

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JOYCE ANDRADE AND WILLIAM C. BOWLING, *
Members of the Warwick School Committee *

V. *

DANIEL F. SHEEHAN, JR., *
Chairman of the Warwick School Committee *

DECISION

Held: School Committee Policy 8324 is superseded by state law, R.I.G.L. 42-46-4, which enables a majority of the School Committee to vote to have a closed meeting. The issue of whether a closed meeting was permitted under state law presents an open meetings question and not one arising under a law relating to schools or education.

Date: November 14, 1995

Travel of the Case

On May 18, 1995 Joyce Andrade and William C. Bowling appealed to Commissioner Peter McWalters from the decision of Daniel F. Sheehan refusing to place a matter on the agenda for an open meeting. Both appellants are members of the Warwick School Committee and Mr. Sheehan is the Chair of that Committee. Commissioner McWalters designated the undersigned to hear and decide this appeal.

The matter was heard on August 16, 1995, with all of the parties appearing pro se. The transcript was received, and the record in the case closed on August 30, 1995.

Issue

Does Policy 8324, requiring items to be placed on the school committee's agenda at the request of two school committee members, require placement of the subject of Superintendent Tarlian's compensation on the agenda of an open meeting of the Warwick School Committee?

Findings of Relevant Facts

- On February 27, 1995, the members of the Warwick School Committee discussed, voted on, and approved an agreement with then-Superintendent Tarlian relating to the terms and conditions of his employment. Tr. pp. 6, 23.
- At the March 7, 1995 meeting of the School Committee an announcement regarding this agreement was made during the open session by Chairperson Sheehan. He described the agreement to grant retroactive pay increases to the Superintendent for years 1992 through 1995. Tr. pp. 7, 26; Appellants Ex. C.
- Also at the March 7, 1995 meeting Superintendent Tarlian announced his resignation, effective June 30, 1995. Appellants Ex. C.

- Mrs. Andrade¹ understood at the time of the February 27th meeting that the subject of the "Superintendent's Compensation" would be placed on the agenda of a subsequent public meeting.
- At the meeting of April 4, 1995 Mrs. Andrade and Mr. Bowling requested that the subject of the Superintendent's compensation be placed on the agenda for the next public meeting. Tr. p.9.
- When the Agenda was published for the May 10, 1995 public meeting it did not include the requested item, and the appellants made an additional request in writing on May 4, 1995. Tr. p. 10; Appellants Ex. D.
- The requested item was not placed on the agenda for the May 10, 1995 meeting of the School Committee. At the May 10, 1995 meeting, Ms. Andrade and Mr. Bowling again requested placement of the matter on the agenda for the next meeting. Appellants Ex. E. They confirmed their request in writing on May 29, 1995. Appellants Ex. G.
- At the June 6, 1995 meeting of the School Committee a formal motion was made and seconded on the issue of whether or not to place the issue of the Superintendent's compensation on the agenda for the next meeting. That motion failed by a vote of 2-3. Appellants Ex. H.

Positions of the Parties

The appellants argue that the Chair of the Warwick School Committee has illegally censored an item from the school committee's agenda, in violation of Policy 8324. This policy requires that when requested by two members of the committee, an item will be placed on the agenda for discussion by the committee. When the vote (3-2) approving the Agreement was taken in Executive Session on February 27, 1995, the appellants anticipated a subsequent public discussion and vote. It never occurred because of the Chair's inaction and subsequently the vote of the majority

¹Mr. Bowling did not testify concerning his understanding, although at the hearing he did not contradict Mrs. Andrade's testimony that "it was understood" that a public vote would follow the School Committee executive session vote to approve the Agreement.

of the Committee. Mr. Sheehan's position, as we understand it, is that implicit in the agreement with Superintendent Tarlian was the fact that discussion of certain items not be public. Although Mr. Sheehan acknowledged his rudeness in not responding to the Appellants' many requests for inclusion of the matter on the agenda of a public meeting, he attributed it to the fact that:

During this entire time, it was the - it is my opinion- it is a fact that the three people on the school committee did not want it on the public agenda and that obviously came to fruition when the public vote was taken. (Tr. pp. 26-27)

Chairperson Sheehan evidently felt constrained both by his interpretation of the agreement with the Superintendent and the position taken by the majority of the members of the Committee on this issue.

Decision

There is no persuasive evidence in the record that a condition of the agreement with Superintendent Tarlian was that the subject of his "compensation package" would not be subject to public discussion and/or vote by the Warwick School Committee. Given the testimony of two committee members who appeared at the hearing, and the absence of any written provision requiring confidentiality, we conclude that there is no evidence that the agreement itself prevented this matter from being included on the agenda of a public meeting.

The second basis advanced for denial of the appellants' request was that the majority of school committee members had decided that the matter was more properly handled in executive session, followed by a brief announcement at a later public meeting notifying the public of the fact that the agreement had been reached. This argument brings us to the precise issue in this case -- whether Policy 8324 permits two members to place a matter on the public agenda even when the majority of school committee members have voted to discuss and act on that matter in a closed session.²

The answer to this question requires reference to our state's "Open Meetings" law, R.I.G.L. 42-46-1 et seq. Clearly any interpretation or application of this statute is within the exclusive province of the office of the Attorney General. However, since the appellants have requested the Commissioner to issue an order requiring the Warwick School Committee to place a matter on its public meeting agenda, we must consider whether compliance with the policy, and the issuance of such an order, would run afoul of state law. Resolution of education disputes cannot occur in a vacuum, without consideration of other relevant statutory provisions. This is a case in which literal enforcement of

²Even though the actual vote to exclude the matter from the agenda of a public meeting was not taken until after the appeal to the Commissioner, the parties have proceeded as if the appellants have been aggrieved by this later action of the school committee, rather than just the Chair's prior unilateral refusal to act. We would note that the appellants have appealed under R.I.G.L. 16-39-2, "Appeal of School Committee actions to Commissioner".

Policy 8324 would require us to ignore the existence of Section 42-46-4. This provision of the General Laws provides that:

By open call, a public body may hold a meeting closed to the public upon affirmative vote of the majority of its members.

Testimony in this case was undisputed that at such a closed meeting the subject of the "superintendent's compensation" was discussed and voted upon. An agreement with the Superintendent was approved in closed session by a 3-2 vote of the School Committee (Tr. p. 6). The appellants seek, through this appeal to the Commissioner, to use Policy 8324 to require this matter to be discussed and voted upon again at a public, rather than a closed, meeting. An order enforcing Policy 8324 to require the Committee to do so would abrogate rights given to the School Committee under state law.

R.I.G.L. 42-46-4 clearly accords to public bodies the prerogative to meet in closed session with regard to certain matters. The Warwick School Committee exercised that prerogative when it voted³ to go into closed session to discuss the Superintendent's compensation. It affirmed this prior decision when it voted at its June 6, 1995 meeting not to take up the matter again on a public agenda.

Acknowledgment of Section 42-46-4 and the fact that in this matter a majority of members of the Warwick School Committee

³Our record does not include any details regarding this February 27, 1995 vote.

have invoked it requires us to deny the appellants' appeal. Their request is to construe the policy to require placement of a matter on the public agenda⁴ for a vote, and possibly further discussion. We find that the Warwick School Committee has exercised the authority given to it, as a public body, to hold a meeting closed to the public through the vote of a majority of its members.

We wish to emphasize that we express no opinion as to whether this authority was properly exercised, i.e. that the discussion and action taken at the February 27, 1995 meeting with regard to the Superintendent's compensation was in compliance with the Open Meetings Law. Any question of whether the discussion and/or vote was required by law to be conducted at a public meeting is, we would emphasize, a matter beyond the Commissioner's jurisdiction. Our ruling simply recognizes that the authority granted to the majority of the School Committee by statute must take precedence over the authority given to a minority under school committee bylaws.

The appeal is denied and dismissed.

⁴If the policy were construed as requiring inclusion on the agenda of either an open or closed meeting, the School Committee would already be in compliance. We would note that the Commissioner's prior decision in Goddard v. Portsmouth, September 23, 19981 interpreted a similar policy to require an item to be placed on an agenda, without reaching the issue of whether it would be in open or closed session.

Kathleen S. Murray
Kathleen S. Murray
Hearing Officer

Approved:

Peter McWalters
Peter McWalters
Commissioner

November 14, 1995
Date