

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-0738-5

Decision No. 2002-108

PRE-HEARING DECISION and ORDER

BACKGROUND

On July 17, 2002 the 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), and (e). In its complaint, the Union alleges 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 refusing to respond to Union requests within a reasonable time, withdrawing a tentative agreement, insisting that the Union negotiate on a subject of bargaining that is not mandatory, setting preconditions on negotiations, and directly dealing with bargaining unit members.

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 cease and desist from bad faith tactics. The Union also seeks to have the PELRB order the County to revert to a position in negotiations to which it had tentatively agreed. Further, the Union seeks to have the instant matter consolidated with a previous unfair labor practice complaint involving the same two parties, docketed at the PELRB as Case M-0738-4. Lastly, it requests a specific public posting of the PELRB's final order.

On August 1, 2002, the Respondent filed its answer responding to the substantive allegations of the Union's complaint. In its answer, the Respondent denies all factual

allegations put forward by the Union of which the Respondent claimed knowledge. It filed no written objection to the Union's request contained within this instant complaint that the two matters presently pending before the PELRB be consolidated. At the Pre-Hearing Conference the Hearing Officer accepted the oral Objection of the Respondent to the Complainant's Motion to Consolidate the instant matter with a previously filed complaint, Case No. M-0738-4. In brief, the Respondent asserts that none of its "bargaining conduct was offensive to the Act" and therefore requests that the PELRB deny the relief sought by the Union.

A Pre-Hearing Conference was initially scheduled to be conducted on August 29, 2002. The Complainant moved for a continuance to which the Respondent consented and the PELRB then continued the proceeding to September 17, 2002. During the Pre-Hearing Conference, Respondent's counsel requested additional specification of certain allegations contained within the Complaint and the Complainant provided oral clarifications that were accepted by the Respondent's counsel. Acknowledging the acceptance of these additional specifications by the Respondent's counsel, the Hearing officer did not order any further written particulars to be submitted by the Complainant.

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 the instant matter should be consolidated with Case No. M-0738-4, a pending Unfair Labor Practice Complaint filed by the Union involving the same parties?
2. Whether the County's actions as alleged in the complaint and summarized in the "Background" section, appearing above, 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
3. Kathleen Bateson, County Administrator
4. Sarah Lewko, Human Resource Officer
5. Faith Flint, Social Worker
6. Robert Chase, Nursing Home Administrator
7. Warren Atlas, Esquire
8. Peg Patisso, Social Worker
9. Laura Lagos, Social Worker
10. Jen Maher, former Social Service Department employee
11. Lola Linnane, Transportation Assistant/Courier
12. Darlene Tilton, Admissions Secretary

For the Respondent:

1. Robert M. Chase, Nursing Home Administrator
2. Kathleen Bateson, County Administrator
3. Sara Lewko, Human Resources Officer
4. Lori Brown, Assistant Administrator
5. Mary Heath, Business Manager

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 Union Local to Chase, dated 4/25/02
2. Fax Cover Sheet from Union Local to Chase, dated 4/25/02
3. Corrected letter from Union Local to Chase, 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
9. Job descriptions for positions of
 - a. Social Worker
 - b. Transportation Assistant/Courier
 - c. Admissions Secretary
10. County negotiation proposals
11. Union's Ultimate Response
12. PELRB Decisions
13. Union request to open contract, dated in or about 12/1999
14. County response to Union request to open contract
15. Union Proposal re: Holiday
16. County response to Union Holiday proposal
17. County subsequent response re: Holiday proposal

For the Respondent:

1. Management Proposals
2. Counter Proposals
3. Summary Matrix of parties' negotiation proposals
4. Miscellaneous correspondence

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 an evidentiary hearing on this matter is four (4) hours. 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 Complainant shall inform the PELRB and the Respondent no later than Monday, September 23, 2002 whether or not it desires to withdraw its complaint in Case No. M-0738-4. In the event that it does withdraw that complaint, then it shall be dismissed and Case M-0738-5 shall be scheduled for an evidentiary hearing before the PELRB on October 22, 2002 beginning at 9:30 AM. In the event that it is not withdrawn, a Hearing on the Respondent's Motion to Dismiss in Case No. M-0738-4 and Complainant's Motions to Consolidate both cases shall be conducted before the

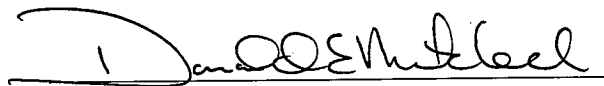
PELRB on Tuesday, October 1, 2002 beginning at 9:30 AM. The parties have agreed that this hearing will be limited to oral argument only.

2. In the event that the Motion to Dismiss is granted in Case M-0738-4, then the evidentiary hearing scheduled for October 22, 2002 shall be on Case No. M-0738-5.
3. In the event that the Motion to Dismiss is denied on Case M-0738-4, then an evidentiary hearing on that case shall be conducted before the PELRB on October 22, 2002, either consolidated with Case No. M-0738-5 or conducted separately on that date.
4. The parties shall exchange any outstanding documents reasonably requested by the opposing party no later than September 25, 2002. In the event that either party has a good faith belief that he 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 his reasons for not providing the document to the requesting party.
5. The parties shall meet and confer, on or before September 25, 2002 to consider certain proposed exhibits that have generally been described as "proposals" and determine whether or not they can agree to a summary document reflecting the relevant portions of those several "proposals" that can be submitted as a joint exhibit.
6. In light of the clarification of allegations by the Complainant and additional discussion between the representatives and with the Hearing Officer, the parties shall confer to reconsider whether or not a previous indication to the Hearing Officer in Case No. M-0738-4 that a mutually executed stipulation of facts, along with their respective legal memoranda on the issues of mootness and consolidation and the pleadings already filed as part of that case could be deemed to constitute the entire record upon which the Hearing Officer may render his opinion on the issues of mootness in Case No. M-0738-4 and consolidation of Case No. M-0738-4 and Case No. M-0738-5. If the parties elect to waive their opportunity for oral argument of these motions before a panel of Board members and have a decision rendered by the Hearing Officer solely on the filings received, to date, in both cases, then the representatives shall file that waiver, in writing, with the PELRB no later than September 25, 2002. This provision of the instant order shall supercede Paragraph #3 of a previously issued order on Case No. M-0738-4 (Decision No. 2002-081) regarding an earlier agreement between the same two parties.
7. In the event that the instant matter is scheduled 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.

8. Respondent's counsel has been seasonably notified of the Complainant's intent to call him as a fact witness to provide testimony before the PELRB and shall make appropriate arrangements to have another individual available to act as the County's representative during his testimony and to make such inquiry of Respondent's counsel on cross-examination, or otherwise, as may be necessary.
9. 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.
10. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than September 27, 2002.

Unless otherwise ordered as a result of any subsequent filings, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on October 22, 2002 beginning at 9:30 A.M.



Donald E. Mitchell, Esq.
Hearings Officer

So ordered.
Signed this 18th day of September, 2002

Distribution:

John B. Mendolusky, I. U. Representative
Attorney Warren D. Atlas