



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Chemical Workers Union Council
UFCW, Local 1046C
Complainant

v.

Merrimack County Nursing Home
Respondent

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Case No. M-0738-4

Decision No. 2002-121

APPEARANCES

For the Complainant:

John B. Mendolusky, International Union Representative

For the Respondent:

Warren D. Atlas, Esq., Merrimack Nursing Home

BACKGROUND

The Complainant, International Chemical Workers Union Council, UFCW, (hereinafter referred to as the "Union") filed an improper labor practice complaint alleging violations of RSA 273-A:3, I and RSA 273-A:5 I (a), (b), and (e). These alleged violations involved a request by the Union for addresses of certain bargaining unit employees to be provided by the Merrimack County Nursing Home (hereinafter referred to as the "County") within a specific time.

The Respondent County generally denied all of the Union's allegations in its answer, filed on May 28, 2002. It further asserted that the information was provided to the Union in a timely manner and moved to have the complaint dismissed as being moot and further moved the Board, in the event of dismissal, to award costs and fees to the County that it incurred in responding to the Union's complaint.

The Union moved to have the instant case consolidated with another matter between the parties, docketed as PELRB Case M-0738-5, pending before the Public Labor Relations Board (hereinafter referred to as the "PELRB").

The parties submitted a joint document of stipulated facts with attachments and legal memoranda in support of their respective positions and made oral argument before the Board at a hearing conducted on October 1, 2002. In addition, on the day of the hearing each party provided the Board with supplemental legal memoranda and cases to support their respective arguments. There being no objection by either party to the submission of these supplements, the Board admitted them. The Board considered the pleadings submitted by each party in the instant case and Case No. M-0738-5, the Joint Stipulation of Facts executed by the parties as appear below along with Exhibits attached thereto, all legal memoranda and the parties oral arguments.

STIPULATION OF FACTS

1. At approximately 2:00 p.m. on April 26, 2002 Merrimack County Nursing Home Administrator Robert Chase received a letter from the Union requesting the names and addresses of certain bargaining unit members. Said letter was hand delivered to Mr. Chase by Mr. John B. Menolusky, the Union representative. (Exhibit 1)
2. Administrator Chase replied to the Union by facsimile transmission at 4:05 p.m. on April 30, 2002. Administrator Chase's reply contained a cover letter and a list of names and addresses. (Exhibit 2)
3. The list provided by Administrator Chase on April 30, 2002 included all the names and addresses that had been requested by the Union.
4. Neither party communicated with the other with respect to the informational request prior to the Nursing Home's submission of its response to the Union on April 30, 2002.

DECISION AND ORDER

The Public Employee Labor Relations Board is vested with primary jurisdiction to determine what conduct undertaken by a party constitutes an unfair labor practice. RSA 273-A:6. On October 1, 2002 it convened and considered the following issues as raised by the parties' filings: (1) Is the present matter moot?; (2) If it is not moot should it be consolidated with pending Case No. M-0738-5?; (3) Should the Union be sanctioned for maintaining its complaint and the County be awarded costs and fees?

At the hearing, both parties were represented and offered oral argument and supportive supplementary briefs, including legal citations. The parties had previously stipulated to the facts as found above and had agreed to submit the case on legal briefs and oral argument without testimony.

The Board considered all filings by the parties, their respective memoranda and oral arguments.

1. It GRANTED the County's requested relief to DISMISS the Union's Complaint as moot having found that, without presentation of sufficient evidence of necessity to the contrary, the County's provision of the requested information, considered alone, was timely and reasonable.
2. Having dismissed the instant complaint that forms the basis of Case No. M-0738-4 we need not consider the request for consolidation with Case No. M-0738-5. Case No. M-0738-5 shall now be heard by the Board on October 22, 2002 beginning at 9:30 A.M.
3. In light of what may be interpreted to be the Union's public policy argument and although we are not persuaded that such a public policy exception exists in this instance to prevent a finding of mootness, we do not find that the complaint maintained was either vexatious, frivolous or motivated by bad faith. Therefore we do not find that this matter requires an award of costs and fees and the County's request for that relief is denied.
4. Nothing in our Order should be construed to prevent the use of factual evidence regarding the incident that formed the basis of this specific complaint from being offered as evidence of a separate charge, providing such use is not otherwise prevented by operation of law.

So ordered.

Signed this 10th day of October, 2002.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Richard W. Roulx and E. Vincent Hall present and voting.