



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Chemical Workers Union Council	*	
UFCW	*	
	*	
Complainant	*	
	*	Case No. M-0764-10
	*	
v.	*	
	*	Decision No. 2003-009
	*	
Hillsborough County Nursing Home	*	
	*	
Respondent	*	
	*	

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, undertook a series of actions that it says interferes with the administration of the employee unit and that demonstrates a failure to bargain in good faith through direct dealing with unit members, denying them union representation in certain meetings, placing unit members at a lower step in the salary schedule than called for by the parties' collective bargaining agreement, failing to provide relevant information to the union necessary to negotiations, and revoking union bulletin posting privileges. Also, the Union alleges that the County discriminated against one unit member because of her membership in the Union by not compensating her in a timely fashion and against another unit member in her promotion to the position of Head Nurse.

The Union primarily seeks to have the PELRB find that the County has committed unfair labor practices against the Union and its members and that it be ordered to correctly compensate two unit members and make them whole, to cease and desist conduct alleged to be discriminatory or to constitute interference with the unit's administration, to provide appropriate bulletin posting space and to bargain in good faith with the Union.

The Respondent generally denies that any conduct attributed to its agents by the Union is violative of the statutory provisions of RSA 273-A. 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.

After substantial discussion was undertaken at the Pre-Hearing Conference regarding the specifics of each allegation raised in the Union Complaint and the nature of the certain actions as constituting breaches of the parties' collective bargaining agreement. Leave was granted to the Union to amend their Complaint and the Respondent to, thereafter, amend its Answer. Further, the number of witnesses listed by the Union on its Pre-Hearing Worksheet was significantly reduced on the basis that their testimony would be redundant of other persons. As a consequence, the issues for determination at the later scheduled evidentiary hearing by the PELRB were not further delineated and shall hereafter be so by the PELRB.

PARTICIPATING REPRESENTATIVES

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

WITNESSES

The following individuals were identified as witnesses to be called to provide testimony at the hearing on the merits:

For the Complainant

- | | |
|----------------------|-----------------------|
| 1. Sandra Kinsey | 8. Paula Pagonis |
| 2. Katie Leduc | 9. Terry Goonan |
| 3. Jane Chateaufneuf | 10. Rosemarie Krosch* |
| 4. Carol Turgeon | 11. Gregory Wenger* |
| 5. Susan Houghton | 12. Gary Wulf |
| 6. Irene Belanger* | 13. Bruce Moorehead |
| 7. Gail Curtis | 14. Donna Dempsey |

* May not be necessary contingent upon the parties' representatives agreeing to written statements being provided in lieu of testimony.

For the Respondent

1. Bruce Moorehead,
2. Kathy Holt
3. Donna Dempsey
4. Rosemarie Krosch
5. Those individuals named by the Complainant

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. Written request(s) for information (to be further identified or provided)
2. Employee Information Summaries (EIS)
3. Houghton promotion announcement
4. Authorization for Dues Check-off for Houghton and Turgeon
5. Bulletin Posting re: Weingarten Rights
6. Grievance Forms and Answers of Moorhead and Wenger
Re: Turgeon sick leave and probationary status
7. Union response to Wenger

For the Respondent:

1. Parties Collective Bargaining Agreement
2. Employee Information Summaries (EIS) (same as Complainant 's #2)
3. Grievance documents regarding Turgeon Grievances

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 February 4, 2003, with a copy provided to the County's representative. The amendment shall declare with greater specificity what wrongful actions are being alleged, the names of those individuals referred to as participating in the alleged conduct and whether the conduct alleged amounts to a breach of contract, and if so what provision of the parties' collective bargaining agreement, or a statutory violation, or both.
2. The County shall file its further answer to the amended complaint with the PELRB no later than February 18, 2003 with a copy provided to the Union's representative.
3. The parties shall exchange written statements, of prospective witnesses Wenger and Curtis, signed by their respective witness, for acceptance by the other on or before February 18, 2003.
4. The parties shall exchange any outstanding documents reasonably requested by opposing counsel no later than February 18, 2003. 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 might not be revealed or marked prior to the hearing.
6. The party representatives shall forward any final amendments of their Witness and Exhibit lists above to the opposing representative or counsel and to the PELRB no later than February 21, 2003.

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, March 20, 2003 beginning at 9:30 A.M.



Donald E. Mitchell, Esq.
Hearings Officer

So ordered.

Signed this 22nd day of January, 2003

Distribution:

John B. Mendolusky, I.U. Representative
Carolyn M. Kirby, Esq., Assistant County Attorney