



**State of New Hampshire**  
Public Employee Labor Relations Board

**AFSCME Council 93 / Local 1444 Berlin City Employees**

v.

**City of Berlin**

**Case No. G-0277-3**  
**Decision No. 2020-296**

Pre-Hearing Memorandum and Order

Date of Conference: December 21, 2020

Appearances: Nolan Young, Esq., for the Complainant  
Mark T. Broth, Esq. for the Respondent

Background:

On August 17, 2020, the AFSCME Council 93/Local 1444 Berlin City Employees (Union) filed an unfair labor practice complaint against the City of Berlin (City) under the Public Employee Labor Relations Act claiming that the City had violated RSA 273-A:5, I (e)(to refuse to negotiate in good faith...) when it asked to postpone a previously scheduled July, 2020 impasse mediation session causing it to be rescheduled for September, 2020. In addition, in its amended complaint (see Decision section below, at 2), the Union claims that the City breached the parties' September, 2020 agreement which required, among other things, that the City issue a request for a quote (RFQ) for health insurance on or before October 1, 2020. According to the Union, the City issued the RFQ in December instead of October, 2020. The Union claims that this delay constitutes a violation of RSA 273-A:5, I (e) and (g)(to fail to comply with this chapter or any rule adopted under this chapter). The Union requests that the PELRB find that the City and City Manager James

Wheeler violated RSA 273-A:5, I (e) and (g) and order the City (1) to negotiate in good faith with the Union in a timely manner, (2) to publicly post the Board's findings for 30 days, and (3) make the Union whole for all costs and expenses incurred to pursue the prohibited practice charge.

The City denies the charges and submits that both parties made a good faith effort to "meet on a regular basis to engage in collective bargaining, during which the parties have engaged in a regular exchange of proposals and counterproposals." According to the City, the rescheduling of the medication session was "the result of an administrative error on the part of the City's counsel, and in no way reflects on the City's good faith efforts in its negotiations with the Union."

#### Issues for Determination by the Board

Whether the City violated RSA 273-A:5, I (e) and/or (g) as charged by the Union.

#### Decision

1. "Parties" means the Union, the City or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. On December 18, 2020, the Union moved to amend its complaint to add the allegations concerning the City's breach of an agreement reached by the parties after the filing of the original complaint. See above. The City does not object to the amendment. The Union's motion to amend is granted. An answer to the amended complaint shall be filed no later than **January 4, 2021**.
3. The exhibits that have been attached to the amended complaint will be returned to the Union under Admin. Rules Pub 201.02 (g) ("the complainant ... shall not attach to or include with the complaint documents except as provided in part (d) above"). Any exhibits, "shall be identified and listed on exhibits lists ... and shall be offered, if at all, as exhibits at hearing ..." See *id.*

4. 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.
5. The parties shall be prepared to submit the direct testimony through the offers of proof. However, all witnesses for whom the offers of proof will be made shall be available for cross-examination.
6. All witness testimony shall be presented in accordance with the procedures set forth in the Guidelines.
7. All exhibits shall be exchanged, marked, and filed with the PELRB in accordance with the Guideline instructions.
8. A comprehensive statement of stipulated facts shall be filed with the PELRB no later than 3 days prior to the date of hearing.
9. 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 **January 14, 2021, 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 3 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: 12/22/2020

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

Distribution: Nolan Young, Esq.  
Mark T. Broth, Esq.



**State of New Hampshire**  
Public Employee Labor Relations Board

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.