



State of New Hampshire
Public Employee Labor Relations Board

AFSCME Council 93

and

Town of Hampstead

Case No. G-0298-1

Decision No. 2021-007

Pre-Hearing Memorandum and Order

Date of Conference: January 12, 2021

Appearances: Sean Cronin, Esq., for the Complainant
Peter C. Phillips, Esq., for the Respondent

Background:

On December 14, 2020, the AFSCME Council 93 (Union) filed a petition for certification seeking to represent the Town of Hampstead employees in the following proposed bargaining unit:

Unit: Firefighter (full-time and part-time per diem), firefighter lieutenant, and firefighter captain.

Excluded: Fire chief, deputy fire chief, firefighter (on call), and administrative assistant.

The petition was supported by the requisite number of confidential authorization cards as reflected in the PELRB December 16, 2020 Report re: Inspection of Confidential Authorization Cards.

The Town objects to the petition on the following grounds: (1) part-time per diem firefighters are irregular and on-call employees within the meaning RSA 273-A:1, IX (d) and, therefore, are not public employees and cannot be included in the bargaining unit; (2) without part-time per diem firefighters, the proposed unit does not satisfy a 10-employee minimum requirement

under RSA 273-A:8, I; (3) the firefighter captain is a supervisory employee within the meaning of RSA 273-A:8, II and, therefore, cannot be included in the bargaining unit with employees he supervises; (4) the firefighter captain is a confidential employee within the meaning of RSA 273-A:1, IX (c) and, therefore, is not a public employee and cannot be included in the unit; (5) the proposed bargaining unit lacks a community of interest as required under RSA 273-A:8, I; (6) certification of the proposed bargaining unit will have a negative effect on the efficiency of governmental functions; and (7) the petition fails to comply with the provisions of Admin. Rules Pub 301.01 (b) because it was filed too close to the budget submission date. The Town requests that the PELRB dismiss the petition.

Issues for Determination by the Board

1. Whether the petition is timely under Admin. Rules Pub 301.01.
2. Whether the proposed bargaining unit is appropriate under RSA 273-A:1, RSA 273-A:8, and Admin. Rules Pub 302.02.

Decision

1. "Parties" means the Union, the Town or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the Town indicated that some of the employees in the proposed bargaining unit are also employed by a different public employer and are currently members of a different bargaining unit. For the purpose of clarification, the Union is required to file a modification petition only if it wishes to remove a particular position from the existing bargaining unit in order to place same position in the proposed bargaining unit. No modification petition is required if the Union does not seek a removal of employees/positions from any existing bargaining unit.

3. 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.
4. 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.
5. All witness testimony shall be presented in accordance with the procedures set forth in the Guidelines.
6. All exhibits shall be exchanged, marked, and filed with the PELRB in accordance with the Guideline instructions.
7. A comprehensive statement of stipulated facts and exhibits shall be filed with the PELRB no later than 3 business days prior to the date of hearing.
8. 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 22, 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 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: 1/12/2021


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

Distribution: Sean Cronin, Esq.
Peter C. Phillips, 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.