



State of New Hampshire
Public Employee Labor Relations Board

**NEPBA, New Hampshire State Law Enforcement Officers' Union
and
State of New Hampshire, Department of Safety
and
State Employees' Association of NH, SEIU Local 1984
Case No. G-0294-1**

**NEPBA, NH State Law Enforcement Officers' Union
and
State of New Hampshire, Department of Safety
and
State Employees' Association of NH, SEIU Local 1984
Case No. G-0246-4**

**Decision No. 2020-218
(Consolidated Cases)**

Pre-Hearing Memorandum and Order

Date of Conference: September 18, 2020

Appearances: Peter Perroni, Esq., for the NEPBA
Gary Snyder, Esq., for the SEA
Jessica King, Esq., for the State

Background:

On August 4, 2020, the NEPBA, NH State Law Enforcement Officers' Union (NEPBA) filed petitions¹ asking the PELRB to remove Fire Investigators and State Office Complex Patrol Officers from the existing Department of Safety (DOS) bargaining unit in order to establish a

¹ Petition for Modification (G-0246-4) and Petition for Certification - Challenge to Existing Representative (G-0294-1).

new unit consisting of these positions. These cases have been consolidated for hearing and decision.

The SEA is the certified exclusive representative of the DOS bargaining unit and filed motions to intervene on both cases. These motions were granted. The SEA has also filed objections. As to the modification petition, the SEA argues that the NEPBA has not met the requirements of Admin. Rule Pub 302.05. As to the certification petition, the SEA argues that the NEPBA's request runs afoul of *Appeal of Manchester Bd. of School Committee*, 129 N.H. 151 (1987), because the NEPBA has filed similar petitions in Cases Nos. G-0295-1; G-0246-5; G-0202-7, in which, according to the SEA, the NEPBA seeks to represent the supervisors of the fire investigators and state office complex patrol officers.

The DOS objects to the NEPBA's petition for certification on the grounds that the proposed bargaining unit lacks a community of interest required under RSA 273-A:8, I and that "the proposed unit would impose inefficiency of governmental operations per N.H. Admin. R. Pub 302,02(c)(1)." The DOS does not object to the NEPBA's modification petition.

During the pre-hearing conference, the parties proposed consolidating these cases with Cases Nos. G-0295-1; G-0246-5; G-0202-7 (petitions re law enforcement supervisors) so that all five cases include the same record for decision. The parties' proposal was taken under advisement.

Issues for Determination by the Board

1. Whether the modification petition satisfies the requirements set forth in Admin. Rule Pub 302.05.
2. Whether the proposed bargaining unit is appropriate under RSA 273-A:8 and Admin. Rule Pub 302.02.

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 NEPBA, the SEA, the DOS or their counsel/representative appearing in the consolidated cases. 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. At the pre-hearing conference, the parties proposed presenting the direct testimony of their witnesses through offers of proof. The parties' proposal is approved. The parties will have the opportunity to cross examine any witness for whom the offer of proof was made. All witnesses for whom the offers of proof will be made shall be available for cross-examination.
4. Any 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 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 **October 7, 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:

9/21/2020


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

Distribution: Peter J. Perroni, Esq.
Gary Snyder, Esq.
Jessica A. King, Esq.



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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.