



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION
OF NEW HAMPSHIRE, S.E.I.U.,
LOCAL 1984

Complainant

v.

STATE OF NEW HAMPSHIRE,
DIVISION OF MOTOR VEHICLES

Respondent

CASE NO. S-0393

STATE EMPLOYEES ASSOCIATION
OF NEW HAMPSHIRE, S.E.I.U.
LOCAL 1984

Complainant

v.

STATE OF NEW HAMPSHIRE,
NEW HAMPSHIRE HOSPITAL

Respondent

CASE NO. S-0394

STATE EMPLOYEES ASSOCIATION
OF NEW HAMPSHIRE, S.E.I.U.
LOCAL 1984

Complainant

v.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF CORRECTIONS
(STATE PRISON)

Respondent

CASE NO. S-0376:3

DECISION NO. 96-069

APPEARANCES

Representing State Employees' Association of N.H.:

Ward P. Freeman, Negotiator

Representing State of New Hampshire:

Thomas F. Manning, Employee Relations

Also appearing:

Lisa A. Currier, D.O.C.
 Susan Anderson, Safety
 Mark Chitton, N.H.
 Pierre A. Planchet, D.O.C.
 Iphigenia Hades, SEA/N.H. Hospital
 Jean Williams, D.O.S.
 Louis Currier, Jr., D.O.C.

BACKGROUND

The State Employees Association of New Hampshire, Inc. S.E.I.U., Local 1984, AFL-CIO (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire (State), namely its Division of Motor Vehicles, Department of Corrections (State Prison) and New Hampshire Hospital, on May 1, 1996 alleging violations of RSA 273-A:5 I (h) relating to the manner in which suspected sick leave abuses were being handled because that methodology differed from, and thereby breached, the collective bargaining agreement (CBA). The State filed its answer on May 14, 1996 after which this matter was heard by the PELRB on July 16, 1996.

FINDINGS OF FACT

1. The State of New Hampshire employs personnel at the Department of Safety: Division of Motor Vehicles, Department of Corrections (State Prison) and New Hampshire Hospital and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire, S.E.I.U. Local 1984, is the duly certified bargaining agent for employees of the State of New Hampshire employed at the Department of Safety's Division of Motor Vehicles, Department of Corrections (State

Prison) and New Hampshire Hospital.

3. The State and the Union are parties to a CBA for the period of July 1, 1995 through June 30, 1997. Article XI thereof addresses sick leave, pertinent parts of which provide:

11.1. Entitlement: Full-time employees in the bargaining unit will be entitled to accrue sick leave in accordance with the formula given below. The purpose of sick leave is to afford employees protection against lost income from absences due to illness or injury and, in particular long-term disability due to catastrophic illness or injury. Sick leave is not intended to supplement other leave provisions of this Agreement and is intended to be used only for the purpose set forth herein....Accrual is 15 days per year, posted monthly.

11.2. Allowable Uses: An employee may utilize his/her sick leave allowance for absences due to illness, injury, or exposure to contagious diseases endangering health of other employees when requested by the attending physician, medical and dental appointments with prior approval, or death in the employee's immediate family ...

An employee may utilize up to five (5) days of sick leave per fiscal year for the purpose of providing in-home care to an ill or injured dependent, or foster child. ...

11.3. Application for Use: To utilize his/her sick leave allowance, the employee must file a written application with the Employer specifying the basis of the request is:

"illness",
 "injury",
 "serious health condition as defined by the FMLA",

"dependent care", or
 "medical/dental appointment".

Employees shall be notified as to the approval or denial of their leave requests within a reasonable period of time.

- 11.4. Certification: An employee may be required by the Employer to furnish the Employer with a certificate from the attending physician or other licensed health care practitioner when, for reasonable cause, the Employer believes that the employee's use of sick leave does not conform to the reasons and requirements for sick leave use set forth in this Agreement. Such certificate shall contain a statement that in the practitioner's professional judgment sick leave is necessary. In addition, the Employer may, at state expense, have an independent physician examine one of his/her employees who, in the opinion of the Employer, may not be entitled to sick leave. The time related to such examination shall not be charged to the employee's leave.

4. In addition to the CBA, the issue of sick leave is also addressed in the personnel rules. By their pleadings, the parties agreed that Rules PER 1001.01 and 1501.3 provide, in pertinent part, as follows:

Rule PER 1001.01 defines the six (6) forms disciplinary action may take:

- dismissal during probationary period
- written warning
- withholding of annual increment
- suspension
- demotion
- dismissal

Rule PER 1501.03 Contents of Personnel Record, states

- (a) [t]he appointing authority may place any

one or more of the following documents in an employee's agency personnel record:

* * *

- (5) Performance evaluation summary forms and related counseling letters.

* * *

- (8) Other employment related correspondence.

Rule PER 1001.01 does not speak to "counseling memos" or differentiate them from written warnings.

- 5. Notwithstanding the foregoing, the Division of Motor Vehicles has issued "Minimum Attendance Standards." Union Exhibit No. 2. They state:

- 1. SICK LEAVE: Fifteen (15) days per calendar year

Unacceptable: 1.1 Fifteen (15) plus sick days during one year

- 1.2 Pattern of abuse
Monday, Friday, before/after holiday, attached to vacation time or other days off

- 2. LEAVE WITHOUT PAY (LWOP): Zero (0) days per year

Exceptions: 2.1 Probationary period
Need prior approval from the Director for all LWOP. Only under extreme circumstances will LWOP be granted and then only by the Director depending on severity and urgency of individual circumstances.

- 2.2 F.M.L.A.
Need prior approval from the Director for all LWOP. Only under extreme circumstances will LWOP be granted and then only by the Director depending on severity and urgency of individual circumstances.

2.3 Non-probationary

Need prior approval from the Director for all LWOP. Only under extreme circumstances will LWOP be granted and then only by the Director depending on severity and urgency of individual circumstances.

Susan Anderson, Human Resources Coordinator at the Department of Safety, testified that she worked on Union Exhibit No. 2 and that it was intended as a "guideline."

6. On November 16, 1995, Jean Williams, an employee of the Division of Motor Vehicles received a "counseling memo" which noted that she had used 89.15 hours of sick leave and 28.3 hours of leave with pay [during her probationary status] in the past 24 months. The memo, Union Exhibit No. 1, said:

An ongoing review of the attendance records of all employees of the Division of Motor Vehicles, indicates that your attendance is below acceptable levels.

During the past 24 months you have taken 89.15 hours of sick leave and 28.30 hours of leave time without pay.

Under no circumstances will you be granted any leave time without pay, unless required by law or Administrative Rules of Personnel.

If you take a paid sick day in the next one year, you may be required to submit a note from your health care provider (see PER 1204.07). If you telephone in sick during this one year period you must notify both your supervisor and Director.

Any unapproved absenteeism in the next one year will result in an official letter of warning.

7. Williams testified that 50.5 hours of the sick leave were for illness, 37 hours for doctor appointments. All had been approved by her supervisor. Five hours of leave without pay were for appointments, 15.5 hours

were for illness. The total of sick leave and leave without pay cited in the memo, 117.75 hours, equates to 15.7 days of absences in the 24 month period.

8. Louis Currier has been an employee of the Department of Corrections for three years. He testified that his unit sergeant had denied him seven (7) hours of sick leave to go home and care for his daughter who was unable to go to day care because of illness. The Union alleges this was violative of Article 11.2, para 2 of the CBA. Currier was later granted the leave by a Lieutenant when Currier agreed to take it as credit against comp time he had accrued. Currier also reported an incident where he had been out of work for three days for a back strain. When he returned to work, the sergeant told him he needed a note. When Currier produced the note, he was told it was not necessary.
9. Pierre Planchet has been a corrections officer for 19 years and a union steward for 14 years. He testified about six recent inquiries to him about managerial challenges to the use of sick leave, even after the use of that sick leave had been approved by the employee's immediate supervisor. He also reported numerous withdrawals of Step 1 grievances because the potential grievants felt intimidated by supervisors or feared being changed to another shift.
10. Lisa Currier, Human Resource Coordinator for Corrections, testified that counseling memos had not been over-used at the prison; only six had been issued in the past year for sick leave abuse.
11. Iphigenia Hedges is a staff pharmacist at the New Hampshire Hospital and a union steward. As such, she was familiar with and testified about a counseling memo (Union Exhibit No. 3) issued to Rose Vattes who, in turn, complained to her. It said, in pertinent part:

NOTATION OF COUNSELING SESSION

Rose Vattes, HFC II was issued a written notation of counseling on Thursday, January 18, 1996 in regards to excessive absenteeism.... I have noticed [sic] a pattern which suggests your abuse of misuse of sick leave. In the past thirty days you have called in sick on two occasions. The dates are listed as followed; Thursday, December 14, 1995 and Friday,

January 12, 1996. On a third occasions [sic], Wednesday, January 3, 1996 you called in to say you were unable to report to work due to inclement weather. Coincidentally all three days that you have failed to report to work were days that a snow storm was forecast...

In the future should you call in sick and inclement weather is forecast you will be expected to provide a certificate from a physician. Failure to meet these expectations may result in further disciplinary action.

* * *

The document was signed by Mark Galusha, Supervisor of Environmental Services. Hedges testified that the time had been approved by Vattes's supervisor as sick leave. Marc Chittum, Human Resources Coordinator at N.H. Hospital, testified that the time slips had been approved because "we chose to believe [when she said that] she was sick." The Vattes matter was grieved to Chet Batchelder, Assistant Superintendent, by Hedges (Union Exhibit No. 4) and to Commissioner Terry Morton (Union Exhibit No. 5) on February 21, 1996. Vattes ended up quitting before the matter was settled or arbitrated to conclusion.

12. The CBA makes no reference to "counseling memos." Article XIV relating to the grievance procedure provides that its purpose is "to provide a mutually acceptable procedure for adjusting grievances and disputes arising with respect to implementation or application of any provision of this Agreement." The Union has alleged that the State's actions complained of in this ULP violate Articles 10.9, 11.2 and 11.4 of the CBA.

DECISION AND ORDER

We dispose of the pending complaints by addressing the circumstances of each of the individuals and departments involved.

First, the Vattes complaint against New Hampshire Hospital is dismissed as moot. Case No. S-0394. At the time this complaint was heard, Vattes had voluntarily left state employment. The complained-about absences were excused, according to Chittum, and the counseling memo was not considered


a disciplinary event. Accordingly, this history, informed and unappealable as it is, cannot (and, apparently has not) follow Vattes into other non-state employment. No further findings or remedy is required.

Second, we dismiss the Williams complaint against the Division of Motor Vehicles because Union Exhibit No. 2 was characterized as a "guideline" and, thus, is not a disciplinary event. Having done so, we note that the sick leave and leave without pay which she utilized were within accrual limits under Article II and, apparently, authorized. Her sick leave utilization over two years was 7/10 of a day over what the "guidelines" in Union Exhibit No. 2 suggested for one year. Finding No. 7. This makes her counseling memo of November 16, 1995 (Union Exhibit No. 1) somewhat suspect. As she has left employment with the Division of Motor Vehicles for a position elsewhere in state government, we direct that the Division of Motor Vehicles expunge any unofficial files or papers remaining in its possession on former employee Williams, that they turn these papers over to Williams and that they provide her with a certificate that no further documentation on her attendance record or counseling thereon remains in its possession.

Third, the State violated the CBA, Section 11.2, when it denied Currier seven hours of sick leave to care for his sick daughter. Finding No. 8. It was improper to require him to use accrued comp time for this purpose. The seven hours of comp time Currier used for this purpose shall be reccredited to him and a appropriate debit adjustment made to his sick leave balance.

So ordered

Signed this 28th day of August, 1996.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members E. Vincent Hall and William Kidder present and voting.