



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2715	*	
	*	
	*	
Complainant	*	
	*	Case No: A-0426-58
v.	*	
	*	Decision No. 2004-071
Hillsborough County Nursing Home	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 2715 (hereinafter "the Union") filed an unfair labor practice complaint on March 4, 2004 alleging that the Hillsborough County Nursing Home (hereinafter "the County") committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i) as a result of its failure to furnish certain information to the Union. More specifically, the Union claims that by letter dated July 27, 2003, its' president, Richard K. Burke ("Burke"), requested information from Administrator Bruce Moorehead ("Moorehead") relative to the hiring of a new employee to the position of "Account Clerk II" and the consequential denial of an advancement opportunity to a bargaining unit employee, Martine Cote ("Cote"). A grievance had earlier been filed on behalf of Cote, after she was notified that she did not meet the minimum requirements for the position. The Union asserts that by memorandum dated August 6, 2003, Moorehead denied the Union's request for information necessary to determine if the new hire possessed job qualifications superior to those of the Ms. Cote. The Union alleges further that Burke made a second request for the information, in a letter dated August 26, 2003, and that Moorehead, in a memorandum dated September 2, 2003, again indicated that he would not provide the information requested.

The Union states that the County's conduct in this regard prevents it from being able to properly evaluate the merits of a grievance prior to its proceeding to arbitration and thereby constitutes a violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i). As remedies, the Union asks that the PELRB sustain the complaint, order the County to (1) provide the Union with the information necessary for it to carry out its duties, (2) publicly post the PELRB's findings, (3) make the Union whole for any and all costs and expenses incurred as a result of pursuing the instant charge, and that the PELRB order such other relief that it deems necessary under the circumstances.

The County filed its answer to the complaint on March 16, 2004. The County denies the Union's complaint and, on several grounds, argues that it must be dismissed as a matter of law. It asserts, among other things, that the Union's complaint exceeds the six (6) month statute of limitations set forth in RSA 273-A, and that the Union has failed to follow the negotiated and agreed upon grievance procedure under the parties' collective bargaining agreement (CBA) with respect to the Cote grievance. As the Union has not pursued the Cote grievance to final and binding arbitration, the County contends that it is now effectively waived. The County also maintains that the Union's complaint is defective on its face in that it fails to articulate the basis for the seven (7) alleged violations of RSA 273-A:5, I as related to the instant facts. Although the County does not dispute the basic chronology of events as described in the Union's complaint, it denies that its conduct with respect to the information requested by the Union is violative of RSA 273-A. 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 April 7, 2004, during which representatives of both parties were present.

PARTICIPATING REPRESENTATIVES

For the Union: Bryan Lamirande, AFSCME Staff Representative

For the County: Carolyn M. Kirby, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Is the Union's complaint barred by the six (6) month statute of limitations contained in RSA 273-A:6, VII?
- (2) Should the Union's complaint be dismissed for failure to utilize the parties' contractual grievance procedure?
- (3) Should the Union's complaint be dismissed for lack of ripeness?
- (4) Did the County commit an unfair labor practice, within the meaning of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and/or (i), by its refusal to provide certain information requested by the Union relative to the filling of a job vacancy?

WITNESSES

For the Union:

1. Richard Burke, President, AFSCME Local 2715
2. Bryan Lamirande, AFSCME Staff Representative

For the County:

1. Bruce C. Moorehead, Administrator
2. Sandra Egan

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. Job vacancy postings.
3. Grievance materials/parties' correspondence.

For the Union:

1. Grievant Martine Cote's Transcript, dated September 25, 1995.
2. Grievant Martine Cote's Resume.
3. July 22, 2003 letter from Martine Cote's college re: Medicare and Medicaid.

For the County:

None other than those marked above as "joint."

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. The Union shall provide to the PELRB and to the County, within ten (10) days of the date of this Decision and Order, a written description of the particular facts and legal bases upon which it contends each respective subsection of RSA 273-A:5, as set forth in its complaint, was allegedly violated.
2. The parties' representatives shall meet, or otherwise confer, on or before **July 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 County has indicated its intent to file a Motion to Dismiss based upon its contention that the Union's complaint violates the six (6) month statute of limitations. Said motion shall be filed with the PELRB on or before **June 7, 2004**. The Union's response shall be filed with fifteen days of the filing of the County's motion. The parties shall file any additional preliminary, procedural or dispositive motions 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:

July 13, 2004 @ 9:30 AM

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

So ordered.

Signed this 12th day of May, 2004.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:

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