



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME LOCAL 2715, HILLSBOROUGH
COUNTY NURSING HOME EMPLOYEES**

COMPLAINANT

CASE NO. G-0046-13

v.

DECISION NO. 2009-203

HILLSBOROUGH COUNTY NURSING HOME

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: October 2, 2009

Appearances: Complainant - Karen E. Clemens, Esq.
 Respondent - Carolyn M. Kirby, Esq.

Background:

AFSCME Local 2715, Hillsborough County Nursing Home Employees (Union) filed an unfair labor practice complaint against the Hillsborough County Nursing Home (County) on August 19, 2009. The Union claims that the County violated RSA 273-A:3 and RSA 273-A:5, I (b), (c), (e), (g), (h) and (i) by failing to notify the Union of its intent to eliminate the Unit Aid positions and replace them with Licensed Nursing Aide (LNA) positions and by directly dealing with the bargaining unit members.

The Union requests the PELRB to find that the County has failed in its obligation as a public employer to bargain in good faith and is guilty of improper labor practices, to order the County to cease and desist dominating, and interfering with, the employee organization, to order the County to forthwith bargain in good faith, to order the County to publicly post the findings of the PELRB for 30 business days, and to order the County to make the Union whole for any and all costs and expenses incurred to pursue the prohibited practice charge.

The County filed an answer on September 3, 2009. The County denies the charge of unfair labor practice and contends that it has the rights to structure its workforce under RSA 273-A and to communicate with employees about matters that are not mandatory subjects of bargaining.

The County requests that the PELRB dismiss the charges and award attorney's fees and costs.

On October 2, 2009 the representatives of the County and the Union attended the pre-hearing conference at the PELRB offices in Concord. At the pre-hearing conference, the Union's representative indicated that the Union intends to file a motion to amend the complaint and a request for a cease and desist order.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the County violated RSA 273-A:3 and RSA 273-A:5, I (b), (c), (e), (g), (h), and (i).

WITNESSES

For the Union:

1. Steve Lyons
2. Paula Martel
3. Christine Benner

4. Charlie Foss
5. Micheline Barriere
6. Susan Nason

For the County:

1. Bruce Moorehead
2. Thomas Flygare
3. Kathy Covert
4. Heidi Bernier

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

Joint and Agreed:

1. Parties' Collective Bargaining Agreement. Expiration date June 30, 2008
2. Nurse Leadership Meeting Notes from June 3, 2009
3. June 11, 2009 letter from Steve Lyons to Bruce Moorehead regarding elimination of Unit Aide positions

For the Union:

1. May 28, 2009 memo from Bruce Moorehead to Susan Nason and Kevin Poulin
2. May 28, 2009 memo from Bruce Moorehead to Susan Nason and Kevin Poulin with a CC to Paula Martel
3. Notice to Bruce Moorehead dated February 16, 2009 indentifying who holds the Union positions
4. Notice dated January 23, 2009 from Steve Lyons to Bruce Moorehead requesting future correspondence to be directed to the Union President Paula Martel.
5. Notice dated January 23, 2009 from Steve Lyons to Gregory Wegner requesting future correspondence to be directed to the Union President Paula Martel
6. January 28, 2009 email exchange between Steve Lyons and Bruce Moorehead regarding the January 23, 2009 memo.

For the County:

1. General Staff Meeting Agenda and attendance record. March 2009

2. Nurse Leadership Meeting Notes from June 3, 2009
3. June 9, 2009 memo from Bruce Moorehead to Susan Nason and Kevin Poulin regarding LNA training
4. June 9, 2009 memo from Bruce Moorehead to Charlie Foss and Mary Cameron regarding LNA training

Both parties reserve the right to amend their Lists 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. 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.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
2. The Complainant shall file a motion to amend the complaint no later than **October 6, 2009**. In the event the complaint is amended, the County shall file an answer to the amended complaint no later than **October 12, 2009**.
3. The parties shall file a Statement of Stipulated Facts no later than **October 12, 2009**
4. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than **October 12, 2009**.
5. The parties shall 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 203.03.

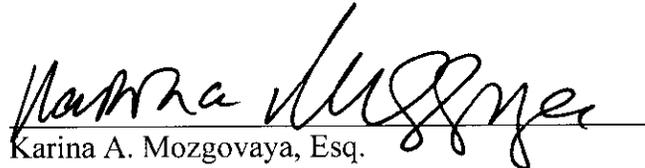
HEARING

Unless otherwise ordered as a result of the filing of a motion to continue or other motion, the adjudicatory hearing between the parties will be held on **October 20, 2009 at 9:00 AM** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this

hearing is 5 hours. 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 5 days prior to the date of hearing.

So ordered.

October 2, 2009


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

Karen E. Clemens, Esq.

Carolyn M. Kirby, Esq.