



State of New Hampshire
Public Employee Labor Relations Board

International Chemical Workers Union Council/UFCW

v.

Hillsborough County Nursing Home

Case No. G-0292-2
Decision No. 2020-179

Pre-Hearing Memorandum and Order

Date of Conference: August 18, 2020

Appearances (WebEx): August Randall Vehar, Esq. and Danielle L. Murphy, Esq. for the Complainant

Carolyn M. Kirby, Esq. for the Respondent

Background:

On July 10, 2020, the International Chemical Workers Union Council/UFCW (Union) filed an unfair labor practice complaint¹ against the Hillsborough County Nursing Home (County) under the Public Employee Labor Relations Act claiming that the County had violated RSA 273-A:5, I (e)(refusal to negotiate in good faith) when it unilaterally decided to exempt the Nursing Home employees from the paid Covid-19 related FMLA coverage provided by the certain federal statutes (FFCRA², EPSLA³ and EFMLEA⁴). The Union asserts that (1) these federal statutes provide extended paid FMLA/sick leave to employees unless the employer takes a discretionary action to exclude its staff from this coverage; (2) in March, 2020, the County, without notice to the Union

¹ The complaint was amended on July 24, 2020 per PELRB Decision No. 2020-151.

² Families First Coronavirus Response Act.

³ Emergency Paid Sick Leave Act.

⁴ Emergency Family and Medical Leave Expansion Act.

or bargaining, voted to exercise its discretion and exempted bargaining unit employees from the extended paid FMLA/sick leave coverage; (3) a change to the paid FMLA/sick leave coverage provided by federal law is a mandatory subject of bargaining; (4) the County was required to give the Union a notice and an opportunity to bargain over the change; and (5) the County's failure to provide a notice and an opportunity to bargain over its decision to exempt bargaining unit employees from the coverage constitutes a breach of its duty to bargain in good faith as required under RSA 273-A:5, I (e). The Union requests that the PELRB order the County (1) to reverse the unilateral change; (2) to reinstate paid Covid-19 related coverage; and (3) to make affected employees whole by paying the employees who should have been paid and restoring vacation and other paid leave taken.

The County denies the charges and asserts, among other things, that: (1) the County exercised its legal right, as provided by federal law, to exclude health care providers at the Nursing Home from the FFCRA; (2) the FFCRA is not a benefit offered by the County; (3) the FFCRA is not a mandatory subject of bargaining; (3) the parties were bargaining a successor collective bargaining agreement (CBA) when the FFCRA was passed and when the County exempted bargaining unit employees from its coverage; (4) the Union raised the FFCRA topic during CBA negotiations; (5) the current CBA, which does not address the FFCRA, was signed and ratified by the parties and was implemented on July 1, 2020; (6) following the implementation of the CBA, the Union demanded impact bargaining on the FFCRA and the County declined to open negotiations and bargain. The County also filed a motion to dismiss the complaint on the ground that the Union failed to state a claim upon which a relief can be granted. The County argues that: (1) the federal law reserves to the employers of health care providers, like Nursing Home employees here, exclusive authority to exclude employees from its application; (2) the decision to exclude health care workers from the application of certain provisions of the FFCRA was within

the exclusive managerial authority of the County pursuant to the federal law; and (3) the County's disputed decision is a prohibited subject of bargaining under the three-part test outlined in *Appeal of State of New Hampshire*, 138 N.H. 716, 722 (1994). The County requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

Whether the County violated RSA 273-A:5, I (e) as charged by the Union.

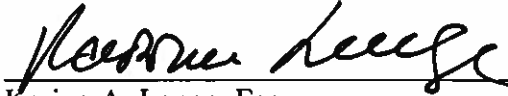
Decision

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 parties agreed to submit this matter for decision on stipulated facts, exhibits, and briefs. Accordingly, the September 9, 2020 hearing is cancelled. The parties shall file a joint statement of stipulated facts and exhibits on or before **September 23, 2020**. The parties shall file opening briefs on or before **September 25, 2020** and reply briefs, if any, on or before **October 9, 2020**. Relevancy objections, if any, should be specifically notated as to any exhibit or affidavit and the relevancy arguments should be made in the briefs.

So ordered.

Date:

8/19/2020



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

Distribution: Eugene White, Union Representative
Carolyn M. Kirby, Esq.
August Randall Vehar, Esq.
Danielle L. Murphy, Esq.

