



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

**Town of Tilton**

**and**

**Tilton Police Union, NEPBA, Local 29**

**Case No. G-0116-3**

**Decision No. 2021-057**

Pre-Hearing Memorandum and Order

Date of Conference: April 6, 2021

Appearances: Eric A. Maher, Esq., for the petitioner  
Peter Perroni, Esq., for the respondent

Background:

On December 1, 2020, the Town of Tilton (Town), filed a modification petition pursuant to N.H. Admin. Rule Pub 302.05 seeking to remove the positions of Sergeant and Detective Sergeant (collectively, sergeants) from the existing bargaining unit represented by Tilton Police Union, NEPBA, Local 29 (Union). See PELRB Decision No. 2014-189. The Town alleges, among other things, as follows: (1) following an internal review process conducted by Municipal Resources, Inc. (MRI) and based on MRI's recommendations, the Town reviewed and updated the job descriptions of the Department's command staff, including, those of Sergeant and Detective Sergeant; (2) under the updated job descriptions, the sergeants now have greater supervisory authority and supervisory responsibilities, including authority to discipline and evaluate other bargaining unit employees; (3) addition of new responsibilities is a material change in circumstances within the meaning of Admin. Rules Pub 302.05; and (4) Sergeant and Detective

Sergeant should be removed from the bargaining unit because they are supervisory employees within the meaning of RSA 273-A:8, II.

The Union objects to the modification on the following grounds: (1) the Union's bargaining team consists of Sergeant, Detective Sergeant, and an NEPBA representative; (2) the Town filed its petition to remove the Sergeant and Detective Sergeant from the bargaining unit in the middle of the parties' collective bargaining negotiations in order to undermine the Union's negotiating team; (3) the alleged changes in sergeants' duties/responsibilities were illegal, pretextual, bad-faith, and non-material alterations undertaken by the Town in order to support this petition and attempt to remove the Union's bargaining team from the bargaining unit; (4) by unilaterally changing job responsibilities, the Town breached its duty to bargain in good faith; (5) the filing of this modification petition during the contract negotiations constitutes an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (e), (g), and (i); (5) there has been no material change in circumstances; (6) the petition is barred by laches, estoppel, and waiver; (7) the petition violates negotiation ground rules agreed upon by the parties; (7) RSA 273-A:8, II "does not require exclusion of the sergeants"; and (8) granting the petition would result in prejudice to sergeants, would alter the self-felt community of interest thereby negatively affecting harmonious and cooperative relations, and would be inequitable to the employees impacted. The Union requests that the PELRB dismiss the petition.

#### Issues for Determination

1. Whether there have been a change in circumstances within the meaning of Admin. Rules Pub 302.05.
2. Whether Sergeant and Detective Sergeant are "persons exercising supervisory authority involving the significant exercise of discretion" and should, therefore, be removed from the bargaining unit under RSA 273-A:8, II.

### 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 Town, the Union 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 Union asserted that the modification petition should be dismissed because, among other things, the Town filed its modification petition, which seeks to remove the Union's negotiating team members from the bargaining unit, in the middle of the parties' negotiations on a successor CBA. Under Admin. Rules Pub 201.01 (j), "[a]ny request for relief which seeks action or decision in advance of a final hearing on the merits shall be presented in a separately filed motion specifically stating the relief requested and the factual and legal basis for the requested relief." Any such request, e.g. a motion to dismiss, shall contain legal basis, including relevant case law.
3. As discussed at the pre-hearing, any claim of violations of RSA 273-A:5, I must be submitted as an unfair labor practice complaint and must comply with the requirements of RSA 273-A:6, II and Admin. Rules Pub 201.02. There shall be no determination in these modification proceedings as to whether there have been any violation of RSA 273-A:5.
4. At the pre-hearing conference, the Union requested a continuance of the April 20, 2021 hearing. The Town assented to this request. The Union's request is granted. The hearing will be rescheduled for **May 13, 2021, at 9:00 a.m.** A notice of hearing shall be issued.


5. 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 **May 13, 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: 4/7/2021

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

Distribution: Eric A. Maher, Esq.  
Peter Perroni, Esq.

Attachment to pre-hearing order,  
PELRB Decision No. 2021-057,  
(April 7, 2021).

Guidelines for WebEx Video Hearings  
Public Employee Labor Relations Board  
Revised, October 13, 2020



**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.