



State of New Hampshire
Public Employee Labor Relations Board

New Hampshire Troopers Association

v.

State of New Hampshire, Department of Safety

Case No. G-0097-27
Decision No. 2020-235

Pre-Hearing Memorandum and Order

Date of Conference: October 15, 2020

Appearances: Marc G. Beaudoin, Esq., for the complainant

Marta A. Modigliani, Esq., and David M. Hiltz, Esq., for the respondent

Background:

On September 15, 2020, the New Hampshire Troopers Association (Union), 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 DOS had violated RSA 273-A:5, I (a) and (h) when it implemented a non-disciplinary termination of a bargaining unit employee. The Union argues that the collective bargaining agreement (CBA), Article XI, Section 11.8 (Sick Leave Bank Article) prevents the DOS from non-disciplinarily terminating an employee who hasn't exhausted, or hasn't been denied, sick leave bank benefits. The Union requests, among other things, that the PELRB order the DOS to cease and desist from any further violations, reinstate the employee, and reimburse the employee for lost pay, leave, and benefits.

The DOS denies the charges and asserts, among other things, that: (1) the Sick Leave Bank Article does not provide job protection; (2) removal of employees falls within the exclusive managerial prerogative under Article II of the CBA; (3) removal of the employee was implemented under provisions of NH Personnel Rules, Per. 1003 over which the PELRB has no jurisdiction; and (4) the Union failed to allege sufficient facts to establish that the DOS had violated RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter). The DOS requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

Whether the DOS breached CBA Article XI, Section 11.8 when it non-disciplinarily terminated a bargaining unit employee, thereby violating RSA 273-A:5, I (a) and/or (h).

Witnesses and Exhibits

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 Union, the DOS or their counsel/representative appearing in this case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. During the pre-hearing conference, the DOS moved to continue the hearing scheduled for October 30, 2020. The Union assented to this motion. The motion to continue is granted. The October 30, 2020 hearing is cancelled. A new hearing date will be established in a subsequent notice. On or before **October 22, 2020**, the parties shall provide to the PELRB their availability for a hearing during the two-week period starting November 30, 2020.

3. The respondent's assented to motion to waive posting is denied. Any hearing notice and the Union's complaint form, without details of the charge attachment, shall be posted in accordance with Admin. Rules Pub 201.07 (b) and Pub 201.02 (f), respectively. The complaint form shall be posted with this pre-hearing order as a summary of and a substitute for the Union's "details of the charge" attachment.
4. Based upon the parties' pleadings and the discussions at the pre-hearing conference, the issue in this case is limited to the interpretation of the CBA Article XI, Section 11.8 and, therefore, does not require submission of any evidence related to the subject employee's medical record or personnel file. Therefore, the Union's motion to seal is denied as moot.
5. During the pre-hearing conference, the Union stated that a hearing is necessary because the Union intends to offer testimony as to bargaining history related to CBA Article XI, Section 11.8. The DOS asserts that such testimony is not relevant and that this case can be decided on briefs and stipulations. Accordingly, on or before **November 5, 2020**, the Union shall submit to the PELRB a written offer of proof as to the testimony concerning the parties' negotiations on the 2018-19 CBA it intends to elicit from its witnesses at the hearing.
6. On or before **November 12, 2020**, the parties shall submit briefs on the issue of relevancy of the negotiations-related evidence. See paragraph 5.
7. The hearing¹ 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.
8. No later than 3 days prior to the date of hearing, the parties shall submit a comprehensive statement of stipulated facts.

¹ Subject to review of the Union's written offer of proof and briefs referenced in paragraphs 5 and 6.

9. The parties shall be prepared to present direct testimony of witnesses through offers of proof. The parties will have the opportunity to cross examine any witness for whom the offer of proof was made. All witnesses shall be available for cross-examination.
10. No one else should be present in the room where a witness is testifying. Witnesses may not consult with anyone during testimony and should not look at or make references to notes or any documents other than pre-marked exhibits except as permitted by the presiding officer. The testimony of all witnesses shall be presented in accordance with the procedures set forth in the Guidelines.
11. All exhibits shall be exchanged, marked, and filed with the PELRB in accordance with the Guidelines.
12. The parties shall ensure that witnesses are familiar with the WebEx platform and have access to technology necessary to participate in a WebEx hearing.

So ordered.

Date: 10/19/2020


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

Distribution: Marc G. Beaudoin, Esq.
Marta A. Modigliani, Esq.
David M. Hilts, 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 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.