Public Records, notes re collective bargaining session

Number: INFORMAL

Date: January 31, 2003

Subject:
Public Records, notes re collective bargaining session

Mr. Richard B. Fulwider
Fire Chief
Cedar Hammock Fire Control District
5200 26th Street
Bradenton, Florida 34207

Dear Chief Fulwider:

You ask whether written notes taken by the representative of a fire control district during a collective bargaining session between the representative and the employees' bargaining agent are exempt from disclosure.

You state that in 1990 the Cedar Hammock Fire Control District (district) and the International Association of Firefighters (IAFF), certified as the bargaining representative of a bargaining unit consisting of district firefighters and fire inspectors, entered into collective bargaining. After a series of collective bargaining sessions, a contract was ultimately signed between the union and the district. During the sessions, which were open pursuant to s. 286.011, F.S., a tape recording of the negotiations was made and was subsequently transcribed by the district.

The negotiator for the fire control district also took written notes. You state that these notes were taken during the actual bargaining sessions for use by the district's negotiating team in planning for subsequent sessions. According to the attorney for the district, the notes reflect the district's collective bargaining "strategy, opinions, impressions and direction." This office was also advised that the notes have been kept in the district's collective bargaining file and have not been made available for public inspection.

You state that the IAFF has requested a copy of the notes. From the information provided to this office, it appears that the IAFF seeks access to the notes as the minutes of the collective bargaining meeting subject to the Government in the Sunshine Law.

Section 286.011, F.S., requires that minutes of a public meeting be promptly recorded and open to public inspection. This office has stated that while sound recordings may be used to record the proceedings before a public body, written minutes also must be taken.[2] From the information provided to this office, it appears that the district has transcribed the tapes recordings of the meetings. The attorney for the district has stated that the notes were not prepared as, and do not constitute, the minutes of the meeting as required by s. 286.011, F.S. This office has been informed that the notes contain the district's strategies, opinions, and impressions and were taken by the district negotiator for use in preparing for subsequent

negotiation sessions. While the transcript of the meeting is available for public inspection, the notes have never been open to public inspection.

Since your attorney has been advised that the notes do not constitute the minutes and that no other written minutes exist with the exception of the transcript, it appears that in order to comply with s. 286.011, F.S., the transcript constitutes the minutes of the meeting. While this office has stated that the minutes of a public meeting need not be a verbatim transcript of the meeting,[3] I am not aware of any prohibition against a public agency providing a written transcript of the meeting as the minutes.

Based upon the above, I cannot conclude that the notes in question constitute the minutes of the meetings and thus must be made available for public inspection pursuant to s. 286.011, F.S. Such notes, however, would appear to constitute public records as that term is defined for purposes of Ch. 119, F.S., the Public Records Law.

The Supreme Court of Florida in Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.,[4] stated that the term “public record” for purposes of Ch. 119, F.S., encompasses all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. Clearly the notes or minutes were prepared by the district in connection with its official business. Moreover, such notes "memorializing" discussions which took place, are being used to perpetuate the information contained therein[5] and, therefore, constitute public records.

Section 119.07, F.S., requires that public records be made available for public inspection and copying unless exempted or made confidential by statute. Section 447.605(3), F.S., provides that "[a]ll work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from chapter 119." In construing this provision, the courts have concluded that records prepared in the normal and required course of public business are not exempt from s. 447.605(3), F.S., since the statute only exempts material developed by the public employer in preparation for or during labor negotiations.[6] As the First District Court of Appeal stated in Bay County School Board v. Public Employee Relations Commission,[7]

"Public employers make use of many public records in preparation for and during negotiations, but unless those records are 'developed by the public employer in preparation for negotiations, and during negotiations,' they are not exempt under Section 447.605(3) . . . . Records which are prepared for other purposes do not, as a result of being used in negotiations, come within the exemption of Section 447.605(3)."

As discussed *supra*, this office has been advised that the notes were taken for use in preparing for subsequent bargaining sessions during the collective bargaining process. Thus, as it appears that the notes were prepared by the district in preparation and during collective bargaining negotiations and, according to the information provided to this office, reflect the impressions, strategies and opinions of the district negotiators,[8] such notes would appear to be exempt from the public records law pursuant to s. 447.605(3), F.S.

I hope that the above informal advisory comments, which should not be construed as a formal

opinion of this office, may be of some assistance to the district in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/twd

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[1] *See* City of Fort Myers v. News-Press Publishing Company, Inc., 514 So.2d 408 (2 D.C.A. Fla., 1987), in which the court stated that the Legislature had divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, such discussions may be exempt from s. 286.011, F.S.; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law.

[2] Attorney General Opinion 75-45. *And see* AGO 91-26 stating that such minutes are public records when the person responsible for preparing the minutes has performed his duty even though they may not have been officially approved by the public board or commission.

[3] Attorney General Opinion 82-47.

[4] 370 So.2d 633 (Fla. 1980)

[5] *See* Florida Sugar Cane League v. Florida Department of Environmental Regulation, Case No. 91-4218 (2d Cir. Leon Co., June 5, 1992) (handwritten notes of agency staff "utilized to communicate and formulate knowledge within [the agency], are public records"); Inf. Op. To Michael S. Davis, March 13, 1992, in which this office advised that a personnel director's retention of notes which were originally handwritten but subsequently typed and kept by the director in his office for years "might well be construed by a court as evidence of the director's intention to perpetuate the information contained therein."

[6] *See, e.g.,* 382 So.2d 747 (1 D.C.A. Fla. 1980) (work sheets prepared to assist school board in developing budget are not exempt under 447.605(3) even though subsequently used to assist school board in collective bargaining negotiations); City of Gainesville v. State *ex rel.* I.A.F.F., *Local 2157*, 298 So.2d 478 (1 D.C.A. Fla., 1974) (budget proposal prepared in normal and required course of municipal business was not exempted by statute exempting work product developed by public employer in preparation of or during collective bargaining negotiations).

[7] 382 So.2d at 749, *quoting*, In re: The Petition for Declaratory Statement of United Teachers of Dade, 4 FPER 4250 (1978).

[8] *Cf.* Hickman v. Taylor, 329 U.S. 495 (1947), and Atlantic Coast Line R. Company v. Allen, 40 So.2d 115 (Fla. 1949), recognizing an attorney work product exception from discovery; and s. 119.07(3)(n), F.S., creating a limited attorney work product exemption from Ch. 119, F.S.