

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION
NO.: 1879CV00650

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAR 25 2019


CLERK OF COURTS

REBECCA BOUTIN, KYLE MILTIMORE,
DAVID KENNEDY, and MARIANNE THEODORAKIS,
Plaintiffs,

vs.

ALBERT J. MASCIADRELLI, PATRICK OLEARCEK and CARLO BONAVIDA,
as they constitute the
WESTFIELD FIRE COMMISSION
Defendants.

MEMORANDUM OF DECISION AND ORDER OF IMPOSITION OF PENALTY

On August 29, 2018, this court entered an order nullifying adverse personnel actions taken by the members of the Westfield Fire Commission against the plaintiffs-employees during an executive session that was held in violation of the Open Meeting Law, G.L. c. 30A, §23.

The court conducted a subsequent hearing on September 18, 2018, to determine whether the violation was willful and, if so, whether a fine should be imposed on the defendants pursuant to the provisions of Chapter 30A, §23(c)(3)¹.

Based on the evidence presented at the hearings, this court finds that the defendants willfully violated the Open Meeting Law and did not act in good faith when complying with the advice of their legal counsel. In short, the defendants knew that they were violating the Open

¹ This action was brought by Westfield Fire Captain Boutin, Firefighter Kyle Miltimore and Firefighter Kennedy (“plaintiff-employees”) and by Marianne Theodarkis. All of the plaintiffs are registered voters in the City of Westfield..

Meeting Law when they voted to go into executive session. The fact that the City's lawyers advised them to do so does not excuse them from their knowing and intentional violation of the Open Meeting Law.

As discussed in this court's memorandum of decision of August 29, 2018, the commission voted to go into executive session, excluding both the public and the plaintiff-employees. The commission's ostensible reason for closing the meeting was "to discuss strategy with respect to litigation related to alleged misconduct" and that "... an open meeting "... an may have a detrimental effect on the litigation position."

Albert J. Masciadrelli was the sole witness to testify on behalf of the defendants at the second hearing. At the time of his testimony, he had served on the commission for almost 20 years. Mr. Masciadrelli was the chairperson of the commission when he and the two other members voted to go into executive session to discuss the reputations, characters and mental health of the plaintiff-employees and to discuss potential discipline or dismissal of the plaintiff-employees. The defendants, acting in knowing violation of Chapter 30A, §21 (a)(1), did not afford the plaintiff-employees the right to be present at the executive session, or to have their counsel attend.

Mr. Masciadrelli testified that for several months prior to the meeting, he knew that there was some type of investigation into the Fire Department. Even though he was chair of the commission that by charter was charged with the oversight of the department, he nonetheless testified that he didn't know any details of an internal investigation of the plaintiff-employees, including the identity of the targets of the investigation. In fact, he claims that he didn't even know who hired the investigator. The investigator was a private lawyer who was evidently

retained by the city solicitor to conduct an investigation of the plaintiff-employees on behalf of the commission.

Mr. Masciadrelli admitted that despite citing litigation as a basis for convening the closed meeting, there was not any litigation pending or imminently expected. He also acknowledged that he knew that the Open Meeting Law provided an employee the right to be present when their reputation, character or mental health was being discussed. Remarkably, he insisted that he did not know that the reputations, characters and mental health of the plaintiff-employees were going to be discussed, despite having provided advanced notice of the executive session to the City Clerk for posting and despite convening and presiding over the closed meeting, the sole purpose of which was to discuss the reputations, characters and mental health of the plaintiff-employees.

Mr. Masciadrelli's testimony was not credible. The minutes from the executive session reveal that the commissioners met with the city solicitor, her assistant and the City's personnel director, all whom discussed a report authored by the investigator. The city solicitor summarized the investigator's conclusions, which included claims that attacked the plaintiff-employees' reputations and characters and brought into question their mental health.

Following the city solicitor's presentation, the commissioners unanimously voted to issue notices of termination to the plaintiff-employees. As a result, the Deputy Fire Chief immediately placed the plaintiff-employees on administration leave pending a termination hearing.

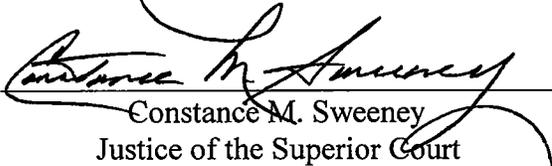
In his testimony, Mr. Masciadrelli said that it was clear to him that the city solicitor was trying to keep the subject matter of the meeting "secret." The subject matter that the officials were attempting to keep secret from the plaintiff-employees was the investigator's onslaught of

conclusory and extremely damaging claims against the plaintiff-employees that directly attacked their characters, their reputations and their mental health.

It is clear from the evidence that the commissioners knew that they were violating the Open Meeting Law when they voted to go into executive session by excluding the plaintiff-employees, who had a right to be present with or without counsel. The commissioner's intentional violation of the law is not excused by the city solicitor's advice that the meeting should be held in executive session. Her obvious attempt to circumvent the Open Meeting Law does not immunize the commissioners from their equally willful violation of the law.

ORDER

For the foregoing reasons, this court imposes a civil penalty of One Thousand Dollars (\$1,000.00) upon the Fire Commission of the City of Westfield and orders said public body to make payment thereof to the Hampden County Clerk of Courts within twenty one (21) days of the date of this order. The Clerk will thereafter transfer the payment to the General Fund of the Commonwealth.


Constance M. Sweeney
Justice of the Superior Court

Dated: March 25, 2019.