
OPINION OF THE PUBLIC ACCESS COUNSELOR

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Complainant,

v.

LOGANSPORT UTILITY SERVICE BOARD,
Respondent.

Formal Complaint No.
19-FC-60

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Logansport Utility Service Board violated the Open Door Law.¹ Attorney Cathleen M. Shrader filed an answer to the complaint on behalf of the service board. In ac-

¹ Ind. Code §§ 5-14-1.5-1 to -8

cordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 23, 2019.

BACKGROUND

This case involves a dispute about the sufficiency of public notice provided by the Logansport Utility Service Board (“USB”) for an executive session held on May 24, 2019, as well as a question of whether the subject matter discussed during the meeting was sanctioned under the Open Door Law (“ODL”).

On April 29, 2019, The International Brotherhood of Electrical Workers (“IBEW” or “Complainant”) filed a grievance against the USB Superintendent Paul Hartman, alleging a violation of the Collective Bargaining Agreement. On May 6, 2019 Mr. Hartman denied the violation, which was then followed by the submission of a Step 3 grievance on May 9, 2019. On May 29, 2019, the Complainant received a response to the grievance, which explained that the matter was discussed during an executive session on May 24, 2019. The result of this executive session deliberation was a denial of the Step 3 grievance.

On July 9, 2019, following the denial of the grievance, the Complainant sent a request for public records, asking for “... the minutes from the Executive Session held by the Board on May 24, 2019.” USB Superintendent Hartman responded to the request for record by providing the Complainant with a copy of the notice of the meeting as well as a copy of the USB Chairman’s certification of the meeting minutes.

The complaint outlines a number of alleged violations of the Open Door Law. First, the complainant argues that the subject matter provided on the Notice of Executive Session, which states that the purpose of the meeting was to discuss “personnel issues,” is not a legitimate justification for holding an executive session. Second, the Complainant claims that a copy of the meeting notice was not posted at the principle location of the public agency holding the meeting.

Third, in his May 29, 2019 letter, Mr. Hartman says that “The Utility Service Board of Logansport Municipal Utilities met in executive session on May 24, 2019, to consider and render a decision on this Step 3 grievance.” The Complainant argues that the issue of a union grievance is not a matter that can be discussed during an executive meeting and that the USB violated the ODL by not voting on the grievance at a public meeting.

On August 29, 2019, Cathleen Shrader, Attorney for the Logansport Utility Service Board, submitted a response to the complaint on behalf of the USB. Shrader argues that IBEW’s complaint was filed after the thirty day filing deadline, therefore the matter should be dismissed. She also asserts that the USB took all necessary steps to ensure that the executive session notice complied with public access laws.

First, citing Ind. Code section 5-14-5-7(a)(2), the USB claims that the formal complaint was not filed within the thirty day deadline. According to Ms. Shrader, the Complainant was made aware on May 29, 2019 that the USB met in executive session on May 24, 2019 and that their grievance had been denied. USB argues that the whole complaint is invalid since IBEW learned about the executive session on May 29, 2019 but did not file a complaint until July 23,

2019, thus falling outside the thirty day deadline. The Complainant, in the narrative portion of the complaint, states that they "... learned about [the executive meeting] on July 18, 2019 in an email from Paul Hartman," however as part of their formal complaint IBEW included a copy of an email dated May 29, 2019, which informed them that their Step 3 grievance had been denied during an executive meeting.

Second, in her letter Ms. Shrader contests the claim that the executive session notice was in violation of ODL. According to her, the Notice was "...physically posted at the doors of the building in which the meeting was held, as well as outside the meeting room." In an affidavit provided with the response, Paul Hartman attests that the publication and posting of the Notice was done in compliance with the Open Door Law.

Finally, regarding the matter of discussing a contested grievance filed by the IBEW during an executive session. Shrader's response claims that it is a "routine practice" to address those types of matters in an executive meeting.

ANALYSIS

1. The Open Door Law

It is the intent of the Open Door Law ("ODL") that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14- 1.5-3(a).

There is no dispute that the Logansport Municipal Utilities is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the Utility Service Board ("USB") is a governing body of the county for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

2. Timeliness of Complaint

Indiana code 5-14-5-7(a) is the statute of limitations for filing a complaint with the Public Access Counselor. It states:

A person or a public agency that chooses to file a formal complaint with the counselor must file the complaint not later than thirty (30) days after:

...

(2) the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice.

Typically, the 30 days cited in the statute is interpreted by this Office as 30 business days instead of calendar days. Here, the complaint was filed with the PAC on July 23, 2019, and the meeting was held on May 24, 2019. That amounts to approximately 40 business days excluding holidays. We do add in some grace period for mail time and other unforeseen considerations.

The complaint states the Complainant only learned about the alleged violation on July 18, 2019, but it was provided notice on May 29, putting it outside the time limitations of the statute, even liberally building in a generous grace period.

To be sure, complaints are rejected on timeliness grounds regularly when a complaint is so far removed from a meeting that it is impractical to address a complaint so far in the past. Additionally, the statute of limitations for filing a trial court petition for an ODL violation is a strict 30 calendar days.

However, this Office takes a less technocratic approach and considers it prudent to educate on matters of substance. Therefore, even though this Opinion cannot be relied on in a court of law as it is untimely, the Counselor has chosen to weigh in regardless.

2. Public Notice

Generally, under the ODL, public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting must be posted at the agency's principle office at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* Ind. Code § 5-14-1.5-5.

Additionally, the governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. *See* Ind. Code § 5-14-1.5-5(b).

Pursuant to an affidavit filed in its response the USB claims the notice was posted in three separate locations in the City Building where the meeting was being held. It is unclear as to exactly why the IBEW takes exception to this but it appears to be proper notice.

Furthermore, there is no requirement under the law that IBEW receive individualized notice from the USB for its public meetings or executive sessions.

3. Executive Sessions

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

There exists a heightened requirement for executive session notice, and for good reason. While the law allows some latitude to a governing body to meet behind closed doors, the public in turn is entitled to specific notice as to why. Thusly, Indiana code section 5-14-1.5-6.1(d) states: Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b).

Subsection (b), of course, enumerates the specific subject matter which is authorized to be discussed in an executive session. And with this, this complaint becomes meritorious. The notice by the USB merely cites “personnel issues” to be the predicate for the executive session. The Open Door Law does not list “personnel issues” as appropriate executive session matters. Rather, it lists specific personnel management

considerations, but it is not an all-encompassing basis for entering into an executive session.

The notice is not specific enough to warrant compliance with the Open Door Law. The USB should have been more specific. Taken a step further, based on the information provided, the notice should have likely used the collective bargaining strategy statute², if any.

4. Action Taken in Executive Session

A meeting, for purposes of the ODL, means a “gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c).

“Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.

Notably, the ODL expressly states that “final action must be taken at a meeting open to the public.” Ind. Code § 5-14-1.5-6.1(c). “Final action” means “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.” Ind. Code § 5-14-1.5-2(g).

Based on a review of the Agreement between the USB and IBEW, a decision of a grievance process would likely not fall under those actions required to be “final action” as contemplated by the open door law. Executive session can indeed include some decision making. Given that the decision was made under the umbrella of an already-existing contract, the

² Ind. Code § 5-14-1.5-6.1(b)(2)(A)

decisions made in the executive session were appropriate, even if the noticed subject matter was not.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Logansport Utility Service Board violated the Open Door Law by giving improper notice of an executive session. The complaint upon which this advisory opinion is based, however, was untimely and should not be relied upon in a court of law as any authority, persuasive or otherwise. .

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the right.

Luke H. Britt
Public Access Counselor