

PRELIMINARY DECISION OF THE FACT FINDER

IN THE MATTER OF ARBITRATION)
)
 BETWEEN)
)
 Jefferson County School District (the) Impasse over the terms of
 District)) 2020-2021 Collective
) Bargaining Agreement
)
 AND)
)
 Jefferson Education Support)
 Professionals Association (JESPA;)
 the Association))

BEFORE: Jon Numair, Fact Finder

APPEARANCES:

For the District Craig Blake, Staff Attorney
Legal Services & Employee Relations
Jeffco Public Schools

For the Association: Erik G. Bradberry, Attorney
Colorado Education Association

Date of Preliminary Award: February 19, 2021

PRELIMINARY ISSUE

On February 17, 2021, The District filed a Motion requesting the Fact Finder to declare the fact-finding between it and the Association, scheduled to occur on February 23 and 24, 2021, be held in closed session. The Fact Finder gave the Association the opportunity to respond, which they did in a Reply dated February 19.

ANALYSIS AND FINDINGS

The preliminary matter must be addressed as quickly as possible given the Motion was filed less than a week before the hearing was scheduled and the Fact Finder gave the Association time to respond. My analysis will be unavoidably brief in order to allow the parties time to properly prepare for the hearing. I thank them for their understanding.

After a review of the District's Motion to declare the hearing be held in closed session, the Association's Response in opposition to that Motion, the relevant contractual provisions, and provisions of the Colorado Open Meetings Law, the Fact Finder offers the following abbreviated analysis:

1. The Collective Bargaining Agreement provides for closed Fact Finding Sessions, except as required by law.
2. In 2014, the Colorado Open Meetings Law was extended to apply to Collective Bargaining Meetings between school districts and employees' collective bargaining agents.
3. Included in the District's Motion is the statutory definition of "Meeting" for these purposes.

The statute defines a "meeting" as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

4. Given this broad definition, it would be difficult to conclude a Fact Finding Session, designed to provide the School District and Representatives of the employees opportunities to present their respective positions on a yet to be concluded negotiation process, is not a discussion of "public business."
5. Also included in the District's Motion is the statutory participation threshold for compliance.

All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times." C.R.S. § 24-6-402(2)(a).

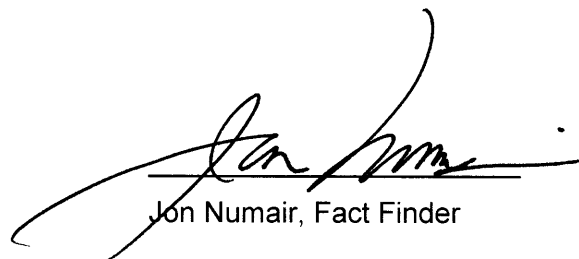
All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times." C.R.S. § 24-6-402(2)(b).

6. The Fact Finder is unaware of the District's intentions on the number of members of their organization who will be present during the Meeting, therefore he can neither Grant the Motion nor Deny it. The number of participants on the District's team during the Fact Finding will determine whether the Meeting will legally need to be open to the public.
7. These are challenging times due to the COVID pandemic. Regardless of the legal circumstances and despite the fact neither party raised safety and health issues, the fact is Colorado remains under Executive Orders and Public Health Advisements in an effort to reduce transmission of the COVID virus, including limitations on public gatherings. The attendance of in-person audiences must be considered in light of these advisements.

CONCLUSIONS AND RECOMMENDATIONS

In accordance with the above findings, I make the following recommendations:

1. The Collective Bargaining Agreement's provision that Fact Finding be closed, except as required by law, is conditional upon provisions of the Open Meetings Law.
2. This Fact Finding is a "Meeting" as defined in the law.
3. If the make-up of the School District's representation rises to a level which triggers the law (as described above) the Meeting must be opened to the public.
4. If the make-up of the School District's representation does not rise to a level which triggers the law, the provisions of the Collective Bargaining Agreement calling for a closed meeting will prevail.
5. In addition, regardless of whether the meetings are open or closed, I recommend the parties work together to ensure compliance with state and local health directives aimed at reducing the spread of COVID-19. If the meetings are deemed to be open, attendance of an in-person audience must be closely considered and monitored.


Jon Numair, Fact Finder

February 19, 2021