



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**United Electrical, Radio & Machine Workers  
of America (UE) Local 278**

**Complainant**

**GRAFTON COUNTY NURSING HOME**

**Respondent**

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**CASE NO. M-0769-2**

**DECISION NO. 2000-113**

**PRE-HEARING CONFERENCE MEMORANDUM AND ORDER**

**PROCEDURAL BACKGROUND**

The United Electrical, Radio & Machine Workers of America (UE) Local 278 (Complainant) filed improper labor practice charges against the Grafton County Nursing Home (Respondent) on September 15, 2000. The complaint alleges violations of the parties' *status quo* relationship by the Respondent during negotiations of the parties' first collective bargaining agreement (CBA) when Respondent unilaterally implemented mandatory overtime contrary to RSA 273-A:5, I (g). In addition, Complainant alleges that Respondent violated RSA 273-A:11, when it refused permission to a member to attend a negotiations meeting.

The Respondent admits that mandatory overtime was implemented, but asserts that its actions are permitted within the management rights exclusion. Respondent further asserts that a legal duty to its patients at the time necessitated the implementation of the overtime policy. Respondent rebuts the allegation that it violated RSA 273-A:11, II when it refused to release one of four members of the union's negotiating team from duty to participate in a negotiations session on the basis that three of four members present represented a reasonable number of employees permitted to meet. The Respondent specifically requests that the Board dismiss both charges of improper labor practices contained in the complaint.

**PARTICIPATING REPRESENTATIVES**

For the Complainant: Rachel Clough, UE Field Organizer

For the Respondent: Renny Perry, Labor Relations Consultant

**ISSUES TO BE DETERMINED**

Whether or not the actions undertaken by respondent in implementing mandatory overtime violated the parties' status quo relationship? If so, did the respondent's actions fall within the statutory management rights exclusion?

Whether or not the actions of the respondent constituted a refusal to allow a member of the union negotiating team to attend a negotiations meeting? If so, did such actions violate the statutory provision, RSA 273-A:11,II regarding union member meetings with management?

**WITNESSES**

For the Complainant:

1. Barbara Klinger
2. Kathy Allen
3. Brenda Martel

For the Respondent:

1. Ernie Towne
2. Eileen Bolander
3. Joanne Mann
4. Lucy McKean

Both parties reserve the right to amend their List of Witnesses no later than five (5) business days prior to the scheduled hearing or upon later proper showing and 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. Posted memorandum of overtime, dated 9/1/00
2. Posted Reminder, undated
3. Bolander Memorandum to CAN personnel, dated 7/13/00
4. Bolander Memorandum to CAN personnel, dated 9/18/00
5. CAN personnel schedules for several time periods
  - a. 5/21/00 – 6/3/00
  - b. 6/4/00 – 6/17/00
  - c. 6/18/00 – 7/1/00
  - d. 7/2/00 – 7/15/00
  - e. 7/16/00 – 7/29/00
  - f. 7/30/00 – 8/12/00
  - g. 8/13/00 – 8/26/00
  - h. 8/27/00 – 9/9/00
  - i. 9/10/00 – 9/23/00
6. Posted Memorandum Re: Staffing needs 7/16/00 – 7/29/00
7. Schedule of Nursing Home overtime hours worked, prepared 9/28/00
8. Schedule of Bonus Recipients, prepared 9/20/00
9. List of CAN personnel who worked shifts in excess of 8hrs, as of 10/2/00
10. \* List of "per diem" CAN personnel, undated
11. Excerpt from Code of Federal Regulations 42 CFR § 483.30
12. Excerpt from Federal Register Vol. 64 No. 209
13. New Hampshire Revised Statutes Annotated 151:9 Residential Care & Health Facility
14. \* List of Staffing deficiencies, dated 10/19/00
15. PELRB Decision No. 2000-043, dated 5/25/00
16. Executed Ground Rules, dated 1/20/00

\* Marked for identification ONLY

Both parties reserve the right to amend their List of Exhibits no later than five (5) business days prior to the scheduled hearing or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02.

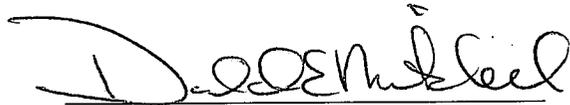
**LENGTH OF HEARING**

The representatives indicate that the direct testimony of witnesses is now estimated to 4 hours. The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) calendar days from the date of this order.

The parties shall inform each other and the PELRB of any amendments to their final list of witnesses and list of planned exhibits in writing or by facsimile transmission no later than November 7, 2000 at 4:30 PM. The parties also shall arrange to pre-mark all planned exhibits, in sufficient number as called for in the rules of the PELRB, prior to the commencement of the hearing which is **scheduled before the Board on Tuesday, November 14, 2000 beginning at 9:30 AM.**

So ordered.

Signed this 23<sup>rd</sup> day of October, 2000



Donald E. Mitchell, Esq.  
Hearings Officer