



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 3438
Sullivan County Nursing Home Employees

Complainant

v.

Sullivan County Nursing Home

Respondent

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Case No. A-0518-1

Decision No. 2003-001

PRE-HEARING DECISION and ORDER

BACKGROUND

AFSCME Council 93, Local 3438 (hereinafter referred to as the "Union") filed an unfair labor practice charge on November 19, 2002 on behalf of the Sullivan County Nursing Home Employees alleging that the Sullivan County Nursing Home (hereinafter referred to as the "County"), acting through their agents, including its Business Manager, Administrator and Director of Human Services, has unilaterally changed the hours of work of certain bargaining unit members and refused to bargain over the impact of the change in hours. The Union asserts that such actions constitute a breach of the parties' collective bargaining agreement and violates certain provisions of RSA 273-A and thereby the County has committed an unfair labor practice against the Union.

The Union requests that the PELRB make a finding that the County has committed an unfair labor practice and issue a cease and desist order compelling a return to status quo hours of work prior to the change and to negotiate the impact of any proposed change in hours. The Union further requests that it be reimbursed for the costs necessary to bring this complaint and asks that a copy of the PELRB's Order be publicly posted at the work site.

The County filed its Answer with the PELRB on December 4, 2002. In essence, it agrees with the factual allegations alleged by the Union that the County has changed hours of work but asserts that all alleged changes have been done within the authority that it retains under the statute and the parties' collective bargaining agreement. The County denies that it has any further obligation to negotiate with the Union. By way of further answer, the County asserts that the language in the job description for Restorative Aides supports its actions expressly by providing that Direct Care Nursing Staff must "work 26 weekends per year scheduled by Sullivan County".

For its part, the County requests that the PELRB find that no unfair labor practice has occurred.

A Pre-Hearing Conference was conducted on January 3, 2003 at which time the parties discussed indicated that the prospects of settlement of this complaint were poor. Following discussion with the Hearing Officer, the parties agreed to proceed in a manner that may obviate the need for an evidentiary hearing through the submission of a Joint Stipulation of Facts and Agreed Exhibits, submission of legal memoranda and a waiver of the need for an evidentiary hearing. The parties indicated their interest in expediting the resolution of this dispute and agreed that, if successful with the formulation of a Joint Stipulation of Facts and Agreed Exhibits, the case could be submitted solely on the pleadings and filings to the Hearing Officer for a decision without the need for testimony or oral argument.

PARTICIPATING REPRESENTATIVES

For the Complainant: Daniel A. Cocuzzo, Esquire

For the Respondent: Marc Hathaway, Esquire, Sullivan County Attorney

ISSUE

Whether the actions of the County in changing the hours of work of certain bargaining unit members constitutes an unfair labor practice?

WITNESSES

For the Complainant:

1. Elizabeth Koski, President
2. Dorothy Cowitt, Restorative Aide
3. Jack McMath, Union Field Representative

For the Respondent:

1. Ed Gil De Rubio, County Manager
2. Robert Hemenay, Administrator
3. Peter Farrand, Director of Human Resources

EXHIBITS

The parties shall submit their List of "Agreed Exhibits", *i.e.* those to which neither party objects, and such other Exhibits as may not be consented to in accordance with the time schedule indicated in the DECISION section of this order.

LENGTH OF HEARING

In the event that an evidentiary hearing becomes necessary, the time being set aside for the combined hearing is one-half 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 thirty (30) days from the date of this Order.

DECISION

1. The parties shall confer, on or before January 17, 2003, to consider certain proposed "Stipulations of Fact" upon which they can agree and to attempt to agree upon all exhibits to be admitted either as Joint Exhibits, without objection, or entered as a single party exhibit, without objection. The County shall file a document indicating the agreed facts and status of proposed exhibits.
2. The parties shall exchange any outstanding documents reasonably requested by the opposing party no later than January 17, 2003. In the event that either party has a good faith belief that he has not received any such document, that representative shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to the opposing representative who shall, upon receipt, provide the document or inform the PELRB in writing of his reasons for not providing the document to the requesting party.
3. The parties shall also, by mutual document or by separate documents, ratify their previously expressed agreement that they waive any rights to arbitration of this issue pursuant to their collective bargaining agreement and agree that the PELRB may decide the existence of an unfair labor practice raised by both the allegation of a breach of the parties' collective bargaining agreement and the allegation, based upon

the same facts, of a statutory violation of RSA 273-A. That mutually executed document shall be filed with the PELRB on or before January 22, 2003.

4. If no evidentiary hearing becomes necessary to take testimony, the parties shall each file their legal memorandum in support of their respective position no later than February 3, 2003.
5. In the event that the instant matter is scheduled for a hearing on the merits, the party representatives shall also confer to discuss all exhibits planned for introduction at hearing, and to arrange to pre-mark any exhibits, for identification, prior to the time of hearing and arrange to have sufficient copies of all exhibits available at the hearing as required by Pub 203.02. It is understood that exhibits that are to be used solely for purposes of impeachment may not be marked prior to the hearing.
6. In the event that an evidentiary hearing becomes necessary, the party representatives shall forward any final amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to the date of any hearing on the merits.
7. Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to the date of the evidentiary hearing.
8. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than February 10, 2003.

If the parties cannot reach agreement on the matters discussed above and unless otherwise ordered as a result of any subsequent filings, an evidentiary hearing between the parties shall be conducted at the Office of the Public Employee Labor Relations Board on February 20, 2003 beginning at 9:30 A.M.

So ordered.

Signed this 3rd day of January, 2003



Donald E. Mitchell, Esq.
Hearings Officer

Distribution:

Daniel A. Cocuzzo, Esquire
Jack McMath, Union Field Representative,
Marc Hathaway, Esquire, Sullivan County Attorney