



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 14, 2018

Via electronic mail

Via electronic mail

The Honorable Srbo Radisavljevic
President, Board of Education
Norridge School District 80
8151 West Lawrence Avenue
Norridge, Illinois 60706
boe@norridge80.net

RE: OMA Request for Review – 2018 PAC 52158

Dear [REDACTED] and Mr. Radisavljevic:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Norridge School District 80 Board of Education (Board) held an improper closed session discussion during its February 20, 2018, meeting.

On March 13, 2018, [REDACTED] a member of the Board, submitted a Request for Review alleging that on February 20, 2018, the Board held a closed session discussion on matters outside the scope of the exceptions in sections 2(c)(1), 2(c)(2), and 2(c)(11) of OMA (5 ILCS 120/2(c)(1), (c)(2), (c)(11) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) that the Board cited to close the meeting. Specifically, [REDACTED] alleged that the Board improperly discussed removing and appointing Board members to a negotiations committee.

On March 19, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda, open and closed session minutes, and verbatim recording(s) of the closed session(s) of its February 20, 2018, meeting for this office's review, together with a written response to [REDACTED] allegations.

[REDACTED]
The Honorable Srbo Radisavljevic
June 14, 2018
Page 2

On March 28, 2018, counsel for the Board provided this office with those materials and a written response denying [REDACTED] allegations. On March 29, 2018, this office sent a copy of the Board's response to [REDACTED] she did not reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Section 2(c)(2) of OMA

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA. The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017.

Section 2(c)(2) of OMA provides that a meeting may be closed to discuss "[c]ollective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees." By creating the section 2(c)(2) exception, the General Assembly recognized "that the very nature of meaningful collective bargaining requires that certain phases of the negotiating process must be conducted privately." Ill. Att'y Gen. Op. No. 80-024, issued August 12, 1980, at 10-11. Under this exception, "as a general rule and in the absence of specific facts, a public body may meet privately to consider a collective negotiating response." Ill. Att'y Gen. Op. No. 80-024, at 10.

In its response to this office, the Board explained that at recent meetings, it "took action to non-renew and honorably dismiss several teachers."¹ The Board and the Norridge Education Association of Teachers (Association) are parties to a collective bargaining agreement, and the Association subsequently sent the District a demand to bargain. As a result, the Board asserted, it was necessary to determine who would serve on the negotiations committee. The Board explained that during the closed session on February 20, 2018, it "discussed various collective negotiating matters including: who should serve as the Board's

¹Letter from Dawn M. Hinkle, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau (March 28, 2018), at 2.

chief negotiator, * * * and who should serve on the Board's negotiations committee when meeting with the Association[.]"² The Board asserted that section 2(c)(2) authorized its discussion about selecting negotiations committee members because certain considerations pertaining to committee membership "are inextricably connected with bargaining matters, including considerations of trust and whether an individual is likely to represent the Board faithfully."³ The Board also argued that, in general;


[T]he topic of who serves on the committee * * * is intertwined with bargaining-related issues such as how the parties' representatives will approach negotiations, how the School District and Association will respond, which strategies are likely to be employed by each side, and who is most suited * * * to represent, address and implement the negotiation positions of each party.⁴

This office's confidential review of the relevant portion of the closed session recording confirmed that the Board discussed which member(s) should be appointed to the negotiations committee in response to the Association's bargaining demand. However, discussion of the appointment or removal of members of such a committee is not a "[c]ollective negotiating matter[]" within the scope of section 2(c)(2). "Generally, wages, hours and other terms and conditions of employment are proper subjects for collective bargaining, as well as any other subject with respect to which the parties may have chosen to bargain." (Emphasis added.) 1980 Ill. Att'y Gen. Op. 80-024, at 9. That is, "collective negotiating matters between the public body and its employees or their representatives" are limited to subjects about which the parties are going to bargain. Narrowly construed as required by OMA, the section 2(c)(2) exception does not authorize discussions of strictly internal considerations such as the appointment of members to a public body's negotiations committee. Although the makeup of the committee may influence the Board's collective negotiating response, the topic of the appointment of members is not a subject with respect to which the parties may bargain. Accordingly, the Public Access Bureau concludes that the Board violated OMA at its February 20, 2018, meeting by entering closed session to discuss that matter pursuant to section 2(c)(2).

²Letter from Dawn M. Hinkle, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau (March 28, 2018), at 3.


³Letter from Dawn M. Hinkle, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau (March 28, 2018), at 4.

⁴Letter from Dawn M. Hinkle, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau (March 28, 2018), at 4.


The Honorable Srbo Radisavljevic
June 14, 2018
Page 4

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 793-0865 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours,


MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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