

The Chester Telegraph

P.O. Box 221 Chester, VT 05143

802-875-2703

cprairie@chestertelegraph.org

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Meg Alison Powden
Superintendent
Two Rivers Supervisory Union
609 Vermont Route 103
Ludlow, VT 05149

Paul Orzechowski
Chairperson, TRSU
Ludlow Mt. Holly UUSD
609 Vermont Route 103
Ludlow, VT 05149

Joseph Fromberger
Chairperson
Green Mountain USD
609 Vermont Route 103
Ludlow, VT 05149

Dear Ms. Powden, Mr. Orzechowski and Mr. Fromberger:

On May 7 we sent the supervisory union ***a written notice pursuant to 1 VSA § 314(b)(1) alleging*** a knowing and intentional violation of Vermont's Open Meeting Law at the May 2 TRSU board meeting.

We first became aware that board members had not known what they would be discussing in executive session on March 21, 2019, when Joe Fromberger was elected to the chair of the GMUSD board and Superintendent Powden felt it necessary to offer a recess to reveal to him the subject of the closed door meeting. The lack of this knowledge by all board members made it impossible for them to make a specific finding that the public knowledge of the session's topic would put the board at a disadvantage as envisioned in 1 VSA § 313(a)(1).

We were able to confirm this at the May 2 meeting and since then we have been reviewing meetings of the three governance boards of the SU. Our review has uncovered several more instances in which the boards of TRSU have improperly entered into executive session and held executive sessions for which there was no exemption. 1 VSA § 314(c) allows an action to be brought within one year after a meeting where an alleged violation occurred.

This is written notice pursuant to 1 VSA § 314(b)(1) alleging knowing and intentional violations of Vermont's Open Meeting Law by the TRSU, GMUSD and LMHUUSD boards in the following meetings:

September 12, 2018 - The LMHUUSD Board entered into an executive session to discuss "Black River teachers and staff jobs ending in 2020" under 1 VSA § 313(a)(1)(B) "Labor relations agreements with employees." It is difficult to understand what labor agreements there would be with the faculty and staff of a school that will cease to exist on June 30, 2020 and so this may not be a topic where the cited exemption fits. But even if somehow § 313(a)(1)(B) fits the circumstances, the board made no effort whatsoever to make the "specific finding" required by the statute before going into executive session and excluding Okemo Valley TV, which broadcasts and streams public meetings for the benefit

of the public.

October 10, 2018 - The LMHUUSD Board entered into another executive session to discuss “Black River teachers and staff jobs ending in 2020” under 1 VSA § 313(a)(1)(B) “Labor relations agreements with employees.” Again we wonder whether this is a discussion that would be allowed under the exemption used, but even if it were, the board made no effort to make the “specific finding” except for one person raising her voice to say “with all the appropriate language...” The board went into executive session excluding several members of the public and the Okemo Valley TV camera.

December 6, 2018 – The TRSU Board entered into an executive session for three subjects on the same exemption – 1 VSA § 313(a)(1)(B) “Labor relations agreements with employees.” It appears doubtful that the exemption fits all three of the subjects discussed, but it is very clear that the board did not make “a specific finding that a premature general public knowledge” of the board's discussion “would clearly place the public body or a person involved at a substantial disadvantage.” The nature of the discussions was not disclosed as required by the statute and the board did not weigh or consider whether a disadvantage would be created.

As the motion was made, Superintendent Powden added “to not hold us at a substantial disadvantage.” The board then went into executive session excluding the public and *The Chester Telegraph*, which regularly reports on the school system.

December 12, 2018 – While there is no audio or video recording of the LMHUUSD board meeting for this date, the minutes say that the board entered into executive session under 1 VSA § 313(A)(1)(b) to discuss four separate matters: “Black River Teachers and Staff Jobs Ending 2020,” “Compensation for Leave Days,” “Teacher Negotiations” and “Secondary Personnel Issue.”

The minutes state that “After making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage.” However, so do all the other meetings in which we allege that the board did no such thing. It is clear that not all the topics to be discussed fit under the “Labor relations agreements with employees” exemption and it strains credulity to imagine that in this single instance the board actually took the time to weigh and consider each of the four topics to be discussed and made the required finding in each regarding “premature public knowledge.”

February 7, 2019 – The TRSU Board entered into an executive session pursuant to 1 VSA § 313(a)(1)(B) “Labor relations agreements with employees” but omitted the words “agreements with employees.” Instead the board discussed a contract extension for Superintendent Powden.

We believe this was an incorrect use of the exemption and more to the point the board did not make the “specific finding” required to use the exemption. Without weighing or considering the need to exclude the public, the chair said the board was “going into executive session because it would put the board at a disadvantage.” A member then made the motion to go into executive session without the board making a specific finding. This excluded members of the public and Okemo Valley TV.

March 13, 2019 – The LMHUUSD entered executive session under 1 VSA § 313(a)(1)(B) “to discuss negotiations for Non-Bargaining staff” on a motion by a board member. Superintendent Powden then said, “Can I just add we are making the motion so it doesn't put the board at a disadvantage?”

In addition to the contradiction of negotiating a labor agreement - as envisioned by the exemption - with “non-bargaining staff,” the board did not make the “specific finding” required by the law, but excluded the public and Okemo Valley TV on the superintendent's word.

March 21, 2019 – The GMUSD board entered executive session under 1 VSA § 313(a)(1)(B), once again for negotiating with non-bargaining staff when the cited exemption makes it clear that it pertains to labor agreements.

It was very clear that the board had no knowledge of what was to be discussed and could therefore not make the “specific finding” required under the law.

The superintendent suggested to the newly elected board chair “...since you're new to being the chair, if you want a little recess so I can update you on the executive session before we go into it.”

The chair, who has been a member of this board since an Act 46 merger created it, said he was “very familiar with Title 1 paragraph 313” to which the superintendent replied “OK, I didn't know if you wanted to know about what the specific matter we are about to be discussing.”

The chair said he would find out during the session and the board closed the door on those members of the public attending including SAPA TV and *The Chester Telegraph*.

March 27, 2019 – The TRSU board entered into executive session under 1 VSA § 313(a)(1)(B), once again for negotiating with non-bargaining staff when the cited exemption makes it clear that it pertains to labor agreements.

In this case it is clear that the board was taking the legal requirements for justifying an executive session less than seriously. When a member made a motion to enter executive session, the superintendent added “with the caveat about not putting the board at a disadvantage.” The chair pantomimed holding up a large sign and suggested they could just have a sign made up and show it to the cameraman or make a recording and play it. The board did not make a specific finding and entered the session to the exclusion of Okemo Valley TV.

May 2, 2019 – TRSU – While we appreciate that the board chair admitted to a violation of the Open Meeting Law, the explanation did not match the violation that we alleged **and so we believe that the situation remains unresolved.**

At the May16 special meeting, chairman Paul Orzechowski said that he cited the session incorrectly. He said that he should have stated his personal belief that the session to be held to discuss an administrator's contract would have put the board and the individual at a disadvantage. This would be to serve as a substitute for the board reaching that decision as part of its legal duty to consider the situation and reach a “specific finding.”

Mr. Orzechowski’s explanation of what was wrong with the session failed on at least two counts.

- First, the session was listed on the agenda as being about “Labor relations,” a much broader

term than the narrow exemption to open meetings allowed for discussions of “Labor relations agreements with employees.” In other words, collective bargaining agreements. Administrators are “non bargaining staff” who have contracts, but not labor agreements. The executive session arguably could have been done under contracts, but the law requires the board to “indicate the nature” of what will be talked about, as opposed to simply citing the relevant subsection of the statute. That was not done.

- And second, before it can move to close the door to the public and talk about contracts, agreements and other negotiations the public body – not just the chair – must first make that specific finding referred to above. While the executive session was on the table, members of the board including, Mr. Orzechowski, told *The Telegraph* they did not know what the private session was about. Superintendent Powden then reminded Mr. Orzechowski that he did know the subject of the executive session to which he replied “Yeah, I probably do. It's labor.”

According to Deputy Secretary of State Chris Winters, “Such a finding requires a weighing of specific facts and circumstances that is impossible if you don’t know what you are voting on.” It is quite obvious from the Okemo Valley TV video of the meeting that no such weighing and considering was done.

Further, the Vermont Supreme Court, in *Trombley v. Bellows Falls Union School, Dist. 27* states that: “It is not unworkable for a public body to make a careful analysis of need before deciding to go into executive session. ”

We believe our allegations take on additional weight when one considers the minutes of these meetings.

In every session where we allege that boards did not even attempt to make the “specific finding” the minutes of those meetings included boilerplate saying that “*After making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage.*” The board no more satisfies its obligation to make a specific finding by simply recording an action that it did not in fact take than it would satisfy its obligation to produce non-exempt public records by simply stating “I hereby ‘promptly produce the record,’ 1 V.S.A. § 318(b).”

The board makes a mockery of the Open Meeting Law that states in 1 VSA § 312(b)(1) that “The minutes shall cover all topics and motions that arise at the meeting and *give a true indication of the business of the meeting.*” (Italics are mine)

According to the statute, the cure for such improperly constituted executive sessions is to hold a public meeting and ratify or void the decisions made through such sessions. In this case these would include:

LMHUUSD 12/6/18 - The board agreed to compensate Mount Holly bus driver Nancy Perry from leave days, not to exceed \$5,663.

TRSU 2/7/19 – The board offered a 2-year contract to Superintendent Powden.

LMHUUSD 3/13/19 – The board approved spending \$13,681 for pay increases for the maintenance position at Mt. Holly, the administrative assistant at Mt. Holly, and the associate principal at BRHS/LES as discussed in executive session. It also approved a 2.75% pay increase for the non-

bargaining support staff and a 2.5% salary increase for the principals.

GMUSD 3/21/19 - The board approved an increase of 2.75% to non-bargaining staff for the 2019-2020 school year. It also decided to allow a one-time only sick day donation with a maximum of 35 days from GMUSD employees for a support staff employee.

TRSU – 3/27/19 - The board approved increasing non-bargaining staff salary by 2.75%, and increasing Lauren Baker’s salary to \$63,376 and Ms. Powden’s salary to \$134,194.

This is not to say that we have any opinion on the advisability of any of the above decisions, but only that they were made through an executive session which violated the Open Meeting Law and that part of the statutory cure for such violations is to revisit and re-vote them.

I would also direct your attention back to December 2017 when *The Telegraph* sent Ms. Powden an informal email pointing out similar problems with a GMUSD meeting and asked for a response. We did not receive one. We then filed a formal complaint. The response was that the violation was “unintentional” and an acknowledgment that the warning language was vague and that when necessary the board must comply with the law as it relates to making a specific finding when entering an executive session under 1 VSA § 313(a)(1)(A)-(F).

The superintendent also responded to our call for Open Meeting Law training for board members by handing out text copies of the statute with no opportunity for the members to ask questions of an authority on the law.

This pattern of Open Meeting Law violations documents the supervisory union's cavalier and contemptuous attitude toward its obligations and toward the public it serves and makes a mockery of the law’s policy that “public commissions, boards, and councils and other public agencies in this State exist to aid in the conduct of the people’s business and are accountable to them pursuant to Chapter I, Article VI of the Vermont Constitution.”

This written notice starts the 10 calendar-day clock for “the public body” to acknowledge the violation and state its intent to cure the violation within 14 calendar days, or state that it has determined that no violation has occurred and that no cure is necessary.

We are sending a copy of this written notice to each member of the three boards since it will be up to them to decide on each board's response.

If you have any questions regarding this matter please don't hesitate to call or email me.

Sincerely,

Cynthia L. Prairie
Publisher
The Chester Telegraph