



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AFSCME, LOCAL 3657 for the		*
Hillsborough County Corrections Employees		*
		*
	Complainant	*
	v.	*
		*
HILLSBOROUGH COUNTY,		*
DEPARTMENT OF CORRECTIONS		*
	Respondent	*
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CASE NO. A-0428:190

DECISION NO. 2000-055

REPRESENTATIVES

For the AFSCME , Local 3657 Hillsborough County Corrections Employees:
Jennifer Springer, Esq., Associate General Counsel

For the Hillsborough County Department of Corrections:
Carolyn M. Kirby, Esq., Assistant County Attorney

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 No. 99-76, dated August 30, 1999, ordering, *inter alia*, the county to revert to the *status quo* relative to Nurse Brady, to make her whole for any lost wages, benefits or out-of-pocket expenses she had incurred as the result of being changed to another shift and work. The Respondent requested a rehearing that was denied by the PELRB by its Decision No. 1999-111, dated October 20, 1999. The Respondent then appealed to the New Hampshire Supreme Court on November 19, 1999 (Docket # 99-720). That appeal was accepted on January 12, 2000. The Complainant's subsequent Motion for Summary Affirmance to the court was denied.

Following the Respondent's failure to return matters to *status quo*, pending its appeal, the Complainant filed its Motion to Enforce with the PELRB on March 13, 2000.

The Respondent's Objection followed on March 28, 2000. After some unsuccessful efforts by the parties to enter into a settlement that would obviate further proceedings here, the PELRB conducted a hearing on the Complainant's Motion to Enforce on June 27, 2000.

FINDINGS OF FACT

1. The Hillsborough County Department of Corrections (County) has not implemented the PELRB's previous Decision No. 99-76.
2. The County has not returned Nurse Brady to her previous status as a first shift nurse.
3. Nurse Brady has been caused to incur out-of-pocket expenses as a result of her shift change.
4. No documentary evidence substantiating any of these alleged expenses was produced for the PELRB as part of the Hillsborough County Corrections Employees' (AFSCME) case to support vague testimony offered by Nurse Brady.
5. To the extent that credible testimony was offered regarding out-of-pocket expenses, their nature seem to be consistent with the rationale incorporated within shift differential enhancements in wages.
6. The County has not filed any Motion to Suspend the initial August 30, 1999 decision of the PELRB.
7. Superintendent O'Mara testified in the earlier hearing that "the medical services contractor had *requested* (emphasis added) permission from him to mandate certain schedule changes." (Finding No. 8)
8. Superintendent O'Mara testified during the instant hearing that the County did not follow the PELRB order for two reasons. One reason was that the County had appealed the PELRB decision. A second reason was that he had no authority to change shift schedules.

DECISION AND ORDER

After hearing the evidence presented and arguments of counsel, the PELRB grants the AFSCME Motion to Enforce and hereby orders the County to immediately implement the findings of Decision No. 99-76 to the extent of transferring Nurse Brady to her original shift as called for in that decision.

Counsel for the County has ignored the law of this state in failing to avail herself of the opportunity presented in RSA 541:18. If it was to be the policy of the County to ignore the PELRB decision, then its remedy was to file a motion pursuant to that statute. The PELRB cannot, and does not, support a remedy of self-help on the part of the County in this instant matter or any party to its proceedings. Nor can it condone any party ignoring its orders, particularly if that party is a governmental entity that depends, itself, on the willing compliance of its citizens to follow rules.

As to damages claimed by Nurse Brady, we find that she has not met her standard of proving by a preponderance of the evidence that she has sustained quantifiable damages in excess of, or of a nature other than, that contemplated by shift differential payments.

It is further ordered that the County is to notify the PELRB, by facsimile transmission followed by written hardcopy notice, of the date Nurse Brady is reassigned to her original shift as previously ordered in Decision No. 99-76.

So ordered.

Signed this 27th day of June, 2000



JACK BUCKLEY
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and Richard E. Molan present and voting.