

Special Meeting of the
Hillsborough County Board of Commissioners
Grievance Hearing
April 2, 2007
Bouchard Building, Goffstown, NH

Minutes of the Public and Non- Public Session
(Not Official Until Approved by the Board and signed by the Clerk.)

Present: Comm. T. Pappas, Comm. C. Holden, Comm. M. Clemons, B. Moorehead, R. Jelly, G. Wenger, and R. Pomroy.

Also Present: S. Lyons, R. Holtz, C. Benner, and members of the public.

Comm. Pappas noted that Mr. Moorehead would be arriving shortly and suggested discussing Old/New Business first.

1. Pledge to the Flag

Comm. T. Pappas called the meeting to order at 3:48 P.M. G. Wenger led those present in the Pledge to the Flag.

3. Old/New Business

Comm. Holden noted that she received a communication from B. Miller of the Demers Group regarding HB 1, which goes before the Finance Committee tomorrow. She noted that Rep. King and Rep. Wendelboe will bring in an amendment to HB 1 to restore the funding, 2% increase, to the Nursing Home rate. She noted that they provided a list of the Finance Committee members, of which one was from Manchester and one from Nashua. A discussion followed.

B. Moorehead joined the meeting at this time.

2. Grievances

NH AFSCME Grievance # MG-0528

Comm. T. Pappas introduced NH AFSCME Grievance # MG-0528, Laurie Dionne. S. Lyons requested that this be presented in public session.

C. Benner: Laurie Dionne reported to work on 11/5/06 and received an emergency room phone call from the hospital stating that her daughter needed treatment. In doing so, she tried to notify her husband with no success and tried to notify her mother, thinking that her mother could go down and help, with no success. She was left with no other choice than to leave the facility. She left at approximately 2:15 P.M., 45 minutes prior to her shift ending. Then was required and received a letter on 11/7 requesting that she come to work on 11/12 and that her schedule has been revamped because she is required to make up the whole day, and we are left to grieve it.

L. Dionne: On my behalf, I just want to say that I believe that I am a good employee. I believe I don't call out a lot, I don't leave early a lot, I don't come in late a lot, and I felt that I shouldn't have had to choose between my child and my job, and I did try to find other means of somebody going to the emergency room before I left. I didn't just try to leave and I don't leave all of the time. For 45 minutes, I don't think it was fair to for 8 hours.

Comm. Pappas: So your shift started in the morning?

L. Dionne: At 7:00 A.M., yes.

Comm. Pappas: And you would have worked until 3:00 P.M.?

L. Dionne: Yes.

S. Lyons: Part of that is the fact that this was a request by the emergency room due to a serious medical condition that someone needed to respond for that treatment. And again, I think the grievant can give some more information on that specifically, but she did attempt to make those calls in advance, so it wasn't immediately that she got the phone call (she) tried to find another adult that could respond. That's important. Second, is the fact is that, yes, she is a good employee if you look at her evaluations over the last year she had a total of 3 sick days, so this is not someone that

abuses her time. She has not been written up according to this, she does not have discipline (with) regards to abuse, of sick time, or any type of utilization. The fact of the matter here is that what is reasonable, this person worked predominantly through her whole shift, attempted to make reasonable accommodations outside of that to say even before I go, can I get someone else to go, and to now be obligated to work a weekend shift based upon 45 minutes response, the union sees as unreasonable. It seems as she put it making a choice between do I make up and have work another day or do I respond to my family emergency. In that instance I think that she made the right decision. The fact of the matter is now she is obligated to work that following weekend. We just don't find that reasonable. What you are going to also hear is testimony from management with regards to a change in policy. There is a policy change through a committee that it did not complete. The last time the committee met was on September 5th and there were subsequent meetings that were supposed to occur. Subsequently, Bruce Moorehead had a one-on-one discussion with the local president who subsequently signed this agreement outside of the committee. This has not been ratified by the Union, we don't believe that should have been in effect and the meeting should continue to resolve the issues under the change in policy. So again you are going to hear from management there was a change in policy. Our position very clearly is undisputed, is in documentation for me to provide indicating that there were meetings subsequent (to) the 5th of September and they were going to be continued, and that no further meetings were scheduled.

Comm. Holden: It was my understanding that there was a mutually agreed policy, section VII: 24 addressing the weekend make-up, and that was signed on October 20, 2006.

S. Lyons: As I indicated, that was a one-on-one discussion with the local president not the full committee that was established to review the policy, and subsequently that has not even been ratified by the Bargaining Unit.

Comm. Clemons: So in effect it is not part of the contract.

S. Lyons: That is correct.

B. Moorehead: This incident with Laurie is not questioning her work record at all, nor was there any discipline imposed. The grievance, if you look at the grievance as it was filed, does not rise to the level of a grievance since it quotes a policy, and you can find that statement under the grievance procedure under article 16. As Steve indicated the Union signed off on the revised make-up policy on 10/20/06. That was signed by the then Union President, Mark Goulet, agreed to as per our discussion, and the policy is specific in it says under A: Employee calls in sick, or does not work his/her complete shift on a weekend will be required to make up that shift on the employee's next scheduled weekend off. Employee will be notified by the supervisor of any change to the schedule due to the weekend make-up time. Then under C: Leaving early or coming in late will be considered an absence to the above policy.

Comm. Clemons: Who initiated this policy?

B. Moorehead: The Union came to me around Christmas of 05, and asked me if I was aware that we were not enforcing the weekend make-up policy, and I said I haven't and I'll check into it, I did and found out they were right, and we started implementing it at that time.

Comm. Clemons: You said an employee has to make up a weekend, she wasn't docked for the first day. In other words, she didn't complete her shift, she stayed for 7 hours and 15 minutes.

B. Moorehead: I'm not sure what the payment would have been. More than likely she would have been paid up until the time she punched out.

Comm. Clemons: If she was asked to work the next weekend, wouldn't that put an extra employee on the payroll.

B. Moorehead: Bob Jelly is here and he'd be able to answer that question better than I. Typically, it is my understanding that she would be given off a day during the week if she had to work the weekend. But usually the weekends, we do have a tendency to run a little lighter than we do during the week anyway, so an added body is not going to be a burden.

R. Jelly: I agree with that. We give the employee that has to make up the weekend, an additional day off, and it's usually mutually agreed upon. Because every employee that works for the Nursing Department has every other weekend off. Our staffing levels are a little bit lighter so those weekend make-ups actually add to the mix.

Comm. Clemons: It's not as if this person is really needed in that weekend, it's more of a punitive thing.

R. Jelly: No, I wouldn't characterize it as punitive. If we're running light on the weekend and we have folks that don't work the weekend, it makes it much harder to meet the needs of the residents.

B. Moorehead: Typically, we run 6-7 aids on the day shifts during the week. On the weekends, we run 5-6, so going back to or close to the weekday levels on the weekends is not disadvantageous or punitive.

Comm. Clemons: I guess it's up to (the Board of Commissioners) to judge whether or not there really was an emergency. Would there be any circumstance, any circumstance at all that a person could leave 45 minutes early and not have to work the next weekend shift?

R. Jelly: I would say no. It makes it difficult to...

Comm. Clemmons: What if they had a heart attack?

R. Jelly: If they had a heart attack it would be hard for us to hold them accountable for the next weekend.

Comm. Clemmons: So there would be some sort of exceptions.

R. Jelly: If they didn't have the ability to make up the next weekend then we would have to take that into consideration.

Comm. Clemons: So what if they had a heart attack at 2:15 (P.M.)? You said there is no reason why somebody should not finish their shift.

B. Moorehead: I discussed this with Randi and Chris and Mark Goulet numerous times, and I said that I don't want to get into the point where I'm making decisions on what is an expectable variance to the policy or not. Because if I make 2 decisions to waive the policy in 2 consecutive occurrences and then on the 3rd decide that it does not meet the criteria, whatever that criteria may be, I'm more than likely going to be grieved. So my feeling at that point was I have to follow the policy to the "T".

Comm. Pappas: Would she receive a weekend day of her choice to work?

B. Moorehead: Yes, Bob had mentioned earlier that it's usually a compromise day.

Comm. Pappas: So it's not necessary the following (weekend)?

R. Jelly: No, it is the following weekend.

B. Moorehead: It's automatically the next scheduled weekend day.

Comm. Clemons: What would happen if an employee came up to you and said 'I know I have to work that weekend day, but my daughter is getting married and I have to attend the wedding?'

B. Moorehead: They'd have to work it. I mean they would have to...

R. Jelly: We might be able to accommodate one day versus the other, but they would be responsible for making up the time.

Comm. Clemons: And the penalty for not making the day up would be insubordination?

B. Moorehead: I guess it would depend on the circumstances.

S. Lyons: I have something else to add. There have been discussions regards to the mutual days. I inquired with Laurie, there wasn't even a discussion on this. I do have a note, I can provide you a copy. It's dated 11/7/06, it's just a notice indicating the dates that would be made up. There was no discussion.

S. Lyons passed around the letter at this time.

B. Moorehead: Who is it from?

C. Benner: We have no idea, these letters have been coming out frequently and we've been asking for letterhead.

B. Moorehead: It's not signed, no letterhead.

L. Dionne: That's how I received it Mr. Moorehead. That's how it was handed to me with no signature or anything.

C. Benner: We've been questioning, and yes this is how this is how they've been coming out.

Comm. Pappas: You've had more like this?

C. Benner: Correct, when they have to make (days) up, all they're being given is (a) paper, and we've asked them to put it on letterhead, (and) sign the name. Bob wasn't here at the time, he was not the director of Nursing. We brought it to Diane Boutin's attention at the time.

Comm. Pappas: Did you receive any other notification or anything besides that letter?

L. Dionne: No, just that letter and no signature, I could have gotten that letter from anybody, and then how would I really know that I was supposed to (make up time). I knew I had to make it up, but the letter came from anybody, I mean it could have come from anybody.

S. Lyons: But there again, there was no discussion. This was simply a direction. We disagree in this instance and other ones we can't but you can ask Laurie. When this was signed by the Union President, was it widely circulated to all of the employees. Post, there was a distribution at the end of October, I believe it was the 31st, the policy was provided, the fact of the matter is that there were no further meetings were pursued and they have not been finalized.

Comm. Clemons: Has it been past practice that the Union President can sign off on policy.

S. Lyons: No, specifically actually there is clear knowledge by the Administration even that an obligation for

anything to be accepted is to be ratified by the body. The President (doesn't) have exclusive rights.

Comm. Clemons: Is that the way you've found it in the past Mr. Moorehead?

B. Moorehead: No. I, nor did Mark, see any problem signing off on it. We had several meetings to discuss the whole policy between July/August from January '06, perhaps from December '05. So it was going back quite a bit.

Comm. Clemons: You say that the reason why this policy is necessary is because you don't feel that it would be right for you to make decisions on exceptions.

B. Moorehead: I don't want to make decisions as far as weekend make-ups go that are subjective. That's what I'd be doing all of the time. There are 20-30 weekend call-outs a month, so if I have to make those decisions every month, or Bob as my designee, that would require an awful lot of time. And if there is ever one discrepancy with the decision, then it's grieved, possibly.

Comm. Clemons: Now when people call out, what traditional could you do to get coverage? Do you have to scramble to call other people.

B. Moorehead: Sometimes, it really depends on what levels of staffing we're talking about. If it falls below the minimum levels, the supervisor on that shift would have the ability to call other staff members who might be scheduled off that day. He/She would be able to ask staff who were already there to work over or staff who are coming in later, to come in earlier. She/He has the ability to contact Nursing Pools and Agency Staff.

Comm. Clemons: Now how many instances such as this have you had in the past year, where somebody has missed 45 minutes of the shift?

B. Moorehead: I couldn't say.

Comm. Clemons: Is it numerous, I mean you told me that 20-30 people call in every month.

B. Moorehead: But that could be a combination of different types of call outs, could be calling in sick, calling in absent, etcetera.

Comm. Pappas: Any further questions.

S. Lyons: I made reference in my statements regarding to a further meeting. I do have a document that I can provide to you date 9/5/06 from Randi Holtz, who's present here. It's specifically in regards to another grievance, Micheline Barrier with regards to including a note that says 'there will be another meeting with Diane Boutin, staff, and the Union to help the issues of when employees will be scheduled, that will be more accommodating to the employees and staff.' This clearly indicates that there were more meetings to come, again I will provide you a copy of this as well.

Comm. Clemons: What exactly is Laurie looking for?

B. Moorehead: A weekend off of her choice, I believe.

Comm. Pappas: Yes, I think you're right. Is that right?

S. Lyons: That is correct. One day.

Comm. Clemons: Now, did you come in and work that weekend that you were told to come in and work?

L. Dionne: Yes, I did. ...When I got the call my daughter was brought in by ambulance, it wasn't just like, she has epilepsy, she had a grand-mal seizure. It wasn't just like she fell and split her head open and just needed a few stitches type thing. It was an emergency, emergency. When an emergency room calls you and you're a parent, do you tell them 'I can't go there until after 3:00(P.M.)?'

Comm. Clemons: Who did you tell on your shift?

L. Dionne: I told my head nurse at the time, and my supervisor, Terry who came to the floor that I had to go after I tried other resources to go.

Comm. Clemons: And what did she say to you?

L. Dionne: Terry? She let me go but she told me that I, even though it's only 45 minutes, that I probably have to...

Comm. Clemons: How old is your daughter?

L. Dionne: She's 19.

Comm. Clemons: But, they needed you there? I mean she's of the age of consent.

L. Dionne: Yes, she still resides and I still take care of her medically and she is not able body to...

Comm. Holden: Did you have a day off the week before you worked that weekend?

L. Dionne: I hadn't, before I worked the weekend that I had to make up? Yes, they gave me another day off, but not of my choice. They just put it on the schedule or whatever.

Comm. Holden: But you did have the day off?

L. Dionne: Yes.

B. Moorehead: I just wanted to reference (policy) 16.1, again I mentioned earlier that this did not rise to the grievance because it did not quote the specific contract provision, which is what 16.1 states. The grievance is defined as 'a claim upon an employee or a group of employees in the unit or the Union specifying the names of the bargaining employees involved gaits any alleged offense or offenses, and the specific contract provision involved, which rises under and during the term of this agreement.'

G. Wenger: Can I just ask that everyone identify themselves for the record, please?

Comm. Pappas: Yes, please, before you speak so that the tape knows it's you.

G. Wenger: Or if we could just have them identify themselves now, so that when this is being typed up...

A round of introductions ensued.

Comm. Clemons: You've quoted from the contract and you said that this doesn't rise to the level of a grievance because it is not a violation of the contract. How would somebody grieve something like this? How would someone tell a higher authority that they do not agree to this should be a policy?

B. Moorehead: If the policy, to my knowledge they couldn't. Maybe for a ULP.

Comm. Clemons: So they'd have to make it to the State level?

B. Moorehead: That would be the State level, but I'm not sure if they could, I would think they could ULP it. That would be a question for Legal Counsel.

Comm. Clemons: Now the policy that was signed by the Union President, does that become part of a contract?

B. Moorehead: No, not always.

Comm. Clemons: Then why would the Union President have to sign it?

B. Moorehead: Well, he wouldn't but he was part of that group that was meeting to talk about the issue. I just naturally went to him to see if he was okay with what was said in the policy, and that it was pursuant to our agreement. When the facility changes policy, or writes new policies, there inputted/put into effect by distributing policies to the Units, and the employees can read (them) and they're signed off on and implemented. It's typically not with approval other than to meet regulatory compliance where we comply to try to maintain the building at safe staffing levels.

Comm. Clemons: If you were a Union employee wouldn't you agree with me that if you had problem with Management that you would got to your Union.

B. Moorehead: I don't know if I'd agree with that. I think they have other avenues, like I said. It could possibly go through the ULP process, through the PELRP.

Comm. Clemons: Okay

B. Moorehead: And we do meet and discuss quite a bit about policies. There's the Policy and Procedure Committee that meets periodically. They're not addressing these types of issues because this is more administrative, but they do get together and talk about procedural Nursing issues, issues involving policy treatment procedures in Nursing that might involve reporting abuse and those sort of things. It's an ongoing process that is constantly occurring there.

Comm. Clemons: Would you say that this policy has added a negative effect on morale at the Nursing Home?

B. Moorehead: I don't think so.

Comm. Clemons: Most of the employees accept it?

B. Moorehead: I've not heard, there's been I think three grievances on this issue since, actually probably more than that because we talked about it in December. We modified the policy late in the fall. Three or four grievances.

Comm. Pappas: Before the policy, you mean?

B. Moorehead: Before and after. Well, actually, no. Since I've been there, there's been 4 grievances, all of which have been in the last 18 months.

Comm. Pappas: Further questions or comments?

P. Martel: I'm the Acting Presedent right now, because we are taking it up with our Presedent who did sign off on this policy. He was not allowed to do that. I have been there 11 years and I'm upset with the policy. I do not have attendance problems, and I'm upset with it. And yes there is a morale problem and yes people are upset with it because the emergencies come up, people have to leave, they come in there really sick and try to make it through the flu or whatever and you just keep working and we're in the trenches and there is a problem, there is a morale problem

there. Just because I haven't had to grieve it because I've been fortunate enough to work my weekends or trade-off my weekends. I don't think it's fair that we're all put in this boat where there's disciplinary action in place for people who come in late all of the time, in stead of punishing everybody, punish the ones that are habitual offenders. That's my take on it.

Comm. Holden: I just go back to why in December of '05 did the Union come to Mr. Moorehead to say that there were abuses of this and then they came to an accommodation. I hear that the Union went to management and I'd like Mr. Moorehead to respond to that.

B. Moorehead: They came to me saying 'are you aware that the weekend make-up policy is not being enforced?' I said I was not, I will check on it, I did, they were right there was something there, and I said (that) we'll enforce it. That's what we ended up doing, and then later on we massaged the policy and the verbiage.

Comm. Pappas: And the Union President signed off on it.

B. Moorehead: Correct.

S. Lyons: With regards to that, the Union came forward and said it was not being evenly administered. I think that there's a qualifying word in there. Some people were having it applied and others weren't, and that was the issue of concern by the union. Very clearly it is an even application as so stated by Management earlier, it is sometimes easier to handle it; however, that was the issue of concern brought forward, not the fact that the Union necessarily wanted everyone, by the way this is lying dormant and nobody (said) 'why don't you enact this', it was more the fact that certain people were getting it and certain people weren't.

Comm. Holden: Mr. Moorehead has it been evenly administered since October 20, 2006?

B. Moorehead: To the best of my knowledge, yes. And I take exception to the comment that I misinterpreted the language that was discussed with me prior to the first meeting in December. They said to me "are you aware that this policy is not being enforced?" and I said no.

Comm. Clemons: How were people disciplined on the weekend before this was brought to your attention?

B. Moorehead: I can't answer that question.

Comm. Clemons: Was there any drop in the care that was provided to the patients.

B. Moorehead: I can't answer that question at this time. I don't know. In my opinion, no.

Comm. Clemons: Then why was it necessary to all of the sudden (enforce) the policy if the care was...

B. Moorehead: Because you have a policy that is there and is not being enforced. It is my obligation to enforce the policy.

Comm. Clemons: But, why couldn't you enforce it before?

B. Moorehead: I just wasn't aware that it wasn't being enforced. I thought I made that clear.

R. Jelly: It's my understanding that since the initiation of enforcing the policy, the number of weekend call-ins has been reduced pretty dramatically, which makes it much easier for us to provide staffing for the residents for the weekends.

Comm. Clemons: The policy seems to be one that is working.

R. Jelly: Yes.

Comm. Clemons: And you would adhere to the belief that you should make absolutely no exceptions to that policy?

R. Jelly: Yes, I would agree with that because if the issue comes up that we're not enforcing it fairly or evenly, it makes it very difficult to arbitrarily define what is reasonable and what is not. It makes it much easier to enforce fairly if we enforce the policy the same way with everybody and every circumstance.

R. Holtz: I think Mr. Moorehead is referring to me about the discussion back in December. When that happened it was a meeting about something completely different. I didn't just go up to Mr. Moorehead and say 'what about the weekend make-up, why aren't people making it up?' It was another meeting about rehab and...

C. Benner: the mistreatment of employees and we had talked to him about several on-going problems about the employees.

Comm. Pappas: Let's not deviate from this issue. You did bring the issue up.

R. Holtz: Yes, I made a comment like 'what happened to the weekend make-ups' because they were talking about poor attendance on the weekends. That's how it was brought up, I didn't just have a meeting (about this).

Comm. Pappas: Anything further? Did someone else wish to speak?

T. Ouellette: I'm a supervisor and a head-nurse at Hillsborough County, I've been working there 14 years. I have a question about the different departments at the Nursing Home. Is one department being singled out over another (i.e.)

Nursing versus the Kitchen or Housekeeping, for coming in late. I know Nursing has been told that we have to enforce the people who are late, that they have to make it up. I'm just wondering if other departments, and I'd like that clarified by Mr. Moorehead.

B. Moorehead: As I've said numerous times in the past, this policy applies to the Nursing service. It's a Nursing service policy. Yes it applies just to Nursing. It's not singling out, in my opinion, one particular department, and I've checked with department heads and it is my understanding that the reason this was not imposed in other departments is because from what they told me, there is not a problem in the other departments.

Where the parties had nothing further to offer the matter was taken under advisement.

Following a brief discussion the Board agreed to discuss NH AFSCME Grievance # MG-0530 as it grieves the weekend make-up policy as well.

NH AFSCME Grievance # MG-0530

Comm. T. Pappas introduced NH AFSCME Grievance # MG-0530, Susan Charest and B.J. Claar. S. Lyons requested that this be presented in public session.

C. Benner: On 12/23/06 both Sue Charest and Billie Jean Claar (came in late). Billie Jean came in at 8 minutes late, reported for duty at 7:08 and Sue Charest reported for duty at 7:10. They then proceeded to work their full day, went on vacation that following Monday. When they went on vacation on the Thursday of their vacation, Billie Jean received a phone call from the Hillsborough County Nursing Home saying that she was minutes late there for she is to report for duty on that following Saturday, cutting her vacation time short. Sue Charest received the same phone call from the Hillsborough County Nursing Home asking her to report to duty on her vacation, cutting her vacation short and asking her to report to duty for being minutes late. Then, they called me at work and we began to write up a grievance. I talked to Irene Boulanger who was the supervisor at the time. Asked her how many minutes late each one of them were. Then became aware of it, asked her if she actually thought it was right for them to be called on their vacation, seeing their vacations were for rest and recuperation. She did not agree with calling them on their vacations, but was told that they had to make up the weekend per policy the following weekend, so she had no choice but to enforce that policy and call them.

B.J. Claar: My mother had come up from Alabama, so I only see my mother once a year, and we were splitting time between me and my step-sister, and to be called during my vacation to have to come in, and I asked if I could make it up on my following weekend off because my mother was here, and that was the day that she was leaving. I was told no, if you don't come in you will owe me two weekends, not just one. So I would be working 6 weekends in a row, or something. I didn't see it was fair when I didn't know I was late, to be honest with you. We have until 7, your not technically late until after the 7 minute mark, and I didn't even know I was late. So when I got the call I didn't know...I answered the phone thinking that maybe they were short of help or something like that, but instead I'm being told that I'm being reprimanded for being a 1 minute late. I did work my full 8-hour shift besides 1 minute and I don't feel that it's fair to have to come in to work another full 8 hours for one minute. And the morale in the building is down because of it. I've worked snowstorms where people are rushing to get in because it's the weekend and they're afraid to be late. People have been in accidents and they still have to make it up because they're in accidents trying to get into work on time. I don't feel that it's fair. I think there should be circumstances. I asked if I could make it up but a different weekend because of my circumstances, and I was told no that I would owe them 2 weekends in a row if I did that. The exact words were "do what you have to do Billie, but if you don't come in you owe me two."

Comm. Pappas: Who told you that?

B.J. Claar: Irene Boulanger.

S. Charest: I was also minutes late, I don't think I've missed a weekend in 3 or 4 years. I was on vacation and had planned to see my nephew in Vermont. My brother passed away and I was going to spend time with him, I could not do that. I asked if I can not work what would happen, and she said you will owe me 2 days if you do not show up.

C. Benner: We don't believe that this policy is being enforced equally. I have a detailed report punch from 11 employees. We tried to write it out so that you would, instead of handing you all of the detailed reports several times,

here has been tardy, left late, called in absent, and never had to make up a weekend, not once. And this policy, she goes to 12:25, she has 7:08, 7:14, she has been up to a half of an hour late and never has had to make up a weekend. It's not being equally applied to everybody. Some of the employees are being reprimanded and some of them aren't. And we feel that it is a reprimand. If you're asking to choose people, they're rushing to work, snow storms happen, people, this particular employee, one particular employee got into an accident this winter and the other employee went to go help her and said to her I can't stay I'm going to be late, I have to go and left her in a ditch, but gave her, her cell phone so she could call for help. It's not an equally distributed policy, it's not being fair to the employees, and the morale is down. For people to say that it isn't down, I welcome any of you to come to the Nursing Home and question any employee.

Comm. Pappas: Is this person in the same department?

C. Benner: Yes, she is. She's in Nursing.

B. Moorehead: This same issue for this grievance applies to Laurie Dionne's grievance. One, it does not rise to the level of a grievance, see article 16. The Union quotes policy and past practice, it also quotes 16.8 discipline; however, section again refers to the policy.

Comm. Clemons: As far as other nursing facilities, they consider like hospitals and private nursing homes, is this policy quite common amongst the nurses?

B. Moorehead: In my experience, not necessarily so.

Comm. Clemons: So in another word, hospitals in Manchester...

B. Moorehead: I cannot talk for hospitals, I can address my experience with nursing homes. I can tell you though, from the private sector if somebody would miss so many weekends, chances are, good chances are they'd be terminated.

Comm. Clemons: (Comments inaudible)

B. Moorehead: That they should be terminated?

Comm. Clemons: Yes.

B. Moorehead: Not under contract, because under the contract when there is due process, which with the contract and the County policies two call outs on weekends would not necessitate or probably justify termination. It would require progressive discipline.

Comm. Pappas: Any further questions?

B. Moorehead: Chris had mentioned that she did not think that this policy was being imposed uniformly. As an administrator, there are times when systems might not be in place that need to resolve issues such as that and we had an issue with that and that has been resolved. Bob and I have had this discussion probably not even a month and a half ago, about the fact that I had the punch details pulled on Mondays, auditing that to make sure that anybody who lost work, was late on the prior weekends automatically scheduled to work the following weekend. When Bob and I talked about it a discussion ensued as to whether a person at that level, into the future, would be the one who would keep on doing that, so we talked about that, but yes there are also problems and when we find out there are problems, we address them.

Comm. Clemons: Do you ladies have to receive a report in the morning from the other shift.

B.J. Claar: Yes

Comm. Clemons: What time do you usually start getting that?

B.J. Claar: We get our report from the Head Nurse, and that's usually about, maybe 7:10 is when the first when nobody's there, and the nurses get the report from the other shift, but usually they're done with that.

Comm. Clemons: So you didn't miss the report that night.

B.J. Claar: No. I didn't miss any part of that.

Comm. Clemons: What do you usually do between 7 and 7:10 in the morning?

B.J. Claar: Get our carts ready, put our coats away. I come in at 6:30, so I actually punched in at 6:38, and when I come in I'll go and get vitals from the Skilled residents for that day or whatever my Head Nurse assigns me to do during that time. And I wasn't...

Comm. Clemons: So neither of you missed the report.

B.J. Claar: No.

R. Jelly: There's just a misconception about the additional time into the shift. The 7 minutes (are) given so that if folks are running late, they have a bumper. Technically, that would mean that the staff person is tardy if they're in

between 7:07. The expectation is that they're on the unit at 7 A.M. in order to be able to be part of the report.

Comm. Pappas: What time is report.

R. Jelly: It typically starts at 7 A.M. A lot of times it doesn't because staff tend to use that additional time-frame as a buffer. In fact that's not what its meant to be.

B. Moorehead: After 7 minutes you're considered late, Commissioner.

Where the parties had nothing further to offer the matter was taken under advisement.

NH AFSCME Grievance # MG-0529

Comm. T. Pappas introduced NH AFSCME Grievance # MG-0529, Chris Benner. S. Lyons requested that this be presented in public session.

S. Lyons: This is Chris Benner, she's the grievant. This comes over a matter of suspension that was given to Ms. Benner obviously that's put forward here (under) 16.8 a & c. This was without just cause. Do you have a copy of the grievance?

Comm. Pappas: Yes.

S. Lyons: As well as the discipline of the client, the insubordination, which is dated 12/15/06?

Comm. Pappas: Yes, we do.

S. Lyons: This is a matter (that) has multiple issues. One, the discipline administered under the insubordination was basically for an off duty activity. Employee was punched out, you can even read the statement on the discipline, it was from Mr. Moorehead at approximately 2:40 P.M. Ms. Benner gets off at 2:30 P.M., if there's any dispute that she wasn't off duty. The fact of the situation which arose for Ms. Benner to be in addressing Mr. Moorehead is relative to the intent to the previous Commissioner's meeting for grievances. There's a request made and notice required to give to management in regards to who would be attending the grievance procedure, which was the following day. Ms. Benner responded down to give the notice off-duty in her capacity as a Union representative. Provided the documents, a document to Mr. Moorehead who protested her attendance to the following day's grievance hearing, was unable to release 2 LNA's and such had indicated 'you're not going' specifically identifying Ms. Benner as not being in attendance when she was actively involved in the grievances that (we) were going to present. Ms. Benner indicated that she would, both parties exchanged their positions several times. At that point in time Ms. Benner indicated that she would be attending and that Mr. Moorehead could take it up with her lawyer, subsequently started to leave, Mr. Moorehead followed her into the area that's connected to the administrative section, there's a copier area outside of Mr. Moorehead's area, a common area, the administrative area, pursued Ms. Benner out to that area, indicated that she wouldn't be going, that she was insubordinate. She turned around and said 'no I'm not, I'm not insubordinate, I would be attending.' The conversation continued where she opened the door. At that point in time Mr. Moorehead continued to indicate that she was insubordinate and she was suspended. Ms. Benner indicated that she wasn't suspended and she departed. So again, there was multiple actions through this process all through the doorway of the Administrative wing. We believe that she the one acting in the Union capacity, she was giving notice through off duty contact. There is no nexus between her off duty conduct and on duty conduct. Second, to be insubordinate it's a failure to follow the rules. Mr. Moorehead suspended her before she had the opportunity to attend or not attend the meeting, so she was being suspended because she told him, she would be attending, as a matter of fact she did. So Mr. Moorehead prematurely took any action. We still argue that the actions were based upon Union activity, which is protected activity and should not effect her in anyway, but even at that point when you give someone a direction the only way that they can violate it is to not follow the direction. So we don't believe, under just cause that any suspension should be administered, we believe it should be expunged. We believe that the administration was premature, it was a knee-jerk reaction as a result of an exchange between a Union Representative and the Administration. We believe that it should be expunged and the grievant be made whole.

B. Moorehead: Ms. Benner came into my office on 12/12 at about 2:40 P.M. She came into my office to give me a list of who in AFSCME would be attending a grievance hearing the following day, 12/13 at 9:00 A.M. I told her that she could not go since she was scheduled on the 13th as an LNA on the same floor, and she had asked one of the grievants, I won't give her name. But to have two LNAs on the same unit, on the same shift (unavailable), I didn't

think it was (acceptable). I told Chris that there was, I did not want her to go. Basically, she refused. She was walking away from me as I was talking to her, she was loud, rude and disrespectful as she exited my office. She told me she was going anyway to the meeting the next day and did not care what I had to say, and I suspended her and gave her a suspension for not just the wording, if you read it says for disobedience and insubordination. Additionally, the Union's first list that I was given had 4 member attending for a grievance hearing that effected 4 people. 5 people, sorry.

Comm. Clemons: What is your official role in the Union?

C. Benner: Right now I'm the Chief Steward.

Comm. Clemons: What were you then?

C. Benner: Steward.

Comm. Clemons: You were a Steward?

C. Benner: Correct.

Comm. Clemons: And the person, this grievance was going to be heard was...

C. Benner: were my cases, correct.

Comm. Clemons: Mr. Moorehead did you consider asking the Commissioners to postpone the grievance hearing?

B. Moorehead: No, I did not. I don't schedule the meetings, but as you know, Greg does.

Comm. Clemons: Did you contact Greg and tell him what the situation was?

B. Moorehead: No, it was a few hours later, and as I said the reason for the discipline was not, it was the fact that she decided to violate my directive to not attend, which was the disobedience piece.

Comm. Clemons: Do you think you would have had a speaking part at that...

C. Benner: I was presenting all of the cases. I had been notified prior to this that I was presenting all cases that the staff rep would not be able to make it.

S. Lyons: Very specifically there was a conflict with the original scheduling subsequent issue, I was informed that the County advisor and date (inaudible), and then this date was going to go and the dates suggested after the holidays were not acceptable, and that the hearing was going to occur that day. I gave notice to the Union (that) I had a conflict. I had a meeting with the Nashua Health Insurance Advisory Committee establishing some procedures going down there that I had a 3 hour block that I wouldn't be able to attend. I gave notice to originally, initially bring in Randy Holtz and subsequently Chris Benner with regards to the presentation of all grievances that I couldn't attend. Subsequently being notified that Chris Benner had been suspended and was unable to go, I had to cancel my plans with regards to the city, I attended, in fact I showed up at 6:30 in the morning with Ms. Benner to see if she was honestly suspended that morning. So when she (would) not violate it to get the proper notification, we entered the facility, we were met by Heidi, I know her by her first name, Heidi. And she indicated not either way, if she was suspended or not. I subsequently asked to see the schedule. Ms. Benner was removed from the schedule, so she did not proceed up to the floor. She was there obviously if she was not suspended or still on schedule. This occurred the morning of the grievances. Subsequently they ended up having Ms. Benner at the grievance hearing along with myself based upon Management's actions with the grievant that ended up being the question of could they release the grievant and Ms. Benner. She was suspended, so we ended up having everybody that was the issue of this concern by Management present. Again, one these issues is again what capacity, and two this is an off duty action as well. I don't think there was any dispute that she was off the clock, and second she was in the Union capacity giving notice of who would be attending the grievance, almost pretty clear on applicable situations. And again if you tell someone not to do something you need to wait and see if they do it.

Comm. Clemons: You said you did not want her to go to the meeting because you would be short on the floor that day?

B. Moorehead: There were 4 employees total that were due to attend the schedule, to attend the grievance hearing that was scheduled that day. Two of which were Aids, Chris and another Aid from the same Unit, which is what caused the whole issue.

Comm. Clemons: Okay, but you said to her that she couldn't go to the meeting because you didn't want to be short of employees.

B. Moorehead: I didn't want to take 2 people off the Units.

Comm. Clemons: Yet you suspended her the next day and she wasn't there anyway.

B. Moorehead: That's true, I was one down that day. I would have been two down if they...

Comm. Pappas: Any further questions?

Where the parties had nothing further to offer the matter was taken under advisement.

NH AFSCME Grievance # MG-0531

Comm. T. Pappas introduced NH AFSCME Grievance # MG-0531, Linda Carr.

R. Holtz: Grievant isn't here, but she was bypassed on overtime. She signed up for the overtime roster. On February 12 at 3-11 security switchboard person called in a part-timer to cover his shift. Basically, I just wanted to, I don't have a copy for you, but this posted by their, this is their overtime roster, the two names are on it, and this is posted by it telling you how to utilize the overtime call list and in bold print it says, "on-call employees are not to be called until overtime list has been utilized." And this girl has said to me 'you know they usually go by the overtime roster.' I guess it ended up being a couple times that they called in a part time up there and after. Then there was another week around March 9th the office lady told her use the overtime roster. So it's kind of a mixed up, going back and forth. In the contract the language does, it just says "the parties agree that overtime shall be distributed as equally as possible within a reasonable period of time and within the classification affected among all employees who are available and capable of performing the work. Each department shall have an overtime roster posted weekly for the coming week and no part time employees shall be assigned to overtime work, provided full time employees within the job classification affected are available and capable of performing the work and have signed up for such overtime on the roster."

B. Moorehead: The part timer who was called into work did not work overtime, and that's pretty much what the cut with the section of the contract 5.3 that Randi just read covers. No part time employees shall be assigned to overtime work, provided full time employees within the job classification affected are available and capable of performing the work and have signed up for such overtime on the roster. This is not an uncommon occurrence, if we have a vacant shift on that department, it's not uncommon to utilize a part-timer. What would be uncommon is if we used the part-timer to take overtime work away and pay him or her overtime that should have been a given to somebody on the roster. That did not occur. The part-timer did not get overtime so, therefore I think this grievance should be denied because it did not violate 5.3.

Comm. Clemons: What's the definition of overtime?

B. Moorehead: Over 8 hours a day.

Comm. Clemons: Over 8 hours a day? Part timers don't work 8 hours a day, do they?

B. Moorehead: Some do.

Comm. Clemons: What about over 40 hours?

B. Moorehead: That's overtime as well.

Comm. Clemons: But part-timers don't work over 40 hours?

B. Moorehead: Typically not.

Comm. Clemons: Now, part-timers are not in the Union?

B. Moorehead: It depends, if they're scheduled to work on average more than 20 hours, they're eligible for the Union, if they work below an average of 20, they're not.

Comm. Clemons: Now, in this case there were overtime, was not applicable to the part-time employee. Was it applicable to the person that would have been called in?

B. Moorehead: I'm not sure. I believe so. Who knows?

Comm. Clemons: So there's a semantic debate here on what the word overtime is referring to.

S. Lyons: First, clarification of part-timers under section 1.2, worked at least 1040 hours of the immediate year prior so it's not having to work an average of 20, it just happens to come out at 20 hours per week, but it's a total accumulation of that 40 hours. Second, with regards to the included provision, the managements position is any additional time should be provided to those employees, may result in overtime. And as a result these people were gone, were part-time employees when it was part of design to limit or restrict the utilization of part-timers in the absence of overtime.

Comm. Clemons: Bruce, if you wanted to eliminate, I mean Mr. Moorehead, if you wanted to eliminate overtime all

together, if you ordered the departments to hire just part-time people, and that way they don't have to pay overtime at all of most of these departments, those are not unionized.

Comm. Holden: Just referring back to 5.3 CBA "The parties agree that overtime shall be distributed as equally as possible within a reasonable period of time" and the key words are: "within the classifications effected among all employees who are available and capable of performing work." Now, I believe the grievant is a grade 11 and some of the other people in this security switchboard area are grade 9. So, I would like Mr. Moorehead to respond. You went to a part time person within the grade 9 classification rather than going with grade 11?

B. Moorehead: It would have been, yes.

Comm. Holden: It would have been, okay. I'm just trying to...

B. Moorehead: I believe my response to the grievant also stated that this person could be considered out of classification because of what you just said.

R. Holtz: I just wanted to make a comment that there is a supervisor here (inaudible) and on the weekend if someone calls out sick on 3 to 11, she's supervising during the day and she starts getting the calls out on 3 to 11 she can tell you what she does, first of all, she goes to the overtime roster. That's in Nursing. They don't start looking at the part, I don't think they have, you know all of the part-timers phone numbers and what-not to start looking at the part-time people.

Comm. Pappas: That's a fact? She schedules...

Terri Oullette: I have a roster that I go by and people sign up on that roster. But besides that there are people that have seniority and what I do is I start with the seniority people and I go through them and if they refuse, everyone refuses, I leave messages the machine that I have to give a timely basis to keep on going because they never call back. And then once I exhaust the people that are on for seniority, I go through the ones who put in for overtime on the roster. And they usually check off the shifts they want to work in the day for the dates that are available and I go through that. Once that's exhausted, and that's only for RN's, LPN's, (and) Aids/Unit Aids. I'm not allowed to call for RN's or LPN's on the day time, say I came in and they were short RN's or LPN's we have this kind of situations as RN's, who are Head Nurses, have a backup and we would call them in. Or we would fill in on a floor and make the second nurse, and then if the situation got where we would need the backup, we'd call the backup in. We also have a pool status. Once we've exhausted the roster of people of seniority and people who signed up, I start going through the pool status, which is per diem pool and there are also people listed there who don't put in for it. Myself, as a Nurse who has been working there for a long time, knows who's interested in, who's part time/full time who might work overtime. And as you see I'm busy doing supervisory work, taking care of the residents so I go through and get what I can for staffing. For example this weekend I had two Aids who called in on two different Units and I had a Nurse call in, and it got to the point where I exhausted the pool and the overtime and I had no Nurse to fill in on the 3-11 shift because all of the pool I called, all the people that were on weren't available. So the supervisor on Sunday night had to deal with that task as supervisor and security. We have a lot of pool and per diem and less core Nurses that work in this facility at this time. I can say that from experience of being here 14 years, there are more choices on the outside for these nurses to work, the pay status is different, there's a lot of different things. I just think I've explained myself as far as that, but there's choices.

Comm. Pappas: Are there any further comments or questions?

Where the parties had nothing further to offer the matter was taken under advisement.

S. Lyons offered the Board an extension regarding the decision of the grievances, if it so chose.

Comm. Clemons stated that he inquired on the first grievance what the grievant was looking for to be made whole. He then inquired what would be necessary for the second grievant to be made whole. C. Benner stated that the second grievant would be requesting the same as the first, a day off of her choosing. Comm. Clemons inquired about the 3rd and 4th grievant, what would be requested to be made whole, to which S. Lyons stated that the 3rd would request that her record be expunged all related documents as well as repayment of missed days due to her suspension. C. Benner stated that the 4th grievant would request to be compensated for the 5 hours of over-time payment.

Motion: To go into recess. By Comm. Holden, second by Comm. Clemons. Motion carried unanimously.

The Board went into recess at 5:05 P.M.

Motion: To come out of recess. By Comm. Holden, second by Comm. Clemons. Motion carried unanimously.

The Board came out of recess at 5:20 P.M.

Following a brief discussion the Board agreed to revisit the matters regarding the grievances at its next meeting.

Motion: To adjourn. Comm. Clemmons, yes; Comm. Pappas, yes; Comm. Holden, yes. Motion carried.

The meeting adjourned at 5:21 P.M.

(SIGNED 4/19/07)

Comm. M. Clemons, Clerk
Hillsborough County Board of Commissioners

Approved 04/19/07
Date