive session held during the October 6, 2015 regular meeting involved a discussion constituting strategy and negotiations with respect to collective bargaining and therefore was properly held in executive session in accordance with §§1-200(6) and 1-210(b)(9), G.S., and alternatively that such discussion does not constitute a meeting under §1-200(2), G.S.

8. It is found that the Board held its regular meeting on October 6, 2015, at which meeting the First Selectman was in attendance to provide the "Selectman Report." During the course of the October 16, 2015 regular meeting and prior to convening in executive session, it is found that the First Selectman stated that: "if you wanted to go into executive session after this for a minute, I would share with you what happened at the dispatchers negotiations, only in executive session."

9. It is found that later during the October 6, 2015 regular meeting, a motion was made to add to the agenda "labor issues," which would be discussed in executive session. It is further found that the discussion was to encompass the status of contract negotiations between the Board of Selectmen and the complainants, which status would be provided by the First Selectman.

10. It is found that during the October 6, 2015 executive session, the First Selectman provided a status update of the on-going union contract negotiations between the respondent Town and complainant UPSEU Local 911 to the respondent Board, which status update only touched on general information. Despite conflicting testimony offered by respondent First Selectman and respondents' witness, the vice-chair of the Board of Finance, it is further found that the status update was approximately five (5) minutes long, "vague" and did not detail any concrete information or specific financial considerations.

11. It is found that the First Selectman is responsible for all collective bargaining for the respondent Town, and that the Board of Selectmen approves all labor contracts. It is further found that while the respondent Board is responsible for appropriating funds to meet the Town's obligations, it does not have any authority over union contract negotiations, does not vote on those contracts, and is not involved in the negotiations of such contracts.

12. Strategy and negotiations have been long been defined by Connecticut Courts:

[i]n our relevant statutes the words 'negotiation' and 'strategy' are used together. As used, each is expected to occur in some form of meeting. Negotiation suggests that the adversary will be present. One cannot negotiate with oneself. But strategy, regardless of whose definition we use, involves planning by one side only. 'Strategy[,] careful, cleverly devised plan or series of maneuvers for attaining a specific goal or result.' 'Word Menu', Stephen Glazier, 1992.

Waterbury Teachers Association v. Freedom of Information Commission, Et Al., Superior Court, Judicial District of Hartford New Britain at Hartford, Docket No. CV 930704266 (June 11, 1993, O'Neill, J.).

13. It is found that there were no representatives from respondent UPSEA Local 911 present during the executive session, which would be necessary to engage in any type of negotiations. It is further found that providing the Board of Finance, an entity that had no direct involvement and/or authority over contract labor negotiations, with a "status update" on contract labor negotiations, which update was devoid of any financial consideration does not constitute strategy.

14. Therefore, it is found that the executive session that was convened during the respondent Board's October 6, 2015 meeting did not include strategy or negotiations with respect to collective bargaining.

15. The Commission notes that even if the discussion had constituted strategy and/or negotiations, the Commission has long established that strategy and negotiations with respect to collective bargaining do not come within the purview of §1-200(6), G.S., and therefore, are not the proper subject for executive session; see Nancy Beckwith v. Board of Directors, Poquonnock Bridge Fire District; and Poquonnock Bridge Fire District, Docket No. FIC 2012-466 (April 10, 2013); Mark J. Anderson, Suzanne Simoneau and The Bristol, Press v. Chairman, Bristol Housing Authority; and Bristol Housing Authority, Docket No. FIC 88-87 (May 31, 1988); John Gallo v. Town of Windsor Locks; and the Board of Finance of the Town of Windsor Locks, Docket No. FIC 1978-065, 066, 073 (August 23, 1978). Such a discussion is also not considered a meeting within the meaning of the Freedom of Information Act, and therefore, such discussion is not required to be conducted in an open meeting. See §1-200(2), G.S.¹

¹The respondents concede that such a topic is not properly discussed in executive session in their post-hearing brief.

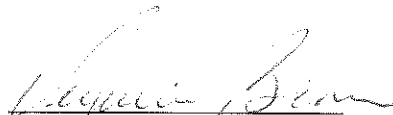
16. With respect to the respondents' assertion that the status report provided by the First Selectman during executive session was proper in reliance on §1-200(6)(E), G.S., because it included information contained in "records, reports and statements of strategy or negotiations with respect to collective bargaining," as provided for in §1-210(b)(9), G.S., the Commission finds that assertion unsustainable. There was no evidence presented at the hearing in this matter to support such a conclusory assertion.

17. Consequently, it is concluded that the respondents convened in executive session during its October 6, 2015 regular meeting for an impermissible purpose.

18. With regard to the remedies requested by the complainants, this Commission has no authority to order the respondents and/or a non-party to this matter, the First Selectman, to issue a public apology to the complainants, and declines to order another meeting be held in light of the fact that there was no action taken during the executive session.

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

1. Henceforth, the respondent shall strictly comply with the requirements of §§1-225(a) and 1-200(6), G.S.
2. Forthwith, the respondents shall create minutes of the October 6, 2015 executive session, to include a detailed account of the discussions that took place, and a description of who was in attendance, and further, shall forthwith post such minutes with the town clerk and provide a copy, free of charge, to the complainants.


Virginia Brown
as Hearing Officer