



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL EMPLOYEES,	:	
LOCAL 3657 FOR HILLSBOROUGH COUNTY	:	
CORRECTIONS EMPLOYEES	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. A-0428:187
	:	
HILLSBOROUGH COUNTY, DEPARTMENT	:	DECISION NO. 1999-073
OF CORRECTIONS	:	
	:	
Respondent	:	

APPEARANCES

Representing AFSCME, Local 3657:

Vincent Weners, Esq.

Representing Hillsborough County:

Carolyn Kirby, Esq.

Also appearing:

- James C. Anderson, Staff Representative
- James O'Mara, Superintendent
- Marc I. Cusson, Captain, Hillsborough County Corrections
- Lynda Normand, AFSCME
- Cecile Beaudoin, AFSCME
- Michael Doval, AFSCME
- Tom Ryan, AFSCME
- J. MacCarone, AFSCME

BACKGROUND

The American Federation of State, County and Municipal Employees (AFSCME), Local 3657, filed unfair labor practice (ULP) charges on behalf of organized correctional employees at Hillsborough County on March 29, 1999 against Hillsborough County Department of Corrections (County) alleging violations of RSA 273-A:5 I (a), (b), (c), (g), (h) (i) resulting from domination, interference and coercion of union affairs and breach of contract which occurred when a member of management removed a posting from a bulletin board set aside for Union communications with its members. The County filed its answer on April 13, 1999. This matter was heard by the PELRB on July 20, 1999, after an intervening continuance sought by and granted to the parties.

FINDINGS OF FACT

1. Hillsborough County, by and through its Department of Corrections, employs personnel in the operation of its jail, and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The American Federation of State, County and Municipal Employees, Local 3657, is the duly certified bargaining agent for organized, non-supervisory full time and regular part time employees of the Hillsborough County Department of Corrections.
3. The County and AFSCME are parties to a collective bargaining agreement (CBA) for the period July 1, 1990 through June 30, 1995, and continuing for all pertinent times thereafter under *status quo* provisions. That agreement contains certain provisions pertinent to these proceedings, to wit:

ARTICLE XIIIBulletin Boards

13.1 - The Correctional Superintendent agrees to provide suitable space for bulletin boards for the posting of notices of the Correctional Superintendent addressed to the employees and for Union announcements, notices, social events and other non-controversial matters addressed to its members. The Correctional Superintendent agrees to locate said bulletin boards at convenient places. No Union notices shall be posted until it shall have been signed by the Chairman of the Union and a copy of said notice has been provided to the Correctional Superintendent. The bulletin board

space shall not be used for controversial matters which shall include but not be limited to, advertising, political matters, or any kind of literature other than herein provided.

ARTICLE XV

Grievance Procedure

15.1 - For the purpose of this contract, a grievance is defined as a complaint or claim by an employee or group of employees in the bargaining unit or the union specifying the names of[sic] the bargaining unit employees involved, the dates(s) of the alleged offense(s) and the specific Contract provision(s) involved which arises under and during the terms of this agreement. Grievances are limited to matters of interpretation and/or application of specific provisions of this agreement....

4. Linda Normand, a secretary and bargaining unit member, testified that she routinely makes postings on the bulletin board provided for Union announcements under Article 13 of the contract. On or about March 24, 1999, she posted an article taken from the Union Leader at the request of chapter chair, Tom Ryan (See Union Exhibit No. 2 and County Exhibit Nos. 2 and 4) and placed a copy thereof in the Superintendent's internal mail box. Thereafter, she observed Captain Marc Curson removing the posting. Normand testified that she re-posted the posting at least two more times that day.

5. The Article which Norman posted had the words "Political Advertisement" added to its outside borders by the Union Leader and was censored in its entirety from newspapers coming into the facility, with the exception of a copy which was framed and now hangs in the Superintendent's office. (County Exhibit No. 4.) It said, in pertinent part:

In December 1998 a Fact Finder's Report was presented to the Hillsborough County Delegation and to the members of AFSCME Local 3657 Chapter 13. Both parties voted for the Fact Finder's Report. The Fact Finder's Report was the framework for resolutions of outstanding issues. Using this Fact Finder's Report we have attempted to conclude negotiations to bring about a fair contract which deals with both management and union concerns.

With key components agreed upon and only definitions and language to settle, the Delegation and Union members were excited about a pending agreement.

Since the time of the vote on the Fact Finder's Report we have attempted no less than 4 separate times to sit down and negotiate language with Superintendent O'Mara and his negotiating team. Instead of meeting with the Union, Superintendent O'Mara attempted to take the following actions:

- He attempted to implement portions of the FactFinder's Report without contract ratification by the Union members.
- He attempted to mandate officers to fill out shift requests without any language in regards to seniority.
- He has attempted to change the vacation structure.
- He attempted to use the pager policy without the needed language concerning safety and liability issues. Due to O'Mara's continuous inability to safely staff the jail since 1995, a pager system was implemented by the Union in 1996 as a stop gap measure to alleviate the severe staffing crisis at the facility. This is being abused - some officers have been mandated to work up to 100 hours in a week or face disciplinary action.
- Superintendent O'Mara attempted to take the current health benefits away from the employees and their families with no contract in place. Only intervention from the Public Employee's Labor Relations Board averted this action by Mr. O'Mara.
- While our members have not seen a pay raise since 1995, Mr. O'Mara has enjoyed continuous pay raises up to his current pay level of \$82,000 (the highest paid Corrections Superintendent in the state), uninterrupted health insurance for him and his family and use of a county car and truck.

6. Chapter Chair Thomas Ryan testified that he had asked Normand to make the posting and that, thereafter, he was called twice by Cusson. During the second of those calls, Cusson ordered Ryan not to repost the article. The re-postings then stopped.

7. It is undisputed that Cusson removed at least three of the postings on March 25, 1999; he references them in his memo to the Superintendent on March 25, 1999 (County Exhibit No. 2) and acknowledges no further postings once he ordered them to cease.
8. Cusson's position at the jail is Chief of Security. He testified that he removed the postings because he believed that they violated Article 13 of the CBA, that they were "controversial," and that they impaired the security of the facility by speaking to a "severe staffing crisis at the facility" and to friction between labor and management.

DECISION AND ORDER

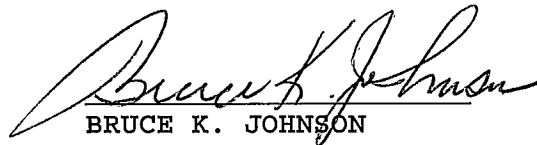
In this case the parties have taken the unusual step of setting contractual standards relative to the posting of materials on the bulletin board, See Article 13 reflected in Finding No. 3. That language speaks to avoiding controversial matters twice, i.e., "other non-controversial matters" and "bulletin board space shall not be used for controversial matters." Upon reviewing the posting, we find its contents to, indeed, have been controversial, certainly as to explaining only the Union's side of the dynamics associated with the negotiations process.

Even if we were not to find the posting to have been controversial, its contents pose a potential threat to the good order and discipline of the jail, especially as to the extent language about staffing shortages and labor management disputes could be digested by the inmate population and used to foment unrest between the prison population and the staff.

The ULP is DISMISSED.

So ordered.

Signed this 28th day of July, 1999.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Richard Roulx and Richard Molan present and voting.