



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

AFSCME Local 3657	*	(Amended as to Caption
	*	reference to Local only)
	*	
Complainant	*	
	*	Case No. A-0426-50
	*	
v.	*	
	*	Decision No. 2000-127
	*	
Hillsborough County Nursing Home	*	
	*	
Respondent	*	
	*	

---

PRE-HEARING DECISION and ORDER

BACKGROUND

The Complainant, AFSCME Local 3657, filed a four (4) count improper labor practice charge pursuant to RSA 273-A:5,I(b), (c), (e), and (h) alleging that the Hillsborough County Nursing Home, (Respondent) and its agents breached the Collective Bargaining Agreement (CBA) by failing and refusing to bargain in good faith by unilaterally implementing a Fact Finder's agreement that resulted in increasing employees' contribution to health insurance plans and retroactively applying said unilateral increased contributions, by failing to meet with the union in good faith bargaining, by not paying retroactive raise and step increases in a timely fashion, and by undertaking a series of acts that collectively constitute retaliation against the union membership. The Complainant, AFSCME Local 3657 primarily seeks relief in the form of a cease and desist order from the Board against the Respondent and an order against the Respondent to make the members whole by restoring status quo regarding the health insurance contribution and to make full payment of back raises and step increases plus interest.

The Respondent generally denies the allegations of the union and it answers essentially that the parties agreed to a Collective Bargaining Agreement that embodied the provisions of the Fact Finder's report and that the parties mutually negotiated language changes to the CBA in that regard. The Respondent further answers that the

County Delegation approved the Fact Finder's report, the two parties to the CBA agreed to its terms and the union simply refused to sign it. It denies that it has any further obligation to bargain the terms of the CBA with the union. Specifically, it admits that certain deductions have been made from member's paychecks to support increased contributions to health insurance, but that those deductions are consistent with the parties' agreement and consistent with the Fact Finder's report as approved by the County Delegation. It also states that the union's complaint is self-contradicting and that if the union relies on the existence of an agreement to support certain of its allegations, then the union's first two counts of the complaint should be dismissed as those counts allege the non-existence of a CBA. It indicates that members have enjoyed certain benefits associated with the implementation of the Fact Finder's report and should not be entitled to deny the existence of an agreement from which they are taking benefits.

The primary relief requested by the Respondent is the dismissal of the alleged improper practice complaint.

#### PARTICIPATING REPRESENTATIVES

For the Complainant: Daniel A. Cocuzzo, AFSCME Representative  
For the Respondent: Carolyn M. Kirby, Esq., Assistant County Attorney

#### WITNESSES

For the Complainant:  
1. Gloria Plowall  
2. Harriet Spencer

For the Respondent:  
1. Bruce Moorehead  
2. Gary Wulf  
3. Carol Holden  
4. Harriet Spencer  
5. Lorraine Croteau and/or Donald Parnell  
6. Robert Mercer and/or Marcia Rusch

Both parties reserve the right to amend their List of upon proper showing and reasonable notice to the other party. Both parties reserve the right to call witnesses of the other party and rebuttal witnesses as may be deemed allowable by the Board. 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. Fact Finder's Report
2. Board of Commissioners' Minutes, dated 1/19/00
3. Spencer letter to Denaco, dated 1/19/00
4. Wulf letter to Denaco, dated 2/5/00
5. Legal Notice of Delegation Meeting , dated 2/4/00 (Union reserves objection pending documentation)
6. County Delegation minutes, dated 2/9/00
7. Spencer letter to Wulf, dated 2/29/00
8. Spencer letter to Wulf with Attachments, dated 5/12/00
9. Board of Commissioners' Minutes, dated 7/20/00

### For the Complainant:

1. Correspondence
2. Unsigned Collective Bargaining Agreement
3. Fact Finder's Report
4. Other relevant documents.

### For the Respondent:

1. Unsigned Collective Bargaining Agreement
2. Spencer letter to Morehead, dated 2/4/00
3. Wulf letter and Attachments to Spencer, dated 4/12/00
4. Croteau Memo to all employees, dated 8/2/00
5. Croteau Memo to all employees, dated 8/28/00
6. Spencer letter to Morehead, dated 9/19/00
7. Wulf letter to Spencer, dated 9/30/00
8. Morehead Memo to Employees, dated 10/2/00
9. Moorehead Memo to Employees, dated 10/3/00

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule appearing at the conclusion of this Order 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.

The each party shall exchange its final list of witnesses and its list of planned exhibits in writing or by facsimile transmission no later than five (5) business days prior to the date of the evidentiary hearing on the merits. Copies of each shall also be transmitted to the PELRB in like fashion by the same date. 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.

## ADDITIONAL ORDERS

1. Respondent's counsel shall provide copies of Mr. Wulf's Negotiation Session notes dated 2/3/00 and 6/7/00 no later than five (5) business days prior to the date of hearing, if after consultation with Mr. Wulf, the Respondent or its witness is to use said notes at the hearing .
2. The AFSCME representative shall, in good faith, more specifically identify exhibits and provide a list of the same to the Respondent's counsel no later than January 5, 2001, in light of the generalities contained within its Pre-Hearing Worksheet provided to the PELRB on December 20, 2000. Such good faith production shall not be deemed a waiver of the above standing order allowing representatives to modify their respective lists up to five (5) business days prior to the evidentiary hearing.
3. The parties shall cooperate in the production to the other of the documents each has listed, or shall list as exhibits.
4. The parties shall communicate, finalize, and execute such Agreed Statement of Facts as may be drawn between them and submit an original and five (5) copies to the PELRB prior to the hearing. Both parties have heretofore agreed to statements numbered 1-6, 8,9 and 10 appearing on the Proposed Stipulated Facts, dated December 19, 2000 as submitted at the Pre-Hearing Conference.
5. The parties shall communicate, select and provide the PELRB with two alternate and mutually agreed upon dates on which they and their witnesses shall be available for hearing from the following dates: February 6,13,15,20, and 22. Both parties shall communicate the agreed dates for hearing to the PELRB in writing no later than January 5, 2001. A Notice of Hearing shall thereafter be distributed from the PELRB to the parties' representatives.

So ordered.

Signed this 22<sup>nd</sup> day of December, 2000



Donald E. Mitchell, Esq.  
Hearings Officer