



6. The Commission finds unpersuasive the respondent's claim that the April 5 gathering constituted strategy or negotiations with respect to collective bargaining and was therefore not a meeting as defined by §1-18a(b), G.S.

7. Attending the April 5 executive session were five members of the board of education, the superintendent of schools, the principal of Nonnewaug High School, the president of the teachers' association and the chairman of the professional rights and responsibilities committee of the teachers' association.

8. While convened in executive session the board of education discussed issues relating to the teacher's grievance, such as her performance and health history, including use of sick leave days, and examined documents such as doctors' reports and attendance records. Presentation of the teacher's position was accomplished not through direct testimony from the teacher herself but through the representations of the officers of the teacher's association.

9. In the Board of Police Commissioners case a police officer, Louis Gold, had asked that a hearing regarding his alleged violation of a departmental rule be held open to the public. Testimony and legal argument were heard in public session, following which the board convened in executive session to deliberate.

10. On appeal, the board claimed that deliberations in executive session were appropriate even where an employee had requested an open meeting, and Mr. Gold claimed that the board had erred when it conducted its deliberations in executive session in spite of his request for a public session. Also raised as an issue was an allegation that while convened in executive session the board had considered additional evidence.

11. The "hearing" involved in the Board of Police Commissioners case was a formal one, in which Mr. Gold was represented by legal counsel and evidence was presented by both sides.

12. The language cited by the complainants from the Board of Police Commissioners case is as follows:

Even if [Louis] Gold had made no request at all, §1-21 must be construed to mandate that the "hearing" portion of an administrative proceeding, where evidence and arguments are presented, be open to the public. The statute permits "executive sessions" only for the purposes specified and, in the context of this case, did not authorize the presentation of additional evidence during the "discussion" of Gold's case by the board. (emphasis added).

13. It is found that the April 5, 1984 meeting of the board of education did not constitute a "hearing" within the meaning of the Board of Police Commissioners case.

14. It is not clear from the Board of Police Commissioners decision whether the Supreme Court's language was intended to cover all gatherings which are referred to, generically, as "hearings," or whether it was intended to cover only formalized evidentiary hearings such as the one involved in the Board of Police Commissioners case.

15. It is found that absent a more specific expression of intent the Supreme Court's position must be interpreted to refer only to the type of hearing involved in the Board of Police Commissioners case.

16. It is concluded that the April 5, 1984 executive session, convened to discuss the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee within the meaning of §1-18a(e)(1), G.S., did not violate §1-21, G.S.

17. Under the circumstances, the Commission does not find it necessary to treat the respondent's claims that the complainants lacked standing to file a complaint against the respondent and that the April 5, 1984 gathering was properly convened pursuant to §1-18a(e)(5), G.S.

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 August 22, 1984.

  
Mary Jo Jolicœur  
Clerk of the Commission