



State of New Hampshire
Public Employee Labor Relations Board

New Hampshire Troopers Association

v.

State of New Hampshire, Department of Safety

Case No. G-0097-24
Decision No. 2020-144

Pre-Hearing Memorandum and Order (Corrected)

Date of Conference: July 9, 2020

Appearances (WebEx): Marc G. Beaudoin, Esq. and John Krupski, Esq. for the
Complainant

Marta Modigliani, Esq. and Jessica A. King, Esq. for the
Respondent

Background:

On May 29, 2020, the New Hampshire Troopers Association (Association) filed an unfair labor practice complaint against the State of New Hampshire, Department of Safety (DOS) under the Public Employee Labor Relations Act claiming that the ~~District~~ State had violated RSA 273-A:5, I (a) and (h) because of its handling of an internal investigation. In particular, the Association alleges: (1) that after initiating a non-criminal internal investigation of a bargaining unit employee, the DOS, without a legitimate reason, sent the internal investigation file to the NH Attorney's General Office, in violation of RSA 105:13-b (Confidentiality of Personnel Files); (2) that this action was unprecedented and therefore violated the CBA Article 1.5 requiring that the "provision of this Agreement ... be applied equally to all employees"; (3) that "the criminal investigations may have received information obtained from the internal investigation in

violation of [employee's] Garrity Warnings under Section 12.2.1 of the CBA"; (4) that the internal investigation was not completed within 90 days as required under CBA Article 16.5; and (5) that the DOS failed to inform the Association of any request for an extension of the 90-day deadline or of the "just cause" for such request, thereby breaching CBA Article 16.5. The Association requests that the PELRB find that the DOS committed an unfair labor practice and order the DOS (1) to cease and desist from any further violations; (2) to "show just cause as to why the internal investigation took over 90 days"; and (3) to "produce any correspondences that were made to the Commissioner of the Department of Safety seeking 30-day extensions for the internal investigation."

The DOS denies the charges and asserts, among other things, that: (1) the Association has failed to state a claim upon which relief may be granted; (2) the PELRB lacks jurisdiction over claims of violation of RSA 516:36, RSA 105:13-b, personnel rules or federal law; (3) the DOS followed the CBA requirement in requesting and obtaining extensions for completion of the internal investigation; and (4) the CBA does not require the DOS to provide notice of a request for extension or "just cause" for such request to an employee or the Association. The DOS requests that the PELRB dismiss the complaint or find that the DOS did not commit an unfair labor practice.

Issues for Determination by the Board

Whether the DOS violated RSA 273-A:5, I (a) and/or (h) as charged by the Association.

Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. 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.

Decision

1. "Parties" means the Association, the DOS or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. As discussed at the pre-hearing conference, the parties shall confer about submitting this case for decision on stipulated facts, exhibits, and briefs. Any request to submit this case for decision on stipulated facts, exhibits, and briefs shall be filed no later than **July 16, 2020** and shall contain a proposed schedule for the filing of stipulated facts, exhibits, opening briefs, and reply briefs, if any.
3. The hearing in this case 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.
4. The testimony of all witnesses 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 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.

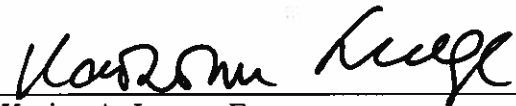
Hearing

Unless otherwise ordered, the hearing in this case will be conducted virtually by WebEx on **July 21, 2020, 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 4 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: 7/10/2020



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

Distribution: Marc G. Beaudoin, Esq.
Marta Modigliani, Esq.
Jessica A. King, Esq.
John Krupski, Esq.



State of New Hampshire
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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 witnesses is testifying by WebEx, and witnesses may not consult with anyone during testimony and should not look at or make references to notes or any other 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.