



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2715, Hillsborough County
Nursing Home Employees

Complainant

v.

Hillsborough County

Respondent

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Case No: G-0046-6

Decision No. 2007-090

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 3657, Hillsborough County Nursing Home Employees (hereinafter "the Union") filed an unfair labor practice complaint on May 9, 2007 alleging that Hillsborough County (hereinafter "the County") committed unfair labor practices in violation of RSA 273-A:5 I (b), (c), (d), (e), (f), (g), (h) and (i). The complaint relates to four grievances heard on December 13, 2006. The Union claims the County improperly attempted to exclude Union Steward Christine Benner from attending a grievance proceeding and thereafter suspended Ms. Benner on account of her participation in the December 13, 2006 grievance proceedings. The Union also claims that the County improperly refused to provide requested information specifically related to the discipline at issue in the four grievances. The Union's proposed hearing exhibits suggest that the County provided some, but not all, of the requested information. The Union asserts such information is needed for a number of reasons, including the investigation and evaluation of possible grievances.

As remedies, the Union requests that the PELRB: 1) Find that the County has failed in its obligation as a public employer to bargain in good faith in violation of RSA 273-A:4 and 273-A:5, I (b)-(i); 2) Order the County to cease and desist from dominating and interfering with the employee organization; 3) Order the County to bargain in good faith; 4) Order the County to publicly post the findings of the Board for 30 business days; 5) Order the County to reimburse the Union for any and all costs and expenses incurred in pursuing the complaint; and 6) Grant such other relief as the Board deems necessary and appropriate.

The County filed its answer on May 24, 2007. The County denies the charges and contends that Ms. Benner was properly suspended and that the County complied with its obligations when it responded to the Union's information requests. The County also asserts that

the treatment of Ms. Benner is the subject of a grievance and the matter should ultimately be determined in arbitration, and not by this agency. Accordingly, the County requests that the PELRB: 1) Dismiss the charges; 2) Award attorney's fees and costs; and 3) Award such other relief as the Board deems just and proper.

The undersigned Hearing Officer conducted a pre-hearing conference on June 14, 2007 at the PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Daniel Cocuzzo, Esq.

For the County: Carolyn Kirby, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

1. Whether the County was obligated to provide the information requested by the Union and, if so, whether the County's failure to do so violated RSA 273-A:5 I (b), (c), (d), (e), (f), (g), (h) or (i)?

2. Whether the County suspended Christine Benner for engaging in protected activity (participating in the December 13, 2006 grievance hearing as a Union Steward) and, if so, whether the County's actions violated RSA 273-A:5 I (b), (c), (d), (e), (f), (g), (h) or (i)?

WITNESSES

For the Union:

1. Randi Hults, Union Steward
2. Christine Benner, Union Steward
3. Steve Lyons, AFSCME Staff Representative

For the County:

1. Bruce Moorehead, HCNH Administrator
2. Gregory Wenger, County Administrator responsible for scheduling
3. Heidi Bernier, Witness to interaction between Ms. Benner and Mr. Moorehead
4. Diane Boutin, Witness to interaction between Ms. Benner and Mr. Moorehead
5. Donna Mailhot, Witness to interaction between Ms. Benner and Mr. Moorehead

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

For the Union:

1. Bargaining Unit Certification, Decision No. 2003-076
2. Collective Bargaining Agreement
3. Foster Grievance
4. Labonville Grievance
5. Macky Grievance
6. Breaugh Grievance
7. 11/22/06 Correspondence to Mr. Gregory Wenger
8. 11/21/06 Information request for Foster Grievance
9. 11/21/06 Information request for Labonville Grievance
10. 11/21/06 Information request for Macky Grievance
11. 11/21/06 Information request for Breaugh Grievance
12. 12/12/06 Correspondence to Mr. Gregory Wenger
13. 12/12/06 Correspondence to Mr. Steven Lyons
14. 12/13/06 Attendance Schedule
15. 12/13/06 Hillsborough County Board of Commissioners Minutes
16. 11/27/06 Correspondence to Mr. Steven Lyons
17. Supreme Court Decision NLRB v. Acme Industrial Co. (1967)

At the pre-hearing the County stated that it has no objection to Union Exhibits 1-13, 15 and 16.

For the County:

1. Union's list of employees to attend 12/13/06 grievance hearings
2. Certified Mail Receipt for Union Exhibit 16
3. Grievance re: Christine Benner Suspension

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

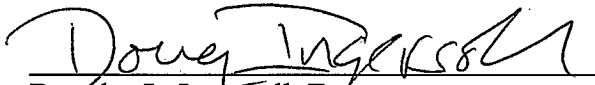
The time set aside for this hearing will be one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The parties' Joint Motion to Continue filed June 14, 2007 is granted.
2. The parties' representatives shall meet, or otherwise confer, on or before July 15, 2007, in attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.
3. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before July 15, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at the time written submissions are filed, or on the date of the hearing, as the case may be.
4. 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 20 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.
5. The parties shall file any additional preliminary, procedural or dispositive motions no later than July 15, 2007.
6. An evidentiary hearing between the parties at the PELRB will be held on a date to be established by a subsequent scheduling order.

So ordered.

June 14, 2007.


Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:

Daniel Cocuzzo, Esq.

Steve Lyons, AFSCME Staff Representative

Carolyn Kirby, Esq.