



State of New Hampshire
Public Employee Labor Relations Board

New England Police Benevolent Association

v.

Hillsborough County
(County Attorney's Office)

Case No. G-0278-3
Decision No. 2020-161

Order

I. Background:

On July 17, 2020 the New England Police Benevolent Association (Union) filed an unfair labor practice charge claiming the County has violated RSA 273-A:5, I (a), (g), (h) and (i). In the complaint the Union reviews a work at home arrangement which the County ended effective on July 18, 2020 (the day after the complaint was filed) without first (or since) bargaining with the Union over the working conditions at the Hillsborough County Attorney's Office. In paragraph 12 of the complaint the Union itemizes the bargaining subjects as safe workplace distancing, bathroom facilities, lunchroom, cleaning supplies, masks and hand sanitizer, records of janitorial services, building entry procedures for employees and visitors, and specific guidelines or procedures. As relief, the Union asks the board to order the County to "cease and desist from its conduct and to bargain with the Union regarding the conditions under which employees may be required to work at regular office locations in lieu of continuing the work-at-home arrangement." Union complaint at paragraph 16.

On July 17, 2020 the Union also filed a request for an immediate cease and desist order which requires the County to maintain the status quo work at home arrangement pending the hearing on the complaint. The County duly filed its objection, and on July 29, 2020 the board held a motion hearing on the Union request for a cease and desist.¹

The history relevant to the Union's request for an immediate cease and desist order includes the following. On March 13, 2020 the Governor issued Executive Order No. 2020-004 declaring a state of emergency due to Novel Coronavirus (COVID-19). The Governor has renewed this order multiple times, most recently on July 17, 2020 by Executive Order No. 2020-15. At its March 25, 2020 meeting the Hillsborough County Board of Commissioners (BOC) voted to approve Tele-work arrangements for County employees as detailed in the County's Exhibit at 28-31. On March 26, 2020, the Union emailed the County a proposed Memorandum of Agreement (Union MOA) containing a proposed work from home policy for the County Attorney's Office employees it represents.² Union MOA paragraph 5 states that: "...The modified (Tele-work) schedule shall be in effect until such time as the State of Emergency is lifted and/or upon a vote of the Hillsborough County Commission, provided the work environment is safe and healthy to do so." However, this language was not included in the Tele-Work Agreement (TWA) the parties entered into on March 27, 2020. See County Exhibits at 26-27 (Union MOA) and 32-33 (March 27, 2020 TWA). Of particular relevance to the board's analysis are paragraphs 3-5 of the TWA, which provide as follows:

3. This Agreement is a temporary response to a national crisis that may be revoked at

¹ Prior to the motion hearing both parties filed exhibits. The County's exhibits were accepted into the record without objection, as were the Union exhibits, with the exception of certain workplace photographs, which were accepted over the County's objection.

² The Union is the exclusive representative of the employees in the following positions in the Hillsborough County Attorney's Office: Secretarial positions, Clerical positions, and Professional positions, including Victim/Attorney Advocates and the Paralegal positions. Unit exclusions are: the County Attorney, Legal Interns, the Drug Prosecutor, the Domestic Violence Attorney, Attorneys, the Victim/Witness Director, and the Office Manager. See PELRB Decision No. 2019-032 (February 11, 2019)(Board Certification of Representative and Order to Negotiate).

the sole discretion of the County.

4. The Union will not grieve the application or administration of the Temporary Tele-Work Program.

5. This Agreement is a one-time non-precedent setting response and shall terminate upon cessation of the Temporary Tele-Work Program.

In summary, the Union's effort to obtain a TWA which conditioned the TWA's termination on a determination, presumably agreed upon, that the work environment is safe and healthy was unsuccessful. On June 30, 2020 the BOC voted to terminate the TWA effective July 18, 2020.

II. Discussion and Decision:

The board's authority to issue a cease and desist order pending a hearing on an unfair labor practice charge is set forth by statute and administrative rule, relevant portions of which are as follows:

RSA 273-A:6 Violations.

I. The board shall have primary jurisdiction of all violations of RSA 273-A:5...

II. The board may issue a cease and desist order if it deems one necessary in the public interest, pending the hearing.

Pub 304.02 Interim Orders.

(a) When the board considers it to be in the public interest, it shall issue a cease and desist order under RSA 273-A:6, III pending a hearing under Pub 201.05.

(b) The board shall issue such an order for reasons to include, but not limited to:

- (1) Protection of the public safety;
- (2) To avoid prejudice to one party or another; or
- (3) To avoid irreparable harm.

In making our decision we emphasize the history leading up to the TWA, a history which included the Union's request for language that specifically conditioned the termination of a work-at-home agreement on a safe and healthy work environment. Ultimately, however, the

Union elected to enter into the March 27, 2020 TWA. While the TWA addresses many bargaining unit employee workplace concerns it does so on a temporary basis. In these circumstances, and especially given the specific duration and termination language actually included in the TWA, we find there is no legal basis upon which we can, under the provisions of RSA 273-A:6, III or Pub 201.05, limit or interfere with the County's exercise of its agreed authority to terminate the TWA as it has done. Therefore, the Union's request for a cease and desist order is denied.

In reaching our decision we do not intend to minimize or disregard employee concerns about health and safety issues in the workplace, nor are we making a determination about whether the County's actions violate any provisions of RSA 273-A. At this juncture, we do have concerns about the County's apparent reluctance, if not refusal, to bargain about working conditions, irrespective of the status of the TWA.³ Although we are not deciding the charges in the complaint at this time, we have been provided with a fairly extensive preview of the likely evidence at a hearing on the merits. It is apparent that the County has taken a number of steps which it sincerely believes address and improve working conditions for bargaining unit employees. However, in the context of RSA 273-A bargaining, such actions can be, technically, beside the point, depending on the specific circumstances of a particular case. This is because unilateral action by an employer, however well-intended, on matters which involve a mandatory subject of bargaining is not the equivalent of, or a substitute for, an employer's bargaining obligations under RSA 273-A. We are confident that both parties are familiar with this bargaining principal. In fact, it is our impression that both parties are relatively sophisticated and experienced in public sector labor relations and have the skills necessary to address and resolve

³ We also note that the complaint fails to specifically cite that the County has violated RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations).

challenging labor relations issues on their own. We believe this is a case where the parties can employ their skills and experience to reach a negotiated resolution, and we strongly encourage the parties to work diligently toward such an agreement.

In terms of the docket, the next step in this case will be the scheduling of a pre-hearing conference and hearing - we expect the parties to report the status of their efforts to address and resolve the issues raised in the complaint at the time of the pre-hearing conference.

So ordered.

August 3, 2020

/s/ Peter G. Callaghan
Peter G. Callaghan, Esq., Alternate Chair

By unanimous vote of Alternate Chair Peter G. Callaghan, Esq., Board Member Carol M. Granfield, and Alternate Board Member Glenn Brackett.

Distribution: Peter Perroni, Esq.
Carolyn M. Kirby, Esq.