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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2332-14T3

KEAN FEDERATION OF TEACHERS,
JACQUELINE MASSA, and
ANNA DEMERS,

Plaintiffs-Respondents,

v.

BOARD OF TRUSTEES OF KEAN
UNIVERSITY, and KEAN UNIVERSITY,
a body Corporate and Politic,

Defendants-Appellants.

Argued October 6, 2016 - Decided February 8, 2017

Before Judges Fuentes, Carroll, and Gooden
Brown.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Docket No. L-179-
14.

James P. Lidon argued the cause for
appellants (McElroy, Deutsch, Mulvaney &
Carpenter, LLP, attorneys; John J. Peirano,
of counsel; Mr. Lidon, on the briefs).

Robert A. Fagella argued the cause for
respondents (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys; Mr.
Fagella, of counsel and on the brief).

PER CURIAM

This appeal originated as an action in lieu of prerogative writs filed by Jacqueline Massa, an Assistant Professor of Psychology; Anna DeMers, an Assistant Professor of Theater; and Kean Federation of Teachers ("KFT"), a labor organization that represents all of Kean University's fulltime faculty members. Plaintiffs brought suit against Kean University and its Board of Trustees (collectively "the Board"), seeking to invalidate certain personnel actions the Board took at its December 7, 2013 meeting. The meeting at issue resulted in the non-reappointment of Professors Massa and DeMers, among others.

Relying on our holding in Rice v. Union Cty. Req'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div. 1977), plaintiffs argued the Board violated the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 to -21, when it failed to provide affected faculty members with advance written notice of its intent to discuss their employment status in executive session.¹ Plaintiffs also claimed the Board violated the OPMA by failing to make the minutes of its December 7, 2013 meeting "promptly available" to the public as required under N.J.S.A. 10:4-14. Finally, plaintiffs argued the Board violated the OPMA, the Open Public Records Act ("OPRA"),

¹ We use the term "executive session" to denote the part of a meeting in which a public body may exclude the public in order to discuss matters falling within the scope of the nine items listed in N.J.S.A. 10:4-12(b).

N.J.S.A. 47:1A-1 to -13, and the common law right of access when it excessively redacted the minutes of its December 7, 2013 executive session, thereby rendering the minutes' contents incomprehensible.

On cross-motions for summary judgment, the trial court concluded the Board violated the OPMA when it discussed specific faculty members in executive session without providing the affected faculty members with Rice notices. In Rice, we held that N.J.S.A. 10:4-12b(8) authorizes public bodies to discuss personnel matters in executive session "'unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.'" Rice, supra, 155 N.J. Super. at 70 (quoting N.J.S.A. 10:4-12b(8)). Advance notice enables the affected public employees "to (1) make a decision on whether they desire a public discussion[;] and (2) prepare and present an appropriate request in writing." Id. at 73.

The trial judge concluded the Board violated the OPMA by failing to make the minutes of its December 7, 2013 meeting "promptly available" to the public, as required under N.J.S.A. 10:4-14. The judge found the Board's limited meeting schedule hindered its ability to approve and release its minutes to the public within the timeframe envisioned by the Legislature. The

judge noted: "If a public body meets only once or twice a year, then arguably some steps need to be taken to generate approved minutes in a more timely fashion. . . . The minutes at issue contain[] subject matters that are important to the teachers directly affected by the Board['s] action[s]."

The trial judge also found that the redactions the Board made to the December 7, 2013 executive session minutes violated the OPMA. Under N.J.S.A. 10:4-14, public bodies "shall keep reasonably comprehensible minutes" of its meetings, including discussions which occur during executive session. After reviewing the unredacted version of the minutes in camera, the trial judge held the term "reasonably [comprehensible]" requires the minutes "to contain sufficient facts and information to describe what took place at the meeting and what final action was taken in order to permit the public to understand and appraise the reasonableness of the public body's determination."

As explained by the trial judge, the Board's heavily redacted minutes of the executive session also violated the public policy embodied in OPRA under N.J.S.A. 47:1A-1, which requires the Board to make "government records . . . readily accessible for inspection, copying, or examination by the citizens of this

State[.]”² The court concluded “the Board fell short of meeting its obligation[s] under OPMA and OPRA [through] overly broad redactions and its failure to explain how the redacted matters will clearly endanger [the] public interest[.]” The court directed the Board to reissue the minutes of its December 7, 2013 executive session by December 5, 2014. Any redactions made to these minutes had to be consistent with the court's findings and rulings, as reflected in its September 18, 2014 letter-opinion.³

On appeal, the Board now argues the trial court erred when it concluded the Board violated the OPMA by: (1) not issuing Rice notices to affected employees in advance of its December 7, 2013 meeting; (2) failing to make its meeting minutes available to the public within thirty to forty-five days; and (3) excessively redacting the executive session minutes, thereby rendering them incomprehensible.

We reject the Board's arguments concerning the notice required under N.J.S.A. 10:4-12b(8), as construed by our decision

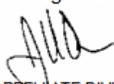
² The Board does not dispute that minutes of the executive session are “government records” under OPRA. N.J.S.A. 47:1A-1.1.

³ By order dated December 1, 2014, the trial court denied the Board's motion for a stay pending appeal. On December 12, 2014, the Board filed an application with this court seeking to stay the trial court's ruling on an emergent basis. This court granted the Board's application to proceed on an emergent basis but thereafter denied its motion for a stay pending appeal.

in Rice, and the availability of the minutes under N.J.S.A. 10:4-14, and we affirm for the reasons expressed in Kean Fed'n of Teachers v. Ada Morell, ___ N.J. Super. ___ (App. Div. 2017). With respect to the redactions of the minutes of the executive session the Board conducted during the meeting held on December 7, 2013, we affirm substantially for the reasons expressed by the trial judge in his September 18, 2014 letter-opinion. Finally, since the trial court's November 14, 2014 order was not stayed, we presume the Board has modified the executive session minutes consistent with the trial court's instructions and that plaintiffs have received the modified minutes.⁴

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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⁴ Part of the relief the trial court granted to plaintiffs in the November 14, 2014 order included an award of counsel fees to KFT in the amount of \$6000, pursuant to OPRA's fee-shifting provision. N.J.S.A. 47:1A-6. The Board did not challenge the reasonableness of this award in its appellate brief. We thus consider this issue waived. In re Expungement Petition of D.H., 204 N.J. 7, 15-16 n.5 (2010).