



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 3657
Hillsborough County Corrections Employees

Complainant

v.

Hillsborough County Department of Corrections

Respondent

*
*
*
*
*
*
*
*
*
*
*

Case No: A-0428-215

Decision No. 2004-030

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Council 93, Local 3657, Hillsborough County Corrections Employees (hereinafter "the Union") filed an unfair labor practice complaint on February 20, 2004 alleging that the Hillsborough County Department of Corrections (hereinafter "the County") committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), and (c) as the result of certain conduct towards Union officials, as specified in four (4) separate charges against the County. In Charge I, the Union claims that a management official, Lieutenant James Vacca, has counseled employees, including the suspended Chapter Chair of the Local Union, regarding the decertification process. In Charge II, the Union alleges that a management official, a Lieutenant Sullivan, ordered the newly appointed Chapter Chair, Correctional Officer Andrew Jubinville (CO Jubinville), to return certain union postings to the Union's bulletin board that had been removed the previous day. Rather than risk being punished for insubordination, CO Jubinville returned the documentation. When Jubinville later on that same day asked to have a union announcement posted on the bulletin board regarding the cancellation of a union vote, Lieutenant Sullivan allegedly refused. The Union asserts that such conduct constitutes an unlawful interference with the administration of the Union, and thereby a violation of RSA 273-A:5 I (b).

Charge III of the Union's complaint relates to allegations that the County unlawfully transferred CO Jubinville to another work location because his status as Chapter Chair was "too inflammatory." As to Charge IV, the Union claims that the County has further discriminated against CO Jubinville in that he has been prohibited from discussing union matters during work hours, while officers in support of the pending decertification petition have not been subjected to the same restriction. As remedies, the Union requests that the PELRB find that the County is in violation of RSA 273-A:5 I (a), (b) and (c) and that it order any and all relief as it deems necessary and appropriate.

The County filed its answer denying the complaint on March 5, 2004. As to Charge I, the County generally denies the allegation that a management official has counseled employees, including the suspended Chapter Chair of the Local Union, regarding the decertification process. The County states that Lt. Vacca is not the County's representative for negotiations and further notes that he is a member of the Teamsters' bargaining unit. Regarding Charge II, the County admits that CO Jubinville was ordered to return the postings referenced in the Union's complaint, but denies that the documentation belonged to the Union or were posted on a "Union" bulleting board. The County remarks that as of December 17, 2003, CO Jubinville had not provided any documentation that he was the Chapter Chair despite being directed to do so the previous day. In response to Charge III, the County admits that CO Jubinville was transferred to another work location but explains that it was temporary and only for a portion of his shift. The County denies the facts alleged in Charge IV of the complaint, stating, *inter alia*, that the allegation lacks specificity. The County requests that the PELRB (1) dismiss the Union's charges, (2) award the County its attorney's fees and costs and (3) order whatever further relief it deems just and proper.

On March 10, 2004, the Union filed a Motion to Amend Unfair Labor Practice, wherein it requests that the PELRB issue a stay of the pending decertification petition (PELRB Case No. A-0428-214), pursuant to RSA 273-A:6 and Pub. 304.02, until the instant case is resolved.

A pre-hearing conference was conducted via telephone on March 16, 2004, during which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esq.

For the County: Carolyn M. Kirby, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Has the County committed an unfair labor practice within the meaning of RSA 273-A:5 I (b) by allegedly counseling employees as to the decertification process?
- (2) Has the County committed an unfair labor practice within the meaning of RSA 273-A:5 I (b) by the alleged ordering of a Union official to return union postings and/or the refusal to post a Union notification regarding the cancellation of a Union vote?
- (3) Has the County committed an unfair labor practice within the meaning of RSA 273-A:5 I (a), (b) and/or (c) by allegedly transferring an employee to a different work site because his status as Chapter Chair of the Union is "too inflammatory?"
- (4) Has the County committed unfair labor practices within the meaning of RSA 273-A:5 I (a) and/or (b) by allegedly prohibiting a Union official from discussing Union matters, including a pending decertification petition, while on duty, and at the same time allowing employees in support of decertification to engage in such conversations?

WITNESSES

For the Union:

1. CO Andrew Jubinville, Chapter Chair
2. Stephen Moltenbrey

For the County:

1. Superintendent James O'Mara
2. Lt. Jerry Street
3. Lt. James Vacca
4. Capt. David Dionne
5. Lt. Steven Giderakos

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with 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

Joint Exhibits:

1. Parties' collective bargaining agreement, July 1, 1995 to June 30, 2002.

For the Union

1. December 2, 2003 Posting re: scheduling of Union vote.
2. Letter dated February 9, 2004 to S. Moltenbrey from G. McEntee

For the County:

1. Posting re: proposed wage scale.
2. Posting re: Management 10/22/03 proposal.

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 with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION AND ORDER

1. The County shall file its response, if any, to the Union's Motion to Amend Unfair Labor Practice, referenced above, on or before **March 30, 2004**.
2. The parties' representatives shall meet, or otherwise confer, on or before **March 30, 2004** in order to compose a mutual statement of agreed facts and to reach stipulations on joint exhibits. The parties' representatives shall memorialize those facts and exhibits upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. The parties shall file any additional preliminary, procedural or dispositive motions, including a Motion to Dismiss, no later than twenty (20) calendar days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, a hearing on the complaint and any pending motions will be held on:

April 8, 2004 at 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire. The parties are cautioned that any request for a continuance will be strictly scrutinized.

So ordered.

Signed this 25th day of March, 2004.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Katherine M. McClure, Esq.
Carolyn M. Kirby, Esq.