



State of New Hampshire
Public Employee Labor Relations Board

AFSCME Local 3657, Hillsborough County Sheriff's Office

v.

Hillsborough County

Case No. G-0012-22

Decision No. 2020-012

Pre-Hearing Memorandum and Order

Date of Conference: January 13, 2020

Appearances: Sean Cronin, Esq., for the Complainant
Carolyn Kirby, Esq., for the Respondent

Background:

On November 25, 2019, the AFSCME Local 3657, Hillsborough County Sheriff's Office (Union) filed an unfair labor practice complaint against Hillsborough County under the Public Employee Labor Relations Act claiming that the County Sheriff's Office had violated RSA 273-A:5, I (a), (c), (e), (g), (h), and (i) when it unilaterally changed the manner in which it administered outside details/extra work and "standby duty"/mandatory overtime assignments while the parties were in negotiations on a successor collective bargaining agreement (CBA). The Union also claims that: (1) at least since the issuance of the 1995 arbitrator's decision related to mandatory overtime, the County has been using only part-time employees for "standby duties"; (2) the changes to the "standby duty" and "outside details" assignment procedures were made in retaliation for the Union's refusal to agree to the County's "standby duty" bargaining proposals; and (3) such actions constitute an impermissible refusal to bargain in good faith. The

Union requests, among other things, that the PELRB (1) find that the County violated RSA 273-A:5, I (a), (c), (e), (g), (h), and (i); (2) order the County to cease and desist from violating the CBA; (3) order the County to cease and desist from using the new standby duty assignment procedure ("Ordering In Procedure") and to bargain the impact of any proposed changes to the CBA; (4) order the County to cease and desist from coercing bargaining unit employees and interfering with their statutory rights, specifically by threatening to take away outside details; (5) order the County to negotiate in good faith and not implement a portion of its "last best offer" made to the Union at the bargaining table; (6) issue an interim cease and desist order under RSA 273-A:6, III; (7) order the County to post publicly the PELRB's findings for 30 business days; and (8) order the County to make the Union whole for all costs and expenses incurred to pursue the prohibited practice charge.

The County denies the charges and asserts, among other things, that the Union attempts to "bootstrap a pending grievance related to extra work (which by definition is not part of deputies' regular duties) with management's efforts to structure predictable coverage for regular statutory duties in an effort to shift the focus away from the sworn staff's apparent failure to be available for mandated statutory duties." The County also claims (1) that the outside details assignment has always been at the Sheriff's discretion; (2) that the outside details' cancellation was not in retaliation for the Union's rejection of the County's bargaining proposal and only lasted one week; (3) that the memo regarding "standby duties" did not establish a new procedure but instead "formalized" the existing procedure; (4) that the Sheriff's Office is a "paramilitary organization that retains the right to order in staff when coverage is needed"; (5) that the Union failed to utilize the grievance procedure for any purported violation of Article 5 of the CBA and, therefore, "waived the complaint"; and (6) that the Union failed the state a claim upon which relief can be granted. The County requests that the PELRB dismiss the charges and order the

Union to make the County whole for all costs and expenses in defending this prohibited practice charge.

Issues for Determination by the Board

Whether the County violated RSA 273-A:5, I (a), (c), (e), (g), (h), and (i) as charged by the Union.

Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.

Decision

1. "Parties" means the Union, the County or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the Union indicated that it intends to file a motion to continue the hearing scheduled for February 12, 2020. Any motion to continue shall be filed no later than **January 21, 2020** and shall contain 5 proposed hearing dates acceptable to both parties.
3. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a comprehensive statement of stipulated facts no later 10 days prior to the date of hearing. All non-joint exhibits on the lists of exhibits shall be pre-marked as either "ID" (if objected to) or "Full by Agreement."
4. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed

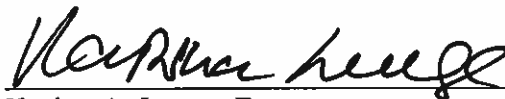
exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

Hearing

Unless otherwise ordered, the hearing in this case will be held on **February 12, 2020, at 8:30 a.m.**, at the offices of the PELRB in Concord. The time set aside for this hearing is 4 hours. If either party believes that additional time is required, a written notice of the need for additional time, together with a detailed explanation of the basis for the request, shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 1/13/2020



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

Distribution: Carolyn Kirby, Esq.
Sean Cronin, Esq.