



Hillsborough County Nursing Home ("County") and/or the Union for its violation of RSA 273-A:5, II (a); and/or its failure to represent her adequately.

The Union filed an answer to Ms. Sherwood's motion on February 17, 2005 wherein it denies any failure to represent Ms. Sherwood adequately. It also states that the PELRB's Consent Decree should not be vacated as it has no relevance or bearing on Ms. Sherwood's termination grievance. According to the Union, the evidence reflects that the reference in the PELRB's May 25, 2004 Consent Decree to a claim by Ms. Sherwood pertained to FMLA leave. In fact, as explained by the Union, the County acknowledged receipt of Ms. Sherwood's termination grievance in a letter dated June 15, 2004. The Union also contends that Ms. Sherwood's charge against the Union, brought under RSA 273-A:5, is untimely. The Union asks that the PELRB deny all remedies requested by Ms. Sherwood and grant it all costs incurred in defending the present action.

The County filed its objection to Ms. Sherwood's motion on February 18, 2005. It denies many of the facts alleged in the motion, but specifically denies that it was a party to any alleged fraud. By way of further answer, the County states that Ms. Sherwood's pleading is untimely, noting that in her own affidavit, attached thereto, she indicates her awareness of the unfair labor practice charge and consent decree in July 2004. The County also points out that under RSA 273-A the Union is the certified and exclusive representative of Ms. Sherwood and therefore authorized to represent her and negotiate on her behalf. In this context, the County contends that it is not a proper party to the alleged unfair labor practice charge that Ms. Sherwood has filed against the Union and submits that it should be dismissed from that action. Accordingly, the County requests that the PELRB deny all motions filed by Ms. Sherwood and dismiss the complaint.

A pre-hearing conference was conducted before the undersigned hearing officer at PELRB offices on March 14, 2005. During the pre-hearing conference, counsel for Ms. Sherwood proposed that the instant matter be placed into abeyance for a brief period pending an anticipated settlement being reached between Ms. Sherwood and the County. As a result of such settlement, counsel surmised that the instant motion might be withdrawn. Counsel for the Union objected and indicated her intent to file a Motion to Dismiss. Upon the consent and agreement of all counsel present, the hearing officer established a timetable for further filings in this matter.

#### PARTICIPATING REPRESENTATIVES

For Ms. Sherwood: David L. Nixon, Esq.

For the Union: Katherine McClure, Esq.

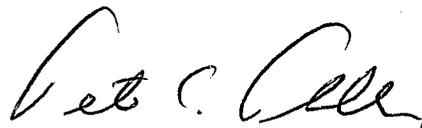
For the County: Carolyn M. Kirby, Esq.

DECISION AND ORDER

1. In response to Ms. Sherwood's February 3, 2005 filing, the Union shall file its Motion to Dismiss, with supporting memorandum of law, on or before **March 30, 2005**.
2. Ms. Sherwood shall file her written response to the Union's Motion on or before **April 15, 2005**. The County shall file its written response, if any, to the Union's Motion on or before **April 15, 2005**.
3. Upon receipt, review and consideration of all submissions by the parties, the PELRB will schedule a hearing, schedule a supplemental pre-hearing conference, or deny the pending motion.
4. In the event this matter is scheduled for an evidentiary hearing, the parties' representatives shall meet, or otherwise confer, at least ten (10) days prior to the hearing date 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.
5. In the event this matter is scheduled for an evidentiary hearing, the parties' representatives shall provide a Witness and Exhibit list to the opposing representative(s), and to the PELRB, at least five (5) days prior to the scheduled hearing date. The Witness list shall contain a specific description of the anticipated testimony, and an offer of proof, for each witness to be called.
6. 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.

So ordered.

Signed this 17<sup>th</sup> day of March, 2005.



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Peter C. Phillips, Esq.  
Hearings Officer

Distribution:

David L. Nixon, Esq.  
Katherine McClure, Esq.  
Carolyn M. Kirby, Esq.