



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Chemical Workers Union Council
UFCW

Complainant

v.

Hillsborough County Nursing Home

Respondent

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Case No. M-0764-9

Decision No. 2002-027

PRE-HEARING DECISION and ORDER

BACKGROUND

The Complainant, International Chemical Workers Union Council, UFCW, (hereinafter referred to as the "Union") filed an improper labor practice complaint pursuant to RSA 273-A:5 I (a), (b), (c), (e), and (g) alleging that the Hillsborough County Nursing Home (hereinafter referred to as the "County"), acting through its agents, failed and refused to bargain in good faith by not adhering to negotiation guidelines establishing new proposal submission deadlines and by unilaterally implementing an Employee Evaluation policy and by unilaterally establishing wages during a status quo period. Also, the Union alleges that the County has refused to agree to a workable grievance procedure in violation of RSA 273-A:4. The Union further alleges that these actions were undertaken for the purpose of discouraging support for the Union and in retaliation for Head Nurses having sought to exercise collective bargaining rights. The Union primarily seeks to have the PELRB find that the County has committed unfair labor practices against the Union and one of its members and that it be ordered to bargain in good faith with the Union.

The Respondent denies all of the allegations of the Union as expressed in the complaint. It further answers that no actions have been undertaken in retaliation for Head Nurses having sought to exercise their rights under the state's Public Employee Labor

Relations Act. The County requests that the PELRB dismiss the Union's complaint and order the Union to pay the costs of defending the improper practice complaint.

PARTICIPATING REPRESENTATIVES

For the Complainant: John B. Mendolusky, I.U. Representative
For the Respondent: Carolyn M. Kirby, Esq., Assistant County Attorney

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the timing of the submission of negotiation proposals by the County breached the parties' negotiation guidelines hereby violating the principles of "good faith" bargaining?
2. Whether or not the County's action in proposing a budget without including funds for anticipated costs of the parties' collective bargaining agreement constituted a unilateral action by the County or violated the principles of "good faith" bargaining?
3. Whether or not actions undertaken by the County regarding the acts or inaction of the Director of Restorative Services in connection with patient "falls" constituted disciplinary action intended to discriminate against her for membership in the bargaining unit, to discourage membership in the unit or to interfere in the administration of the union?
4. Whether or not actions undertaken by the County in the application of an Employee Evaluation policy for a Head Nurse constituted disciplinary action intended to discriminate against her for membership in the bargaining unit, to discourage membership in the unit or to interfere in the administration of the union?

STIPULATIONS

1. The International Chemical Workers Union Council/UFCW (hereinafter the "Union") is the certified exclusive representative of certain employees at the Hillsborough County Nursing Home.
2. The Hillsborough County Nursing Home (hereinafter the "County" is a public employer within the meaning of RSA273-A.
3. The bargaining unit has been modified since its original certification on October 27, 1999.

4. The Union and the County have been engaged in negotiations for an initial collective bargaining agreement since February 8, 2000.

5. The Union and the County have reached impasse.

6. On November 21 2001 the Public Employee Labor Relations Board appointed a mediator who had been agreed upon by the parties.

7. Mediation between the parties is scheduled for February 26, 2002.

WITNESSES

For the Complainant:

1. Sandra Kinsey, Head Nurse
2. Katy Leduc, Director of Restorative Services
3. Jane Chateauneuf, Head Nurse
4. Elaine Pinard, Head Nurse
5. Sharon Daigneaut, Head Nurse
6. Debbie Berliquette, Head Nurse

For the Respondent:

1. Bruce Moorehead, Nursing Home Administrator
2. Margaret Coughlin, Director of Nursing
3. Gary Wulf, Chief Negotiator
4. Sandra Kinsey, Head Nurse
5. Katy Leduc, Director of Restorative Services
6. Jane Chateauneuf, Head Nurse
7. Elaine Pinard, Head Nurse
8. Sharon Daigneaut, Head Nurse

Both parties reserve the right to amend their List of Witnesses upon proper showing and reasonable notice to the other party. Both parties reserve the right to call witnesses of the other party and to call other 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*

For the Complainant:

1. Contract proposals
2. Warning notices
3. Head Nurse Meeting notes
4. Relevant contents of negotiations file

For the Respondent:

1. Policies regarding employee evaluation, complaints and grievances
2. Relevant contents of negotiations file
3. Correspondence

* The Complainant did not bring his case file or contract file with him to the pre-hearing conference and was consequently unable to provide more specificity as to the planned exhibits. The Respondent did not participate in all negotiation sessions and, due to the general nature of the written complaint, lacked knowledge of certain charges alleged by the Complainant to provide any more specificity regarding her planned exhibits.

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.

LENGTH OF HEARING

The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty-one (21) days prior to the evidentiary hearing.

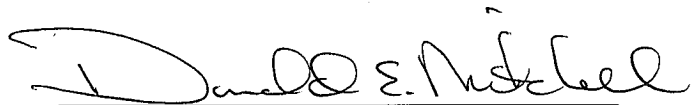
DECISION

1. The Union shall file an amendment to its original Complaint with the PELRB no later than March 8, 2002, with a copy provided to the County's representative. The amendment shall, at a minimum, name all management employees or agents alleged to have undertaken any action affecting any member of the bargaining unit, identify which contract proposals are alleged to be untimely, identify what guidelines are alleged to have been violated, identify the so-called "vacant position" alleged to

have been budgeted by the County and identify each bargaining unit employee alleged to have been wrongfully disciplined.

2. The County shall file its further answer to the amended complaint with the PELRB no later than March 22, 2002, with a copy provided to the Union's representative.
3. The parties shall meet and confer, on or before March 25, 2002 to compose a mutual statement of agreed facts, in addition to the seven listed above, as may be stipulated between the two sides and the same shall be submitted to the PELRB on or before April 4, 2002.
4. The parties shall exchange any outstanding documents reasonably requested by opposing counsel no later than March 25, 2002. In the event that either party has a good faith belief that he or she has not received any such document, that representative shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to the opposing representative who shall, upon receipt, provide the document or inform the PELRB in writing of their reasons for not providing the document to the requesting party.
5. The party representatives shall also confer to discuss the exhibits planned for introduction at hearing, and to arrange to pre-mark any exhibits, for identification, prior to the time of hearing and arrange to have sufficient copies of all exhibits available for distribution at the hearing as required by Pub 203.02. It is understood that exhibits that are to be used solely for purposes of impeachment may not be discussed or marked prior to the hearing.
6. The party representatives shall forward any final amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to the date of hearing.
7. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, April 11, 2002 beginning at 9:30 A.M.



Donald E. Mitchell, Esq.
Hearings Officer

So ordered.

Signed this 26th day of February, 2002