

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 3657, HILLSBOROUGH
COUNTY DEPARTMENT OF CORRECTIONS
EMPLOYEES

Petitioner

v.

HILLSBOROUGH COUNTY COMMISSIONERS

Respondent

CASE NO. A-0428:183

HILLSBOROUGH COUNTY COMMISSIONERS

Petitioner

v.

AFSCME LOCAL 3657, HILLSBOROUGH
COUNTY DEPARTMENT OF CORRECTIONS
EMPLOYEES

Respondent

CASE NO. A-0428:185

DECISION NO. 1999-055

APPEARANCES

Representing Hillsborough County Department of Corrections
Employees:

Vincent Wenners, Esq.

Representing Hillsborough County Commissioners:

Carolyn Kirby, Assistant County Attorney

Also appearing:

Gary Wulf, Labor Relations Consultant
 James C. Anderson, AFSCME
 Carol H . Holden, Hillsborough County
 Rhona Charbonneau, Hillsborough County
 Keith Bertrand, Hillsborough County
 Warren Hart, Hillsborough County Department of Corrections
 Edward Sapienza, Hillsborough County Dept. of Corrections
 Jim Vacca, Hillsborough County Department of Corrections
 Thomas Dalton, Hillsborough County Department of Corrections
 Thomas Ryan, Hillsborough County Department of Corrections
 Donna Lacerte, Hillsborough County Dept. of Corrections
 Brian Durst, Hillsborough County Department of Corrections
 Dan Rollins, Hillsborough County Department of Corrections
 John Ledre, Hillsborough County Department of Corrections
 Michael Duval, Hillsborough County Department of Corrections
 Richard Fox, Hillsborough County Department of Corrections
 Andrew Jubinville, Hillsborough County Dept. of Corrections
 Paul Moller, Hillsborough County Department of Corrections
 George Rudy, Hillsborough County Department of Corrections
 Joseph Pinkham, Hillsborough County
 John LeDuc, Hillsborough County Department of Corrections
 Paul Matte, Hillsborough County Department of Corrections
 Luis Torres, Hillsborough County Department of Corrections

BACKGROUND

AFSCME Local 3657 (Union) filed unfair labor practice (ULP) charges on February 17, 1999 against Hillsborough County (County) alleging violations of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i) and requesting interim relief in the form of a cease and desist order. The Board responded to the motion by letter of February 22, 1999. The County filed its answer on March 3, 1999 and filed an unfair labor practice charge against the Union on March 12, 1999 alleging violations of RSA 273-A:5 II (d) and (g). The Union answered this on March 29, 1999. The matters were consolidated for hearing and heard by this Board on April 13, and May 4, 1999. Briefs were submitted by the County and by the Union on May 18, 1999 at which time the record was closed.

FINDINGS OF FACT

1. Hillsborough County Department of Corrections employs

correctional officers and other personnel in the operation of its correctional program and so is a "public employer" within the meaning of RSA 273-A:1 X.

2. AFSCME Council 93 Local 3657 is the duly certified bargaining representative for certain employees of the Hillsborough County Department of Corrections.
3. AFSCME and the County are parties to a collective bargaining agreement that expired on June 30, 1995. Prior negotiations had failed but tentative agreements (TA), titled temporary agreements, were carried forward when the parties returned to the bargaining table in May, 1997. (County Exhibit No. 1). Nine negotiation sessions were held and certain tentative agreements were reached and documented (County Exhibit No. 2A and 2B). The County declared impasse in October, 1997 and one day of mediation followed which was unsuccessful in resolving negotiations.
4. The County requested the appointment of a fact-finder on April 7, 1998. (County Exhibit No. 3). Lists of both parties' issues were presented to the fact-finder (See page 3 of County Exhibit No. 3). The Fact-finder's Report was issued on November 23, 1998. (Attachment to Unfair Labor Practice). It was approved by the County Executive Committee and then by the County Delegation on January 7, 1999. The Fact-finder's Report was rejected by the Union Negotiating Team but approved by the membership on December 18, 1998. (County Exhibits No. 4 and 5).
5. The proposed new collective bargaining agreement (CBA) was prepared and forwarded to the Union for signature by the County Negotiator, Gary Wulf. It was accompanied by his letter of January 18, 1999 (County Exhibit No. 6). The cover letter refers to the need for lead time in order to implement certain provisions including a change in health insurance plan and a change to the Group II state retirement plan.
6. On February 3, 1999, James Anderson, AFSCME representative, wrote to Gary Wulf indicating that the Union negotiating team had found a number of "necessary changes" or "modifications" to the draft collective

bargaining agreement (CBA.) (County Exhibit No. 7). He requested a meeting suggesting that some items, including a proposal to bring correctional officers into Group II Retirement, required clarification. On February 8, 1999, Wulf responded for the County saying that a meeting to negotiate was inappropriate and that he would deliver a draft for signatures on February 11, 1999. (County Exhibit No. 8).

7. On February 11, 1999, Wulf wrote Anderson with some urgency indicating that the County would sign the proposed CBA on February 15 and asking when the Union ratification would take place since Anderson had informed Wulf that a vote of the full membership was necessary. On March 11, 1999, the bargaining unit membership voted on the proposed CBA and it was rejected.
8. Early in February, the County had begun the process of converting to the Healthsource Insurance program. It issued applications for Healthsource informing employees of a mandatory return date since the present insurance plan would soon cease. On February 15, 1999, James Anderson sent a memorandum to AFSCME members asking recipients not to fill out the Healthsource applications. (County Exhibit No. 10). On February 22, 1999, the County addressed a memorandum to AFSCME members informing them that Blue Cross Blue Shield Health Care coverage would end effective March 1, 1999.
9. James O'Mara testified that it was his suggestion that the County Delegation approve offering correctional officers the Group II Retirement program. The County Delegation voted to approve the change to Group II on January 7, 1999. (County Exhibit No. 13).
10. The Group II Retirement proposal had been rejected as a carry over item from prior negotiations in May, 1997, (County Exhibit No. 1). Group II was not included in the TA list signed by the parties on September 23, 1997. It was not a subject presented to Fact-finder Lee Williamsen on either party's list of issues to be decided. Though mentioned by the fact-finder, conversion to Group II was not the subject of a

recommendation in the fact-finder's report of November 23, 1998. However, the proposal to bring correctional officers into the Group II Retirement plan appears as Article 12.4 of the proposed CBA. (County Exhibit No. 6)

DECISION AND ORDER

The Union filed unfair labor practice charges and requested an emergency cease and desist order against the County to prevent conversion to Healthsource medical insurance prior to its membership's vote on the proposed CBA. The Union had noted a number of significant differences in the draft CBA from that which the parties had negotiated and sought further negotiations on the details. The County cross complained that the Union had refused to implement the fact-finder's report, though the document had been ratified by both parties, when it attempted to reopen negotiations and insisted on a second ratification vote held two months after the vote on the fact-finder's report.

The unfair labor practice charges relating to the changeover from the previously negotiated health insurance plan to Healthsource are moot. Taking steps to initiate a new insurance program before the signing of the collective bargaining agreement is not unusual because of the need for continuous coverage for bargaining unit members. In as much as the conversion process ceased and the original plan was reinstated, no harm was incurred by bargaining unit members. The charges as they relate to the changes to terms of the CBA such as the inclusion of Group II retirement are not so benign.

The Union had viewed conversion to Group II retirement for correctional officers as an advantage to bargaining unit members when it was last discussed and rejected by the County as a tentative agreement in May 1997 prior to the commencement of bargaining in September 1997. The matter was raised in the negotiation process that followed. The Group II proposal next appeared in February, 1999 in the draft of the collective bargaining agreement prepared by the County's representative. It was not a matter raised at any stage of the current negotiations or presented to and considered by the fact finder.

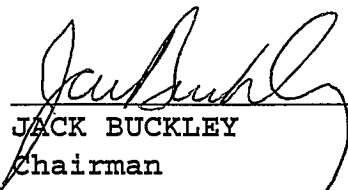
The County's unfair labor practice is dismissed. The Union was not in error for insisting that a vote was necessary on the CBA. It contained a major provision not addressed in the recommendations of the fact-finder's report and so not approved

by the rank and file members. As events unfolded, the absence of a meeting of the minds on a major benefit change was fatal to the proposed CBA. Questions arose as to the impact on the correctional officers of changing to Group II and the CBA was voted down.

The more desirable retirement plan may have been approved by the County as a *quid pro quo* for the change to a less desirable HMO medical plan but that is of no consequence to this decision. Such a balance must be achieved through the bargaining process followed by a vote of the legislative body, the membership, and not by unilateral action as had occurred in this case. Once bargaining is concluded, it is a weighty ethical responsibility for labor relations professionals to put the agreements of the parties into draft form for approval. The draft must be faithful to the intent of both parties. The County erred when it added to the collective bargaining agreement a proposal that had not been bargained and ratified. These actions by the County constitute a failure to bargain in good faith which is an unfair labor practice contrary to RSA 273-A:5 I (e). The County shall cease and desist from further such actions.

So ordered.

Signed this 23rd day of June, 1999.



JACK BUCKLEY
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.