

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by                      FINAL DECISION

William Nagler and  
The Middletown Press,

Complainants

against

Docket #FIC 85-241

Middletown Police Commission,

Respondent

August 27, 1986

The above-captioned matter was heard as a contested case on May 27, 1986, at which time the complainants and the respondent appeared and presented testimony, exhibits and argument on the complaint. The matter was continued to July 2, 1986, at which time the complainant and the respondent again appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire matter, the following facts are found:

1        The respondent is a public agency within the meaning of §1-18a(a), G.S.

2.        The respondent held a meeting on October 29, 1985 during which it convened in executive session. The announced purpose of the executive session was "strategy and negotiations regarding pending claims and litigation." At such meeting the complainant Nagler requested and was denied a copy of proposed police department rules and regulations.

3.        By letter of complaint filed with the Commission on November 26, 1985 the complainants appealed the respondent's failure to provide Mr. Nagler with a copy of the proposed rules and regulations, and alleged that because no litigation was pending on October 29, 1985, the respondent's executive session was not held for a proper purpose within the meaning of §1-18a(e), G.S.

4.        This case has been validated pursuant to P.A. 86-408 so that the failure of the Commission to comply with the time limits set forth at §1-21i(b), G.S. does not deprive the Commission of jurisdiction.

5.        It is found that in the summer months of 1985 the chief of police, in conjunction with the respondent, drafted proposed police department rules and regulations. The last revision of the proposal was in late summer or fall.

6. By letter dated October 4, 1985 the president of the police union, who had not yet been given a copy of the proposed changes, notified the chief of police that if the terms of the proposed rules and regulations were not negotiated, the union would be forced to file an unfair labor practice suit against the police department and the City of Middletown.

7. The respondent subsequently requested an opinion from the city attorney regarding the negotiability of the proposed rules and regulations. On or about October 29, 1985 the city attorney submitted a memorandum on the issue.

8. On October 29, 1986 the respondent met in executive session to discuss the city attorney's opinion regarding the negotiability of the proposed rules and regulations. As of that date, the union had not been given a copy of the document, but at the October 29, 1985 meeting the chairman of the respondent directed the police chief to provide the union with a copy as soon as possible.

9. The union was provided with a copy of the proposal on or about November 4, 1985 and, on or about November 8, 1985, notified the chief of police that many of the changes needed to be negotiated. Representatives of the police union and of the City of Middletown subsequently engaged in negotiations regarding certain terms of the rules and regulations.

10. Following an impasse, the rules and regulations were implemented on or about May 30, 1986, with seven passages still in dispute. The proposed rules and regulations, along with a list of passages negotiated and agreed upon and those still in dispute, have been made public.

11. It is found that the October 29, 1985 discussion of the negotiability of the proposed rules and regulations constituted strategy or negotiations with respect to collective bargaining within the meaning of §1-18a(b), G.S. and, therefore, did not constitute a "meeting" within the meaning of §1-18a(b), G.S.

12. It is found that the exclusion of the public from the respondent's October 29, 1985 discussion of the negotiability of the proposed rules and regulations did not violate §1-21(a), G.S.

13. It is found, however, that the respondent's identification of the discussion as an executive session for the purpose of strategy and negotiations regarding pending claims and litigation was inaccurate and, technically, violated §1-21(a), G.S.

14. The respondent claims that in October, 1985 the rules and regulations were in the form of a preliminary draft which had

to be negotiated before becoming final. The respondent claims that it would have impeded the bargaining process and would not have been in the public interest to release a copy because the posture and techniques used in collective bargaining should be kept between the parties.

15. It is found that on October 29, 1985 the proposed rules and regulations were completed and ready for implementation. The negotiability of certain terms did not affect the proposal's character as a completed document.

16. It is concluded that the proposed rules and regulations were not exempted from disclosure by §1-19(b)(1), G.S.

17. It is further found that the proposed rules and regulations discussed by the respondent on October 29, 1985 were the product of collective bargaining strategy and were, ultimately, subject to collective bargaining negotiations, but were not records, reports or statements of such strategy or negotiations within the meaning of §1-19(b)(9), G.S.

18. It is concluded that the proposed rules and regulations were not exempted from disclosure by §1-19(b)(9), G.S.

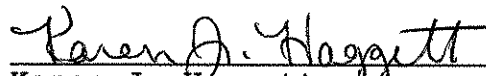
19. It is also found that the proposed rules and regulations did not pertain to strategy and negotiations with respect to any pending claim or litigation to which the respondent was a party within the meaning of §1-19(b)(4), G.S. and that the proposal was, therefore, not exempted from disclosure pursuant to such statute.

20. It is concluded that the respondent violated §1-15, G.S. when on October 29, 1985 it denied the complainant's request for a copy of the proposed police department rules and regulations.

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

1. The respondent shall forthwith provide each of its members with a copy of the Final Decision in this matter and shall make such decision an agenda item for discussion at its next regular meeting following the issuance of the Final Decision.

Approved by order of the Freedom of Information Commission at its regular meeting of August 27, 1986.

  
\_\_\_\_\_  
Karen J. Haggett  
Clerk of the Commission