

policies and procedures. She was further informed that the results of the investigation could lead to disciplinary action up to and including termination. Plaintiff informed the Board that pursuant to her Rice¹ rights, she was electing to have the matter discussed in public on April 14, 2015. Accordingly, on April 14, 2015, the scheduled Board meeting was opened to the public, with the Plaintiff and approximately twenty supporters attending the meeting. Plaintiff claims that after just a few of the supporters had spoken on Plaintiff's behalf, the President of the Board prevented any more supporters from speaking on the basis that they were allegedly repeating the identical arguments and comments of support. No action was taken by the Board relative to Plaintiff's employment on this date and the Board informed Plaintiff that it would continue its discussion concerning her employment at a meeting to be held on May 12, 2015.

Plaintiff requested that the May 12, 2015 Board meeting be open to the public and the Board granted this request. On May 12, 2015, Plaintiff and her supporters were again permitted to attend the Board meeting in which Plaintiff's employment was to be discussed. During the public hearing numerous supporters of Plaintiff again appeared to speak on her behalf. At some point after Plaintiff's supporters had finished speaking, a member of the Board called for a vote on an unnamed resolution. Unbeknownst to Plaintiff or the public in attendance, the resolution was a vote on whether to terminate Plaintiff's employment. Plaintiff alleges the Board referred to the resolution on which it was voting by number only and prior to the vote no member of the Board discussed or deliberated the substance of the resolution. A roll-call vote resulted in unanimous approval of Plaintiff's termination, again unbeknownst to Plaintiff and the members of the public in attendance. The Board then adjourned the meeting. It is undisputed that the Board did not openly discuss or deliberate Plaintiff's continued employment or termination at the public hearing. It was not until Plaintiff received a letter dated May

¹ Rice v. Union Cty. Regional High Sch. Bd. Educ., 155 N.J. Super. 64 (App. Div. 1977).

13, 2015, that she was advised by the Superintendent of Schools that the Board had approved the recommendation to terminate her employment at the May 12, 2015 meeting, by majority vote.

Plaintiff filed a Verified Complaint in Lieu of Prerogative Writs with this court, claiming violations of the Open Public Meetings Act (“OPMA”) as a result of the Board’s conduct. Plaintiff alleges that because the Board did not discuss or deliberate Plaintiff’s case during the public hearing, private deliberations must have occurred prior to the public meeting in which a predetermination was reached to terminate her employment. Presently before the court is the Board’s motion to dismiss Plaintiff’s Complaint for failing to state a claim upon which relief can be granted.

In moving to dismiss Plaintiff’s complaint, the Board asserts that Plaintiff’s understanding of OPMA is flawed. The Board argues that by granting Plaintiff’s request to make her employment hearing open to the public and allowing people to speak at that hearing, it fulfilled its obligations under OPMA. It avers that there is no requirement that it publicly discuss or deliberate the matter at hand before making a motion and voting on it. Therefore, because Plaintiff’s complaint is couched in this assertion, it argues that the complaint must be dismissed for failure to state a claim upon which relief may be granted.

DISCUSSION

I. The Motion to Dismiss Standard

Defendant’s motion is governed by R. 4:6-2(e), which states:

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs... (e) failure to state a claim upon which relief can be granted.

Trial courts should dismiss claims pursuant to R. 4:6-2(e) “in only the rarest of instances.” NCP Litigation Trust v. KPMG LLP, 187 N.J. 353, 364 (2006) (internal quotes and citation omitted).

“A court's review of a complaint is to be undertaken with a generous and hospitable approach, and the court should assume that the nonmovant’s allegations are true and give that party the benefit of all reasonable inferences.” Ibid. Furthermore,

A complaint should not be dismissed under [R. 4:6-2(e)] where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment. However, a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted. [Rieder v. State, 221 N.J. Super. 547, 552, 535 (App. Div. 1987).]

“It has long been established that pleadings reciting mere conclusions without facts and reliance on subsequent discovery do not justify a lawsuit.” Glass v. Suburban Restoration Co., Inc., 317 N.J. Super. 574, 582 (App. Div. 1998). See also Ayala v. N.J. Dep't of Law & Pub. Safety, 2011 N.J. Super. Unpub. LEXIS 2663 (App. Div. 2011) (stating that courts shall not accept complaints that plead “bald accusations, unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations.”).

II. Analysis

The Open Public Meeting Act, N.J.S.A. 10:4-6, establishes the right of all citizens to have adequate notice of all public meetings in which a quorum of the governing body is present and the right to attend meetings at which any business affecting the public is discussed or acted upon. The Act generally permits discussion of matters of public interest with nine exceptions, which are reserved for executive or closed session discussion: (1) matters considered confidential by Federal law, State statutes or Court rule; (2) matters in which the release of information would impair the receipt of federal funds; (3) any material which would constitute an unwarranted invasion of individual privacy if disclosed; (4) collective bargaining agreements or other terms and conditions of a collective bargaining agreement; (5) any matter involving the purchase, lease or acquisition of real property with the use of public funds where disclosure of

such matter could adversely affect the public interest; (6) any tactics and techniques used in protecting the safety and property of the public, provided the disclosure could impair that protection or investigations into violations of law; (7) any pending or anticipated litigation or contract negotiation in which the public body is or may become a party; (8) any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting; (9) any deliberation of a public body occurring after a public hearing that may result in the imposition of a fine upon an individual or the suspension or loss of license or permit belonging to an individual. N.J.S.A. 10:4-12(b).

The right for a public employee to request that any matter involving their employment be discussed at a public meeting was confirmed by the Appellate Division in Rice, supra, 155 N.J. Super 64. In Rice, the Appellate Division held that a Board of Education violated OPMA by failing to give 17 terminated employees notice of a meeting in which their employment would be discussed, thereby failing to give them the opportunity to exercise their right to request a public discussion of the matter. The Rice court recognized that, “the statute provides a method by which the individual may forego this personal privacy and have a public discussion of the matter,” and noted the importance of that right by stating, “secrecy in such matters may increase the likelihood of irresponsible character assassination or political favoritism.” Rice, supra, at 72-73. The various OPMA statutes do not require any specific conduct to occur at such a public hearing, however the “Legislative Findings and Declaration” portion of the act, N.J.S.A. 10:4-7,

sheds light on that question: “[t]he Legislature finds and declares that the right of the public to be present at all meeting of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society . . .” Thus, the New Jersey Legislature clearly found it important to create the right to attend the meetings of public bodies in order for the public to witness the deliberations and decision making of those public bodies. Transparency in how these bodies make decisions was clearly a goal of the Act.

Furthermore, New Jersey courts have consistently held that private meetings in which decisions are made that are then merely ratified at a public hearing violate OPMA. See Polillo v. Deane, 74 N.J. 562, 572 (1977) (condemning conduct that “would allow an agency to close its doors when conducting negotiations or hammering out policies, and then to put on an appearance of open government by allowing the public to witness the proceeding at which its action is formally adopted.”); see also, In re Consider Distribution of Casino Simulcasting Special Fund, 398 N.J. Super. 7, 17 (App. Div. 2008) (finding violation of OPMA for private deliberations, reasoning, “[i]n this case, the NJRC disbursed nearly two million dollars without any public discussion or deliberation. The fact that the members of the NJRC voted at a public meeting and ultimately explained the result does not cure the problem of private deliberations.”).

Here, Plaintiff alleges that, upon information and belief, the Board deliberated and discussed her employment privately and then merely ratified their decision to terminate her at the public hearing. Plaintiff asserts that while she has no direct evidence of any private discussions, it seems implausible that every single board member would vote to terminate a school teacher

without any discussion with fellow board members relating to the accusations against her, the nature of her record, or the possibility of imposing some lesser form of punishment. Plaintiff argues that whether the Board did deliberate in private prior to the public meeting is a question of fact that entitles her to discovery in order to prove the allegation. While the Board is correct that it was under no affirmative duty to engage in dialogue either with the Plaintiff, her supporters or each other during the public hearing and prior to voting, that is not precisely what Plaintiff is alleging. Rather, Plaintiff is alleging that the Board engaged in private discussions regarding her employment outside of the public hearings, conduct that, as discussed, has been found to be a violation of OPMA. In viewing Plaintiff's complaint in a "generous and hospitable approach," as is required on a motion to dismiss, and giving the Plaintiff the benefit of all reasonable inferences, the court concludes that Plaintiff has sufficiently stated a claim for which relief may be granted. Accordingly, the Board's motion to dismiss for failure to state a claim is denied.

CONCLUSION

In conclusion, for the foregoing reasons, Defendant's motion to dismiss the complaint for failure to state a claim is denied.