

## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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STATE EMPLOYEES ASSOCIATION OF  
NEW HAMPSHIRE, INC., LOCAL 1984  
  
Complainant  
  
v.  
  
STATE OF NEW HAMPSHIRE,  
NEW HAMPSHIRE HOSPITAL  
  
Respondent

CASE NO. S-0388:1  
  
DECISION NO. 1998-073

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### APPEARANCES

#### Representing State Employees Association:

Kathy Duval, Organizer

#### Representing State of New Hampshire:

Thomas Manning, Manager of Employee Relations

#### Also appearing:

Marie Lang, New Hampshire Hospital  
Mark Chittum, New Hampshire Hospital  
John Yarmo, New Hampshire Hospital  
Sandy LaPierre, New Hampshire Hospital  
Eva Shattuck, New Hampshire Hospital  
Maureen Timmins, New Hampshire Hospital  
John C. Anderson, New Hampshire Hospital  
Dana Lancaster, Sodexho Marriott  
Melissa Theriault, Sodexho Marriott

BACKGROUND

The State Employees Association of New Hampshire, Local 1984 (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire, New Hampshire Hospital (State) on June 30, 1998 alleging violations of RSA 273-A:5 I (a), (b), (d), (g), (h) and (i) relating to unilateral changes in working conditions, bad faith bargaining and breach of contract due to denial of a contractually guaranteed rest period, changes in contractually guaranteed rest schedule and retaliation. The State filed its answer on July 15, 1998 after which this matter was heard by the PELRB on August 27, 1998.

FINDINGS OF FACT

1. The State of New Hampshire, inclusive of its facility known as New Hampshire Hospital, 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 certain personnel employed by the State at New Hampshire Hospital.
3. The Union and the State are parties to a collective bargaining agreement (CBA) for the period July 1, 1997 through June 30, 1999. Provisions found at Article VI thereof are germane to these proceedings:

6.2 BREAKS: No reduction shall be made from the basic workday for rest periods of fifteen (15) minutes in every four (4) hours working time or major fraction thereof; such rest period to be taken insofar as practicable in the middle of such working time. Such rest periods are to be taken in such a manner that the normal delivery of services will not be interrupted.

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6.4 SCHEDULES: Department work schedules for groups of employees, meaning two (2) or more employees, shall continue in effect for the life of this Agreement unless there is reasonable cause for the Employer to adjust such schedules. The Employer shall

post and provide two weeks notice to the Association of any proposed schedule change, and upon request, shall meet with the Association prior to the scheduled date of implementation.

4. On Sunday, February 8, 1998 the State, through certain supervisory personnel at New Hampshire Hospital, denied a contractually-protected afternoon rest period to workers in the Dietary Department who are covered by the CBA. Notwithstanding this contract violation, Dana Lancaster, General Manager for Food Services and an employee of a subcontractor, Sodexo-Marriott, testified that he learned of this problem from a log entry and corrected it before it became a formal grievance filed by the Union. A union witness testified that the break was restored after a union steward intervened. This is no discrepancy that the matter has since been resolved in conformity with the contract.
5. During February, 1998, when Dietary Department employees were working from 6:00 a.m. to 2:30 p.m., they were told by representatives of management that their second fifteen (15) minute daily break would be from 2:15 to 2:30. This contravened Article 6.2 of the CBA which provides, in pertinent part, that "such rest period [would] be taken insofar as practicable in the middle of such working time." By February 18, 1998, according to a Union witness, the second fifteen minute break had been restored to late morning, prior to the midday meal or tray lines, as was formerly the practice.
6. On February 16, 1998 a union steward met with unit members in the cafeteria/dining room area. Two supervisory personnel in the kitchen came out from the kitchen, observed the meeting and then returned to the kitchen. Another steward meeting occurred in this same location on April 16, 1998. This was followed by a third meeting, initiated by the Union, on April 28, 1998 which included Executive Councilor Peter Spaulding. When NHH Superintendent Batchelder learned of Spaulding's upcoming visit, he delegated the Administrator of Services, Mark Chittum, to coordinate the visit and offer any assistance needed. Chittum understood this to be an invitation for

him to attend the April 26th meeting and did so. He did comply with a union employee's request that he afford them privacy to meet with Spaulding. After the meeting concluded, Spaulding, Union Representative Duval and the employee who asked Chittum to leave all met with Chittum to relate the concerns expressed at the earlier meeting.

7. On March 12, 1998 at least twelve Dietary Department employees were given individual memos from Melissa Theriault, Production Manager and an employee of the subcontractor, telling them that their hours would be changed from 6:00 a.m. to 2:30 p.m. to 6:30 a.m. to 3:00 p.m. effective April 6, 1998. On March 24, 1998, a group of affected employees, through the Union, asked for a meeting with management prior to the implementation of the proposed schedule change. That meeting was held on March 31, 1998 and was attended by stewards Dave Wyatt and John Andersch, Lancaster and Theriault. During this meeting, Wyatt and Andersch were given assurances that employees who suffered hardships as the result of the schedule change would be given consideration. Two such employees, neither of whom signed the memorandum changing the work schedule (Union Ex. No. 1), applied for relief from that change. One, a non-union member, was restored to a 6:00 a.m. to 2:30 p.m. schedule while the other, a union member, was given a 6:15 a.m. to 2:45 p.m. schedule on school days to accommodate her need to pick up her daughter at school. There may have been other employees who sought relief, but they were unidentified, their numbers uncertain and the outcome unknown.
8. Production Manager Theriault testified that the schedule change was precipitated because of a declining patient population and because there was a need to coordinate hours with the cooks whose hours had already changed. General Manager Lancaster elaborated on this, saying that there is currently only a need for 210 meals whereas the patient population formerly has been as high as 350. He also said the change provided more continuity among food service workers because cooks and chefs

had changed their schedules 1 1/2 to 2 years ago. John Yarmo, Food Services Director and an employee of the subcontractor, testified that the new schedule generates much needed time at the end of the work day and that this has resulted in training requirements becoming 90% current. It also has provided a time in which to learn about and address problems which have arisen and which, prior to May of 1998, would not have been brought to his attention by employees because they would not have had an opportunity to do so, absent a special or individualized meeting.

#### DECISION AND ORDER

The actions complained of and as discussed in Finding Nos. 4 and 5 constituted unfair labor practices to the extent they violated Article 6.2 of the CBA, namely, the withholding of a rest period and the scheduling another rest period or "break" at the end of a shift. The unrefuted testimony presented to the PELRB is that both situations have been corrected; therefore, we provide and direct no remedy.

That portion of the complaint which addresses the change in schedule (Finding No. 7) is DISMISSED. The applicable contract language provides for schedule continuity "unless there is reasonable cause for the Employer to adjust such schedules." Lancaster established that discussions relating to schedule changes started as much as two years ago, even before the schedules for cooks and chefs were modified. Considerations such as changes in patient population, continuity of shifts and training requirements (Finding No. 8) lead us to conclude there was "reasonable cause" and an absence of animus associated with the decision to make the schedule change. We also credit the efforts of management to accommodate the needs for individual adjustments in work schedules to minimize hardships caused by the schedule change (Finding No. 7).

As for the portions of the ULP which complained about management's observation of Union meetings or attempted participation therein, the ULP is DISMISSED. First, there is evidence that management cooperated when Chittum was asked to accord privacy to the group which was meeting. Second, there is no evidence that there was any impact on those meetings as the result of the actions complained of by the Union. Third, as was the case in accommodating two employees whose schedules were changed and that change produced hardship, there was no evidence of "illegal


motivation" on the part of the employer such as to constitute a violation of RSA 273-A:5 I (a) or (b). See Appeal of Sullivan County, 141 N.H. 82, 88 (1996).

In closing, we return to our findings in Finding No. 8, above, specifically the testimony from John Yarmo. It is important, if not essential, that there be a means of communication between the workers, their union and management. The fear of engaging in constructive communication must be removed. If that means of communication had existed in this case, there would never have been the need to involve an Executive Councilor in routine management decisions, for Turner to have characterized the "main dish" server on the tray line as being punished, or for a Dietary Department employee to have felt intimidated or harassed when Theriault discussed "flex time" and scheduling alternatives with her. Incidents such as these can be corrected and eliminated with more attention to the training and sensitivity of first line managers. We encourage that effort on the part of the employer.

The disposition of the various charges of the ULP shall be as set forth, above. To the extent any charge is not addressed individually and specifically, it is DISMISSED for failure to state a claim.

So ordered.

Signed this 1st day of September, 1998.

  
EDWARD J. HASELTINE  
Chairman

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