

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, LOCAL 3657 for the
Hillsborough County Corrections Employees

Complainant

HILLSBOROUGH COUNTY,
DEPARTMENT OF CORRECTIONS

Respondent

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CASE NO. A-0428:190

DECISION NO. 2000-052

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

PROCEDURAL BACKGROUND

The Complainant, AFSCME, filed an improper labor practice charge against the Respondent, Hillsborough County Department of Corrections, on May 27, 1999. The PELRB issued its decision on August 30, 1999 generally preventing the Respondent's actions and ordering a return to *status quo*. The Respondent requested a rehearing that was denied by the PELRB and the Respondent then appealed to the New Hampshire Supreme Court. That appeal was accepted on January 12, 2000. The Complainant's Motion for Summary Affirmance to the court was denied.

Following the Respondent's failure to return matters to *status quo*, the Complainant filed its Motion to Enforce with the PELRB. The Respondent's Objection followed and the parties have, to date, been unable to enter into a settlement that would obviate further proceedings here.

The issues being presented to the PELRB are (1) Was the issue of Nurse Brady's shift change properly before the Board at the previous hearing on the merits?; (2) Whether or not the consequences of returning to *status quo* pending a decision of the Supreme Court constitute the requisite irreparable harm necessary for the PELRB to deny the Complainant's Motion to Enforce; and (3) In the event the Motion to Enforce is granted, what amount of damages should be awarded to the Complainant?

PARTICIPATING REPRESENTATIVES

For the Complainant: Jennifer Springer, Esq., Associate General Counsel
For the Respondent: Carolyn M. Kirby, Esq., Assistant County Attorney

ORDER ON PETITION FOR DECERTIFICATION

The Complainant and Respondent both were represented at a Pre-Hearing Conference on June 21, 2000 before the undersigned, acting as Hearings Officer. After brief discussion between the parties, both parties indicated that the instant matter was primarily one of law to be considered by the Board. However, both representatives indicated that testimony would be offered. In the first instance, on the part of the Complainant as to damages to be awarded, and in the second instance, on the part of the Respondent as to the irreparable harm that would result in implementation of the PELRB order pending Supreme Court decision. Both parties reserved their right to call rebuttal witnesses.

WITNESSES

For the Complainant:

1. Nurse Rita Brady, the subject employee

For the Respondent:

1. Superintendent James O'Mara, Jr.
2. Captain David Dionne
3. Lieutenant James Vacca

Both parties reserve the right to amend their List of upon proper showing and reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

1. Documentation of damages claimed

For the Respondent:

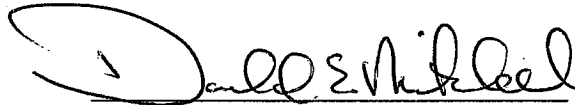
1. Documents of record

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this Order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02.

The each party shall exchange its final list of witnesses and its list of planned exhibits in writing or by facsimile transmission no later than 12:00 PM on Monday, June 26, 2000. Copies of each shall also be transmitted to the PELRB in like fashion by the same date and time. The parties also shall arrange to pre-mark all planned exhibits, in sufficient number as called for in the rules of the PELRB, prior to the commencement of the hearing which is scheduled before the Board on Tuesday, June 27, 2000 beginning at 9:30 AM.

So ordered.

Signed this 19th day of June, 2000.

A handwritten signature in cursive script, appearing to read "Donald E. Mitchell". The signature is written in dark ink and is positioned above the printed name.

Donald E. Mitchell, Esq.
Hearings Officer