

The Law and You

WHAT IS A RICE NOTICE, AND HOW DOES IT AFFECT ME?

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Over the course of their careers, nearly all school board employees have at least once received what is known as a Rice notice. It's not uncommon to hear local association presidents and other union leaders ask, "Have they been 'riced'?" upon learning that one or more of their members will have their employment status discussed by the school board in a closed executive session.

However, if you are not an association leader or staff member, you might be uncertain as to what a Rice notice is and how it affects your employment. The purpose of this article is to shed light on your rights under Rice.

These rights take their name from a union leader and NJEA member named Regina Rice. In 1977, while Rice was president of the Union County Regional High School Teachers Association, the Union County Regional High School Board of Education voted to terminate 17 of her members because of budget cuts. The school board, however, had failed to notify

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these members that it would be taking such an action.

With NJEA's support, Rice and her local association achieved a victory that affects every public employee in New Jersey, including employees of boards of education.

THE SUNSHINE LAW

The Open Public Meetings Act (OPMA), also known as the "Sunshine Law," protects the public's right "to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making." Put another way, OPMA provides that meetings of public bodies, including school boards, should be open to the public. However, there is an exception baked into the statute, which provides:

A public body may exclude the public only from that portion of a meeting at which the public body discusses 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. [N.J.S.A. 10:4-12(b)(8)]

OPMA provides that even though meetings of school boards must be held in public, when the board discusses the employment of specific employees the meeting is conducted in a closed session unless the individual employee, or employees, whose rights could be negatively affected, requests in writing that the matter be discussed in a public meeting.

But how can employees make a written request for a public meeting if they are not aware that their employment is going to be discussed?

RICE REQUIRES EMPLOYEE NOTIFICATION

This is where the Rice notice comes into play. The Appellate Division of the Superior Court of New Jersey decided in *Rice v. Union County Regional High School Board of Education* that a school board must inform employees that their employment status will be discussed during a school board's closed session. The board must also inform them in that notice of their right to compel the board to discuss their employment status in public. The decision states:

The plain implication of the personnel exception to the New Jersey Open Public Meetings Act is that if all employees whose rights could be adversely affected decide to request a

public hearing, they can only exercise that statutory right and request a public hearing if they have reasonable advance notice so as to enable them to (1) make a decision on whether they desire a public discussion and (2) prepare and present an appropriate request in writing. [155 N.J. Super. 64 (App. Div. 1977)]

Recently, the Supreme Court provided an update on the law surrounding Rice notices. In *Kean Federation of Teachers v. Morell*, the court held that there was no obligation to send Rice notices to affected faculty members where a public university's board of trustees determined from the start to conduct its discussion about faculty reappointments in public session.

In sum, while employment matters are generally conducted in a closed session, public employees must be given a Rice notice that advises of their right to request that the discussion be held in public session. Failure to comply with this requirement may result in the public body's decisions made about the employee during the closed session to be invalidated. However, Rice notices are not required if the public employer chooses to conduct the meeting in public session from the outset, or if there is no discussion of individual employees during closed session. 🏠

WITH NJEA'S SUPPORT, RICE AND HER LOCAL ASSOCIATION ACHIEVED A VICTORY THAT AFFECTS EVERY PUBLIC EMPLOYEE IN NEW JERSEY, INCLUDING EMPLOYEES OF BOARDS OF EDUCATION.