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February 13, 2020

OML 2020 – 21

Timothy Luff
Assistant Superintendent
Natick Public Schools
13 East Central Street
Natick, MA 01760

RE: Open Meeting Law Complaint

Dear Assistant Superintendent Luff¹:

This office received a complaint from Ronald Alexander on August 6, 2019, alleging that the Natick School Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.² The complaint was originally filed with the Committee on June 5 and you responded, on behalf of the Committee, by email dated June 19.³ The complaint alleges that the Committee i) posted an insufficiently detailed notice for its May 20 meeting; ii) failed to follow the proper procedures for convening in executive session on May 20; and iii) entered into executive session for an improper purpose on May 20.

Following our review, we find that the Committee violated the Open Meeting Law failing to comply with one procedural requirement for convening in executive session, although we find that violation to be *de minimis*. In reaching this determination, we reviewed the original complaint, the Committee's response to the complaint, and the complaint filed with our office requesting further review. In addition, we reviewed the original and amended notices and the open and executive session minutes of the Committee meeting held on May 20, as well as a video recording of that meeting.⁴

¹ For purposes of clarity, we refer to you in the third person hereafter.

² All dates in this letter refer to the year 2019.

³ Mr. Alexander identifies this complaint as "NSC-2019-8."

⁴ A video recording of the May 20 meeting can be found here:

<https://videoplayer.telvue.com/player/994DtmGESi0VDYK3jI2BJ72GfgNIpU2/playlists/4739/media/480838?sequenceNumber=11&autostart=false&showtabssearch=true>.



FACTS

We find the facts as follows. The Town of Natick has adopted its website as its official method for posting meeting notices. On May 15 at 4:10 P.M., the Committee posted notice to its website for a meeting to be held on May 20 at 6:00 P.M. The notice listed eight main topics, with several subtopics listed under these main headings. One of the topics was an executive session to discuss strategy with respect to collective bargaining and in preparation for negotiations with nonunion personnel. This notice listed the collective bargaining units to be discussed but stated that a list of nonunion positions could be found “under attachments in Novus”; the notice did not include a link to that attachment.

On May 16 at 6:59 P.M., the Committee revised its notice to insert into the notice itself, rather than through a separate document, the specific nonunion personnel with whom it would be negotiating during the May 20 executive session. On May 17 at 10:18 A.M., the Committee revised its notice again to further clarify the nonunion personnel with whom it would be negotiating.

The May 20 meeting was held as planned. The Committee first convened in open session at 6:00 P.M. and voted by roll call to convene in executive session. Committee Chair Julie McDonough announced that the purpose of the executive session was “to discuss strategy with respect to collective bargaining and in preparation for negotiations with non-union personnel . . . if an open meeting may have a detrimental effect on the government’s bargaining or litigating position.” Chair McDonough did not specifically state that having this discussion in open session may have a detrimental effect on the Committee’s negotiating position. She did identify the specific collective bargaining units and nonunion personnel with whom the Committee would be negotiating and announced that the Committee would reconvene in open session following the executive session. Because the Committee has not publicly released the minutes of the executive session, we do not recount their content in detail here. However, we note that during the executive session, the Committee reviewed and discussed the collective bargaining contracts for Units A and B and then discussed potential salary and wage ranges for specific school positions, rather than individual school employees.

The Board reconvened in open session and received presentations from six students regarding orientation for new high school students and from High School Principal Brian Harrigan regarding a School Improvement Plan. The Committee was introduced to the new Director of Special Education who reviewed her goals for the school year. The Committee then heard from the Natick Special Education Parent Advisory Council and received updates on the new Social Studies curriculum and Kennedy Middle School project. Finally, the Committee approved a contract amendment for testing services for the Kennedy Middle School project, three sets of meeting minutes, the 2019/2020 Committee meeting schedule, and updated school policies.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” Ghiglione v. School Board of

Southbridge, 376 Mass. 70, 72 (1978). The law requires that all meetings of a public body be conducted in an open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). A public body may enter an executive, or closed, session for any of the ten purposes enumerated in the Open Meeting Law provided that it has first convened in an open session, that a majority of members of the body have voted to go into executive session, that the vote of each member is recorded by roll call and entered into the minutes, and the chair has publicly announced whether the open session will reconvene at the conclusion of the executive session. G.L. c. 30A, §§ 21(a), (b); see also OML 2014-94.⁵

Before entering the executive session, the chair must state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) (“[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper”). This level of detail about the executive session topic must also be included in the meeting notice. See OML 2016-72.

A public body may convene in executive session to “conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel” (“Purpose 2”); and “to discuss strategy with respect to collective bargaining . . . if an open meeting may have a detrimental effect on the bargaining . . . position of the public body and the chair so declares” (“Purpose 3”). G.L. c. 30A, §§ 21(a)(2) and (3). When convening in executive session pursuant to Purpose 2 or Purpose 3, a public body must identify the collective bargaining unit or nonunion personnel with whom it will be negotiating, if doing so will not compromise the lawful purpose for secrecy. See OML 2017-53; OML 2016-43; OML 2015-87; OML 2013-129.

The complaint alleges that the executive session topic listed on the May 20 notice lacked sufficient detail where it did not include the specific nonunion personnel with whom the Committee would be negotiating. Instead, the meeting notice that was posted on May 15 simply stated that a list of nonunion positions could be found in a separate document but did not include a link to that document. We note that on May 15, prior to posting the meeting notice, Assistant Superintendent Luff contacted our office seeking guidance on the acceptable method for posting a meeting notice containing a lengthy list of nonunion personnel to be discussed in executive session. With the deadline for posting notice approaching, the Committee posted its notice that day, before receiving a response. The following day, on May 16, Assistant Superintendent Luff spoke with an Assistant Attorney General who advised that our office has not previously opined whether posting required information at a separate link, rather than on the face of the notice itself, satisfies the Open Meeting Law, and therefore it would be advisable to include all of the information on the notice rather than by separate link. That same day, the Committee amended

⁵ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

its notice to include the list of nonunion personnel on the notice, rather than by link to a separate document.

We commend the Committee for seeking guidance from this office on an issue that the Open Meeting Law does not directly address and on which the Attorney General had not previously issued guidance, and for amending its notice promptly thereafter. We take this opportunity to clarify that, even for public bodies that use a website as their official notice posting location, meeting notices should include on the notice itself the level of detail that the Open Meeting Law requires, without requiring that users navigate to separate pages or documents.⁶ Accord OML 2019-24, n. 4 (public bodies that post physical notices to a bulletin board must include all required information on the meeting notice itself, even when the notice is several pages long; it is not acceptable to direct members of the public to additional pages on file in the clerk's office).

The complaint also challenges the propriety of the Committee's May 20 executive session. We conclude that the discussions in executive session, which pertained to strategy sessions in preparation for contract negotiations with school personnel, fell within a proper statutory purpose. A public body may strategize and negotiate with specific nonunion personnel in executive session under Purpose 2. See OML 2011-56. Here, the Committee did not violate the Open Meeting Law by meeting in executive session to conduct strategy sessions in preparation for contract negotiations with nonunion school personnel. Moreover, we find that the notice was sufficiently detailed even though it included a list of nonunion positions, rather than nonunion personnel, because the Committee only discussed school positions, rather than individual school employees, during the executive session. See OML 2018-39.

Finally, we find that the Committee failed to comply with one procedural requirement for convening in executive session. The Committee properly convened in open session, approved a vote by roll call to enter into executive session, and announced that it would resume in open session following its executive session. Moreover, Chair McDonough's announcement included the specific collective bargaining units and nonunion personnel with whom the Committee would be negotiating. However, the Chair failed to make the required statement that holding a discussion in open session may have a detrimental effect on the Committee's bargaining position. G.L. c. 30A, § 21(a)(3). Prior to convening in executive session, Chair McDonough simply read from the law stating "if an open meeting may have a detrimental effect" on the Committee's bargaining position, but failed to specifically declare that discussions in open session may have a detrimental effect on the Committee's negotiating position. See OML 2015-13. As such, we are constrained to find a violation of the Open Meeting Law but find that the violation is *de minimus* and we do not order release of executive session meeting minutes. See OML 2019-34; OML 2016-75.

⁶ With regard to the requirement that the "date and time that a meeting notice is posted ... be conspicuously recorded thereon or therewith," it continues to be acceptable for a public body to list on its website the date and time the notice is posted, rather than pre-printing that information on the notice document itself. See 940 CMR 29.03(1)(d); OML 2018-53. This practice allows for an accurate recording of the date and time that a notice is actually posted.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law where the chair failed to specifically state that meeting in open session may have had a detrimental effect on the Committee's negotiating position. We order immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Committee. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Ronald Alexander
Natick School Committee

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.