



**State of New Hampshire**  
**Public Employee Labor Relations Board**

**Keene Education Association, NEA-NH**

**v.**

**Keene School District**

**Case No. E-0120-7**  
**Decision No. 2019-068**

**Pre-Hearing Memorandum and Order**

**Date of Conference:** March 27, 2019

**Appearances:** Rachel Hawkinson, UniServ Director, for the Complainant  
Nathan C. Midolo, Esq., for the Respondent

**Background:**

On February 25, 2019, the Keene Education Association, NEA-NH (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Keene School District (District) had violated RSA 273-A:5, I (a), (b), (e), (g), and (h) when it unilaterally changed its method for calculating the rate of pay for teaching an additional class during a teacher's preparation period. The Association alleges, among other things, (1) that the teachers may elect to teach an additional class during their preparation period for additional pay; (2) that, under the established past practice, the District had paid 25% of the teacher's per diem rate for teaching these additional classes; (3) that on September 28, 2018, the District unilaterally changed the pay rate formula for these additional classes to 17% of the per diem rate; and (4) that this change constitutes an unfair labor practice. The Association requests that the PELRB order

the District to cease and desist from, among other things, unilaterally changing terms and conditions of employment and from interfering with the administration of the Association and the employees' statutory rights. The Association also requests that the PELRB order the District to compensate the affected employee for lost wages.

The District denies the charge and asserts, among other things, that pursuant to the collective bargaining agreement and the established past practice, the District has consistently applied the 17% of per diem rate formula for all bargaining unit employees who choose to teach an 80-minute block class during their preparation period. The District also claims that the affected employee and the Association were informed in February of 2018 that the 25% of per diem rate formula was a "one-time only exception" and that the correct compensation formula (17% of per diem rate) would be used moving forward. The District further asserts that the complaint fails to state a claim upon which relief can be granted and that the complaint is barred by the doctrines of estoppel, laches, waiver, and the applicable statute of limitation. The District requests that the PELRB dismiss the complaint.

#### Issues for Determination by the Board

1. Whether the complaint was timely under RSA 273-A:6, VII and Admin. R. Pub 201.02 (a).
2. Whether the District violated RSA 273-A:5, I (a), (b), (e), (g), and/or (h) as charged by the Association.

#### Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01.

#### Decision

1. "Parties" means the Association, the District or their counsel/representative appearing in

the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.


2. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than April 2, 2019. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement." It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.
3. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

#### Hearing

Unless otherwise ordered, the adjudicatory hearing in this case will be held on **April 11, 2019, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 4 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 3/27/2019

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

Distribution: Rachel Hawkinson, UniServ Director  
Nathan C. Midolo, Esq.