



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Chemical Workers Union Council
UFCW, Local 1046C

Complainant

v.

Merrimack County Nursing Home

Respondent

Case No. M-0738-4

Decision No. 2002-081

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:3, I and RSA 273-A:5 I (a), (b), and (e) alleging that the Merrimack County Nursing Home (hereinafter referred to as the "County"), acting through its agents, failed and refused to bargain in good faith by not providing, in a timely manner, the addresses of certain bargaining unit employees who held positions that it was seeking to have removed from the bargaining unit. The Union further alleges that these actions were undertaken for the purpose of enabling the County to first contact the selected employees prior to the Union's contact and thereby constituted direct dealing with those employees. The Union primarily seeks to have the PELRB find that the County has breached its statutory duty to engage in good faith bargaining and to not interfere in the Union's operation. It requests a Cease and Desist Order issue from the PELRB.

The Respondent denies all of the allegations of the Union as expressed in the complaint in the answer it filed on May 28, 2002. It further answers that the requested information was requested of the County on April 25, 2002 and that the information was forwarded to the Union on April 30th by facsimile transmission and by hand on May 1st.

The County requests that the PELRB dismiss the Union's complaint on the basis of mootness and also asserts that the complaint is without a proper basis in law or fact.

PARTICIPATING REPRESENTATIVES

For the Complainant: John B. Mendolusky, International Union Representative
For the Respondent: Warren D. Atlas, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the issue presented by the Union is moot?
2. Whether the instant matter should be consolidated with Case No. M-0738-5, an Unfair Labor Practice Complaint filed this day by the Union?
3. Whether the County's actions in responding to the request for certain employees' addresses were performed in a timely manner, and if not, did they constitute a violation of RSA 273-A:5, I (a) prohibiting the public employer from restraining, coercing or otherwise interfering with its employees in the exercise of the rights conferred by law; (b) prohibiting a public employer from dominating or interfering in the administration of the employee organization; or (e) refusing to negotiate in good faith

WITNESSES

For the Complainant:

1. Shari L. Tinkham - Local President and Negotiating Team Member
2. Sally I. Gale - Local Secretary/Treasurer, Steward and Negotiating Team Member

For the Respondent:

1. Robert M. Chase - Nursing Home Administrator

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. Correspondence from Mendolusky to Atlas, dated 4/25/02
2. Fax Cover Sheet from Mendolusky to Atlas, dated 4/25/02
3. Corrected letter from Mendolusky to Atlas, dated 4/25/02
4. Correspondence from Atlas to Mendolusky, dated 4/26/02
5. Copy of Original Union Petition for Certification
6. Original Unit definition by PELRB
7. Original Certification of Bargaining Unit by PELRB
8. Facsimile records

For the Respondent:

1. Correspondence from Atlas to Mendolusky, dated 4/26/02

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

In the event that a hearing on the merits is scheduled following the consideration of two preliminary issues, namely mootness and consolidation, 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 at least fourteen (14) days prior to the evidentiary hearing.

DECISION

1. The parties shall exchange any outstanding documents reasonably requested by opposing counsel no later than July 31, 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.

2. The parties shall meet and confer, on or before August 2, 2002 to compose a mutual statement of agreed relevant facts such as may be stipulated between the two sides and the same, along with any joint exhibits agreed upon by the parties, shall thereafter be immediately submitted to the PELRB no later than August 12, 2002.
3. It has been agreed by the parties' representatives that said stipulated facts, along with their respective legal memoranda on the issues of mootness and consolidation and the pleadings already filed in this matter, shall be deemed to constitute the entire record upon which the Hearing Officer may render his opinion on the issues of mootness and consolidation.
4. The parties' legal memoranda referenced in Paragraph #3, above, shall be filed with the PELRB no later than August 12, 2002
5. In the event that the matter is scheduled thereafter for a hearing on the merits, the party representatives shall also confer to discuss all 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 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 any hearing on the merits.
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 Tuesday, August 27, 2002 beginning at 9:30 A.M.



Donald E. Mitchell, Esq.
Hearings Officer

So ordered.
Signed this 19th day of July, 2002