



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF	:	
NEW HAMPSHIRE, SEIU, LOCAL 1984	:	
for ROCKINGHAM COUNTY CORRECTIONS	:	
EMPLOYEES	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. S-0386:9
	:	
ROCKINGHAM COUNTY,	:	DECISION NO. 1999-026
DEPARTMENT OF CORRECTIONS	:	
	:	
Respondent	:	

APPEARANCES

Representing State Employees Association:

Teresa DeNafio Donovan, Esq.

Representing Rockingham County:

Gary Wulf, Consultant

Also appearing:

Martha S. Roy, Rockingham County
Gene P. Charron, Rockingham County
John L. Blomeke, Rockingham
Robert Remick, Jr., Rockingham Chapter 58
Keith MacMaster, Rockingham Chapter 58

BACKGROUND

The State Employees Association of New Hampshire, S.E.I.U. Local 1984 (Union) filed unfair labor practice (ULP) charges against Rockingham County (County), Department of Corrections on

December 7, 1998, alleging violations of RSA 273-A:5 I (e) and (h) for refusal to bargain and breach of contract by letting bargaining unit vacancies go unfilled and then creating and filling other, new positions with a different schedule. The County filed its answer on December 21, 1998, after which this case was heard by the PELRB on March 9, 1999.

FINDINGS OF FACT

1. Rockingham County employs correctional officers and other personnel in the operation of its county jail and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire, S.E.I.U. Local 1984 is the duly certified bargaining agent for Correctional Officers I and II and Control Center Operators employed by the County.
3. The County and the Union are parties to a collective bargaining agreement (CBA) (Joint Exhibit No. 1) from the date of execution, October 25, 1996, to June 30, 1999. That agreement contains two contract articles pertinent to these proceedings:

ARTICLE II MANAGEMENT RIGHTS

- 2.1 Except as specifically limited or abridged by the terms of the Agreement, the management of the Department of Corrections in all its phases and details shall remain vested exclusively in the County and its designated agents, including, but not limited to: the exercise of all of the rights, responsibilities and prerogatives that are inherent in the Employer or its agents by virtue of any statutes and/or ordinances, as well as all rights, responsibilities and prerogatives relating to, including, but not limited to, the direction of work force, the establishment of reasonable rules and regulations, the establishment of qualifications for employment, the establishment of work and productivity standards, the right to hire, supervise, discipline or discharge, transfer, or relieve employees from duty for lack of work

or funds, the right to decide job classifications, the creation and abolition of positions, and the determination of the methods, processes and manner of performing work and the general control of all of the operations of the Department in all its phases and details as well as all rights retained by virtue of, including, but not limited to, New Hampshire RSA Chapter 273-A, and any other provision(s) of the Revised Statutes Annotated or other laws.

* * * * *

- 3.5 Consultation: The parties recognize their mutual obligation to conscientiously seek satisfactory solutions to problems arising out of the employment relationship. Consultation may be requested by either party in writing stating the reasons for the requested meeting and the proposed agenda or topic of consultation. A mutually agreed meeting date shall be established, and each side shall be entitled to have appropriate representatives in attendance.

ARTICLE XX

HOURS OF WORK AND OVERTIME

- 20.1 Work Week: The basic work week for unit employees shall be forty-one and one-quarter (41.25) hours per week. The weekly pay period shall run from Monday through Sunday.
- 20.2 Work Day: The daily eight and one-quarter hour shifts will normally be 6:45 a.m. - 3:00 p.m. (1st shift), 2:45 p.m. - 11:00 p.m. (2nd shift), and 10:45 p.m. - 7:00 a.m. (3rd shift) as well as float positions which are normally 5:45 a.m. to 2:00 p.m., 12:45 p.m. to 9:00 p.m., and 1:45 p.m. to 10:00 p.m.
- 20.3 The work day shall include a fifteen (15) minute briefing and training shift change period. This briefing and training shift change time shall be paid at the employee's straight-time rate.
- 20.4 Work Schedule: The parties agree that during the term of this Agreement the existing shift schedules for the facility shall be maintained. In selecting employees to fill open shift assign-

ments, the Department shall consider the qualifications of the applicants, and the scheduling needs of the facility, and if the qualifications of the applicants are equal, seniority shall be the determining factor in making the assignment. The Superintendent or Superintendent's designee shall meet with delegates of the Union, to be chosen by the Union, for the purposes of discussing scheduling.

4. The Union's ULP alleges that there has been a breach of contract because the "Superintendent and his designees have been circumventing the language of Article 20.4...[because,] as shifts become vacant, the Superintendent is not filling those positions and is creating new positions with different schedules. [T]he long term effect of such a practice will eventually have the same effect as if the County had unilaterally changed the entire schedule of the facility at once." (ULP, para. 7.)
5. Keith MacMaster, a second shift Correctional Officer and Chapter Vice President, testified that the "discussion" committee under Article 20.4 had been unable to reach a consensus recommendation on a 4+2, a 5+2 or other scheduling pattern. He affirmed that the County is not filling certain shifts when vacancies occur as the result of promotions, quits or retirements. Those vacancies have allegedly been addressed through new and different schedule assignments than those in which the vacancy occurred.
6. Robert Remick, Jr., a correctional officer, with a "5+2" schedule testified that he moved to the third shift in a "permanent" position so he could ultimately move from permanent Tuesdays and Wednesdays off to permanent Saturdays and Sundays off. He expressed frustration that when someone with permanent Saturdays and Sundays off leaves or quits, the posted vacancy for which a bid is sought is for mid-week days. Remick has been on the Article 20.4 scheduling discussion committee since April of 1998. He reported that no progress had occurred since then and confirmed that the committee had been unable to reach any consensus recommendations from among a number of alternatives,

4+2, 5+2, 6+2 and other schedules, some of which would utilize schedule rotations. Currently, both 5+2 schedules with "fixed" days off and 6+2 schedules with "rotating" days off are used at the jail.

7. The Union's ULP complaint alleges that the Deputy Superintendent has told Chapter President John Wesson "that the County has no further obligation to attempt to meet with the Union to discuss the matter of scheduling." The date of that utterance is not stated nor is there proof that a demand to meet and discuss under Article 20.4 has been made by the Union and rejected by the County.

8. Superintendent Eugene Charron testified that the jail has maintained the same shifts before and for the duration of the current CBA, namely, 6:45 a.m. to 3:00 p.m., 2:45 p.m. to 11:00 p.m., and 10:45 p.m. to 7:00 a.m., as mandated by Article 20.2. That contract article also contemplates and provides for "float positions" whose "eight and one-quarter hour shifts" are 5:45 a.m. to 7:00 p.m., 12:45 p.m. to 9:00 p.m., and 1:45 p.m. to 10:00 p.m. Likewise, Charron confirmed that the non-float positions are spread over both a 5+2 schedule and a 6+2 schedule as detailed in Finding No. 6, above. He contrasted these "shifts" to the "schedule committee" under Article 20.4 of the CBA. That committee has not met since December of 1997 because the Union has not asked to "reconvene." Charron testified that scheduling (i.e., days on and off, and not time of day) is dictated by staffing requirements, court days, days off, safety considerations and operational needs. Saying that scheduling is in a "state of flux," Charron explained that when a vacancy occurs, the "shift" or hours to be worked usually remain the same but that the days worked, the 6+2 versus the 5+2 "schedule," may change. This was confirmed by Charron's memo to and about Robert Remick's grievance (Union Exhibit No. 2) where he explained that Remick had applied for a 6+2 rotation on October 16, 1998 and on November 2, 1998 but that, in each instance, the posting was awarded to officer applicants who had more seniority which is in accordance with Article 20.4. Charron gave an example in Union

Exhibit No. 2:

A 3-11 employee is awarded one of the postings on days. It then requires that we post that position which is now vacated. When another employee is awarded the 3-11 shift then and only then can we post with specificity the shift and days off. Bottom line we are dealing with the unknown thus there is no way that we can anticipate what shift is available. The best analogy is like dominoes. The first one has to be pushed and others then follow.

9. John Blomeke, now a Lieutenant, has been employed by the County for 16 years. He testified that the hours (shifts) and scheduling (days and rotations) are currently the same, and have been the same, as they were in 1995. Over the past five years, the number of correctional officers with set versus rotating days off has never been static. From 1995 through 1998, the number of 6+2 personnel over three shifts has gone from 26 to 29, 30 and 23 for the respective years. The number of 5+2 personnel has gone from 17 to 22, 22 and 21 personnel for those respective years. The difference in staffing has been adjusted by the number of "floaters" which has ranged from 16, to 14, 17 and 10 for the respective years involved. (County Exhibit No. 3.) Scheduling needs are continuously adjusted for holidays, personal days, vacations, advanced days off and the consecutive scheduled days off at the end of a 6+2 rotation. "Floaters" are frequently used to fill these "time off" situations, even though floaters are carried as full time positions and may cover any of the three shifts. Blomeke said only two 6+2 position vacancies have been posted since the summer of 1998.

DECISION AND ORDER

The ULP alleges a violation of RSA 273-A:5 I (e) and (h) which, implicitly, calls upon us to review the pertinent contract language. We start with Article II as recited in Finding No. 3. It confers a broad grant of managerial authority (e.g., "except as specifically limited or abridged by the terms of the Agreement," "the exercise of all rights, responsibilities and

prerogatives that are inherent in the Employer" and "the general control of all the operations of the Department... as well as all rights retained by virtue of, including, but not limited to, New Hampshire RSA 273-A..."). RSA 273-A:1 XI defines the "managerial policy" exception to the obligation to bargain to include "the use of technology, the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions." We recognize the critical importance of and the unequivocal need for public control of the governmental function of operating a prison. In this regard the County has the force and authority of RSA 273-A:1 XI in its favor relative to the staffing and operation of the jail, issues of public safety, adequacy of staffing and the assignment of personnel to meet operational needs.

We look next to the issue of whether there has been any violation of the CBA. Article 20.2 (Finding No. 3) is entitled "work day" and sets forth the times for the various 8 1/4 hour shifts. The Union has not established that there has been any violation of the contractually agreed to shift sequence. To the contrary, the uncontroverted testimony is that it has been honored and that Article 20.2 survives intact.

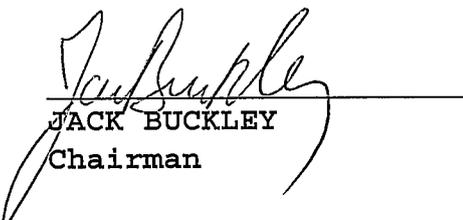
If there has been no violation of the contractually agreed-to shifts (hours worked), we then inquire if there has been a violation of the "work schedule" as denominated in Article 20.4. The contract is bereft of any obligation pertaining to "work schedules" as that term refers to days or rotations worked as opposed to hours worked. Again, given the testimony of Blomeke, it appears that both the shifts (hours worked) and the scheduling (days and rotations worked) have been stable since 1995. (Finding No. 9.) It is apparent that the scheduling of days, whether 6+2, 5+2 or otherwise, has been an item of concern and that that concern has been addressed, at least in part, by a contractually agreed-to discussion group as reflected in the last sentence of Article 20.4. The fact that that group has not met or been productive of any consensus recommendations does not give rise to a ULP. Testimony was uncontroverted (Finding No. 8) that there has been no call for that group to meet since December of 1997. Without such a call, one cannot find a violation of the contractual obligation to "discuss scheduling." There has been no violation of the last sentence of Article 20.4.

While we have already addressed, at least indirectly, the first sentence of Article 20.4 pertaining to maintaining "the existing shift schedules for the facility" for the duration of the CBA, we specifically reiterate our finding of no violation of this contractual obligation. We have already found no violation of the shifts as set forth in Article 20.2. Likewise, there has been no violation of the schedules (days and rotations worked) as evidenced by County Exhibit No. 3. (Finding No. 9). Days and rotations have remained intact even though there has been some dissatisfaction with and at least one grievance about how vacancies were filled. Notwithstanding that complaint, the Union has failed to show non-compliance with the seniority language of Article 20.4. For that matter, Union witnesses agreed that some bargaining unit members were advantaged by the application of seniority standards. The grievant simply did not have sufficient seniority to prevail. See Union Exhibit No. 2 (Finding No. 8).

In their on-going negotiations, the parties may find it helpful to open wider and more congenial communications. It appears that the language of Article 20.2 and 20.4 has caused some confusion and misunderstanding. Maintaining "shifts" should be held to mean those shifts over a 24 hour period which allow for around-the-clock coverage. "Schedules" appears to mean, from the language of the contract and the testimony offered, days and rotations worked. The evidence is insufficient to show that obligations pertaining to either of them have been ignored or violated. Nevertheless, combining both terms as "existing shift schedules" in the first sentence of Article 20.4 has not met with universal understanding by of the parties. We encourage the parties' on-going discussions about actual or perceived problems with "scheduling" as we have defined it, above, but find no ULP to have been committed.

For the reasons stated above, the ULP is DISMISSED.

Signed this 18th day of March, 1999.


 JACK BUCKLEY
 Chairman

By unanimous decision. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.