

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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In the Matter of the Application of MICHAEL BOGULSKI  
as President of CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
Local 815, Erie County White Collar Unit

PETITIONERS

-VS-

INDEX NO. 97/95

for a Judgment Pursuant to Article 78 CPLR against  
ERIE COUNTY MEDICAL CENTER and the COUNTY OF ERIE

RESPONDENTS

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NANCY E. HOFFMAN, ESQ.  
TARA SINGER-BLUMBERG, ESQ.  
LAW OFFICES of RICHARD J. SCHROFF, ESQ.  
ATTORNEYS FOR THE PETITIONERS

PAUL A. BEYER, ESQ.  
KENNETH A. SCHOETZ, ESQ.  
ERIE COUNTY ATTORNEYS OFFICE  
ATTORNEYS FOR THE RESPONDENTS

MEMORANDUM DECISION

FAHEY, J.

Petitioner, MICHAEL BOGULSKI as President of CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Local 815, seeks an Order and Judgment pursuant to CPLR Article 78 alleging violations of Sections 103 and 105.1, Public Officers Law, "The Open Meetings Law", on the part Respondents, ERIE COUNTY MEDICAL CENTER and the COUNTY OF ERIE, a ordering Respondent HOSPITAL and COUNTY to refrain from further action regarding personnel layoffs and invalidating the determination of Respondent HOSPITAL and COUNTY of July 9, 1997 and July 17, 1997 abolishing some 42.05 positions.

The Petition is denied.

Petitioner contends that on July 9, 1997, at Respondent HOSPITAL's Board of Managers' sub-committee meeting, duly attended by a representation of Petitioner, MR. STEVE BECK, and without an agenda of said meeting being distributed, all individuals not members of said subcommittee were told to leave the room as said subcommittee was going into Executive Session, all without an identification of what subjects would be addressed in Executive Session, nor a vote being held to determine to go into Executive Session.

Petitioner contends that, subsequently, on July 17, 1997 Respondent HOSPITAL's Board ratified the earlier determination eliminate the positions.

The court is persuaded that the July 9, 1997 determination to go into Executive Session without a majority vote or without provision of such a vote violated Section 105 Public Officers Law. The Court is further persuaded that Respondent HOSPITAL's Board going into Executive Session to discuss layoffs pertaining to a class of individuals falls well outside the scope of the exception carved out in §105(f) "particular person or corporation" see Weatherway Town of Stony Brook, 97 A.D.2d 840 (2nd Dept. 1983).

The Court notes the further holding in Weatherway *supra* 841, that a policy decision, even if it simply pertains to an individual, falls outside subsection (f). That Court would apparently hold that only as the discussion shifts to an individual's history would subsection (f) apply.

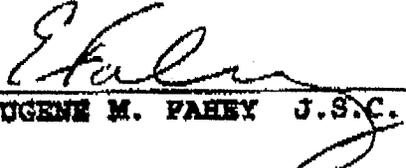
Nevertheless, having found a violation of the Open Meeting Law in Respondent HOSPITAL's Board actions, the Court is not persuaded that declaring void the ultimate determination on July 17, 1997, is the proper recourse [see Dombroske v. Board of Educ West Genesee School, 118 Misc. 2d (1983), for the holding that prior violation of the Open Meeting Law by a subcommittee did not taint a subsequent legal meeting at which the questioned action was taken]. The taint was removed by the subsequent action.

However, in the future, the Board and any sub-committee must comply with the Open Meeting Law. This means that the use of an Executive Session is only for a specified exception, not for what is politically inconvenient to discuss in public.

Further, the committee must vote on going into Executive Session, which was not done in the previous incident.

Submit Order upon notice to opposing counsel.

THIS DECISION CONSTITUTES AN ORDER OF THE COURT.

  
EUGENE M. FAHEY J.S.C.

DATED: January 13, 1998