



State of New Hampshire
Public Employee Labor Relations Board

International Chemical Workers Union Council, UFCW

v.

Hillsborough County Nursing Home

Case No. G-0292-4
Decision No. 2022-040

Pre-Hearing Memorandum and Order

Date of Conference: March 17, 2022

Appearances: Randall Vehar, Esq., for the Complainant
Carolyn M. Kirby, Esq., for the Respondent

Background:

On February 15, 2022, the International Chemical Workers Union Council, UFCW (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Hillsborough County Nursing Home (HCNH) claiming that the HCNH violated RSA 273-A:5, I (a)(To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter), (b)(To dominate or to interfere in the formation or administration of any employee organization), (c)(To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization), (d)(To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter), (g)(To fail to comply with this chapter or any rule adopted under this chapter), and (h)(To

breach a collective bargaining agreement). The Union alleges, among other things, as follows: (1) HCNH Occupational Therapist Eric Duquette has been an active union member, a member of the Union's negotiating team, and the Union vice-president; (2) among other things, he filed an affidavit on behalf of the Union in the unfair labor practice proceedings before the PELRB in 2020-21; (2) the HCNH disciplined Mr. Duquette in retaliation for his protected union activity; and (3) the HCNH committed an unfair labor practice by "repeatedly reprimanding, disciplining or threatening discipline, suspending, and/or otherwise attempting to intimidate, coerce and/or interfere with the Employee's exercise of his rights under the Act, because he has engaged in protected concerted and /or unit activity." The Union later moved to amend the complaint alleging that the HCNH also violated RSA 273-A:5, I (a), (e)(To refuse to negotiate in good faith with the exclusive representative of a bargaining unit ...), and (h) when it refused to provide information the Union requested in connection with its investigation and prosecution of Mr. Duquette's grievance and its complaint in this case. The Union requests, among other things, that the PELRB order the HCNH (1) to cease and desist from "all unlawful harassment, discipline, and other improper actions against the employee"; (2) to remove all related disciplinary actions and references thereto from the employee's records; and (3) to make the employee whole for any loss of pay or benefits. In its motion to amend, the Union also request that the PELRB order the HCNH to rescind any policy or practice that prohibits the Union from obtaining lawfully requested information necessary to investigate alleged breaches of the CBA and to promptly provide the Union with "lawfully requested" information.

The HCNH denies the charges. The HCNH asserts, among other things, as follows: (1) the HCNH appropriately disciplined the employee in accordance with a progressive disciplinary procedure, with a Union representative present and available for consultation; (2) the employee's

latest disciplinary action is the subject of a pending grievance, which includes a final and binding arbitration step; (3) discipline is the subject of Article IV of the CBA; (4) the Union is attempting to circumvent the CBA and challenge the discipline outside the contractual grievance process and beyond the time frame agreed to by the parties; and (5) the Union is attempting to resurrect PELRB Case G-0292-2 and the "employee's prior disciplinary action". The HCNH also raises the "affirmative defenses of statute of limitations for both RSA 273-A and the CBA." The HCNH requests that the PELRB dismiss the charges.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over some or all of the Union's claims.
2. Whether the HCNH violated RSA 273-A:5, I as charged by the Union.

Decision

1. "Parties" means the Union, the HCNH or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. On February 25, 2022, the Union filed a motion to amend the complaint by adding allegations that the HCNH violated RSA 273-A:5, I (a), (e), and (h) when it refused to provide information the Union requested in connection with its investigation and prosecution of Mr. Duquette's grievance and the complaint in this case. The HCNH objected to this motion on the ground that it is "more accurately recognized as a response to the Answer filed by the County and thus not a proper amendment or basis to amend." Admin. Rule Pub 201.04 (b) provides that "[t]he board shall permit an amendment to the complaint or to the answer which is filed and requested at least 15 days prior to the date of hearing upon due notice to all parties." In this case, the motion to amend was filed more

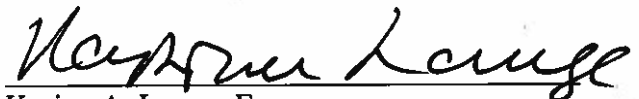
than 15 days prior to the date of hearing (April 1, 2022). Based on the parties' submissions and in accordance with the Admin. Rule Pub 201.04 (b), the Union's motion to amend the complaint is granted. Any answer to the amended complaint shall be filed on or before **April 1, 2022**. See Admin. Rule Pub 201.04 (d).

3. During the pre-hearing conference, the HCNH moved to continue the April 1, 2022 hearing. The Union assented to the motion. The assented to motion to continue is hereby granted. The April 1, 2022 hearing and the associated filing deadlines are cancelled.
4. Based on the discussions during the pre-hearing conference, it appears that the parties are working to resolve some or all issues in this case. A WebEx status conference is scheduled for **May 20, 2022, at 9:00 a.m.**, at which time the parties shall update the PELRB on their efforts to resolve this matter and shall also be prepared to discuss the scheduling of a June, 2022 hearing, if needed. The parties shall promptly inform the PELRB of any resolution of this case in the interim.

So ordered.

Date:

03/18/2022



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

Distribution: Randall Vehar, Esq.
Carolyn M. Kirby, Esq.