

**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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INTERNATIONAL CHEMICAL WORKERS	:	
UNION COUNCIL/UFCW	:	
	:	CASE NO. M-0764:1
Complainant	:	
	:	DECISION NO. 2000-010
v.	:	
	:	
HILLSBOROUGH COUNTY NURSING HOME	:	
	:	
Respondent	:	

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Appearances

Representing ICWUC/UFCW:

John B. Mendolusky, Representative

Representing Hillsborough County Nursing Home:

Carolyn Kirby, Esq., Counsel

Also appearing:

Lisa Young, ICWU  
 Sharon Daigneault, ICWU  
 Margaret Coughlin, HCNH  
 Elaine Foss, HCNH  
 Rosemarie Krosch, HCNH  
 Bruce Moorehead, HCNH  
 Nancy O'Connell, HCNH  
 Carol Holden, HCNH

BACKGROUND

The International Chemical Workers Union/UFCW ("Union") filed unfair labor practice (ULP) charges against Hillsborough

County Nursing Home (County) on June 16, 1999 alleging violations of RSA 273-A:5 I (a), (b) and (c) for discrimination against, intimidation and coercion of employees because of their participation in a union organizational campaign. Hillsborough County filed its answer on July 2, 1999. This matter was subsequently consolidated with case number M-0764:2 (Decision No. 2000-001) and case number M-0764:3 (Decision No. 2000-002) for hearing by notice of November 30, 1999. In the meantime, a certification election was held at the Hillsborough County Nursing Home (HCNH) on Friday, October 29, 1999 resulting in the certification of the union as bargaining agent for head nurses and certain other professional and supervisory positions. The Union filed a letter on December 10, 1999 seeking to amend the charges under consideration in the ULP. The County filed a letter objecting to such an amendment on December 22, 1999.

This matter was heard by the PELRB on December 28, 1999 with post-hearing briefs due to be filed by the parties on or before February 7, 2000. Those briefs were both received on February 7, 2000. Meanwhile the Union petitioned to reopen the record in this case on February 3, 2000 under the provisions of Rule PUB 203.05. The County filed objections thereto on February 8, 2000, after which the PELRB granted the Motion to Reopen the Record for specified and limited purposes as set forth in Decision No. 2000-017 (February 29, 2000). Thereafter, the PELRB conducted a hearing on the subject matter of the request to reopen the record on April 20, 2000 after which the record was closed.

#### FINDINGS OF FACT

1. Hillsborough County operates a nursing home which employs head nurses and certain other professional and supervisory positions (Decision No. 2000-002), thus making it a "public employer" within the meaning of RSA 273-A:1 X.
2. The International Chemical Workers Union/UFCW is an employee organization which sought to and now represents certain professional and supervisory employees of the HCNH, as evidenced by a Petition for Certification filed on April 7, 1999, a unit determination decision issued on August 18, 1999 (Decision No. 1999-079) and a tally of ballots dated October 29, 1999 showing that ten (10) of thirteen eligible voters voted for representation

by the Union and that three (3) votes were cast against representation. As the result of the resolution of Case No. M-0764:3 (Decision No. 2000-002), the amended certification of positions in the bargaining unit now reads:

Head nurses, Hospice Administrator, Staff Development Coordinator, Shift Supervisor, Clinical Behavior Therapist, Facility Maintenance Supervisor, Housekeeping Supervisor and Director of Therapeutic Recreation.

3. In furtherance of that part of the Union's claim that maintaining the *status quo* should be inclusive of the 3% step increases planned sometime after July 1, 1998 and before the Union organizational campaign, the parties stipulated at hearing that there were no increases or changes in the terms and conditions of employment of bargaining unit personnel between the commencement of the Union's organizational campaign and the date of the hearing.
4. Rosemarie Krosch is Assistant Director of Nursing but, between May 18, 1999 and June 28, 1999, she was acting Director of Nursing at HCNH. She conducted a head nurses meeting on June 9, 1999. During that meeting, one of the head nurses asked her about a pending 6% raise. Krosch responded that she knew nothing about this but that there was a 34 cent per hour raise contemplated in the next budget. Krosch told the inquiring head nurse, identified as Sandra Kinsie, that the *status quo* would prevail as the result of the Petition for Certification which had been filed in April. Referring to the non-union wage scale (Union Ex. No. 1), Krosch said that step increases for non-union personnel would be reflected on that document. Noting that Kinsie would not have received the 34 cents per hour increase, she also would not have been subjected to increased costs for her employee's share of health insurance premiums, as was the case with personnel who received the increase.
5. Nancy O'Connell is a registered nurse, has worked

as a staff nurse for HCNH for 15 years and occasionally fills in for a head nurse vacancy. Such was the case when she attended the head nurse meeting on June 9, 1999. She heard Krosch say the 34 cent raise would be "taken away" or not apply to the positions sought in the certification petition because it could be viewed as an attempt to influence potential voters.

6. Sharon Daigneault has been employed by HCNH since June of 1973 and is a head nurse for Unit A-1. She would have been due for a longevity or step increase in June of 1999, according to Union Ex. No. 1, but did not receive it. She testified that Linda Carr, who shared the same date of hire with Daigneault, did receive the step increase. Carr fills a position not included in the Union's certification petition.
7. Lisa Young is a head nurse at HCNH. She testified she would have been entitled to a step increase on October 9, 1999, her anniversary date, but received none. Her position was covered by the Union's certification petition.
8. Carol Holden is a Hillsborough County commissioner who said she understood that the *status quo* should prevail once the certification petition was filed. She was familiar with the status of negotiations throughout the county and said that non-union employees and union employees whose negotiations were completed and whose contracts were resolved received their respective step increases in 1999. She explained the circumstances relating to the 34 cent per hour increase as intending to offset an increased shared cost of health insurance being placed on county employees whose contracts were settled or who were non-union employees. While the employees covered by the Union's certification petition did not get the 34 cents per hour increase, neither were they required to pay an increased shared cost for their health insurance premiums.
9. The gravamen of the Union's Motion to Reopen the

Record consisted of two arguments. First, it complained that a bargaining unit member received a raise during the organizational campaign. This occurred when the individual moved from Assistant Director of Therapeutic Services (hourly paid) to Director of Therapeutic Recreation, a/k/a Director of Activities, a salaried department head position. Second, the Union claimed that, contrary to testimony on December 28, 1999, members of the newly organized unit suffered increases in insurance premiums in August of 1999 while not receiving either the 34 cent per hour "offset" raise explained by Commissioner Holden (Finding No. 8) or a step increase. See testimony of Jane Chateaufneuf and Sharon Daigneault both of whom had their insurance contributions increase from \$13.55 to \$14.93 per pay period. (Union Exhibit Nos. 4, 5 and 6, County Exhibit No. 1.)

10. Lorraine Croteau is an Account Clerk III and processes payroll, employee benefits and authorized deductions. She explained that before July of 1999, health insurance contributions from non-union employees, i.e., those employees not covered by contract language to the contrary, were \$00.00 for single coverage, and, for two persons or family coverage, 15% of the weekly premium less the cost of single coverage, as already assumed and paid for by the County for single coverage employees. This same "formula" has been in effect since 1992. By August of 1999, the formula changed so that non-union personnel seeking single coverage paid 10% of the premium and those seeking two-person or family coverage paid 20% of the premium minus the cost of single coverage, but this change to the new formula was not applied to employees in the bargaining unit being organized by the Union. Instead, employees in the unit being organized were kept, *status quo*, under the "old" formula as existed from 1992-99. What did happen was a general increase in costs from 1998-99 to 1999-2000 so that some individuals did experience higher out-of-pocket contributions for their insurance coverage; nevertheless, the formula for calculating their contributions for this coverage remained unchanged. This is verified by annual memoranda from Croteau and

others showing the annual adjustments to weekly contributions for single, two person and family health insurance coverage from 1992 through 1999. (County Exhibit Nos. 1 through 7, inclusive and Union Exhibit No. 5.) In each instance, the adjustment to the employee's insurance contributions was shown and passed through to the weekly contribution was amount, whether the amount to be paid by the employee increased or decreased. In other words, the "formula" passed changes in insurance costs through to the employee, whether an increase or decrease, and maintained the integrity of the "formula" as a device for measuring and assessing the contribution amounts from individual employees.

#### DECISION AND ORDER

As the complainant in these proceedings, the Union bears the burden to prove, by a preponderance of the evidence, that the actions alleged in the ULP violate the provisions of RSA 273-A. Rule PUB 201.06. This the Union has failed to do. In the case of the promoted employee, she went from one position with a specified level of responsibility to another position with a different, and higher, level of responsibility and was paid accordingly. The Union has produced no evidence that this had an adverse affect on its organizational effort or the outcome of the representation election last October.

Through its efforts to reopen the record, the Union has established that the contribution levels of certain employees, as measured in dollars and cents, changed in the summer of 1999 during the course of the organizational campaign. When we hear all the evidence, however, we find that those changes were caused as the result of changes in estimates for insurance costs for the ensuing year. The formula for calculating the impact of the estimated changes remained unchanged and was applied equally and equitably to all personnel who elected insurance coverage under provisions other than those governed by a collective bargaining agreement. Further, the evidence shows that the County worked diligently to assure that working conditions, as measured by the formula distributing the costs of health insurance premiums among subscribing employees, remained unchanged during the course of the Union's organizational campaign. We find no fault in these efforts by the County to maintain "sanitary conditions" during

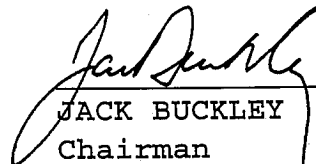
the course of the organizational campaign and subsequent election.

We reach the same conclusion when we revisit the facts presented on the first day of hearing. Rosemarie Krosch, who served in the capacity of Acting Director of Nursing in May and June of 1999 (Finding No. 4, above), testified about a head nurses' staff meeting on June 9, 1999 in which she spoke about the 34 cent per hour raise and the need to maintain the status quo as of the date the petition was filed in April. Both of these issues arose in the "open forum" portion of the meeting and were not part of her initial presentation. Thereafter, we heard from Daigneault and Young, during the same hearing, that they had not received the step increases they otherwise would have received had the Petition for Certification not been filed. These actions were totally consistent with testimony we heard from and on behalf of the County, both from Commissioner Carol Holden and under the Union's petition to reopen the record. Likewise, whatever actions which were imposed on non-organized employees with respect to wages and insurance benefits for the fiscal year beginning in July of 1999 were consistent with the County's explanation of how they applied their policies, inclusive of the formula for determining employee contributions for insurance premiums, and show no evidence of adversely impacting the Union's quest for certification, as evidenced by the results of the certification election held on October 29, 1999.

The ULP is DISMISSED.

So ordered.

Signed this 9th day of MAY, 2000.

  
 JACK BUCKLEY  
 Chairman

By majority vote. Chairman Jack Buckley and Seymour Osman voting in the majority. Member E. Vincent Hall voting in the minority.

Member Hall dissents based upon the fact that the County delayed pre-planned, pre-programmed step increases for members of

the proposed bargaining unit during the organizational campaign. Notwithstanding the now known outcome of the bargaining agent election, had those election results been closer, the announced withholding of a step increase may have discouraged prospective voters from voting for a proposed bargaining agent. Whether subtle or not, this form of influence is to be avoided to maintain the "laboratory conditions" necessary for a full and fair bargaining agent election.