



NEW JERSEY SUPREME COURT REVERSES LOWER COURT ON *RICE* NOTICE REQUIREMENTS

Kean Federation of Teachers v. Ada Morell **(decided June 21, 2018)**

In a highly anticipated decision, the New Jersey Supreme Court has reversed the decision of the Appellate Division that significantly altered the requirements imposed on public entities concerning the provisions of Rice notices, the use of committees to discuss personnel matters, and the release of closed session minutes.

Rice Notice Requirements

The Appellate Division previously ruled that the notice requirements of the Open Public Meetings Act (“OPMA”) required Rice notices to be provided to all potentially affected employees of public entities, regardless of whether the employee could be adversely affected, whenever personnel matters appeared on the public meeting agenda. In its reversal, the Supreme Court explained:

Forcing public bodies to issue Rice notices and robustly discuss all personnel matters...would intrude on a public body’s prerogative as to how to conduct its meetings. The Appellate Division’s holding on the Rice requirement takes that salutary notice procedure out of its context and places on public bodies an intrusive, expansive, and confusing notice requirement . . .

The Supreme Court’s decision eliminates the need for all personnel to receive a Rice notice any time they are the subject of an agenda item, and reinstates the prior practice which requires a Rice notice to be sent only to those employees whose rights could be adversely affected to the extent that they could be discussed by the entity in executive session. Moreover, the ruling makes clear that such employees have the right only to compel a closed session discussion into public, not to compel the entity to discuss every personnel item before taking public action on it. The discretion to determine which items warrant such discussion lies with the entity. The Supreme Court acknowledged that requiring Rice notices to be sent to personnel listed on the public agenda whom an entity does not elect to discuss in closed session is unnecessary, when the purpose of the Rice notice is to permit the employees to insist on a public discussion, if desired.

Use of Committees

Underlying the Appellate Court's earlier decision was the notion that the committee process was being used as an underhanded vehicle to circumvent more comprehensive closed session discussions of pending personnel matters. The Appellate Division was concerned that the use of committees to advance personnel items to the agenda without a more robust discussion in closed session by an entire entity would improperly avoid the need to issue a Rice notice. This rationale was also rejected by the Supreme Court.

The Supreme Court's decision upholds the use of committees to discuss personnel items and formulate recommendations for consideration by an entity. Taking into account the Appellate Division's concern that the OPMA is undermined when a public body's use of a committee results in summary resolution of personnel matters in public session, the Supreme Court found that an entity's use of the committee process is common and is not fairly viewed as a way to circumvent the need to issue a Rice notice.

In fact, public entities routinely approve recommendations in public meetings without discussion in reliance on advice from professional staff and committee recommendations. In this regard, the Supreme Court noted that the OPMA does not address the depth of discussion that must occur regarding any particular topic. Importantly, the Supreme Court did caution against a process that would have the effect of stifling discussion on important personnel matters. Moreover, it noted that once an entity has committed to a public discussion on a topic tangential to the OPMA's personnel exception, if a question is raised that implicates the need to adjourn to closed session, then discussion would have to halt if the employee had not been provided with a Rice notice.

Meeting Minutes

The Supreme Court's decision also clarifies the Appellate Court's ruling concerning the timeframe within which meeting minutes must be publicly released. The OPMA requires that minutes of meetings must be "promptly available" for public release. It is well established that the "promptly available" rule applies to closed session minutes as well. The Appellate Division had suggested a guideline of between thirty to forty-five days for release, to be applied on a fact-sensitive, case-by-case basis. However, the Supreme Court observed that because closed session minutes involve matters that generally are of a sensitive nature, a more cautious approach is warranted. The Supreme Court stated its expectation that public entities will develop ways to speed the process without shortchanging their decisions as to what may be included for release to the public, recognizing that public release of executive session minutes requires a careful balancing of competing interests. Thus, when dealing with



closed session minutes, public entities should balance punctuality, due diligence and adequate caution, rather than meticulous adherence to a deadline for release.

The Supreme Court held that public session minutes should be released within days of their approval, unless truly extraordinary circumstances prevent their availability to the public.

Recommendations

- Administrators should consult with their Board Attorney to revise Rice notice practices in accordance with the Supreme Court's decision, and to alert employee representatives of the revised requirements.
- Board Policies and Regulations may need to be updated.
- Personnel committee practices should be reviewed and updated.
- Board Secretaries should review the Court's guidance regarding public release of minutes.

Should you have any questions or concerns with respect to any issues regarding the Rice notice process or related issues, the attorneys at The Busch Law Group are available to assist you.

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