

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Richard Kosinski,

Complainant

against

Docket # FIC 2024-0231

State of Connecticut, Neutral Arbitrator
Selection Committee; Douglas Cho,
Director, State of Connecticut, Connecticut
Board of Mediation and Arbitration; and
State of Connecticut, Connecticut Board of
Mediation and Arbitration,¹

Respondents

April 9, 2025

The above-captioned matter was heard as a contested case on October 10, 2024 and February 24, 2025, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

By Motion for Service dated and filed June 7, 2024, the complainant moved the Commission to serve his appeal on the Neutral Arbitrator Selection Committee. By Motion for Speedy Ruling dated and filed July 8, 2024, the complainant moved the Commission to rule on his Motion for Service forthwith. On July 8, 2024, the Commission denied the complainant's Motion for Service.

By Motion for Recusal dated and filed July 24, 2024, the complainant moved that Commissioner Christopher P. Hankins recuse the undersigned hearing officer because he, along with all other Commissioners in attendance, voted to adopt the report of the hearing officer in a separate matter, Docket #FIC 2023-0021, *Richard Kosinski v. Chairman, Connecticut State Board of Mediation and Arbitration et al.* The undersigned hearing officer denied the Motion for Recusal on August 1, 2024.

By Amendment to Notice of Appeal dated and filed July 22, 2024, the complainant amended his appeal to update his telephone number and to seek the imposition of civil penalties pursuant to §1-206(b)(2), G.S. Such amendment was granted by the undersigned hearing officer on August 1, 2024.

By Motion for Disclosure and Production dated and filed July 22, 2024, the complainant moved that the Commission disclose certain information and records, which motion was denied on August 1, 2024. By Motion to Compel Testimony dated and filed July 22, 2024, the

¹ The caption has been amended to reflect the parties based upon the Administrative Record.

complainant moved the Commission to compel Colleen M. Murphy and Paula S. Pearlman to attend and testify at the hearing on this matter. The Motion to Compel Testimony was denied on August 1, 2024.

On August 1, 2024, the complainant filed three separate Motions for Articulation of the Commission's decisions regarding his Motions for Recusal, for Disclosure and Production, and to Compel Testimony, which the undersigned hearing officer granted on August 6, 2024.²

On August 1, 2024, the Commission issued a notice to the parties that the case caption in this matter had been modified as follows: "Richard Kosinski v. Douglas Cho, Director, State of Connecticut, Connecticut Board of Mediation and Arbitration; and State of Connecticut, Connecticut Board of Mediation and Arbitration."

Upon further review of the complaint and its attachments, along with certain of the complainant's motions filed in this matter, on August 6, 2024, pursuant to §1-21j-30, Regulations of Connecticut State Agencies, the hearing officer ordered that the following parties be added as respondents in the above-captioned matter: Chair, State of Connecticut, Neutral Arbitrator Selection Committee; and State of Connecticut, Neutral Arbitrator Selection Committee. On August 6, 2024, the added respondents were provided with a copy of the administrative record in this matter.

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

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.³
2. It is found that, on April 16, 2024, the complainant sent an email addressed to: "Neutral Arbitrator Selection Committee c/o Douglas A. Cho, Director State Board of Mediation and Arbitration douglas.cho@ct.gov" requesting the following records:

[a.] as to each meeting which resulted in the appointment or

² At the October 10, 2024 hearing on this matter, the complainant made an oral motion that the hearing officer reconsider his rulings on the Motions for Recusal and to Compel Testimony, which the hearing officer denied.

³ In their post-hearing brief, the respondents stated that they do not concede that the Neutral Arbitrator Selection Committee ("NASC") constitutes a "public agency" under the Freedom of Information ("FOI") Act. During the hearing on this matter, the respondents failed to present evidence disputing the complainant's claim that the NASC is public agency and failed to adequately brief such claim in their brief. "Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." *State v. Buhl*, 321 Conn. 688, 724 (2016). It is found that, §7-473c, G.S., requires the Commissioner of the State of Connecticut, Department of Labor to appoint "a Neutral Arbitrator Selection Committee consisting of ten members, five of whom shall represent the interests of employees and employee organizations and five of whom shall represent the interests of municipal employers...." It is further found that, pursuant to §7-473c, G.S., the NASC is required to appoint a panel of twenty impartial persons to serve as neutral arbitrators who arbitrate matters as part of the binding arbitration process set forth in §7-473c, G.S. Accordingly, it is found that the NASC is a statutory creation and that the statute grants the NASC with the independent, express authority to appoint a panel of neutral arbitrators whose duties are statutorily established. In addition, it is found that the NASC has, at least at certain times, complied with certain FOI Act requirements and that its meetings are open to the public. Based upon the facts and circumstances of this case, it is concluded that the NASC is a public agency within the meaning of §1-200(1), G.S.

reappointment of Joseph M. Celentano, Susan E. Halperin, Richard H. Kosinski, Louis A. Pittoco or Gerald T. Weiner as a member of the Panel of Neutral Arbitrators for the term expiring December 18, 2024, this is to request that you provide me with a copy of the meeting notice, meeting agenda, meeting minutes and minutes of the subsequent meeting at which the initial meeting minutes were approved.

[b.] For the balance of 2024, please provide me with a copy of each meeting notice, meeting agenda, meeting minutes and minutes of the subsequent meeting at which the initial meeting minutes were approved.

3. It is found that by email dated April 17, 2024 the Director of the State Board of Mediation and Arbitration (“SBMA”), Douglas A. Cho (the “SBMA Director”), acknowledged the complainant’s April 16, 2024 request, stating: “I am in receipt of your emailed FOI request and will be providing you with a response after an opportunity to review the request.”

4. It is found that by email dated April 24, 2024, and filed with the Commission on April 24, 2024, the complainant appealed to this Commission alleging that the respondents violated the FOI Act by failing to comply with the April 16, 2024 request.⁴

5. It is found that, on June 28, 2024, counsel for the respondents emailed the complainant a copy of the Meeting Notice and Agenda for the October 19, 2022 meeting of the Neutral Arbitrator Selection Committee (the “NASC”) and stated as follows:

The [NASC] meeting ‘which resulted in the appointment or reappointment of Joseph M. Celentano, Susan E. Halperin, Richard H. Kosinski, Louis A. Pittoco or Gerald T. Weiner as a member of the Panel of Neutral Arbitrators for the term expiring December 18, 2024’ took place on October 19, 2022. The meeting notice and agenda for the October 19, 2022 meeting is attached. Neither Douglas Cho nor the State Board of Mediation and Arbitration have meeting minutes from this meeting, or ‘minutes of the subsequent meeting at which the initial meeting minutes were approved.’ As to the second part of Mr. Kosinski’s request, we respectfully seek clarification as to what Mr. Kosinski means by ‘the balance of 2024,’ so that we may provide an appropriate response, if required.

6. On June 28, 2024, the complainant replied to the respondents’ June 28, 2024 email described in paragraph 5, above, by forwarding an email he had sent to the ombudsman assigned to this matter, which stated in relevant part as follows:

The [NASC] is a public agency established by C.G.S. Sec. 7-

⁴ At the hearings in this matter, the complainant alleged additional violations of the FOI Act that were not fairly raised in his complaint, and therefore, will not be further addressed herein.

473c(a). Its members are appointed by the Labor Commissioner. It is the appointing authority, by unanimous vote, of members of the Panel of Neutral Arbitrators. There is no formal connection by statute or regulation between the NASC and the Connecticut [SBMA] or its Director. The NASC has no website or email address. The Commissioner has tasked the SBMA and its Director to provide administrative support to the NASC. Online communications to the NASC can be done only through the Director. My request to the NASC was done c/o the Director. Attached are: 1. An email thread between the Director and me about the NASC; 2. An NASC meeting minutes prepared by the then Director; 3. A 10/13/22 NASC Meeting and Agenda Notice to the Secretary of the State from the Director; and 4. An NASC Meeting Notice and Agenda for a 3/18/24 meeting where members of the public wishing to attend were told to contact douglas.cho@ct.gov. It is obvious that an SBMA Director is intimately involved in the doings of the NASC and attends its meetings. ... A request for future meeting notices is governed by C.G.S. Sec. 1-227.

7. By oral motion initially raised by the respondents at the October 10, 2024 hearing on this matter, the respondents moved to dismiss the complaint against the NASC for lack of subject matter jurisdiction, contending that the complainant conceded that he had not sent his request to the NASC and that the NASC and SBMA are unrelated entities. The respondents claimed that the complainant, therefore, did not meet his burden that his April 16, 2024 request was submitted to the NASC. The respondents, in their post-hearing brief, also argued that neither the SBMA nor its director had any obligation to respond to the complainant's request on behalf of the NASC or to forward it to the NASC, relying on *Lash v. Freedom of Info. Comm'n*, 116 Conn. App. 171, 187 (2009), *aff'd in part, rev'd in part*, 300 Conn. 511 (2011), which held that distinct public agencies have no duty to maintain or make available the records of another public agency.

8. During the hearings on this matter and in his post-hearing brief, the complainant objected to the respondents' motion to dismiss emphasizing that he sent his request to the NASC care of the SBMA Director and that he specifically addressed his request to the NASC, not the SBMA Director. The complainant contended that, although there is no statutory or regulatory connection between the NASC and the SBMA, the SBMA Director and his predecessors provided administrative support to the NASC and, based upon his knowledge and belief, they had done so for more than 20 years. The complainant contended that the SBMA Director is an agent for the NASC, particularly with respect to communications and other administrative tasks.

9. Contrary to the respondents' arguments, this case presents a distinct issue than that presented in *Lash*. Here, the ultimate question is whether the SBMA Director and the NASC were in an apparent agency relationship, with respect to communications to or from the NASC. *See, e.g. Loughery v. Comm'r of Corr.*, No. CV010812161S, 2002 WL 1903092, at *9 (Conn. Super. Ct. July 9, 2002), *citing Fonar Corp. v. Tariq Contracting, Inc.*, 885 F.Supp. 56 (E.D.N.Y.1995)(holding that serving an agent who has apparent authority to act on behalf of the principal was sufficient for service of process on the principal).

10. “[I]t is a general rule of agency law that the principal in an agency relationship is bound by, and liable for, the acts in which his agent engages with authority from the principal.... An agent's authority may be actual or apparent.... Actual authority exists when [an agent's] action [is] expressly authorized” *Maharishi School of Vedic Sciences, Inc. (Connecticut) v. Connecticut Constitution Associates Ltd. Partnership*, 260 Conn. 598, 606–607 (2002). In contrast, “[a]pparent authority is that semblance of authority which a principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses....” *Tomlinson v. Bd of Education*, 226 Conn. 704, 734–35 (1993) (“*Tomlinson*”).

11. “The issue of apparent authority is one of fact to be determined based on two criteria.... First, it must appear from the principal's conduct that the principal held the agent out as possessing sufficient authority to embrace the act in question, or knowingly permitted [the agent] to act as having such authority.... Second, the party dealing with the agent must have, acting in good faith, reasonably believed, under all the circumstances, that the agent had the necessary authority to bind the principal to the agent's action....” *Tomlinson* at 734–35; *see also Hallas v. Boehmke & Dobosz, Inc.*, 239 Conn. 658, 674 (1997).

12. Manifestations of apparent authority are “not limited to spoken or written words.... Silence may constitute a manifestation when, in light of all the circumstances, a reasonable person would express dissent to the inference that other persons will draw from silence. Failure then to express dissent will be taken as a manifestation of affirmance.” *Ackerman v. Sobol Fam. P'ship, LLP*, 298 Conn. 495, 511-12 (2010) (“*Ackerman*”). The basis of apparent authority may be a course of dealing between the agent and the principal. *Ackerman*, at 515.

13. It is found that the complainant emailed his April 16, 2024 request to the following email address: douglas.cho@ct.gov and that such email is the SBMA Director's email. It is also found that the complainant specifically addressed his request to the “Neutral Arbitrator Selection Committee c/o Douglas A. Cho, Director State Board of Mediation and Arbitration” and included a salutation of: “Ladies and Gentlemen.” Therefore, it is found that the complainant intended to send his April 16, 2024 request to the NASC, albeit through the SBMA Director.

14. As found in footnote 3, above, §7-473c, G.S., requires the Commissioner of the Department of Labor to appoint ten members to the NASC and that the NASC is the appointing authority of the Panel of Neutral Arbitrators (“PNA”), members of which serve a term of two years.

15. It is found that the SBMA is a statutorily created board which provides grievance arbitration services for state and municipal entities, binding arbitration services for municipal contracts, and mediation services. It is found that the SBMA maintains the list of the members of the PNA and sends such list to parties involved in the binding arbitration process.

16. It is found that the NASC and the SBMA are separate agencies and that the NASC is not a subdivision of the SBMA nor is the SBMA a subdivision of the NASC. It is further found that the SBMA Director and his staff are not employees of the NASC.

17. It is found that the NASC has no office, no support staff, no website, no email address, no mailing address, no physical address, no telephone number, and no chair or other officer. It is also found that the SBMA posted on its website a schedule of NASC meetings as

well as a list of NASC members with their physical mailing addresses. It is found that NASC's in-person or hybrid meetings are held at the SBMA's regular place of business.

18. It is found that the SBMA Director and certain of his predecessors regularly have provided administrative and clerical services to the NASC. It is found that the SBMA Director attends most, if not all, NASC meetings, has taken notes at certain of the meetings, and has assisted in facilitating NASC meetings to varying degrees.

19. It is further found that the SBMA Director or one of his staff members, in large part, schedules and arranges NASC meetings. It is further found that the SBMA Director often contacts members of the NASC regarding their availability for meetings and circulates an agenda if one is prepared. It is found that the SBMA Director has prepared agendas for the NASC meetings, based upon conversations with the NASC members. It is found that the SBMA Director sets up the remote NASC meetings held on TEAMS, and that he sends out the TEAMS invites for such meetings.

20. It is found that the SBMA Director's staff member posted notice of at least one NASC meeting on the Secretary of State's website. It is found that, at least, one of the SBMA Director's predecessors created NASC meeting minutes.

21. The SBMA Director testified, and it is found, that he and his staff sometimes provided the above services on his own initiative and at other times upon request by NASC members. The SBMA Director testified, and it is found, that "there was an expectation that [he] would handle the scheduling and setting up dates with [NASC] input."

22. It is found that the NASC appointed the complainant as a member of the PNA in 1998 and that he has been continuously reappointed ever since.

23. It is found that, since 1998, the SBMA Director or his predecessor sent the complainant communications on behalf of the NASC and that the complainant did not receive any direct communications from any individual members of the NASC related to his service as a member of the PNA. For example, it is found that, by email dated October 27, 2022, the SBMA Director notified the complainant that he had been reappointed to serve on the PNA for another two-year term and requested that the complainant "reply to this e-mail," and stated "we will follow up with a formal letter of reappointment."

24. It is found that, on March 20, 2024, the SBMA Director emailed the complainant inquiring whether the complainant wished to request reappointment by the NASC as a neutral interest arbitrator and stated as follows: "[k]indly reply to me via email at your earliest convenience." It is further found that the SBMA Director sent a follow-up email to the complainant on March 27, 2024. It is also found that the complainant responded to the SBMA Director on March 27, 2024.

25. It is found that, on May 29, 2024, the complainant sent an email to the NASC via the SBMA Director requesting that the NASC discuss his reappointment to the PNA in an open, public meeting and not during an executive session. It is found that, on August 16, 2024, the SBMA Director responded, stating that the complainant's request was discussed at the July 17, 2024 NASC meeting and the NASC would accommodate his request.

26. It is found that, by email dated July 11, 2024, the SBMA Director notified the complainant of the NASC special meeting scheduled for July 17, 2024. It is further found that, by email dated August 16, 2024, the SBMA Director provided the complainant with notice of an August 22, 2024 NASC special meeting, referred to in paragraph 49, below.

27. Based upon the facts and circumstances of this matter, it is found that the NASC relied upon the SBMA Director to provide it with administrative and clerical services, including communications on behalf of the NASC.

28. Based upon the facts and circumstances of this matter, including the course of dealings between the complainant and the SBMA Director, who repeatedly acted on behalf of the NASC, and the NASC's permitting the SBMA Director to act as having such authority, it is found that the NASC clothed the SBMA Director with apparent authority to accept communications on behalf of the NASC and to send communications to third parties on behalf of the NASC.

29. It is found that none of the members of the NASC indicated by their conduct prior to the complainant's April 16, 2024 request that the SBMA Director did not have continued authority to accept communications on behalf of the NASC.

30. It is found that the complainant acted in good faith and reasonably believed, under the facts and circumstances of this matter, that the SBMA Director had the necessary authority to accept his April 16, 2024 request as an agent for the NASC.

31. Accordingly, it is concluded, based on the facts and circumstances of this case, that the complainant properly sent the April 16, 2024 request to the SBMA Director in his capacity as an agent for the NASC and that submitting the request to the SBMA Director, as agent for the NASC, was the same as submitting the request to the NASC, the principal.

32. For the reasons set forth above, the respondents' motion to dismiss is denied.

33. Section 1-200(5), G.S., provides:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

34. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any

law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

35. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

36. It is concluded that the requested records, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

37. With respect to the request described in paragraph 2.a., above, the complainant claims that although the respondents provided him with copies of certain limited records, the respondents either do or should maintain additional records responsive to his request.

38. With respect to the SBMA and the SBMA Director, the SBMA Director testified, and it is found, that only he and the SBMA Administrative Assistant would maintain records responsive to the request described in paragraph 2.a., above. He further testified, and it is found, that both he and the SBMA Administrative Assistant searched for responsive records. The SBMA Director also testified, and it is found, that he searched both electronic and paper files related to the NASC, and that he searched a file created by a former SBMA director, which contained no responsive records. Based upon the SBMA Director’s further testimony, it is found that he provided all responsive records that he and the SBMA Administrative Assistant located to the SBMA attorney, and that counsel provided such records to the complainant.

39. One of the members of the NASC (“NASC Member”) appeared and testified on behalf of the NASC at the February 24, 2025 hearing on this matter.

40. As found in paragraph 17, above, the NASC has no central office or location to store its files and records; rather each NASC member maintains their own records.

41. It is further found that, after the NASC was added as a party to this matter, the NASC Member searched his own files and notes for records responsive to the request described in paragraph 2.a., above. It is found that the other NASC members also searched their files for any responsive records.

42. It is found that the NASC members conducted a reasonably thorough search for any records responsive to the complainant’s request described in paragraph 2.a., above, and that the NASC members located no additional records that were not already provided to the complainant by the SBMA’s attorney.

43. In addition, based upon the respondents’ credible testimony, it is found that the October 19, 2022 NASC meeting is the meeting which resulted in the appointment or reappointment of the individuals listed in the April 16, 2024 request for the term expiring December 18, 2024, and that the complainant was provided with a copy of such meeting notice and agenda. It is further found that no meeting minutes were prepared or existed with respect to the October 19, 2022 NASC meeting. Additionally, it is found that no meeting minutes existed

or were prepared for the meeting subsequent to the October 19, 2022 NASC meeting.⁵

44. It is found that the respondents testified credibly that they provided the complainant with copies of all responsive records that they maintained or possessed. It is further found that the respondents did not withhold any responsive records.

45. With respect to the request described in paragraph 2.b., above, it is found that the complainant clarified to the respondents that he was requesting future NASC meeting notices pursuant to §1-227, G.S.

46. Section 1-227, G.S., provides, in relevant part:

The public agency shall, where practicable, give notice by mail or electronic transmission of each regular meeting, and of any special meeting which is called, at least one week prior to the date set for the meeting, to any person who has filed a written request for such notice with such body, except that such body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting. ... Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. ...

47. More specifically, it is found that, on April 16, 2024, the complainant requested notice of all future NASC special meetings, and that the complainant filed his complaint with the Commission on April 24, 2024. It is further found that no NASC special meetings took place between April 16, 2024 and April 24, 2024. Therefore, during that time period no notice was required to be provided to the complainant.

48. The Commission lacks jurisdiction to determine whether notice was properly provided to the complainant with respect to any NASC special meetings that might have occurred after the filing of the complaint with the Commission.

49. The Commission notes, however, that the respondents testified that the only NASC special meetings that occurred between April 16, 2024 and the hearings in this matter, took place on July 17, 2024 and August 22, 2024. In addition, the parties acknowledged that the complainant was provided advance notice of, and attended, such meetings.

50. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

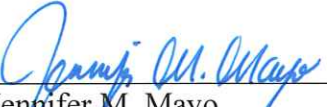
51. Because there is no violation in this matter, consideration of a civil penalty is not warranted.

⁵ The Commission notes that, although it was not alleged in the complaint and therefore cannot be considered herein (see FN 4, above), the NASC admitted that it failed to publish minutes for each NASC meeting, as required by §1-225, G.S. The NASC is encouraged to publish its meetings minutes in order to avoid violations of the FOI Act.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 9, 2025.



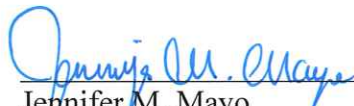
Jennifer M. Mayo
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

RICHARD KOSINSKI, 40 Manitoosic Drive, Oxford, CT 06478

**STATE OF CONNECTICUT, NEUTRAL ARBITRATOR SELECTION COMMITTEE;
DOUGLAS CHO, DIRECTOR, STATE OF CONNECTICUT, CONNECTICUT BOARD
OF MEDIATION AND ARBITRATION; AND STATE OF CONNECTICUT,
CONNECTICUT BOARD OF MEDIATION AND ARBITRATION**, c/o Assistant Attorney
General Ksenya Hentisz, 165 Capitol Avenue, 4th Floor, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission