



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

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

v.

**City of Berlin**

**Case No. G-0277-4**  
**Decision No. 2021-161**

Pre-Hearing Memorandum and Order

Date of Conference: September 17, 2021

Appearances: Sean R. Cronin, Esq., for the complainant  
Mark T. Broth, Esq., for the respondent

Background:

On June 24, 2021, 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), (g), (h), and (i) when, among other things, it engaged in regressive bargaining, thereby refusing to bargain in good faith. The Union asserts the following: (1) the parties have been engaged in lengthy negotiations on a successive collective bargaining agreement (CBA); (2) during the negotiations, the City's counsel informed the Union that the City Council will not approve wage increases without a change to health insurance rates and the departmental reclassification/restructuring which, among other things, would eliminate a seniority assignment of tasks and equipment set forth in the parties' existing CBA and overturn the past Arbitration award on this issue; (3) the departmental

restructuring/reclassification is not a cost item and, therefore, is outside the ratification authority of the City Council; (4) the City reduced its wage increase offer from the original 3% per year to 2%, allegedly due to the increase in insurance costs to other City bargaining units, thereby engaging in inappropriate regressive bargaining; (5) every time the parties appear to reach an agreement on health insurance rates and wages, the City adds new proposals, e.g. reclassification/restructuring proposal, and makes its agreement to wages and insurance rates conditional on the Union's acceptance of its reclassification/restructuring proposal; (6) the City threatens to implement reclassification/restructuring unilaterally upon the termination of the parties' CBA; and (7) the unilateral implementation of such reclassification/restructuring will be contrary to the interest of the bargaining unit employees "causing irreparable harm to the member's negotiated terms and conditions of employment."<sup>1</sup> The Union requests that the PELRB find that the City violated RSA 273-A:5, I (e), (g), (h), and (i); 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) to make the Union whole for all costs and expenses incurred to pursue the unfair labor practice charge.<sup>2</sup>

The City denies the charges and asserts, among other things, that: (1) the City did not engage in regressive bargaining because its reclassification proposal included upward pay adjustment for every bargaining unit employee whose position is to be reclassified, separate from any negotiated general wage increase; (2) the City's changes to wage/health insurance proposals

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<sup>1</sup>The Union also argued that the City breached the parties' CBA when it submitted a notice of CBA termination "less than 30 days from the date of termination" in violation of CBA Article 40.1. Based on the parties' statements at the pre-hearing conference, it appears that the City withdrew its notice of termination and the CBA has been extended to June 30, 2022.

<sup>2</sup> In its complaint, the Union also requested that the PELRB issue an interim cease and desist order under RSA 273-A:6, III to "alleviate the irreparable harm to the public interest caused by the unilateral change." However, based on the discussion at the pre-hearing conference, it appears that the City postponed its unilateral implementation of the reclassification/restructuring until the summer of 2022 as the parties' CBA has been extended to June 30, 2022.

were caused by the newly-discovered information that implementing the specific health insurance plan proposed by the City would have previously unknown consequences resulting in higher costs; (3) the City made clear to the Union its willingness to bargain over the impact of the restructuring of the Department of Public Works and "has made a bargaining proposal regarding issues that it identifies as being impacted by the restructuring"; (4) the City has a right to unilaterally implement the reclassification/restructuring upon the expiration of the parties CBA; (5) the restructuring/reclassification is necessary "so as to achieve efficient use of manpower"; and (6) the Union "has not provided any basis for its assertion that bargaining unit members would be irreparably harmed by the implementation of the restructured job classifications."

#### Issues for Determination by the Board

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

#### 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 City or their counsel/representative appearing in this case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. On or before **September 22, 2021**, the parties shall provide to the PELRB their availability (at least 5 dates) for a hearing during the two-week period starting November 1, 2021. 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 shall be filed with the PELRB at least 10 days prior to the date of hearing.

3. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits no later than 10 days prior to the date of hearing. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement." 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.
4. As discussed at the pre-hearing conference, the parties shall file a detailed statement of stipulated facts no later than 10 days prior to the date of hearing, containing all relevant non-disputed facts, including among others, any background information, any relevant employment/union experience of witnesses, explanations or definitions of "equipment classification," "equipment qualification," "equipment assignment," and other concepts/facts mentioned in the parties' pleadings.
5. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit and bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

So ordered.

Date: 9/17/2021

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

Distribution: Sean R. Cronin, Esq.  
Mark T. Broth, Esq.  
Abigail Geier, Esq.