



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2715, Hillsborough County
Nursing Employees

Complainant

v.

Hillsborough County Nursing Home

Respondent

*
*
*
*
*
*
*
*
*
*

Case No: A-0426-69

Decision No. 2006-029

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 2715, Hillsborough County Nursing Employees (hereinafter "Union") filed an unfair labor practice complaint on October 28, 2005 alleging that the Hillsborough County Nursing Home (hereinafter "Nursing Home" or "County") committed an unfair labor practice in violation of RSA 273-A:5 I (e), (h), and (i), by unilaterally imposing a new restriction on the use of vacation time. More specifically, the Union alleges that on April 29, 2005 the Director of Nurses for the Nursing Home, Irene Belanger, distributed a memorandum regarding the use of vacation time. This memorandum, as referenced by the Union, reads, in part, that "[v]acation time on weekends has only been approved if the weekend falls in the middle of a two (2) week vacation." It is the Union's contention that this language constitutes a new restriction in vacation usage. The Union states that on October 13, 2005 a letter was sent to Bruce Moorehead, Administrator of the Nursing Home, notifying him of the Union's intent to file an unfair labor practice if the memorandum was not rescinded. The Union submits that as of the date it filed the instant complaint it had not received a response from the County. The Union requests that the PELRB: (1) find that the County has committed an improper labor practice in violation of RSA 273-A:5, I (e), (h) and (i); (2) order the County to cease and desist in this unilateral change in terms and conditions of employment; (3) order the County to negotiate in good faith; (4) order the County to publicly post the findings of the Board for 30 (thirty) business days (5) order the County to make the Union whole for any and all costs and expenses incurred; and (6) order any and all other relief as it may deem necessary and appropriate.

The County filed its answer denying the Union's charge on November 28, 2005.¹ While the County generally admits to the factual chronology as described in the Union's complaint, it denies that it has committed any improper labor practice. While the County admits that Director of Nursing Irene Belanger authored the April 29, 2005 memorandum, it denies that the contents therein imposed a new restriction on vacation usage. It also submits that contrary to the allegation raised in the complaint, Administrator Moorehead provided a written response to the Union's October 13th letter. By way of further answer, the County states, among other things, that the instant matter involves the application and interpretation of provisions of the parties' CBA, which includes final and binding arbitration. The County therefore asserts that the Union's failure to pursue the matter through the grievance process constitutes a waiver of any claim it may have had under the CBA. Accordingly, the City requests that the PELRB (1) dismiss the instant improper practice charge (2) Award attorney's fees and costs; and (2) grant whatever further relief the Board deems just and proper.

A pre-hearing conference was conducted on February 13, 2006 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Erin L. Goodwin, Esq. on behalf of Jamie DiPaola, Esq.

For the County: Carolyn M. Kirby, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Does the Board have jurisdiction in this matter or should the matter have appropriately been pursued under the parties' contractual grievance procedure?
- (2) Did the County violate RSA 273-A:5, I (e), (h) and/or (i) by imposing a new restriction on vacation usage through the April 29, 2005 memorandum?

WITNESSES

For the Union:

1. Bryan Lamirande, AFSCME Staff Representative
2. Randy Hults, Union Steward
3. Rebuttal Witnesses, if necessary.

For the County:

1. Bruce Moorehead, Administrator
2. Irene Belanger, Director of Nursing
3. Rebuttal Witnesses, if necessary

¹ A motion to extend the deadline for filing the County's answer to November 30, 2005 was granted by the Board on November 7, 2005.

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. Certification
2. Collective Bargaining Agreement, July 1, 2003-June 30, 2004.
3. Memo to All Nursing Employees dated 4/29/05.
4. Letter from Bryan Lamirande to Bruce Moorehead dated 10/13/05.

For the Union:

1. Policies and Procedure Manual for Hillsborough County.

For the County:

1. Letter from Bruce Moorehead to Bryan Lamirande dated 10/28/05.

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 four (4) hours.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before February 23, 2006 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 by that date.
2. 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.

3. 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:

February 28, 2006 @ 9:30 AM

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

It is so ordered.

Signed this 13th day of February 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Jamie DiPaola, Esq.
Carolyn Kirby, Esq.