



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

**New Hampshire Troopers Association**

v.

**NH Dept. of Safety-Division of State Police**

**Case No. G-0097-28**  
**Decision No. 2021-055**

Pre-Hearing Memorandum and Order

Date of Conference: April 5, 2021

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

Marta A. Modigliani, Esq., and Stacie M. Moeser, Esq., for the respondent

Background:

On March 3, 2021, the New Hampshire Troopers Association (Union), filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the NH Dept. of Safety-Division of State Police (Division) had violated RSA 273-A:5, I (h) when it denied an employee's request for reimbursement of line-of-duty-injury related leave under Article 11.9 of the parties' collective bargaining agreement (CBA). The Union alleges as follows: (1) Article 11.9 incorporates RSA 21-I:43-a into the CBA; (2) RSA 21-I:43-a provides for reimbursement of sick and annual leave to State employees who were injured in the line of duty "due to a hostile or overt act"; (3) the subject employee was injured while on duty due to an overt act; (4) the employee requested reimbursement of the injury-related leave; (5) the Commissioner denied his request; and (6) these actions constitute a breach of the CBA and "a violation of RSA 21-I:43-a, which is

incorporated into the CBA by reference.” The Union requests, among other things, that the PELRB order the Division to cease and desist from any further violations and reimburse the employee for 266.37 hours of sick leave and 123.18 hours of annual leave.

The Division denies the charges and asserts, among other things, that: (1) the statutory right for the line-of-duty-injury related leave reimbursement is established in two substantially similar statutes - RSA 21-I:43-a (State employees) and RSA 106-B:18 (State Police employees); (2) this right exists independently from the CBA and is a prohibited subject of bargaining; (3) under the statutes, the Commissioner has the exclusive and final authority to determine whether an injury received by an employee “qualifies as in the line of duty and whether it was due to a hostile or overt act or an act caused by another during the performance of duties considered dangerous in nature”; (4) this right was not bargained for; and (5) it is beyond the PELRB’s jurisdiction to review a decision that is “solely and statutorily reserved to the exclusive authority of the Commissioner.”

#### Issues for Determination by the Board

Principal Issue: Whether the Division breached Article 11.9 of the CBA, thereby violating RSA 273-A:5, I (h).

Related Issue: Whether or not the parties intended to incorporate RSA 21-I:43-a in its entirety into CBA Article 11.9 so that a violation of RSA 21-I:43-a constitutes a breach of the collective bargaining agreement.

#### Witnesses and Exhibits

See attached PELRB Guidelines for WebEx Video Hearings for the specific requirements applicable to witnesses and exhibits. **Compliance with the Guidelines is mandatory unless excused by prior order.** Additionally, it is understood that each party may rely on the representations of the other party that listed witnesses will be available at the hearing.

### Decision


1. "Parties" means the Union, the Division or their counsel/representative appearing in this case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the parties agreed that the facts surrounding the incident giving rise to the leave reimbursement request, including the resulting injury to the bargaining unit employee and criminal prosecution against the driver who caused the injury, are not in dispute. It also appears that the basis for the denial of the leave reimbursement request is not in dispute. Accordingly, as discussed at the pre-hearing conference, the parties shall submit these facts, as well as any background information, into the record through stipulations and exhibits. The stipulations shall be submitted to the PELRB no later than 3 days prior to the date of hearing.
3. If, given the scope of the stipulations, the parties determine that a hearing is unnecessary they shall immediately file a joint request to submit this case on stipulations, exhibits, and briefs. Any such request shall contain a proposed filing schedule.
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.

### Hearing

Unless otherwise ordered, the hearing in this case will be conducted virtually by WebEx on **April 19, 2021, at 10:00 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 2 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: 4/6/2021

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

Distribution: Marc G. Beaudoin, Esq.  
Marta A. Modigliani, Esq.  
Stacie M. Moeser, Esq.  
John S. Krupski, 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.