
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEVE SANDERS,
Complainant,

v.

INDIANA UNIVERSITY BOARD OF TRUSTEES,
Respondent.

Formal Complaint No.
22-FC-102

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Indiana University Board of Trustees violated the Open Door Law.¹ Attorney Anne K. Ricchiuto filed an answer on behalf of the Board. In accordance 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 June 13, 2022.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether the Indiana University Board of Trustees (Board) violated the Open Door Law (ODL) by deciding during an executive session not to recognize a student union.

On May 9, 2022, Indiana University faculty called upon the Board of Trustees to recognize the Student Academic Appointees (SAA) as a union. On May 19, 2022, the Board held an executive session for the purpose of discussing strategy with respect to collective bargaining.

On May 31, 2022, the Board sent an announcement to the Indiana University Faculty Council regarding unionization of SAA. In the letter, the Board states:

In light of the recent all-faculty vote... the Board of Trustees will not recognize a union.

On June 22, 2022, Professor Steve Sanders (Complainant) filed a formal complaint with this office. Sanders argues that the vote taken during the executive session constitutes “final action” under the ODL; and therefore, is a violation of the law. Sanders also argues that the decision to not recognize the SAA as a union is not applicable under “strategy” with respect to collective bargaining.

On July 12, 2022, the Board filed an answer to Sanders’ complaint denying any violation of the ODL. The Board argues that it did not take final action during the executive session in question. Additionally, the Board contends the letter sent to all faculty members on May 31 was an effort to not take final action on the possible unionization of SAA. The Board further disputes that the ODL’s executive session exception

for collective bargaining strategy discussions applies only to recognized unions.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, 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. *See* Ind. Code § 5-14-1.5-3(a).

Indiana University is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. The IU Board of Trustees (Board) is a governing body of the agency; and thus, subject to the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, 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.

1.1 ODL definitions

Under the ODL, "meeting" 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. Ind. Code § 5-14-1.5-

2(d). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

2. Executive sessions

Under the ODL, “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).

Here, the parties disagree about whether the Board’s executive session on May 31, 2022, complies with the Open Door Law insofar as the subject matter and actions taken are concerned.

2.1 Authorized subject matters for executive sessions

The ODL allows governing bodies to meet in executive session to discuss specific subject matters. *See* Ind. Code § 5-14-1.5-6.1(b)(1) to – (15).

Here, the Board met in executive session to discuss strategy with respect to collective bargaining. Sanders contends, in part, the Board should not have addressed that subject in executive session. Conversely, the Board argues that Indiana Code section 5-14-1.5-6.1(b)(2)(A) authorized the executive session.

The term “strategy” is not defined by the Open Door Law but likewise the law does not put any bookends or parameters on what strategy might entail. Strategy as it relates to collective bargaining could very well include the positioning with respect to whether to enter into an agreement with an employee or student organization.

The public access laws are to be liberally construed in favor of transparency and narrowly regarding their exceptions.² Executive sessions are the exception to the general rule of open meetings of governing bodies.

Even so, there is nothing narrow about the plain meaning of “strategy” encompassing matters immediately germane to collective bargaining. Strategy, in common parlance, is defined as “a plan of action or policy designed to achieve a major or overall aim.”³ This could reasonably include pending agreements or the decision-making process to enter one.

The executive session in question fits comfortably within appropriate and legally acceptable subject matters allowable by the statute.

2.2 Authorized actions during executive sessions

Sanders additionally argues that the Board took action akin to a vote when it declined to recognize the Student Academic Appointees (SAA) as a union.

The Open Door Law expressly requires a governing body to take final action on public business at a public meeting.⁴

² *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995).

³ Oxford English Dictionary, Oxford University Press, 2022 ed.

⁴ Ind. Code § 5-14-1.5-6.1(c).

The ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g).

A board in executive session may, however, take other types of official action, which includes “making decisions” in its definition. *See* Ind. Code § 5-14-1.5-2(d)(5).

Here, a university press release confirms that the Board considered and concluded that the SAA would not be recognized as a union.

Although some other statutes do so in some situations, the Open Door Law itself does not mandate what action items require a full-fledged vote and what items can be handled informally. To a degree, that would be determined on a case-by-case, context-specific basis. In the context of higher education, there is no statutory bright line or inflection point as to when and how to recognize a union.

The Board was confronted with addressing an issue based upon an externality. Based on the information provided, the question as to the recognition of the SAA did not originate internally, but was foisted upon the Board by outside factors.

In that regard, the Board did not take action at all, but simply affirmed its inaction on the subject. Nothing changed organizationally one way or the other.

One possible litmus test as to whether final action vis-à-vis voting is necessary is to the extent that a governing body’s action changes the status quo. Certainly, entering or exiting an agreement would qualify, but the decision not to engage in negotiations at all might not. The Board’s declination to

put the matter on an agenda is not likely an action item that requires a vote in this circumstance.

Other fact patterns or situations may invite an alternative conclusion, but in this instance, the Board does not appear to have deviated from its statutory access obligations.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana University Board of Trustees did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned to the right of the text.

Luke H. Britt
Public Access Counselor

Issued: October 4, 2022