



**State of New Hampshire**  
**Public Employee Labor Relations Board**  
**National Correctional Employees Union**

v.

**Rockingham County Department of Corrections**

**Case No. G-0140-8**  
**Decision No. 2017-106**

**Order**

**I. Background:**

On June 9, 2017 the Union filed an unfair labor practice charge under the Public Employee Labor Relations Act (Act) asserting that the County has violated RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter); (b)(to dominate or to interfere in the formation or administration of any employee organization); (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations); (g)(to fail to comply with this chapter or any rule adopted under this chapter); (h)(to breach a collective bargaining agreement); (i)(to make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule).

On June 11 the County implemented what the Union describes as a “new modified 5-2/4-2 work schedule,” a change which the Union charges was made unilaterally, without negotiation, and contrary to Article 20 of the January 1, 2017 to December 31, 2018 Collective Bargaining Agreement (CBA). CBA Article 20.1 “Work Week” defines the basic employee work week, CBA Article 20.2 “Work Day” describes the hours for the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> shifts, and CBA Article 20.4 “Work Schedule” states that “during the term of this Agreement the existing shift schedules for the facility shall be maintained.”

In addition to filing a complaint, the Union also filed a motion requesting an immediate cease and desist order under RSA 273-A:6, III and N.H. Admin. Rules, Pub 304.02. The Union’s motion asks the PELRB to order the County to: 1) cease and desist from implementing the new schedule; 2) cease and desist from unilaterally changing the conditions of employment; 3) cease and desist from violating the collective bargaining agreement; and 4) make all bargaining unit members whole.

The County has objected to the Union’s motion and filed an answer to the complaint. The County says the change to a “5-2 schedule” is limited to 1<sup>st</sup> and 2<sup>nd</sup> shift employees, and that: 1) the County did not violate the CBA or change scheduled shifts; 2) the County has properly exercised its management rights to change and implement a “days off rotation”; and 3) the new “days off rotation” is more favorable to employees than the prior version. The County asks the PELRB to deny the Union’s motion for interim relief because the schedule change is not a surprise to the NCEU, the case is currently scheduled for hearing on August 1, granting the motion could potentially result in multiple schedule changes if the County prevails at hearing, there is no harm to employees, and employees will actually benefit from the schedule change because they will have more weekends off during the course of a year.

## **II. Decision:**

The PELRB's authority to issue a cease and desist order pending a hearing on an unfair labor practice charge is set forth by statute and administrative rule, relevant portions of which are as follows:

### **RSA 273-A:6 Violations.**

I. The board shall have primary jurisdiction of all violations of RSA 273-A:5...

III. The board may issue a cease and desist order if it deems one necessary in the public interest, pending the hearing.

### **Pub 304.02 Interim Orders.**

(a) When the board considers it to be in the public interest, it shall issue a cease and desist order under RSA 273-A:6, III pending a hearing under Pub 201.05.

(b) The board shall issue such an order for reasons to include, but not limited to:

- (1) Protection of the public safety;
- (2) To avoid prejudice to one party or another; or
- (3) To avoid irreparable harm.

We find that issuing a cease and desist order requiring the County to reinstate the schedule in place prior to June 11 is in the public interest and consistent with the "policy of the state to foster harmonious and cooperative relations between public employers and their employees and to protect the public by encouraging the orderly and uninterrupted operation of government..." Laws 1975, 490:1. The subject of work schedules is clearly covered by CBA Article 20. Additionally, employees have the right to bargain work schedules as this topic falls within the scope of "wages, hours and other conditions of employment," which are mandatory subjects of bargaining. See RSA 273-A:1, XI; *Appeal of State*, 138 N.H. 716 (1994). Work schedules can fairly be characterized as one of the more basic and fundamentally important terms and conditions of employment, and work schedules include the days and hours

employees will work as well as and the days and hours when they will not work.

Accordingly, the Union's motion for a cease and desist order is granted. The County shall return to the status quo, and reinstate the work schedule in place prior to June 11, pending the hearing on the complaint. The parties are further directed to meet and confer in an effort to resolve the issues raised in this case and shall be prepared to report the result of such discussions at the pre-hearing conference.

So ordered.

Date: July 6, 2017

/s/ Andrew Eills  
Andrew Eills, Esq., Chair

By unanimous vote of Chair Andrew Eills, Esq., Board Member James M. O'Mara, Jr., and Alternate Board Member Glenn Brackett.

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