



State of New Hampshire
Public Employee Labor Relations Board

International Chemical Workers Union Council/UFCW

v.

Hillsborough County Nursing Home

Case No. G-0292-6
Decision No. 2024-105

Order

I. Background:

The International Chemical Workers Union Council/UFCW (Union) filed an unfair labor practice complaint on May 10, 2024. According to the Union, the County failed to provide a holiday pay benefit required by the parties' collective bargaining agreement (CBA).¹ The Union filed a grievance, and when the County denied the grievance at Step 2, the Union emailed a "demand to bargain a unilateral change in working conditions." The County did not agree to bargain as the Union requested. The Union continued to process its grievance, which is now the subject of CBA Article 5 arbitration.²

The Union claims the County's actions constitute unfair labor practices under RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit...), (g)(to fail to comply with this chapter or any rule adopted under this chapter), and (h)(to breach a collective bargaining agreement).

¹ The parties' July 1, 2023 – June 30, 2025, Collective Bargaining Agreement is on file with the PELRB per N.H. Admin. Rules, Pub 201.02 (d)(1) and (2).

² Grievance arbitration is final and binding under CBA Article 5.

The County denies the charges, emphasizing that the holiday pay dispute is the subject of pending arbitration, and arguing that the PELRB lacks jurisdiction because the arbitrator's decision will be final and binding on the parties per the CBA.

II. Pending motions:

The Union has moved to defer proceedings in this case pending the completion of the arbitration. The County objects and has moved to dismiss claiming the PELRB lacks jurisdiction.

III. Discussion:

“The extent of the parties’ agreement to arbitrate determines the arbitrator’s jurisdiction, and the overriding concern is whether the contracting parties have agreed to arbitrate a particular dispute.” *Appeal of City of Manchester*, 153 N.H. 289, 293 (2006)(quotations and citations omitted). The PELRB “does not generally have jurisdiction to interpret the CBA when the CBA provides for final binding arbitration. Absent specific language to the contrary in the CBA, however, the PELRB is empowered to determine as a threshold matter whether a specific dispute falls within the scope of the CBA.” *Id.* at 293 (citations omitted). The PELRB determines whether a particular dispute is arbitrable based on the following four general principles:

(1) arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit ...; (2) unless the parties clearly state otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator; (3) a court should not rule on the merits of the parties['] underlying claims when deciding whether they agreed to arbitrate; and (4) under the “positive assurance” standard, when a CBA contains an arbitration clause, a presumption of arbitrability exists, and in the absence of any express provision excluding a particular grievance from arbitration,... only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail ...

Appeal of the City of Manchester, 144 N.H. 386, 388 (1999)(citations omitted).

A presumption of arbitrability exists if the CBA contains an arbitration clause, but the court may conclude that the arbitration clause does not include a particular grievance if it determines with positive assurance that the CBA is not susceptible of an interpretation that covers the dispute. Furthermore, the principle that doubt should be resolved in favor of arbitration does not relieve a court of the responsibility of applying traditional principles of contract interpretation in an effort to ascertain the intention of the contracting parties.

Appeal of Town of Bedford, 142 N.H. 637, 640 (1998).

Under CBA Article 5.1, “[a] grievance is defined as any dispute or disagreement between an employee or group of employees covered by this Labor Agreement or the Union concerning the application or interpretation by the Employer and/or its agents of any provisions of this Agreement.” In this case, interpretation of the CBA will be necessary to determine when, and to whom, the CBA Article 18 holiday pay benefit³ is provided, and whether the County has acted in violation of this provision. Per CBA Article 5.5, the parties have agreed to final and binding arbitration as the last step in the grievance procedure. I cannot find, with positive assurance, that the parties’ CBA is not susceptible of an interpretation that covers the dispute over the holiday pay benefit. Given the provision for final binding arbitration, the PELRB does not have jurisdiction to interpret the CBA and decide the holiday pay dispute.

The Union seeks to distinguish this case, arguing there is uncertainty about how the arbitrator will handle past practice issues which, in conjunction with the sub-sections (e) and (g) claims, means the PELRB does have jurisdiction and proceedings in this case should be deferred. However, this argument misapprehends the extent of the arbitrator’s authority. See, e.g., *Appeal of Merrimack County*, 156 N.H. 35 (2007); *State Employees’ Association of NH, SEIU Local 1984 v. Town of Littleton*, PELRB Decision No. 2024-068 (April 29, 2024); and *State Employees’ Association of NH, SEIU Local 1984 v. State of New Hampshire Veterans Home*, PELRB Decision No. 2022-024 (February 10, 2022). The extent to which any past practice is relevant to, and determinative of, the holiday pay grievance is for the arbitrator to resolve. And while the Union responded to the County’s Step 2 grievance denial by demanding negotiation over an alleged unilateral change in working conditions,⁴ and then included claims alleging

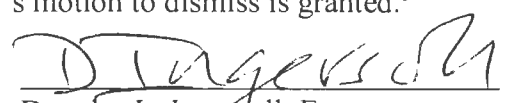
³ CBA Article 18.1 lists thirteen paid holidays, and Article 18.5 states “[e]mployees shall be paid for one shift for each of the above holidays when not worked...”

⁴ The withholding of the holiday pay benefit.

violations of sub-sections (e) and (g), such claims about the County's alleged failure to negotiate are completely derived from the County's Step 2 action on the grievance. Furthermore, following the County's Step 2 denial of the grievance, the agreed process to challenge the County's decision is the Union's advancement of the grievance through the additional steps of the grievance procedure, which the Union has done. The Union's argument relating to past practice and the sub-sections (e) and (g) claims is not persuasive and is insufficient to alter the jurisdictional analysis under the cited authorities.

In accordance with the foregoing, the Union's motion to defer proceedings pending the completion of arbitration is denied, and the County's motion to dismiss is granted.⁵

Date: 6/5/2024



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⁵ It is axiomatic that the Union retains the right, following the issuance of the arbitration decision, to file a complaint to raise claims like those brought in, for example, the *Merrimack County*, *Veteran's Home*, and *Littleton* cases.