



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Newfound Area Teachers Association/NEA-New Hampshire**

v.

**Newfound Area School Board**

**Case No. E-0106-2**  
**Decision No. 2011-094**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: April 4, 2011

Appearances: John Pennington, UniServ Director, for Newfound Area Teachers Association

Gordon B. Graham, Esq. for the Newfound Area School Board

Background:

The Association filed an unfair labor practice complaint against the School Board on January 3, 2011 claiming that the School Board committed an unfair labor practice by implementing a mandatory "advisory program" instead of existing reading program at the Newfound Regional High School. The Association asserts that the preparation for "advisory program" requires teachers to work additional hours and, therefore, constitutes a change in working conditions. The Association requests that the PELRB order the School Board to cease and desist from implementation of the "advisory program" until such time as the parties have bargained the impact of the program.

The School Board denies the charges and claims that the implementation of the advisory program does not constitute a breach of any provision of the parties' collective bargaining

agreement; that the program is within the parameters of the agreed-upon work day and does not require any additional preparation time; and that the Association failed to request to bargain the impact during the most recent contract negotiations. The School Board also asserts that the Association's complaint is barred by laches and by waiver of the issue and fails to state a claim upon which relief may be granted. The School Board moved to dismiss the Association's complaint on the ground that the PELRB lacks jurisdiction over this matter because the Association failed to complete the contractual grievance process, which includes advisory arbitration.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction over this matter.
2. Whether the School Board committed an unfair labor practice by implementing advisory program without bargaining the impact of the implementation on terms and conditions of employment.

#### WITNESSES

For the Association:

1. Carolyn Mello
2. Shelly Philbrick
3. David Harlow
4. John Argiropolis
5. Amy Ballou

For the School Board:

1. Marie Ross
2. Michael O'Malley
3. James LeBarron
4. Monica Jackson

Both parties reserve the right to amend their lists of witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is

understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

#### EXHIBITS

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

#### DECISION

1. "Parties" means the Association, the School Board, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference the Association indicated that it intends to file an objection to the School Board's motion to dismiss filed on March 1, 2011. The Association shall file its objection to the motion to dismiss no later than **April 5, 2011**. The School Board did not express any objection to this late filing.
3. The parties shall exchange and file their final witness and exhibit lists no later than 10 days prior to the date of hearing.
4. The parties shall prepare and file a final statement of stipulated facts no later than 10 days prior to the date of hearing.
5. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

## HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held on **April 26, 2011 at 9 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 3 hours.

So ordered.

April 4, 2011

  
Karina A. Mozgovaya, Esq.  
Staff Counsel/Hearing Officer

Distribution:

John Pennington, UniServ Director  
Marie Ross, Superintendent, Newfound Area School District  
Gordon B. Graham, Esq.  
Lorri A. Hayes, NEA-NH