DECISION AND ORDER

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILED AND ENTERED
ON 3/8 1999
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, WESTCHESTER COUNTY
Present: HON. ALDO A. NASTASI, J.S.C.

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In The Matter of the Application of JOHN GOETSCHIUS, JAMES CARFORO, KEN CIELATKA, THOMAS DILWORTH, REGINALD SKINNER, ROY POLONIO, THOMAS BALDINO, JAMES BROGAN, DEBORAH KIELY, RICHARD ROWLANDS, HEIDI BROETZ, KEVIN BURNS, WILLIAM GANNON, STEPHEN BOYER, and MILTON COBB, Individually and as members and/or officers of the Greenburgh Eleven Federation of Teachers, and THE GREENBURGH ELEVEN FEDERATION OF TEACHERS, LOCAL 1532, AFT, AFL-CIO,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

- against -

BOARD OF EDUCATION OF THE GREENBURGH ELEVEN UNION FREE SCHOOL DISTRICT, and the GREENBURGH ELEVEN UNION FREE SCHOOL DISTRICT,

Respondents.

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Index No. 17481/97
Motion Date & Cal Nos.
2/5/99 11 & 12

NASTASI,J.

The following papers numbered 1 to 28 read on this petition for relief pursuant to CPLR Article 78 and motion by respondents to dismiss.

	Papers Numbered
Notice of Petition-Petition-Exhibits	1-10
Notice of Motion-Affidavit-Exhibits	11-18
Answering Affidavits-Exhibits	20-26
Affidavit in Support of Petition	27
Replying Affidavit	28
Memorandum of Law	19

DISP.

Upon the foregoing papers it is ordered and adjudged that this petition and the motion for summary judgment are disposed of as follows:

The instant petition seeks a judgment pursuant to CPLR Article 78 declaring respondents' conduct of the Board of Education meeting on June 18, 1997, violative of the Education Law and the Open Meetings Law. Petitioners seek to permanently enjoin respondents from further violating the Open Meetings Law and to annul any and all actions taken by respondents during the aforesaid meeting, including the voting of disciplinary charges against certain teachers. Petitioners also seek an award of the costs and fees arising from this proceeding pursuant to Public Officers Law section 107(2).

Respondents moved to dismiss the instant petition on the grounds that it fails to state a cause of action against respondents for violations of the Open Meetings Law.

By order dated January 11, 1999, this Court converted the respondents' motion to dismiss into a motion for summary judgment (CPLR 103(b), 3211 (C); Matter of Boces Central Council of Teachers v. Board of Cooperative Services of Nassau County, 63 N.Y.2d 100, 103; see Mihlovan v. Grozavo, 72 N.Y.2d 506, 508; Matter of Phillips v. Town of Clifton Park Water Authority, 215 A.D.2d 924, 926; Matter of Morey v. City of Gloversville, 203 A.D.2d 625, 626; Matter of Tozzo v. Board of Appeals on Zoning of City of New Rochelle, 179 A.D.2d 810, 811; Briedis v. Village of Tuxedo Park, 156 A.D.2d 744, 746). The parties were directed to submit to the Court whatever additional evidence they believed necessary for the Court to determine this matter on its merits on the basis of the factual sufficiency of the petition. Such additional evidence has now been submitted and considered by this Court.

Petitioners John Goetschius, James Carforo, Ken Cielatka, Thomas Dilworth, Reginald Skinner, Roy Polonio, Thomas Baldino, James Brogan, Deborah Kiely, Richard Rowlands, Heidi Broetz, Kevin Burns, William Gannon, Stephen Boyer, and Milton Cobb, are employed by respondent Board of Education of the Greenburgh Eleven Union Free School District (hereinafter the "Board") as a teachers, and Petitioner James Brogan is employed as a guidance counselor at the Greenburgh Eleven Union Free School District (hereinafter the "District"). Petitioner Goetschius is the President of Petitioner Greenburgh Eleven Federation of Teachers, Local 1532, AFT, AFL-CIO (hereinafter the "Union").

Respondent District was created, pursuant to a special act of the State Legislature, for the sole purpose of operating schools to educate the special-needs boys who reside at Children's Village, a private, not-for-profit agency. The District is coterminous with the grounds of the Children's Village. Sandra G. Mallah is the Superintendent of Schools of the Greenburgh Eleven School District. Respondent Board, a municipal corporate body, is responsible for the superintendence, management, and control of the educational

functions of the Greenburgh Eleven Union Free School District. The Board is comprised of seven members, all of whom are nominated and appointed by the Board of Directors of Children's Village.

This Court has now addressed the manner in which Board meetings have been conducted in four prior Article 78 proceedings. In each instance the Court found respondents' improper conduct so flagrant and willful that it annulled the Board's actions taken at the illegal meetings, and awarded petitioners their costs and attorney's fees (see In The Matter of the Application of John Goetschius, et al. v. Board of Education of The Greenburgh Eleven Union Free School District. Index No. 2861/95, affirmed 244 A.D.2d 552, In The Matter of the Application of John Goetschius, et al. vs. Board of Education of the Greenburgh Eleven Union Free School District, Index No. 18348/96, In The Matter of the Application of John Goetschius, et al. v. Board of Education of the Greenburgh Eleven Union Free School District, and the Greenburgh Eleven Union Free School District, Index No. 5378/97 and In The Matter of the Application of John Goetschius, et al. v. Board of Education of the Greenburgh Eleven Union Free School District, Index No. 10869/97). Then, as now, the Court found that the history of respondent Board's violations of the Open Meetings Law as well as the history of labor relations in the District are a necessary part of the narrative essential to a reasoned determination of an appropriate remedy. Accordingly, the facts and conclusions of law set forth in the prior decisions and orders of this Court dated July 31, 1996, March 13, 1997, March 4, 1999, and March 5, 1999, are incorporated herein by reference and need not be restated.

Respondents' application to strike such allegations as irrelevant must, therefore, again be denied for all the reasons set forth in the Court's aforenoted prior decisions.

Petitioners now challenge the actions of the respondent Board with respect to its meeting held on June 18, 1997. Petitioners contend that all business conducted at that meeting of the board on June 18, 1997, was tainted by the illegality of the meeting, and, due to respondents' intentional violation of the law, should be deemed null and void. Petitioners assert that the continued disregard by the Board for both the letter and the spirit of the Open Meetings Law compels further judicial intervention. Once again this Court must agree.

As this Court has repeatedly noted in the prior proceedings before it, where, as here, there is no electoral process by which the public may hold respondents accountable for their actions, it is imperative that petitioners and other interested members of the public are fully able to observe and participate in the public meetings. Such observation and participation is the only means available to petitioners and the public to ensure that respondents are properly conducting their business.

Indeed, as this Court has previously noted, and simply cannot emphasize too much, it is well-settled that the provisions of the

Open Meetings Law were intended to open the decision-making process of elected officials to the public while at the same time protecting the ability of the government to carry out its responsibilities. In short, the purpose of the Open Meetings Law is to prevent public officials from debating and deciding in private what they are required to debate and decide in public, and to this end, its provisions are to be liberally construed in accordance with the statute's purposes. Any executive session may be convened only in the course of a public meeting held in compliance with all statutory mandates. At the same time, the topics actually discussed must remain within the statutorily enumerated exceptions, and these exceptions in turn must be narrowly construed and carefully scrutinized.

Respondent Board does not dispute that it is subject to the Open Meetings Law but once again maintains that it is in compliance therewith in the conduct of this meeting. Respondents allege that the meeting was held in full compliance therewith.

Petitioners by contrast assert that respondents have once again violated both the letter and spirit of the Open Meetings Law. Specifically, it is not disputed that on June 18, 1997, a regular meeting of the Board, was scheduled to be held at 7:30 p.m. on Wednesday, June 18, 1997, at the Capitol Theater Building in Port Chester, New York. Nor is it disputed that Port Chester is approximately twenty (20) miles away from Dobbs Ferry. Further, and notwithstanding the existence of several meeting rooms within the theater, the meeting was conducted in the actual theater of the Capitol Theater Building.

Once again, in order to attend the meeting, the public was forced to pass through metal detectors. Once again, the Board engaged approximately seventeen (17) people to provide security during the meeting. These individuals again circulated among the audience, stood at the front and rear of the hall and sat among the members of the public. Once again, video cameras remained trained on the audience throughout the meeting.

Petitioners assert that the public attendees were prohibited from displaying signs or distributing any literature during the Board's meeting. Once again, comments and/or questions from the audience were not entertained.

Concomitantly, the Board sat on the stage of the theater and the members of the public attending the meeting were seated in the center section of audience seating, approximately sixty (60) feet away from the stage. While microphones were set up on the stage for the use of the Board members, petitioners assert and respondents do not deny that they were often not utilized and the majority of the meeting was inaudible to the audience.

The meeting commenced at 7:50 p.m. and until 8:50 p.m., the Board reviewed the proposed 1997-98 budget. At approximately 8:55 p.m., the Board went into executive session. The Board did not

reconvene the public session of its meeting until 11:25 p.m. and then adjourned at 11:30 p.m.

The instant Article 78 proceeding was commenced on October 23, 1997.

Respondents once again contend that there has been no violation of the Open Meetings Law. First, respondents again assert that the use of security measures during the June 18, 1997, Board meeting does not constitute a violation of the Open Meetings Law since the Open Meetings Law does not prohibit the use of security measures such as metal detector or security personnel, at open meetings. Again, respondents contend that the intrusion involved was no greater than that necessary to satisfy the governmental interest in assuring a safe and secure environment for the meeting, that advance notice was given and notice of such metal detection was duly posted outside the meeting, and that the metal detector was uniformly applied to all persons seeking entrance to the meeting.

For all of the reasons set forth in the decision, order and judgment of this Court in the actions entitled In The Matter of the Application of John Goetschius, et al. vs. Board of Education of the Greenburgh Eleven Union Free School District, et al., Index No. 5378/97; dated March 4, 1999, and in In the Matter of John Goetschius, et al. vs. Board of Education of the Greenburgh Eleven Union Free School District, et al., Index No. 10869/97, dated March 5, 1999, incorporated herein by reference and made a part hereof, the Court finds the respondents' contentions unsupportable in law or in fact and unacceptable and patently offensive and once again in direct contravention of the letter and spirit of the Open Meetings Law. The actions of respondents are tantamount to a deliberate and intentional exclusion of members of the public from its meetings through intimidation and invasion of the constitutional right to be free from unreasonable search of the person. Respondents have again failed to provide this Court with any persuasive authority to conclude otherwise. As altruistic as their concerns for safety of themselves and members of the public may be, the respondents have failed to set forth <u>any</u> factual predicate to justify these actions.

Respondents' continued reliance on two (2) isolated incidents unrelated to any meeting of the Board and patently even more remote in time to this meeting is woefully miscast. As heretofore set forth, the peaceful picketing by petitioners, albeit in violation of an order of this Court, which occurred on <u>March 10, 1994</u>, at a location equally remote not only in time but in distance as well from the District or any meeting thereof, cannot provide a basis for these actions by the board. Nor can an incident involving a discharged employee - not one of the above-named petitioners - who had been found on a road leading to the school property with a gun in his possession at some unspecified time <u>well prior to</u> March 3, 1995. Indeed, it is again noteworthy and most telling that respondents can point to no security measures that were instituted subsequent to either of these so-called "incidents" but prior to

the decision and orders of this Court finding violations of the Open Meeting Law. Rather, subsequent to these events and until this Court found the above-noted violations by respondents of the Open Meetings Law and annulled the actions taken by the Board thereat, the Board took no action whatsoever to employ these so-called security measures. This inaction during what would be such a critical period of time is once again indicative of the absence of any, much less a compelling, need for such a program important enough to justify the particular intrusion. Thus, while it is again apparent that respondents would have this Court extend the propriety of blanket airport and courthouse search procedures to the facts at bar, a critical factor remains lacking: there simply is no reliable established significant possibility of the risk of violence.

Accordingly, this Court finds that the instant intrusion by respondents was wholly unjustified in its inception and evidenced respondents deliberate, ongoing and intentional attempts to evade and avoid public scrutiny. The chilling effect of this "screening" practice and the ever present surveillance of video cameras trained on an audience comprised of members of the public who were barred from any participation thereat, was again wholly unjustified. Once again, this Court simply will not, indeed can not, approve of such willful and patent disregard of the basic underpinnings of the Open Meetings Law, a law designed to insure accountability of public officials in a democratic society.

Under all of the circumstances and forth the reasons heretofore set forth by this Court in its decision of March 4, 1999, incorporated herein by reference, the Court finds that the use of electronic screening devices was a per se violation of the Fourth Amendment and, necessarily, the Open Meetings Law in both its letter and spirit. So viewed the use of other "security" methods employed by respondents, which while standing alone may arguably not have provided a sufficient predicate for such a conclusion, but under the circumstances at bar evidence respondents' intent to intimidate public participation, can lead this Court to no other conclusion but grant the petition and to impose the most severe of sanctions as hereinafter set forth.

Moreover, this Court further finds that the scheduling of the meeting at a location some twenty (20) miles distant from the Town of Greenburgh is also a violation of the letter and spirit of the Open Meetings Law. Such a remote location in a geographic area not well served by public transportation and at a time when public transportation may not even be available is unacceptable. So too is the use of a theater whose very configuration removes and isolates the members' of the Board from the overseeing public, exacerbated as well by the members failure to utilize available microphones. Such manipulation and posturing by the respondents will simply not be tolerated by this Court.

In this regard, it matters little that the respondents dispute that members of the public may not have in fact been prohibited

from distributing literature at the meeting in violation of yet additional rights under protected First Amendment speech activities. No further time of this Court need be utilized to hold a hearing with respect thereto.

Rather, it is patently apparent that the respondents have and will continue to employ unlawful means to thwart public attendance, public opinion and public oversight of its activities.

Respondents, as heretofore noted, are not elected. Thus, there is no electoral process by which respondents may be held accountable to the public for their actions. Under such circumstances, this Court must agree that it is imperative that the public be able to observe and participate in the mandated public meeting to ensure that respondents are properly conducting their business. Concomitantly, the remedy fashioned by this Court must be one which will deter respondents from any future violations of the Open Meetings Law.

As this Court has repeatedly noted, it is empowered, in its discretion and upon good cause shown, to declare void any action taken by a public body in violation of the Open Meetings Law (Public Officers Law §107). Where, as here, the respondents have again violated both the letter and the spirit of the Open Meetings Law and have acted with intent to circumvent its provisions there exists good cause to void the actions taken pursuant to Public Officers Law section 107(1). Further, where, as here, there is a history of repeated violations and obvious prejudice to the petitioners and members of the public in general as a result of respondents' intentional, deceitful and indeed, unlawful conduct an award of counsel fees pursuant to Public Officers Law Section 107(2) is justified.

Accordingly, and in light of respondents' pattern of numerous violations of the Open Meetings Law and the irrefutably willful and flagrant manner in which they continued to do so, the remedy must be the most severe allowed to this Court and the Court hereby declares any and all actions taken by the respondent board at the meetings held on June 18, 1997, to be null and void.[1]

Respondents are hereby permanently enjoined from engaging in any future conduct violative of the Open Meetings Law including the use of electronic screening devices and/or the utilization of an excessive number of security personnel at any meeting of the Board as well as the designation of a location remote from that of the

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[1]Of course, and once again, to the extent that the confidential educational placement of students, a matter exempt from the Open Meetings Law pursuant to Section 108(3), was included in the voting, the decision and order of this Court is not directed thereat and such proceedings shall be specifically excluded in the judgment to be submitted herein.

Town of Greenburgh.

Submit order and judgment on notice in accordance herewith which shall provide for an award of attorneys fees in an amount to be set by the Court together with counsel's affidavit of services.

Dated: White Plains, New York
March 5, 1999

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