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# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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OML 2014 – 46

Regina Tate, Esq.  
Murphy, Hesse, Toomey & Lehane LLP  
Crown Colony Plaza  
300 Crown Colony Drive  
Suite 410  
Quincy, MA 02169

**RE: Open Meeting Law Complaint**

Dear Attorney Tate:

This office received two complaints from George Harris (the complainant), both dated September 20, 2013, alleging that the bargaining team of the Wayland School Committee (the Committee) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaints were originally filed with the Committee on June 17, 2013 and July 10, 2013, respectively. You responded to the complaints on behalf of the Committee by letters dated July 22, 2013 and July 31, 2013.<sup>1</sup> The complaints allege that the bargaining team was created and expanded in executive session but that these steps should have been taken in open session. The complaints further allege that the bargaining team is a public body subject to the Open Meeting Law and that the team has failed to follow the requirements of the Law.

In reaching a determination, we reviewed the June 17, 2013 and July 10, 2013 complaints filed with the Committee; the Committee's July 22, 2013 and July 31, 2013 responses; and the September 19, 2013 complaints filed with this office. Additionally, we reviewed e-mail correspondence between the complainant and the Chair of the Committee, Barbara Fletcher, provided with the complaints, as well as correspondence from Donna Bouchard dated March 28, 2014 and from the complainant dated March 15, 2014. We also reviewed the agenda and minutes for the Committee's September 24, 2012 and March 11, 2013 meetings, and a recording of the Committee's March 11, 2013 meeting. Finally we spoke with the complainant and the attorney for the Committee in November 2013 and March 2014.

Following our review, we find that the Committee did not violate the Open Meeting Law by creating and expanding the bargaining team in executive session. Further, we find that the Committee's bargaining team is not a public body subject to Open Meeting Law, thus it was not required to comply with the Law's procedures.

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<sup>1</sup> For the purpose of clarity in this letter, we will refer to you in the third person hereafter.



## FACTS

We find the facts as follows. The Committee has utilized counsel as its chief negotiator for union negotiations since 1996. Traditionally, counsel would report back to the Committee on the status of negotiations. In 2012, in an effort to reduce costs associated with counsel providing such reports, the Committee appointed one of its own members to act as a liaison and provide periodic reports to the full Committee on the progress of the bargaining sessions. This appointment was made in an executive session on September 24, 2012 and was described on the meeting notice under the topic "With Finance Committee & Personnel Board – Negotiations Strategy with School Unions, including WTA, WESA, Custodial and Food Service." Prior to entering the executive session, the chair stated that the executive session was "to discuss strategy with respect to Collective Bargaining as set forth in M.G.L. Chapter 30 (a) [sic], Section 21 (a)(3), as such a discussion in open meeting may have a detrimental effect on the bargaining position of the School Committee and an Executive Session is necessary to protect the bargaining position of the School Committee."

In March 2013, the parties switched from position-based bargaining to interest-based bargaining (IBB). Position-based bargaining is the traditional method of bargaining in which the parties start with proposals to solve known or inferred problems. In position-based bargaining, the parties normally justify their proposals by identifying the problems that the proposals are intended to address. In IBB, these problems are the starting point of a negotiation. The parties meet to identify the problems each must address in order to reach an agreement and together identify possible solutions to those problems.

Practically speaking, IBB requires more input from representative members of each party. To meet this requirement, the Committee met in executive session on March 11, 2013 to appoint more of its members to the bargaining team. The agenda listed this item under the topic "Negotiating Strategy with WTA, WESA, Custodial & Food Workers." Prior to entering the executive session, the chair stated that the session was "to discuss strategy with respect to Collective Bargaining for all school unions . . . , as set forth in M.G.L. Chapter 30A, Section 21(a)(3)." No statement was made regarding a possible detrimental effect if the discussion was held in open session.

The newly appointed members of this bargaining team were not charged with any particular goal. Their purpose was to engage in discussions with union representatives and identify common ground. Any firm proposals were still to be exchanged through counsel and the union's chief negotiator. The team did not approve the contract proposals nor did it vote any other actions. The team acted as a conduit of information between the bargaining sessions and the Committee. In one direction, members of the team would engage in collaborative exercises with counterparts from the various unions. In the other, the team would report to the Committee what had occurred during bargaining sessions with various collective bargaining units.

## DISCUSSION

A threshold question raised by any alleged violation of the Open Meeting Law is whether the entity against which the complaint is filed is a "public body" subject to the Open Meeting



Law. The Open Meeting Law defines “public body” in relevant part as “a multiple-member board, commission, committee or subcommittee within . . . any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose[.]” G.L. c. 30A, § 18. A subcommittee is “any multiple-member body created to advise or make recommendations to a public body.” *Id.* To determine whether a multiple-member entity is a public body subject to the Open Meeting Law, there are three factors we consider which apply to all public bodies:

1. The entity must be “within” government and not excluded from the definition of “public body”;
2. The entity must be a “body” empowered to act collectively; and
3. The entity must serve a “public purpose.”<sup>2</sup>

That the bargaining team is “within” government and serves a “public purpose” is not in dispute. The determination of whether the bargaining team is a public body instead hinges on whether it is empowered to act collectively. Indicia of an entity’s collective power to act include a quorum requirement and the taking of votes. *See* OML 2013-56. The bargaining team here was created to participate in a new form of negotiation as a group of individuals representing the concerns of the Committee. It communicated the substance of its discussions to the entire Committee. It made no formal recommendations to the Committee, nor was it charged with any specific decision-making or policy advisory authority. The team also was not charged with making specific concrete proposals—that power remained with the Chief Negotiator. Accordingly, we find that the bargaining team was not a public body subject to the Open Meeting Law.

The complaint also alleges that the creation and expansion of the bargaining team in executive session was in violation of the Open Meeting Law. On both occasions, the Committee met in executive session under G.L. c. 30A, § 21(a)(3) (“Purpose 3”) to discuss strategy with respect to collective bargaining. We find that the creation and expansion of the bargaining team constituted appropriate discussion under the executive session purpose because of its direct connection to the Committee’s strategy with respect to collective bargaining. *See* OML 2013-84. Accordingly, we find no violation of the Open Meeting Law in the Committee’s choice to enter executive session to create and expand the bargaining team on September 24, 2012 and March 11, 2013.

### CONCLUSION

For the reasons stated above, we find that the Committee did not violate the Open Meeting Law by meeting in executive session to create and expand the bargaining team. We also find that the bargaining team is not a public body subject to the Open Meeting Law, thus they were not required to comply with its procedures.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints currently pending with our office or with

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<sup>2</sup> *See* OML 2010-1 for an explanation of this three-part analysis. Open Meeting Law determinations can be found at the Attorney General’s website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).

the Committee. Please feel free to contact our office at (617) 963-2540 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Mark M. Higgins', is written over the typed name.

Mark M. Higgins  
Assistant Attorney General  
Division of Open Government

cc: Wayland School Committee  
George Harris

**This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of this order.**