



State of New Hampshire
Public Employee Labor Relations Board

Wakefield Paraprofessionals' Union/NEA-NH

v.

Wakefield School District

Case No. E-0062-5

and

Wakefield Education Association, NEA-NH

v.

Wakefield School District

Case No. E-0134-3

Decision No. 2021-005
(Consolidated Cases)

Pre-Hearing Memorandum and Order

Date of Conference: January 5, 2021

Appearances: Peter Miller, UniServ Director, for the Complainant
Peter C. Phillips, Esq., for the Respondent

Background:

On December 4, 2020, the Wakefield Paraprofessionals' Union/NEA-NH and Wakefield Education Association, NEA-NH filed unfair labor practice complaints¹ under the Public Employee Labor Relations Act claiming that the Wakefield School District (District) had violated RSA 273-A:5, I (e)(to refuse to negotiate in good faith...), (g)(to fail to comply with this chapter or any rule adopted under this chapter), and (h)(to breach a collective bargaining agreement) when

¹ These cases have been consolidated under N.H. Admin. Rule Pub 201.11. See PELRB Decisions Nos. 2021-003 and 2021-004.

a member of the District's negotiating team, at a school board meeting, voted against a tentative agreement (TA) reached by the parties' negotiating teams. The complainants allege that (1) the parties negotiated a Memorandum of Agreement (MOA) on health and safety issues related to Covid-19 pandemic; (2) the parties' negotiating teams agreed on ground rules and eventually reached a TA; (3) the TA was presented to the School Board for approval on September 15, 2020; (4) Board Member Relf Fogg, who was a member of the District's negotiating team that reached the TA, voted against the TA; (5) as a result of Mr. Fogg's action, the tentative agreement on the health and safety MOA failed to pass; and (6) the District's actions constitute a breach of the ground rules and the statute. The complainants request that the PELRB (1) find that the District committed an unfair labor practice; (2) order the District to cease and desist from these practices; and (3) order that "the School Board Member that TA'd the MOA be compelled to vote in conformity with his TA."

The District denies the charges and submits that despite the failure to pass the MOA, all the terms of the MOA have been implemented by the District; and that Board Member Fogg voted against the MOA based on his then-misapprehension of the law. The District also believes that the dispute in these cases can be resolved without resort to a ULP hearing.

Issues for Determination by the Board

Whether the District violated RSA 273-A:5, I (e), (g), and/or (h) as charged by the complainants.

Decision

1. "Parties" means the complainants, 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 hearing in these consolidated cases shall be conducted via WebEx video. The PELRB

Guidelines for WebEx Video Hearings (“Guidelines”) are attached to this pre-hearing order and incorporated by reference.

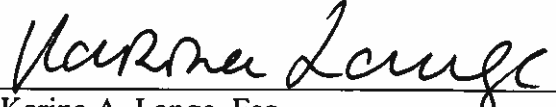
3. The parties shall be prepared to submit the direct testimony through the offers of proof. However, all witnesses for whom the offers of proof will be made shall be available for cross-examination.
4. All witness testimony shall be presented in accordance with the procedures set forth in the Guidelines.
5. All exhibits shall be exchanged, marked, and filed with the PELRB in accordance with the Guideline instructions.
6. A comprehensive statement of stipulated facts shall be filed with the PELRB no later than 3 business days prior to the date of hearing.
7. The parties shall ensure that witnesses are familiar with the WebEx platform and have access to technology necessary to participate in a WebEx hearing.

Hearing

Unless otherwise ordered, the hearing in these consolidated cases will be conducted virtually by WebEx on **January 20, 2021, at 9:00 a.m.** The PELRB will issue the WebEx hearing invitation at least five business days prior to the hearing, and the time set aside for this hearing is 3 hours. If either party believes that additional time is required, a written notice of the need for additional time, together with a detailed explanation of the basis for the request, shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 1/11/2021



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

Distribution: Peter Miller, UniServ Director
Peter C. Phillips, Esq.



State of New Hampshire
Public Employee Labor Relations Board

Guidelines for WebEx Video Hearings

Introduction: These are general guidelines applicable to PELRB WebEx video hearings which are subject to revision, and which may be altered, amended, or supplemented in a pre-hearing order.

1. **Record:** The PELRB shall make and maintain the official audio recording of WebEx video hearings using the PELRB's existing digital recording equipment. The presiding officer will indicate when the proceedings are being recorded by stating "on the record," "off the record," or similar phrases. The PELRB record shall be used by the parties for all purposes in the case.
2. **Exhibits:** All hearing exhibits shall be exchanged, marked, and filed with the PELRB as follows:
 - a. At least 7 days prior to hearing the parties shall exchange exhibit lists and exhibits. The parties shall determine whether each exhibit will be marked for identification only, as one party's full exhibit by agreement, or as a joint exhibit.
 - b. An exhibit marked for identification only shall be marked "Union Ex. 1 id" or "City Ex. A id," depending on which party is offering the exhibit.
 - c. An exhibit marked as one party's full exhibit by agreement shall be marked "Union Ex. 1" or "City Ex. A," depending on which party is offering the exhibit.
 - d. A joint exhibit shall be marked "Joint Ex. 1."
 - e. Each party's final exhibit list shall indicate which exhibits are only marked for identification.
 - f. A separate joint exhibit list shall be prepared if applicable.
 - g. All final exhibit lists and exhibits must be emailed to the PELRB at least 3 business days prior to hearing. Any exhibit that cannot be emailed must be delivered to the PELRB at least 3 business days prior to hearing. The Admin. Rule Pub 203.03 (c) 100 page limit on electronic submissions is suspended until further notice.

3. Witnesses:

- a. The parties are responsible for ensuring witnesses are familiar with WebEx and have access to technology and connections necessary to participate in a WebEx proceeding.
- b. The parties are responsible for ensuring witnesses are available for examination at all times throughout a WebEx proceeding unless excused from the proceeding by the presiding officer.
- c. No one else shall be present in the room where a witness is testifying by WebEx. Witnesses may not consult with anyone during testimony and should not look at or make references to notes or documents other than pre-marked exhibits except as permitted by the presiding officer.
- d. The parties are responsible for ensuring that witnesses have access to any exhibits about which they are questioned.
- e. Witnesses shall only respond to questions asked by party representatives, the presiding officer, or PELRB members. In the event of an objection, witnesses shall refrain from answering the pending question until the presiding officer has ruled.
- f. Any witness whose testimony cannot be presented in accordance with these instructions shall be directed to appear at the PELRB on the hearing date, where they will be provided with WebEx access in the PELRB hearing room. The parties shall notify the PELRB of all such witnesses at least three business days prior to the hearing date.

4. Party Representatives:

- a. Only representatives who have filed a case or have filed an appearance on behalf of a party may address the PELRB on behalf of a party. Others may address the PELRB only with the presiding officer's permission.
- b. In the event multiple representatives attempt to speak at once, the party whom the presiding officer recognizes shall speak first.
- c. Representatives should raise any anticipated technical issues or difficulties with a scheduled WebEx hearing prior to any pre-hearing conference or, in the absence of a pre-hearing or status conference, at least 14 days prior to the hearing date.