



ten (10) days. Both parties submitted Proposed Findings of Fact and Conclusions of Law and Briefs in Support on December 4, 2020. After consideration of the evidence presented at trial and the arguments presented in the parties' briefs, the Court is prepared to render a verdict.

### **FINDINGS OF FACT**

In the instant matter, Plaintiff Casey Grove (hereinafter "Mr. Grove") and Plaintiff Michelle Grove (hereinafter "Mrs. Grove") allege Defendants violated the Pennsylvania Sunshine Act (hereinafter the "Sunshine Act" or the "Act"). Defendant, the Penns Valley Area School Board (hereinafter the "School Board" or the "Board"), is the School Board of the Penns Valley Area School District (hereinafter the "School District"). Defendant Chris Houser (hereinafter "Houser") has been a member of the School Board since December of 2005 and has served two (2) consecutive one-year terms as President beginning in December of 2017 and ending in December of 2019. Plaintiffs allege Defendants violated Section 706, Section 708, and Section 710.1 of the Act during School Board meetings held on: September 19, 2018; November 7, 2018; November 14, 2018; and March 6, 2019. On September 19, 2019, the School Board held a regular meeting which Plaintiffs attended. Pursuant to Board Policy 006, Houser made an announcement during the meeting consistent with the announcement listed in the meeting agenda, which stated:

[t]here was an executive session held during the August 15, 2018 regular meeting to discuss personnel matters. There was an executive session held following the meeting to discuss contract, legal, and personnel matters. There was an executive session held following the September 5, 2018 work session to discuss personnel and legal matters. There will be an executive session following tonight's meeting to discuss contract, legal, and personnel matters.

Plaintiffs assert Defendants violated Section 708 of the Act when announcing executive sessions for "legal matters", "personnel matters", and/or "contract matters", alleging such descriptions lack

the specificity needed for the public to ascertain whether they are being properly excluded from a given meeting.

On November 7, 2018, the School Board held a work session meeting, which Plaintiffs attended in part. Pursuant to Board Policy 006, no roll call or voting took place during this meeting and written minutes were not kept. Additionally, the public was not able to offer comment. Plaintiffs assert Defendants violated Section 710.1 of the Act by failing to allow public comment during work session meetings. On November 14, 2018, the School Board held a regular meeting that Plaintiffs attended. At this meeting, Houser made an announcement regarding prior and upcoming executive sessions, stating:

[t]here was an executive session held following the October 17, 2018 regular meeting to discuss legal matters which include: Docket #2018-4124 in the matter of Casey and Michelle Grove v. Penns Valley Area School Board, and an appeal for the Office of Open Records final determination in 2018-1343 Grove v. Penns Valley Area School District, and personnel matters. There was not an executive session held following the November 7, 2018 work session. There will be an executive session following tonight's meeting to discuss contract, legal and personnel matters.

During the meeting, written minutes were kept and there was a period for public comment in which Mrs. Grove participated. Plaintiffs also assert Defendants violated Section 708 of the Act by announcing an executive session to discuss "personnel matters" during the November 14, 2018 regular meeting.

On March 6, 2019, the School Board held a work session meeting that Plaintiffs attended. Pursuant to Board Policy 006, no roll call or voting took place during the meeting and minutes were not kept. Additionally, the public was not able to comment. After the meeting had adjourned, Mrs. Grove asked the Board why public comment wasn't allowed. A member of the Board stated that the public was not able to comment during work session meetings but could do so at the next

regular meeting. Mrs. Grove did not make a public comment at the subsequent meeting of the Board where voting occurred.

### **CONCLUSIONS OF LAW**

In Pennsylvania, there is a legal presumption that municipal officers have properly performed their duties and have taken the steps necessary to give validity to their official acts. *Mamallis v. Millbourne Borough*, 401 Pa. 375, 164 A.2d 209 (1960). Thus, a plaintiff alleging a violation of the Sunshine Act bears the burden of proof “to overcome the presumption of regularity and legality that obtains in connection with proceedings of local agencies.” *Kennedy v. Upper Milford Zoning Hearing Board*, 575 Pa. 105, 834 A.2d 1104 (2003).

The Sunshine Act recognizes “the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision-making of agencies” finding it to be “vital to the enhancement and proper functioning of the democratic process” as it “curtails secrecy in public affairs.” 65 Pa. C.S. §702; *Smith v. Twp. Of Richmond*, 623 Pa. 209, 82 A.3d 407 (2013); *Babac v. Pa Milk Mktg. Bd.*, 531 Pa. 391, 395, 613 A.2d 551, 553 (1992). An “agency”, for purposes of the Act, is defined as the “body and all committees thereof that are authorized to render advise or take official action” on behalf of the governing body. 65 Pa. C.S. §702. Any time an agency holds a meeting where deliberation or official action by a quorum of its members occurs, the Act requires the meeting to be open and public after notice of the meeting has been given publicly. 65 Pa. C.S. §703.

The Act “does not require agency members to inquire and learn about issues *only* at open meetings.” *Sovich v. Shaughnessy*, 705 A.2d 942, 945-46 (Pa. Commw. Ct. 1998)(emphasis added). “Public officials have an affirmative duty to be fully informed and, as such, may ‘study, investigate, discuss, and argue problems and issues’ outside the confines of public meetings.” *Belle*

*Vernon Area Concerned Citizens v. Bd. Of Comm'rs of Rostraver Twp.*, 87 Pa. Commw. 474, 481, 487 A.2d 490, 494 (1985). However, “[t]here is a substantial difference between discussion and deliberation” which must not be overlooked. *Conners v. West Green School Distr.*, 131 Pa. Commw. 95, 569 A.2d 978 (1989).

Discussions do not give rise to deliberations, and thus do not trigger the open-meeting requirement, when agency members “informally discuss and debate proposals amongst themselves.” *Id.* If, however, “specific proposals or petitions are discussed” the conversation may give rise to deliberations that require the presence of the public. *Smith*, 82 A.3d at 411. “Deliberation” for purposes of the Act is defined as the discussion of agency business. *Id.* “Agency business” includes the framing, preparation, or enactment of laws, policies or regulations, or the creation of liability by contract or otherwise where the discussion is held for the purpose of making a decision. *Id.*

An “official action” for purposes of the Act is defined as any: (1) recommendations made by an agency pursuant to statute, ordinance, or executive order; (2) establishment of policy by an agency; (3) decisions regarding agency business made by an agency; and (4) voting made by an agency on motions, proposals, resolutions, rules, regulations, ordinances, reports, or orders. 65 Pa. C.S. §703. To be a vote constituting official action as defined in the Act, the vote must be on a matter that commits the agency to a specific course of conduct. *Morning Call, Inc. v. Bd. Of Sch. Dir. Of Southern Lehigh Sch. Dist.*, 642 A.2d 619, 623 (Pa. Commw. Ct. 1994).

When an agency deliberates or takes official action, an agency must also take written minutes. 65 Pa. C.S. §706. The minutes shall include: (1) the date, time and place of the meeting; (2) the names of the members present; (3) the substance of all official actions and a record by individual members of the roll call votes taken; and (4) the names of all citizens who appeared

officially and the subject of their testimony. *Id.* Additionally, an agency may be obligated to accept comments from the public. Under Section 710.1 of the Act, an agency:

shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council **prior to taking official action.**

65 Pa. C.S. §710.1 (emphasis added). The Act permits an agency to limit public comment to matters which may or will be presented to the agency for official action during a particular meeting or for a particular duration. *Duff v. City of Phila.*, 2015 WL 4644138 (E.D. Pa. Aug. 4, 2015).

Exceptions to the Act's openness requirement exist for: (1) executive sessions; (2) conferences that do not involve deliberations of agency business; and (3) working sessions of board of auditors concluded for the purposes of examining and analyzing accounts and records. 65 Pa. C.S. §707. The Act defines an "executive session" as "[a] meeting from which the public is excluded...." 65 Pa. C.S. §703. Executive sessions can be held:

- (1) to discuss matters of employment (such as prospective employment, appointment, terms and conditions of employment, promotions, and discipline of public officers and employees);
- (2) to hold strategy, information or negotiation sessions relating to collective bargaining agreements or labor relations and arbitrations;
- (3) to consider the purchase or lease of real property;
- (4) to consult with an attorney in connection with potential or current litigation;

- (5) to discuss or review agency business which, if conducted in public, would violate a lawful privilege or information and confidentiality recognized by the law;
- (6) for duly constituted committees of State-owned, State-aided, and State-related colleges and universities or the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standing; and
- (7) to discuss, plan, or review matters and records that are deemed necessary for emergency preparedness, protection of public safety, and security of all property in a manner that, if disclosed, would be reasonably likely to jeopardize or threaten public safety, preparedness, or public protection.

65 Pa. C.S. §708(a)(1)-(7). Executive sessions “may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time.” *Id.* Although executive sessions may be held without public participation and attendance, the public retains the right to know the general topics of discussion for each session. 65 Pa. C.S. §708(b); *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305, 307 (Pa. Commw. Ct. 1993). When an agency is convening in an executive session to discuss existing litigation the agency must provide the public with the names of the parties, the docket number, and the name of the court. *Id.* When an agency is convening in an executive session to discuss an identifiable complaint, the agency must provide the public with the nature of the complaint, but not the identity of the complainant.

An agency may not deliberate or take official action during an executive session. 65 Pa. C.S. §708(c). However, even where a closed-door gathering, such as an executive session, involves deliberations or an official action in violation of the Act, an agency may “cure” its violation by taking the official action again at a later, open meeting. *ACORN v. SEPTA*, 789 A.2d 811, 813 (Pa. Commw. Ct. 2002); *League of Women Voters of Pennsylvania v. Commonwealth*, 683 A.2d 685, 690 (Pa. Commw. Ct. 1996)(citing *Moore v. Township of Raccoon*, 155 Pa. Commw. 529, 625

A.2d 737 (1993); *Ackerman v. Upper Mount Bethel Tw.*, 130 Pa. Commw. 254, 567 A.2d 1116 (1989).

### **Discussion**

Plaintiffs have raised challenges to the conduct of four (4) specific School Board meetings held on: September 19, 2018; November 7, 2018; November 14, 2018; and March 6, 2019. Plaintiffs ask this Court to grant a preliminary injunction directing the Defendants to: (1) properly identify the specific reasons for all executive sessions; (2) allow for public comments at all public meetings, including work session meetings; (3) keep minutes at all public meetings, including work session meetings; and (4) provide reimbursement of legal expenses. The Court finds as follows.

#### **I. The Reasons Provided by Defendants for Holding Closed-Door Executive Sessions Were Sufficiently Specific Under the Sunshine Act.**

Plaintiffs first contend that Defendants violated Section 708 of the Sunshine Act by failing to provide the public with a sufficiently specific reason for holding executive sessions. Plaintiffs assert that Defendants' practice of providing the public with a broad range of potential topics of discussion is inadequate and frustrates the purpose of the Act. Further, Plaintiffs assert Defendants' announcements are contrary to the Commonwealth Court's interpretation of the Act in *Reading Eagle Co.* and *Butler*.

On September 19, 2018, Houser announced various executive sessions for the purpose of discussing "legal matters", "personnel matters," and/or "contract matters". On November 14, 2018, Houser announced the Board had met in an executive session following the October 17, 2018 regular meeting to discuss a "personnel matter" and two (2) pending litigation matters: *Grove v. Penns Valley Area School Board, et al.*, Docket No. 2018-4124 and *Grove v. Penns Valley*



School District, Docket No. 2018-1343. Defendants made no announcements pertaining to prior or future executive sessions during the November 7, 2018 and March 6, 2019 work sessions.

The Commonwealth Court has held that an announcement of an executive session “must be specific, indicating a real, discrete matter that is best addressed in private”. *Reading Eagle Co.* 627 A.2d 305 at 307. Pursuant to Section 708 of the Act, agencies may hold executive sessions to consult with their attorney regarding information or strategy in connection with litigation or issues on which identifiable complaints are expected to be filed. 65 Pa. C.S. §708. In both *Reading Eagle Co.* and *Butler*, the Commonwealth Court held that the level of specificity required in an agency’s announcement of an executive session for the purpose of discussing “legal matters” is dependent on the nature of the matter and the need for confidentiality.

When an executive session involves the discussion of threatened litigation or an identifiable complaints, the Commonwealth Court held an agency is required to provide the nature of the complaint, but not the identity of the complainant, during a public meeting. *Butler v. Indian Lake Borough*, 14 A.3d 185, 189 (Pa. Commw. Ct. 2011). When an executive session involves the discussion of an existing litigation matter, the Commonwealth Court held an agency is required to provide the names of the parties, the docket number, and the name of the court during a public meeting. *Reading Eagle Co.* 627 A.2d 305 at 307. An agency is required to provide greater specificity when announcing existing litigation because such information is already of public record and therefore poses no risk of violating an individual’s right to privacy.

Neither *Reading Eagle Co.* nor *Butler* state the level of specificity required by an agency, when announcing an executive session pertaining to a “contract matter” or “personnel matter”. As to “contract matters”, the Commonwealth Court has held that an agency must balance the public’s right to know with the importance of maintaining confidentiality during ongoing contract

negotiations. *St. Clair Area Sch. Dist. v. St. Clair Area Educ. Ass'n*, 525 Pa. 236 (1990). As to “personnel matters”, the Commonwealth Court has held that the public’s right to know “must be balanced, under certain situations, with an individual’s right to seek confidentiality concerning a disciplinary matter.” *Mirror Printing Co., Inc. v. Altoona Area Sch. Dist.*, 148 Pa. Commw. 168, 609 A.2d 917, 920 (1992). Section 708(a)(1) of the Act states an individual “whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting.” 65 Pa. C.S. §708(a)(1). Therefore, unless an affected employee requests their name and matter be made public, an agency is not in required to disclose such information in its announcement.

In the instant matter, the Court finds Defendants have not acted in violation of the Sunshine Act or acted contrary to the Commonwealth Court’s interpretation of the Act in *Reading Eagle Co.* or *Butler*. The “legal matters” referenced in Defendants September 19, 2018 announcement pertain to executive sessions held on August 15, 2018 and September 5, 2018. Plaintiffs have failed to provide any evidence to suggest that the “legal matters” discussed during these executive sessions were related to any pending, potential, or threatened litigation. Therefore, by announcing its intent to discuss “legal matters”, Defendants sufficiently notified the public that the Board would discussing a “real, discrete matter best addressed in private”. *Reading Eagle Co.* 627 A.2d 305 at 307. Additionally, the Court finds Defendants’ November 14, 2018 announcement was sufficiently specific. Defendants announced two (2) existing litigation matters: *Grove v. Penns Valley School Board*, Docket No. 2018-4124 and *Grove v. Penns Valley Area School District, et al.*, Docket No. 2018-1343. Both matters mentioned were pending in the Centre County Court of Common Pleas at the time the announcement was made. Therefore, the School Board’s

announcement disclosing of name and docket number of the matters adhered to the Commonwealth Court's interpretation of the Act in *Reading Eagle Co.*.

The "contract matters" referenced in Defendants' September 19, 2018 announcement pertain to executive sessions held on August 15, 2018 and September 19, 2018. Plaintiffs have failed to provide sufficient evidence to overcome the presumption of regularity and legality pertaining to the "contract matters" discussed during the August 15, 2018. In regards to the September 19, 2018 executive session, no "contract matters" were ultimately discussed. As mentioned, it is the long-standing practice of Defendants to provide a range of possible topics which may or may not be discussed during a given executive session. Defendants ensure the meeting minutes, which are approved at the next regular meeting, reflect only those topics actually discussed. Here, although Defendants announced "contract matters" would be discussed during the September 19, 2018 executive session, the minutes approved at the next regular meeting were revised to state only "personnel matters" were discussed. Therefore, by announcing its intent to discuss "contract matters", Defendants sufficiently notified the public that the Board would discussing a "real, discrete matter best addressed in private". *Reading Eagle Co.* 627 A.2d 305 at 307.

The "personnel matters" referenced by Defendants' September 19, 2018 announcement pertain to executive sessions held on August 15, 2018, September 5, 2018, and September 19, 2018. Absent evidence by the Plaintiffs showing Defendants denied an affected employee's request for their matter to be publicly announced and discussed, Defendants have not violated the Act. Therefore, by announcing its intent to discuss "personnel matters", Defendants sufficiently notified the public that the Board would be discussing a "real, discrete matter best addressed in private." *Reading Eagle Co.* 627 A.2d 305 at 307.

Accordingly, the Court finds Defendants provided sufficient specificity in announcing executive sessions and did not violate Section 708 of the Sunshine Act or act contrary to the Commonwealth Court's interpretation of the Act in *Reading Eagle Co.* or *Butler*.

**II. The Sunshine Act Doesn't Require Defendants to Allow Public Comment at Work Session Meetings.**

Plaintiffs next contend that Defendants violated Section 710.1 of the Sunshine Act by failing to provide a public comment period during each work session meeting. Plaintiffs assert that Defendants' work session meetings are regular meetings for purposes of the Act thus require a period for public comment. In particular, Plaintiffs assert Defendants violated the Act by engaging in deliberation and taking official action during the work session meetings held on November 7, 2018 and March 6, 2019.

On November 7, 2018, the School Board held a work session meeting which Plaintiffs attended. After the meeting had adjourned, Plaintiffs inquired as to whether they could make a public comment. Plaintiffs were informed that per Board Policy 006, no public comments would be accepted at work session meetings. On March 6, 2019, the School Board held a work session meeting which Plaintiffs attended. During the work session, the School Board reviewed the planned public presentation for the Crater Farm purchase; however, did not take any roll call vote concerning the presentation. Plaintiffs allege that during this work session, Defendants participated in deliberation and official action without keeping minutes or allowing for public comment in violation of Section 710.1(a) of the Sunshine Act.

Under Section 703, any time an agency holds a meeting where deliberation or official action by a quorum of its members occurs, the Act requires the meeting be open and public after public

notice of the meeting has been given. 65 Pa. C.S. §703. “Deliberations” occur where an agency discusses agency business for the purpose of making a decision. *Id.* “Official action” occurs where an agency makes a decision, votes, or establishes policy. *Id.* Prior to taking official action, an agency must provide the public with an opportunity to comment. 65 Pa. C.S. §710.1. An agency may “limit public comment to matters which may be or will be presented to the [agency] for official action...during a particular meeting. *Duff*, 2015 WL 4644138 at \*4. Additionally, where there exists no deliberation or official action by an agency, Section 710.1 of the Act authorizes an agency to defer the public comment period to the next regular meeting. 65 Pa. C.S. §710.1. In the event a closed-door gathering, such as an executive session, involves deliberations or an official action in violation of the Act, an agency may “cure” its violation by taking the official action again at a later, open meeting. *ACORN v. SEPTA*, 789 A.2d 811, 813 (Pa. Commw. Ct. 2002)

In the instant matter, the Court finds Defendants did not engage in deliberation or take official action as defined by the Act during their work session meetings. In their testimony, Defendants stated that the work session meetings are informal, conversational, and primarily for fact gathering purposes. Additionally, Defendants testified that while work session meetings involve discussing matters that may require a formal vote or decision, such action is taken at a subsequent regular meeting. Here, although Plaintiffs were not able to comment during work session meetings, they were still able to at the next regular meeting prior to any official action being taken. Regarding the work session meeting on March 6, 2019, the Court finds it unnecessary to analyze the semantics of Houser’s use of the term deliberate. As discussed, even where a violation of the Act occurs, such a violation may be “cured”. Here, subsequent to the March 6, 2019 work session meeting, there was an opportunity for the public to comment prior to official action being taken,

thus the Court finds that even if Defendants had violated the Act such violation was ultimately cured.

The Court acknowledges that Defendants have allowed the public to comment at their work session meetings since June of 2019. While such practices aid in governmental transparency, such practices are not required in the Act. Accordingly, the Court finds Defendants did not violate Section 710.1 of the Sunshine Act by not allowing public comment during their work session meetings and even if they had, such violation would have been cured.

**III. The Sunshine Act Doesn't Require Defendants to Record Minutes at Work Session Meetings.**

Lastly, Plaintiffs contend that Defendants violated Section 706 of the Sunshine Act by failing to keep written minutes of their work session meetings. Plaintiffs assert that because Defendants' work session meetings are open to the public, written minutes must be kept.

Pursuant to Section 706 of the Act, when an agency deliberates or takes official action they must also take minutes. 65 Pa. C.S. §706. These minutes should include, among other items, the substance of all official actions and a record by individual members of the roll call votes taken. 65 Pa. C.S. §706; *George Clay Steam and Fire Engine Co., v. Pa. Human Relations Comm'n*, 639 A.2d 839, 903 (Pa. Commw. Ct. 1994). In the instant matter, the Court finds Defendants are not required to keep written minutes of their work session meetings. Although Defendants' work session meetings are open to the public, no deliberation or official action occurs.

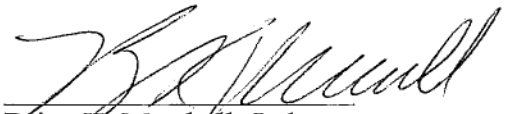
The Court acknowledges that Defendants have taken written comments at work session meetings since June of 2019. While such practices aid in governmental transparency, such

practices are not required by the Act. Accordingly, the Court finds Defendants did not violate Section 706 of the Sunshine Act by not taking written minutes during their work session meetings.

**ORDER**

AND NOW, this 28<sup>th</sup> day of January, 2021, following a non-jury trial held in the above captioned case, upon consideration of the evidence submitted at that trial, the relief requested in Plaintiffs Casey and Michelle Grove's Complaint is **DENIED**. Verdict is entered in favor of Defendants Chris Houser and the Penns Valley Area School Board.

BY THE COURT:

  
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Brian K. Marshall, Judge

NOTICE OF ENTRY OF  
ORDER OR DECREE,  
PURSUANT TO PA. R.C.P.  
236 NOTIFICATION. THIS  
DOCUMENT HAS BEEN  
FILED IN THIS CASE.

PROTHONOTARY, CENTRE  
COUNTY, PA.

DATE: 01/29/2021