



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, Council #93, Local 3657 for the
Hillsborough County Corrections Employees

Complainant

v.

Hillsborough County, Department of Corrections

Respondent

Case No. A-0428-208

Decision No. 2001-125

PRE-HEARING MEMORANDUM AND ORDER

The American Federation of State, County and Municipal Employees ("AFSCME"), Council 93 filed unfair labor practice (ULP) charges on behalf of Local 3657, Hillsborough County Corrections Employees ("Union") on September 28, 2001, against Hillsborough County Department of Corrections ("County") alleging violations of RSA 273-A:5 I (e), (g) and (h) resulting from breach of contract, unilateral changes in working conditions and failure to bargain unilateral implementation of "temporary shift assignments" which impacted Correctional Officer II positions, also referred to as "sergeants," in the bargaining unit. In particular, the Union's complaint alleges that, on or about September 6, 2001, the County, through its agents and supervisors, notified "every" sergeant, individually, that they were "being temporarily assigned" with the result that these reassignments essentially pertained to the entire staff of sergeant personnel. Article 7.5 of the 1995-2002 parties' collective bargaining agreement (CBA) contemplates temporary assignments within the same, lower or higher pay grades, e. g., "An employee covered by this Agreement may be temporarily assigned to the work of any position of the same or lower job classification pay grade..." and "When an employee is temporarily assigned to work in a higher job classification or pay grade for a period of one full work week or longer..." Both quoted provisions are followed by language "Upon termination of such temporary assignment..." which purportedly suggests that "temporary assignments" are not intended to be permanent. Shifts have been negotiated and appear in the CBA at Article 5.1, showing three shifts and starting times, and at Article 17.5, Section 9, showing and defining "weekend shifts."

In addition to a general remedy of "necessary and appropriate relief," the Union is seeking an "immediate cease and desist" order as well as directives ordering the County to (1) revert back to the shifts bid held prior to the September notification of shift change, (2) to abide

by the language of Decision No. 1999-076, a/k/a Case No. A-0428-190, pertaining to two medical division employees within the Department of Corrections, (3) to publicly post notice of this violation for a period of thirty (30) days, and (4) to make the Union whole for any and all costs and expenses associated with this ULP.

Hillsborough County filed its answer to the ULP on October 15, 2001, and, *inter alia*, at paragraph 14 thereof, claims that it "exercised its right to assign employees consistent with RSA 273-A, management prerogative and the good order of the facility." The County's answer admitted paragraphs 1, 2, 3, 5 with commentary, 8 and 9 of the Union's ULP. All other paragraphs thereof (4, 6, 7, 10, 11, 12, 13 and 14) are denied, either in whole or in part. The County further denies that the Union did not have the ability or opportunity to bargain a shift bid process and offers to provide evidence that in the past the Union has "raised shift bidding as an item for consideration at the negotiations table but has never achieved it despite its efforts."

The County has requested, in addition to a "just and proper" remedy, that the PELRB: (1) dismiss the charges, (2) find its actions lawful and reasonable and within its rights, and (3) order the Union to make the County whole for any and all costs and expenses incurred in defending against this ULP.

PARTICIPATING REPRESENTATIVES

The parties participated in a pre-hearing conference at the offices of the Public Employee Labor Relations Board in Concord, New Hampshire, on November 30, 2001, after seeking and obtaining a continuance for an earlier scheduled conference. At this conference, the parties were represented as follows:

For the Union:	Robert Van Campen, Esquire
For the County:	Carolyn M. Kirby, Esquire

ISSUE(S) FOR DETERMINATION BY THE PELRB

As the result of the pre-hearing conference, the parties agreed that the following procedural issue was relevant to the Board's consideration of this case:

Is this matter properly before the PELRB for hearing on the merits given that it has been grieved and is pending a hearing before an arbitrator?

The parties were not able to stipulate an exact issue for hearing on the merits because of the nature of their respective arguments concerning the fact situation in this case. The essence of the issue on the merits may be summarized as follows:

Did the shift change affecting sergeants implemented on or about September 23, 2001, constitute a breach of contract, unilateral change in working conditions

and/or a refusal to bargain under RSA 273-A:5 I?

WITNESSES

At the pre-hearing conference, the parties, respectively, identified the following persons as witnesses in this proceeding and, by this identification, represent that these persons will be available at the time of hearing unless they, or any of them, shall have been duly deleted from this list by giving timely notice to the Board and to the opposite party not less than five (5) days prior to the hearing, consistent with Rule PUB 203.01 (b). It is understood that rebuttal witnesses may be identified and called by a party at the conclusion of the opposite party's case in chief.

For the Union:

John LeBlanc	Angela Bayer
Walter Brooks	Donna LeCerte
Rick Lambert	Gill Provost

For the County:

James O'Mara, Jr.	Mark Cusson
David Dionne	James Vacca

The parties also reserve the right to amend their list of witnesses in conformity with this pre-hearing proceeding and in conformity with Rule PUB 203.01. Once amended, it is understood that each party may rely on the representations of the other as to the availability of named witnesses.

EXHIBITS

During the pre-hearing process, the parties identified, marked and arranged to exchange and file the following exhibits with the Board and with each other at least five (5) days prior to the scheduled hearing date:

Joint Exhibits:

Collective bargaining agreement, July 1, 1995 to June 30, 2002, as appended as exhibit to ULP	Joint Ex. No. 1
Grievance dated October 16, 2001	Joint Ex. No. 2
Employee Rules and Regulations dated April 3, 1991	Joint Ex. No. 3

County Exhibits:

Letter, James O'Mara to James Vacca, June 21, 1995	Cty. Ex. No. 1
Letter, James O'Mara to James Anderson, 25 Jan 99	Cty. Ex. No. 2

Union Exhibits: None at this time. File from Local has yet to be reviewed.

Both parties reserve the right to amend their list of exhibits in conformity with the schedule contained in the "Decision" section of this document, 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 Rule PUB 203.02. It is understood that each party may rely on the representations of the other that exhibits listed above will be available at hearing.

STIPULATIONS – AGREED UPON OFFERS OF PROOF

The County presented and the parties agreed on the five (5) following pre-hearing stipulations:

1. Hillsborough County is a public employer under RSA 273-A.
2. AFSCME Council 93, Local 3657 is the certified exclusive representation [sic] of certain employees of the Hillsborough County Department of Corrections.
3. AFSCME Council 93, Local 3657 filed class action grievances pursuant to Article XV of the collective bargaining agreement challenging the shift assignments that were issued to Correctional Officer II's on or about September 6, 2001.
4. One of the grievances referenced in paragraph three (3) above proceeded through Step 3 of the grievance procedure.
5. The parties have a workable grievance procedure.

LENGTH OF HEARING

The length of time set aside for this hearing is one (1) day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days prior to the designated hearing date.

DECISION

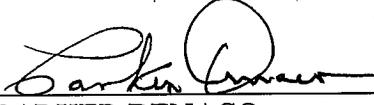
1. Each party, through its respective designated representative as shown on page 2, above, unless noted to the contrary by subsequent timely filing of a new appearance, shall complete and forward its witness and exhibit lists to the opposing party and to the PELRB not later than five (5) days prior to the evidentiary hearing. The counsel or representatives responsible for preparing and presenting this matter before the PELRB shall also meet, or otherwise arrange, to pre-mark all exhibits, for

identification, prior to (meaning at least five days or more before) the evidentiary hearing and have sufficient copies available for distribution at that hearing as required by Rule PUB 203.02.

2. Any additional preliminary, procedural or dispositive motions shall be filed by the party or parties not later than January 4, 2002, with objections to same, if any, being filed with the PELRB within ten (10) days of the filing of the motion itself.
3. Unless otherwise ordered as the result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the offices of the Public Employee Labor Relations Board on, **Tuesday, February 12, 2002, beginning at 9:30 a.m.**

So ordered.

Signed this 3rd day of DECEMBER, 2001.



PARKER DENACO
Hearing Officer/Executive Director