

TRSU BOARD

Regular Meeting Minutes

Wednesday, June 12, 2019

5:30 p.m.

LES, Band Room

I. CALL TO ORDER/ROLL CALL

Board: Fred Marin, Paul Orzechowski, Joe Fromberger, Dan Buckley, Mary Alberty (5:50 p.m.)

Staff: Meg Powden

Other Board Members: Doug McBride, Wayne Wheelock, Katie Hollebeek, Brigid Faenza

Public: Shawn Cunningham, Cynthia Prairie

Mr. Orzechowski called the meeting to order at 5:30 p.m. He invited the board members to introduce themselves.

II. APPROVE AGENDA:

Mr. Fromberger **moved** to approve the agenda. The motion carried unanimously.

III. PUBLIC COMMENTS:

Mr. McBride noted that he may not have to have a comment depending on the direction of the meeting.

IV. NEW BUSINESS:

A. Open Meeting Law-Correction of Errors

Mr. Orzechowski read aloud a statement regarding the board's response to the Chester Telegraph allegations of open meeting law violations.

The Chester Telegraph has made allegations of inappropriate executive sessions at the TRSU Board meetings on December 6, 2018, February 7, 2019, and March 27, 2019.

For the Meeting of December 6, 2018:

The meeting minutes reflect that the Board on this date effectively had three separate executive sessions to discuss: 1) Compensation for Sick Days; 2) a retirement request; and 3) teacher and support staff negotiations. The Board entered into executive session to discuss these topics pursuant to 1 V.S.A. §313(a)(1)(B), Labor Relations Agreements with Employees.

The Chester Telegraph alleges that: 1) these are not a proper topics for executive session under the exemption used (1 V.S.A. §313(a)(1)(B) – Labor Relations Agreements with Employees); and 2) that the Board did not make a specific finding that premature public knowledge would clearly place the Supervisory Union or a person involved at a substantial disadvantage.

We believe that the Board did err if it failed to make a specific finding that premature public knowledge would place the Supervisory Union or a person involved at a substantial disadvantage.

Also, while the exemption used (1 V.S.A. §313(a)(1)(B) is arguably applicable to the topics discussed, we recommend that the Board should have also used 1 V.S.A. §313(a)(1)(A),

Contracts, and 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee, as a basis to go into executive session.

To cure these errors, Mr. Orzechowski acknowledged that the board made an error by failing to make a proper and specific finding that premature general public knowledge would clearly put the Supervisory Union or a person involved at a substantial disadvantage prior to entering into executive session and by failing to properly identify the applicable exemptions under which the Board was to enter into executive session.

Mr. Marin **moved** to ratify that the TRSU Board went into executive session during its December 6, 2018 meeting to discuss: 1) Compensation for Sick Days; 2) a retirement request; and 3) teacher and support staff negotiations and that these were proper subjects for executive session pursuant to 1 V.S.A. §313(a)(1)(A), Contracts, 1 V.S.A. §313(a)(1)(B), Labor Relations Agreements with Employees, and 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee.

Mr. Fromberger questioned if that motion would rectify the mistake. Mr. Orzechowski noted that this is the advice of the SU's legal team. Mr. McBride requested to make a comment when applicable. Mr. Fromberger **moved** to table the pending motion until the board has heard from Mr. McBride. The motion to table carried unanimously.

Mr. McBride noted that the letter that was given to the board from the lawyer doesn't follow the statute. He felt that though the lawyer is not wrong, he felt that a different legal path is more appropriate. He noted that the statute states specifically how to cure the error. He suggested doing something other than following the statute may not be improper but may be "filled with landmines". He felt that there is a simpler path to take. He also felt that the statute anticipates 2 meetings—the first to acknowledge that an inadvertent mistake within 10 days and then specifically has a separate time period for curing the error. He felt that if the legislature wanted the error cured in one meeting, it would have outlined the cure that way.

Mr. McBride noted that the open meeting law is intended to give the public a chance to participate. He felt that the board was going to take action on prior motions, but those motions are not specifically listed on the agenda, therefore there is no option for the public to participate in the ratifications. Two meetings, properly warned about the subjects of the ratifications would give the public a better chance to participate.

Mr. McBride noted that when the inadvertent mistakes were made, the board was comprised of different people, nor are the participants the same. He felt that ratification is dangerous.

He also noted that they should take the path that is least likely to bring litigation. He reminded the board that the Chester Telegraph has advised that they will seek litigation if not dealt with properly. He reminded the board that the TRSU doesn't have its own money—it gets its money from the constituent boards and their tax payers. He felt that there is also a question about the ratification of Ms. Powden's contract and an especially important action that the public should be made aware of.

He felt that the law should be followed directly and it got in this situation by not following it in the first place. There is no retroactive cure in the law. Mr. Buckley noted that the board is also often unaware of the reason for the executive session—rather they are just citing the law that is cited on the agenda. He felt that if the warning were done correctly, they wouldn't be in this

situation. Mr. McBride noted that when someone made the motion, the members would know what it is about in that case.

Mr. Fromberger noted that as a responsible board member, he will consult with the district's attorney before making a decision—they can either accept the current advise or ask the attorney to review it again based on this new information. Ms. Powden noted that when the letter was received from the Chester Telegraph, she forwarded it to their attorneys to see if they wanted to pursue a different route and they felt that they should continue with this path.

Mr. McBride noted that he is not saying that the legal opinion is in error, rather that there are two paths—one that follows the statute which might help avoid litigation, or the path recommended which will likely lead to litigation. There was discussion about the decision. Mr. McBride noted that there is no legal authority cited in the attorney's response and usually attorneys cite their legal authority.

Mr. Buckley **moved** to rectify the open meeting penalties by following the statute which states that the board must either ratify or declare void any action taken as a result of the executive session and adopt specific measures that will prevent future violations; and to do this the specific measure would be that any agenda that indicates that there will be an executive session must not only cite the article of the law under which it pertains, but must also give enough details about the purpose of the executive session. Mr. Fromberger did not feel qualified to make a determination about the legal counsel they have been given and whether it is valid or if there is another option. There was discussion about the rectification being to hold an open meeting with the decisions of the allegedly illegal executive sessions to be ratified while legally warned in detail. Ms. Powden clarified that one of the motions was not to do with a retirement, but rather to do with the request from an educator. There was discussion about the statute stating that the ratification must be made in open session. Mr. Marin noted that today, they are ratifying the decision to have entered executive session. He noted that there is nothing in the allegation that says that the decisions made after the executive session were invalid. The board just has to ratify the decisions made after the executive sessions. He noted that the lawyer's letter is addressing correcting the action of entering executive session and warning it incorrectly. The decisions made after the executive session were made in open session after the fact. There was discussion about the future measures to avoid future violations. The board discussed the training that they had at the meeting last week. Tonight's meeting is about rectifying the past.

Mr. McBride noted that the first step was to acknowledge that an error was made. Mr. Orzechowski acknowledged that the board made an error when he read his statement. Mr. Buckley's motion failed with a vote of 3 opposed—Mr. Orzechowski, Mr. Fromberger and Mr. Marin.

Mr. Fromberger **moved** to take from the table the motion made by Mr. Marin. Mr. Marin read the motion aloud again. The motion to take it from the table carried without opposition. Mr. Fromberger noted that the advice from the attorneys is that it will rectify the problem. Mr. Buckley felt that the Chester Telegraph will feel that this is not adequate and will cause the board to go into litigation. Mr. Fromberger noted that he felt that the board should follow its attorney's decision. The motion carried with a vote of 4 in favor, Mr. Buckley opposed.

Mr. Marin **moved** that the Board specifically finds that the premature general public knowledge of the topics it discussed during the executive session on December 6, 2018 relating to 1) Compensation for Sick Days; 2) a retirement request; and 3) teacher and support staff

negotiations would clearly put the Supervisory Union at a substantial disadvantage. The motion carried with a vote of 4 in favor, Mr. Buckley opposed.

Mr. Marin **moved** to retroactively enter into executive session, pursuant to 1 V.S.A. §313(a)(1)(A), Contracts, 1 V.S.A. §313(a)(1)(B), Labor Relations Agreements with Employees, and 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee, at the Board's December 6, 2018 meeting, to discuss 1) Compensation for Sick Days; 2) a retirement request; and 3) teacher and support staff negotiations and invite:

- a) Ms. Powden and Ms. Perry into the discussion relating to Compensation for Sick Days
- b) Ms. Powden, Ms. Barton and Ms. French into the discussion relating to a retirement request
- c) Ms. Powden and Ms. French into the discussion relating to teacher and support staff negotiations.

Ms. Powden noted that C should be corrected to Ms. Powden and Ms. Hammond. Mr. Marin approved that change to his motion. The motion carried with 4 in favor, Mr. Buckley opposed.

For the meeting of February 7, 2019:

Mr. Orzechowski read aloud a statement regarding the February 7, 2019 meeting. The meeting minutes reflect that the TRSU Board went into executive session to discuss labor relations under 1 V.S.A. §313(a)(1)(B).

The Chester Telegraph alleges that the Board discussed a contract extension for Superintendent Powden, that the executive session exception used was not proper, and that the Board failed to make a specific finding that premature public knowledge would clearly put the Supervisory Union or a person involved at a substantial disadvantage.

It is our opinion that if the Board discussed an extension of the Superintendent's contract in executive session, that is a proper basis to enter executive session. However, we believe that the Board utilized an incorrect exemption to go into executive session. Instead, the Board should have utilized 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee. Utilization of this exemption does not require the Board to make a specific finding that premature public knowledge would clearly put the Supervisory Union or a person involved at a substantial disadvantage.

To correct this error, Mr. Orzechowski acknowledged that the board made an error by failing to utilize the proper exemption under which the Board was to enter executive session.

Mr. Marin **moved** to ratify that the TRSU Board went into executive session during its February 7, 2019 meeting to discuss the Superintendent's Contract and that this was a proper subject for executive session pursuant to 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee. The motion carried unanimously.

Mr. Marin **moved** to retroactively enter into executive session, pursuant to 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee, at the Board's December 6, 2018 meeting, to discuss the Superintendent's contract. The motion carried without opposition.

Mr. Marin **moved** to ratify the action of the Board on February 7, 2019 to approve offering a 2-year contract to Ms. Powden with the terms of the contract to be discussed at the next meeting. The motion carried unanimously.

For the meeting of March 27, 2019:

Mr. Orzechowski read aloud a statement regarding the executive session on March 27, 2019. The meeting minutes reflect that the TRSU Board went into executive session to discuss Negotiations for Non-Bargaining Staff' under 1 V.S.A. §313(a)(1)(B). It also appears that in addition to a discussion relating to a % salary increase for non-bargaining unit staff; the Board also discussed the salaries of Ms. Baker and Ms. Powden.

The Chester Telegraph alleges that) this is not a proper topic for executive session under the exemption used (1 V.S.A. §313(a)(1)(B) – Labor Relations Agreements with Employees); and 2) that the Board did not make a specific finding that premature public knowledge would clearly place the Supervisory Union or a person involved at a substantial disadvantage.

We believe that the Board erred if it did not specifically make a finding that premature public knowledge would clearly place the Supervisory Union or a person involved at a substantial disadvantage.

Also, while we believe that 1 V.S.A. §313(a)(1)(B), Labor Relations Agreements with Employees, is arguably applicable to the discussion had in executive session, the Board should also have utilized 1 V.S.A. §313(a)(1)(A), Contracts, and 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee. as those exemptions are potentially more applicable to the individual employment contracts of non-bargaining unit staff.

Mr. Orzechowski acknowledged that the Board made an error by failing to make a proper and specific finding that premature general public knowledge would clearly put the Supervisory Union or a person involved at a substantial disadvantage prior to entering into executive session and by failing to properly identify the applicable exemptions under which the Board was to enter into executive session. He noted that the reason for entering executive session was valid, but the citation of the exemption was inaccurate.

Mr. Marin **moved** to ratify that the TRSU Board went into executive session during its March 27, 2019 meeting to discuss: Negotiations for Non-Bargaining Unit Staff, including staff and administrator salaries, and that these were proper subjects for executive session pursuant to 1 V.S.A. §313(a)(1)(A), Contracts, 1 V.S.A. §313(a)(1)(B), Labor Relations Agreements with Employees, and 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee. The motion carried with Mr. Buckley abstaining.

Mr. Marin **moved** that the Board specifically finds that the premature general public knowledge of the topics it discussed during the executive session on March 27, 2019 relating to "Negotiations for Non-Bargaining Unit Staff, including staff and administrator salaries would clearly put the Supervisory Union and persons involved at a substantial disadvantage. The motion carried with Mr. Buckley abstaining.

Mr. Marin **moved** to retroactively enter into executive session, pursuant to 1 V.S.A. §313(a)(1)(A), Contracts, 1 V.S.A. §313(a)(1)(B), Labor Relations Agreements with Employees, and 1 V.S.A. §313(a)(3), the Appointment or Employment or Evaluation of a Public Officer or Employee, at the Board's March 27, 2019 meeting, to discuss Negotiations for Non-Bargaining

Unit Staff, including staff and administrator salaries, and invite Ms. Powden. The motion carried with Mr. Buckley opposed.

Mr. Marin **moved** to ratify the action of the Board on March 27, 2019 to increase non- bargaining staff salary by 2.75%, and to increase Ms. Baker's salary to \$63,376 and Ms. Powden's salary to \$134,194. The motion carried unanimously.

V. NEXT MEETING:

The next meeting will be Thursday, August 1, 2019 at 6:00 p.m. at CTES. Discussion about future locations and times of meetings will be held at the next meeting.

VI. ADJOURNMENT:

Ms. Alberty **moved** to adjourn at 6:20 p.m. The motion carried unanimously.

Respectfully submitted,

Amber Wilson
Board Recording Secretary