

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED STEEL, PAPER AND FORESTRY, :
RUBBER, MANUFACTURING, ENERGY, :
ALLIED INDUSTRIAL AND SERVICE :
WORKERS INTERNATIONAL UNION, AFL- :
CIO-CLC :
 : Case No. PERA-C-19-95-W
v. :
 :
THE UNIVERSITY OF PITTSBURGH :
 :

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-17-355-W
 :
THE UNIVERSITY OF PITTSBURGH :

ORDER DIRECTING ORAL ARGUMENT

An election, by secret ballot, was held on April 15, 16, 17 and 18, 2019, among graduate assistants of the University of Pittsburgh (University) to ascertain the exclusive representative, if any, for the purpose of collective bargaining with respect to wages, hours and terms and conditions of employment in a unit comprised of all full-time and regular part-time graduate students on academic appointment who serve as teaching assistants, teaching fellows, graduate student assistants and graduate student researchers; and excluding graduate students on fellowship and traineeship, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Public Employe Relations Act (PERA). The question voted on was whether the eligible graduate assistants in the appropriate unit wished to be represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, (Petitioner). A majority of the valid ballots cast in the election were for no representative.

On May 2, 2019, the Petitioner filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board), alleging that the University violated Section 1201(a)(1) and (7) of PERA, which was docketed at Case No. PERA-C-19-95-W. The Petitioner also filed an objection to the conduct of the Board during the election in the matter at Case No. PERA-R-17-355-W. On September 18, 2019, the Board's Hearing Examiner issued a Proposed Decision and Order, concluding that the Board did not commit misconduct during the election and dismissing the Petitioner's objections in that respect. The Hearing Examiner further concluded that certain actions of the University during the election violated Section 1201(a)(1) of PERA and ordered that a new election be held.

On October 7, 2019, the University filed timely exceptions and a supporting brief with the Board, challenging the Hearing Examiner's conclusion in Case No. PERA-C-19-95-W that it violated Section 1201(a)(1) of PERA. On October 8, 2019, the Petitioner filed exceptions to the Hearing

Examiner's dismissal of its objection to the Board's conduct during the election at Case No. PERA-R-17-355-W. On October 28, 2019, the Petitioner filed a response to the University's exceptions. On that same date, the University filed a response to the Petitioner's exceptions and a supporting brief.

The University has requested oral argument in this matter. After a thorough review of the exceptions, briefs and responses of the parties, and all matters of record, the Board grants oral argument limited exclusively to the following issues: (1) Whether, pursuant to Western Psychiatric Institute v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1974), the University has the burden to prove that unfair practices, if committed, did not materially affect the outcome of the election; and (2) Whether the Board should cease its practice of permitting watchers at elections from openly keeping a list of employees who voted during the election. Each issue will be heard *seriatim* and each party will be allotted fifteen minutes per issue for argument. Rebuttal on an issue may be requested at the start of argument.

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that oral argument be held before the Board on:

Thursday, May 28, 2020 at 1:00 p.m.
Formal Hearing Room 2014
301 5th Avenue, 2nd Floor
Pittsburgh, PA 15222

No continuances will be granted in this matter. Should either party be unable to attend oral argument as scheduled, the matter will then be considered on briefs.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member this eighteenth day of February, 2020. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

PENNSYLVANIA LABOR RELATIONS BOARD
PROTOCOLS FOR ORAL ARGUMENT
UNIVERSITY OF PITTSBURGH
PERA-R-17-355-W
PERA-C-19-95-W
May 28, 2020

1. The panel shall consist of the three members of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr., Member and Albert Mezzaroba, Member.
2. A total of one hour is being scheduled for argument.
3. Oral argument is limited to the following issues:
 - (1) Whether, pursuant to Western Psychiatric Institute v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1974), the University has the burden to prove that unfair practices, if committed, did not materially affect the outcome of the election;
 - (2) Whether the Board should cease its practice of permitting watchers at elections from openly keeping a list of employes who voted during the election.
4. Each issue will be heard *seriatim*. Each party will be allotted fifteen minutes per issue for argument.
5. Issue (1) raised by the University on exceptions to Case No. PERA-C-19-95-W, will proceed first.
 - (a) The University will be allotted fifteen minutes to present arguments on Issue (1). The University may reserve a portion of that time for rebuttal.
 - (b) The Union will then have 15 minutes to present its arguments in response to the University's exceptions in Case No. PERA-C-19-95-W.
 - (c) If time was reserved, the University may present its rebuttal.
6. The Board will then hear argument on Issue (2) raised by the Union on exceptions in Case No. PERA-R-17-355-W.
 - (a) The Union will be allotted fifteen minutes to present arguments on Issue (2). The Union may reserve a portion of that time for rebuttal.
 - (b) The University will then have 15 minutes to present its arguments in response to the Union's exceptions in Case No. PERA-R-17-355-W.
 - (c) If time was reserved, the Union may present its rebuttal.

7. The time periods for argument set forth herein are guidelines for the principle arguments, and counsel should be prepared to continue responding to questions until the Board Chairman is satisfied that all questions have been fully answered to the Board's satisfaction.

8. The Board's granting and scheduling of oral argument in this case has taken into context the circumstances and procedural posture of the case, such that the Board will not grant any continuances of oral argument, even for cause. Should either party be unable to appear for argument, the party should notify the Secretary of the Board no later than 72 hours before argument, and the Board will thereafter consider the matter on briefs in due course.