



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

AFSCME Local 2715, Hillsborough County Nursing Home Employees

v.

Hillsborough County Nursing Home

Case No. G-0049-38
Decision No. 2015-242

Pre-Hearing Memorandum and Order

Date of Conference: November 9, 2015

Appearances: Anna S. Fletcher, Esq., for the Complainant

Carolyn Kirby, Esq., for the Respondent

Background:

On October 7, 2015, the AFSCME Local 2715, Hillsborough County Nursing Home Employees (Union) filed an unfair labor practice complaint alleging that the Hillsborough County Nursing Home (HCNH) violated RSA 273-A:5, I (a), (c), (e), (h)¹, and (i) when it denied a bargaining unit employee's request to adjust her pay rate from \$11.50 an hour to \$13 an hour based on her experience. The Union alleges, among other things, that, under the CBA Article 18.1F, when the HCNH hires a new employee at a pay rate higher than the pay rate of an existing employee performing the same job, the HCNH is required to adjust the existing employee's pay rate accordingly; that the subject employee requested the adjustment of her pay rate to \$13 an hour based on the HCNH job posting with the starting pay rate of \$11.50 an hour; and that the HCNH denied her request. The Union requests that the PELRB find that the HCNH (1) coerced

¹Although the Union does not list subsection (h) ("It shall be a prohibited practice for any public employer... to breach a collective bargaining agreement") as one of the provisions of the RSA 273-A:5, I allegedly violated by the HCNH, in its prayer for relief, the Union requests that the PELRB "find that the County violated the collective bargaining agreement."

or otherwise interfered with its employees in the exercise of the rights conferred by RSA 273-A, (2) bargained in bad faith by refusing to adjust the employee's wages as described in the CBA Article 18.1F, (3) violated RSA 273-A:5, I (i) by adopting a rule relative to the terms and conditions of employment that invalidates the CBA, and (4) violated the CBA; and order the HCNH (1) to cease and desist from interfering with its employees in the exercise of the rights conferred by RSA 273-A, (2) to bargain in good faith, (3) to publicly post the findings of the PELRB for 30 business days, and (4) to make the Union whole for all costs and expenses incurred to pursue the prohibited practice charge.

The HCNH denies the charges and asserts, among other things, that the PELRB lacks jurisdiction over the Union's complaint because the complaint is untimely and because the parties' "CBA contains a final and binding grievance procedure," the Union's complaint arises under the terms of the CBA, and the Union failed to file a grievance for an alleged violation of the CBA Article 18.1F. The HCNH requests that the PELRB dismiss the complaint.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction over the Union's claims.
2. Whether the HCNH violated RSA 273-A:5, I (a), (c), (e), (h) and/or (i) as charged by the Union.

WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.

DECISION

1. "Parties" means the Union, the HCNH or their counsel/representative appearing in the

case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.


2. Per Pub 203.04 (a) and (b), all requests for specific relief, including a request to dismiss the complaint, shall be presented by means of a motion and shall be in written form. In this case, a motion to dismiss, if any, shall be filed no later than **November 16, 2015**. Any objection to the motion to dismiss shall be filed no later than **November 23, 2015**.
3. The parties shall file a joint statement of stipulated facts and their final witness and exhibit lists no later than 10 days prior to the date of hearing.
4. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five (5) copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion, the adjudicatory hearing in this case will be held on **November 24, 2015, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 3 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 11/9/15



Karina A. Lange, Esq.
Staff Counsel/Hearing Officer

Distribution: Anna S. Fletcher, Esq.
Carolyn Kirby, Esq.