

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2715

Complainant

v.

Hillsborough County Nursing Home

Respondent

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Case No: A-0426-56

Decision No. 2004-009

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 2715 (hereinafter "the Union") filed an unfair labor practice complaint on December 12, 2003 alleging that the Hillsborough County Nursing Home (hereinafter "the County") committed unfair labor practices in violation of RSA 273-A:5 I (e), (g), (h) and (i) as the result of unilaterally changing working conditions relative to the granting of sick leave. The Union asserts that the County by its conduct, including language expressed in a letter dated August 6, 2003 from Administrator Bruce Moorehead to the Union, has determined that doctor's notes are not valid for sick time usage. The Union states that an employee, who has since qualified for family medical leave, submitted doctor's notes for her absences and yet was suspended for three (3) days without pay. The Union also indicates that it has been informed that another employee was told that if she did not reduce her sick time usage to zero, she would be fired, presumably without regard to whether or not she submitted a valid doctor's certificate justifying her absence. As remedies, the Union requests, among other things, that the PELRB sustain the complaint, order the County to once again accept doctor's notes as a valid explanation for absences and order the County to make any and all employees whole who were discharged, or otherwise disciplined, for use of sick leave despite having presented a proper doctor's note.

The County filed its answer to the complaint on December 23, 2003. The County denies the Union's complaint and submits that the issues raised by the Union involve the interpretation and application of the parties' collective bargaining agreement (CBA), most specifically Article 10.3. The County asserts that the Union has waived grievances relative to the denial of sick leave and is now attempting to litigate the same matters before the PELRB instead of the negotiated and agreed upon forum, namely final and binding arbitration. Accordingly, the County cross-claims that the Union has itself violated RSA 273-A:5 II (f) and (g), as well as RSA 273-A:4, by failing, inter alia, to use the grievance procedure contained in the parties'

RSA 273-A:4, by failing, inter alia, to use the grievance procedure contained in the parties' CBA. As to the substance of the Union's complaint, the County refutes the contention that it has established a uniform policy of no longer accepting doctor's notes, but states that it reviews employee sick leave usage on a case by case basis. The County requests that the PELRB (1) dismiss the Union's charges, (2) order the Union to hereafter comply with the grievance procedure contained in the CBA, and (3) award the County attorney's fees and costs.

A pre-hearing conference was conducted at the PELRB on February 3, 2004 during which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esq.

For the County: Carolyn M. Kirby, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

(1) Whether or not the Union has committed unfair labor practices within the meaning of RSA 273-A:5 II (f) and/or (g), or otherwise violated RSA 273-A:4, by not utilizing the parties' contractual grievance procedure regarding the alleged wrongful denial of sick leave.

(2) Whether or not the County has committed unfair labor practices within the meaning of RSA 273-A:5 I (e), (g), (h) and/or (i) by unilaterally establishing a policy for the denial of sick leave benefits despite the presentation of doctor's notes by employees.

WITNESSES

For the Union:

1. Richard Burke, President, AFSCME Local 2715
2. Shannon Droz

For the County:

1. Bruce C. Moorehead, Administrator
2. Irene Belanger, RN, Director of Nursing
3. Rosemarie Krosch, Assistant Director of Nursing
4. Dee Stevens
5. Gary Wulf, Labor Relations Consultant

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. 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

Joint Exhibits:

1. Parties' collective bargaining agreement, July 1, 2003 to June 30, 2004.
2. Letter dated August 5, 2004 from Richard Burke to Irene Belanger.
3. Letter dated August 6, 2004 from Irene Belanger to Richard Burke.
4. Shannon Droz grievance and associated documents.

For the Union

1. None other than those marked as "Joint."

For the Employer:

1. Negotiation notes

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub-203:02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION AND ORDER

1. On or before **February 10, 2004**, the Union shall formally identify and furnish information to the County relative to the names of those employees referenced in Paragraphs 5, 6 and 7 of the Complaint, as well as any and all employees on behalf of whom it seeks make whole relief (including the extent of such relief) under Paragraph B of the remedy portion of the Complaint. Likewise, the County shall furnish to the Union the job title and nature of testimony for its listed witness, Dee Stevens. The parties shall forward a copy of any such exchange of information to the PELRB.

2. The parties' representatives shall meet, or otherwise confer, on or before **March 1, 2004** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.

3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. The parties shall file any additional preliminary, procedural or dispositive motions, including a Motion to Dismiss, no later than twenty (20) calendar days prior to the scheduled hearing date.


5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

March 30, 2004 at 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 4th day of February, 2004.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Katherine M. McClure, Esq.
Carolyn M. Kirby, Esq.