

Regular Meeting of the  
Hillsborough County Board of Commissioners  
November 4, 2010  
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, J. Hardy, L. Movsesian, C. Kirby, M. Lencki, B. Moorehead, J. O'Mara, M. Castonguay, G. Wenger, and L. Stonner.

**Also Present:** S. Tinkham-Pres., Local 1046-C, M. Davis-International Rep.-Chemical Worker's Council, K. Hurley-RN/Staff Development Coordinator, C. Turgeon-RN/Vice-President-Local 1046-C, Heidi Bernier-RN/Assistant Director of Nurses, and Kathy Covert-RN/Director of Nursing

**1. Pledge to the Flag**

Comm. Pappas called the meeting to order at 10:00 a.m., followed by the Pledge to the Flag led by Chief Deputy Durette.

**2. Administrative Business**

Commissioner Pappas noted that the Board would address administrative business at this time.

Minutes

October 20, 2010 Board of Commissioner's Meeting

**Motion:** To approve the minutes of the Hillsborough County Board of Commissioners held on October 20, 2010. By Comm. Clemons, second by Comm. Holden. Motion carried.

Comm. Holden noted that the Board has received six sets of minutes in today's packet from the Delegation; the meeting of May 21, 2010 was attended by three Commissioners, therefore that particular set of meeting minutes should be approved by the Board; Comm. Holden noted that she was the only Commissioner present at the other meetings so they do not require Board approval.

**Motion:** To approve the minutes of the Hillsborough County Delegation Sub Committee F held on May 21, 2010. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

Approval of Payroll Register

**Motion:** To approve the Payroll Register dated October 28, 2010 in the amount of \$1,192,310.33, subject to review and audit. By Comm. Clemons, second by Comm. Holden. Motion carried.

Approval of Accounts Payable Registers

**Motion:** To approve the Accounts Payable Register dated November 3, 2010 in the amount of \$3,574,215.09, subject to review and audit. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

#### Budget Transfer # 2011-01 – Contingency to Sheriff's Detail

**Motion:** To approve Budget Transfer # 2011-01; this is a request to transfer \$40,000 from Contingency line 7740, and to transfer that amount to Sheriff's Detail line 7010, and to transfer \$9,852 from Contingency line 7740, and to transfer that amount to Sheriff's Detail line 7130 for a total transfer of \$49,852. Motion by Comm. Clemons, second by Comm. Holden.

Comm. Holden inquired if the expense of the details is covered by a like amount of revenue. Sheriff Hardy responded that there is offsetting revenue to match the appropriation.

Motion carried.

#### Budget Transfer # 2011-02 – Contingency Energy Grants to Nursing Home Administration New Equipment

**Motion:** To approve Budget Transfer # 2011-02, noting that this is a request to transfer \$25,272 from Contingency Energy Grants line 7741 to Nursing Home Administration New Equipment line 7970; this is part of the County's Energy Efficiency and Conservation Block Grant award. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

### 1. Public Comment on Agenda Items

There was no one present who wished to address agenda items.

### 2. Department of Corrections

Census

Supt. O'Mara presented the DOC Census, noting that as of November 1, 2010, the Census was 606, which included 547 men of whom 384 were being held pre-trial and 163 that had been sentenced. There were 59 women of whom 38 were being held pre-trial and 21 that had been sentenced.

Mr. O'Mara noted that he has two items to address under Old/New Business.

### 3. Nursing Home

Census

Mr. Moorehead presented the Nursing Home Census and explained that as of October 28, 2010, the census for the Nursing Home was 287, which included 213 Medicaid residents, 50 self pay residents, and 24 Medicare Part A residents.

#### Bid # 04-2011 – LED Lighting

Mr. Moorehead informed the Board that Bid # 04-2011 is part of the Energy Efficiency grant and explained that this bid is for LED Exterior Lighting for the parking lots: he recommended LED Conversion, Inc., Windham, NH at a price of \$25,271.46, and noted that it is the lowest qualified bidder.

**Motion:** To approve Bid # 04-2011 as described by the Nursing Home Administrator, contingent upon the approval of the Transfer #2011-02 by the Executive Committee. Motion by Comm. Clemons, second by Comm. Holden. Motion carried.

## Bid # 05-2011 - Wireless Installation

Mr. Moorehead presented Bid # 05-2011; it is for the installation of wire for the wireless connections throughout the Nursing Home; the lowest responsible bidder is Longchamps Communication Systems, Manchester, NH. He explained that the computer team has seen this and favors the project, and noted that Longchamps did the installation for the Bouchard Building. Mr. Moorehead explained that this bid includes sealing any penetration into the walls required to run the wiring; the bid is for \$12,692.

**Motion:** To approve Nursing Home Bid # 05-2011 for the Wireless Installation, as presented. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

**Motion:** To authorize the Nursing Home Administrator to spend up to \$12,692 from the Capital Reserve Fund for the purchase and implementation of an electronic data system for the Hillsborough County Nursing Home. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

## September, 2010 Revenue

Mr. Moorehead presented revenue information and explained that the budgeted revenue for September was \$1,683,196 and the actual revenue for the month was \$1,641,257, which resulted in a negative variance of \$41,939. He explained that this was largely due to a lower Medicare census and to September being a 30-day month.

## 6. Sheriff's Office

### Homeland Security Maintenance Grant

Chief Deputy Durette presented a request for approval of a grant application, noting that this is a follow-up grant to one that was already done to place a surveillance system on the water tank across the street to monitor it. He noted that it is an old steel tank with approximately ½ million gallons of water that supplies water pressure to the Complex as well as to some parts of Pinardville. He explained that because the tank is so isolated and difficult to reach, it is important to monitor the tank. He further explained that if the water were to spill out of the tank catastrophically, it would flood out the Police Department across the street and it is likely that water would flow into the basement of the Bouchard Building where the electrical supply is located. Chief Deputy Durette informed the Board that there has been some damage to the system during ice storms and noted that this grant would provide maintenance that would repair that damage and would provide a wind turbine so that there would still be electricity at the tank when there is no sun; he requested Board approval of the bid, and if approved, authorization for the Chair to sign the grant application.

**Motion:** To approve the State Homeland Security Program grant application for the water tank surveillance, repair and upgrade. Motion by Comm. Holden, second by Comm. Clemons.

Comm. Clemons inquired if the tank was owned by the County or the Water Works. Chief Deputy Durette responded that it is owned by the County; it is a shared resource and both the Manchester Water Works and the County provide pressure; it is a reserve of a large capacity of water that can be directed to the fire hydrants for use in the event of a fire. Mr. Wenger explained that there are pumps in the basement of the Administration Building and each night the tank is filled with water.

Motion carried.

Comm. Pappas noted that this is the last official Board meeting that Chief Deputy Durette attends prior to his retirement and thanked him on behalf of the Board for his service to the County. Mr. Durette noted that he will be in occasionally to work on special projects. Sheriff Hardy expressed his profound thanks on behalf of

himself and all the men and women in the Sheriff's Department for all the efforts Mr. Durette has contributed to better the County over the years. Sheriff Hardy explained that Mr. Durette has enhanced the Department's capabilities and operations over the years.

## **7. Old/New Business**

### NHAC Legislative Breakfasts

Comm. Pappas explained that the Association of Counties would like to have a breakfast to educate the Delegations of several Counties relative to legislation that will be presented at the next legislative session regarding the disposing of drugs in Nursing Homes, Corrections, Sheriff's Departments, etc. She noted that the fee is nominal and asked if the Board wishes to support this effort.

E. Robinson informed the Board that a new issue is being introduced regarding a product called "Spice" or "K-2;" it is a synthetic form of marijuana (THC) mixed with herbs that is legal to purchase and possess and has a similar effect to marijuana. She noted that it is now possible to test for it, but noted that it has been difficult to legislate against this in the past; labs had not previously developed a means of testing for the substance because it is converted in the body to a form of serotonin. She explained that the test has only been available for the last few weeks. Ms. Robinson explained that currently, it is legal for a person 18 and over to purchase "K-2," and it is available in some stores. Ms. Robinson went on to note that there have been several related deaths reported in Texas as well as numerous emergency room visits. Comm. Clemons noted that there was a program related to "K-2" on the History Channel.

The Board and those present agreed to support the NHAC breakfast, and Comm. Pappas noted that she will respond in the affirmative to the NHAC query.

Ms. Robinson asked to be excused for a staff meeting. Comm. Holden asked Ms. Robinson to provide an update relative to the family prevention and ADDE program at the next Board meeting, to which Ms. Robinson responded that she would be happy to provide that information.

Mr. Wenger informed the Board that the end of the calendar year is approaching and noted that the Business Office would like to have the December 23<sup>rd</sup> payroll be the last pay of the calendar year and suggested that personal and sick time for the calendar year be calculated as of December 18<sup>th</sup>, the last pay period in the 2010 calendar year. The first paycheck of the 2011 will be January 6<sup>th</sup>, and the W-2's will be sent out in January.

Mr. Wenger noted that it is time for the Administrative Reviews and asked the Board to advise him relative to the Board's intent regarding the reviews. Following discussion, the Board advised that it wishes to instruct the involved Administrators to complete a self-evaluation that will be due prior to the next Board meeting with reviews to be scheduled following the Board meeting.

Mr. Wenger noted that the AFSCME Nursing Home contract is still pending execution and has not been brought to the Board because the County is still waiting for signatures from the bargaining unit; he noted that it is his understanding that the issue relates to two positions that are not budgeted that the bargaining unit wishes to see in the wage ranges. He further noted that the County is doing its best and noted that each week that goes by makes it more and more difficult to implement the contract. Mr. Moorehead noted that there is also a 30-day time period involved for back-dating pay. Mr. Wenger noted that the County and Mr. Flygare are doing everything possible to finalize the contract.

Mr. Wenger informed those present that there were three employees who received awards at the Association of Counties annual conference; they were Denise Boyd-Human Resources, County employee of the year; Tonya Dubois-Nursing Home employee of the year, and Sheriff Hardy-Sheriff of the year.

Mr. Wenger explained that the notice regarding the under-utilized County buildings was sent out the previous week to the various committees that were involved in the Charrette process as well as County newspapers and realtors. He noted that the notice has resulted in three calls; one was interested in looking at the various properties but was more interested in a space that was move-in ready; Brian Rose from the Town of Goffstown is interested in meeting and talking relative to zoning and other issues in advance of the Towns March meeting, and lastly, Cameron Kittle of the Nashua Telegraph will be coming in the following Tuesday at 11:00 a.m. with the intent of gathering information for a possible news story.

Mr. O' Mara informed the Board that the 82<sup>nd</sup> Correctional Officer Academy has concluded, and as a part of this Academy's curriculum, a tour of the facility will take place this afternoon. Corrections Officer Candidates from a number of Counties will be participating in the tour so they can see what is done in Hillsborough County.

Mr. O' Mara informed the Board that the trial that is taking place at the Superior Court in Nashua related to the atrocity that occurred in Mont Vernon is including evidence that was discovered at the Hillsborough County Department of Corrections (DOC). Mr. O' Mara noted that prosecution read a poem in the opening statement that is alleged to have been penned by the defendant currently on trial; he noted that Correctional Officer, D. Mercer is testifying today relative to how he obtained that document, and how it was handled at the DOC. Mr. O' Mara noted that the general public is not always aware of the level of involvement of the Correctional Officers, and explained that the DOC has been providing State Police with intelligence materials; the State Police have indicated that the materials have been key to their prosecution. He summarized that this reflects very positively on the Correctional Officers who have taken the time to cull through materials and be aware of what material could contribute to the trial. He noted that Officer Mercer, while somewhat apprehensive because of the trial's notoriety, is a former police officer who has testified before; Mr. O' Mara is confident that he will reflect well on the County.

Mr. O' Mara informed the Board that the DOC is currently holding three pregnant females; all are pre-trial, all are on modest bails, and fortunately none of them require methadone for the health of the fetus, so any medical bills will be related to prenatal care.

Mr. O' Mara informed the Board that the previous week, the DOC received an inmate who was given a 180-day sentence for "tagging" (spray painting buildings). He noted that the individual has a particular disease that requires medications that cost \$700/week; he explained that since this is a non-violent crime, the inmate has been expedited into the Community Corrections Program; at that time the burden of the medications will become his responsibility and that of his family. Mr. O' Mara noted that these situations are an example of the volatility of the medical expense line that the DOC must work within.

Comm. Holden noted that she attended the Rails to Trails Steering Committee meeting the previous Friday and expressed a concern that was raised related to whether or not a person could walk behind the Women's Prison on the property that is adjacent to the trail. Mr. Wenger noted that it is not possible to drive a vehicle on the trail but, to his knowledge, there is no problem walking in that area. Mr. O'Mara requested that Comm. Holden contact him should anyone be confronted or if there is any issue and noted that he will resolve the issue immediately.

Comm. Holden noted that the final meeting of the Right to Know Commission was held recently; she explained that legislation was introduced to extend the Commission, but it failed to pass. She noted that she submitted a report to Mr. Wenger.

Mr. Wenger noted that he wished to add his thanks to Mr. Durette for his assistance and cooperation with the many projects they have worked on together throughout the years. Comm. Holden noted that she appreciated his efforts with the projects they have worked on together over the years, including the telephones and upgrading the computers.

Comm. Pappas suggested that the Board change the order of business and address Public Comments at this time.

## 9. Public Comments

Rep. Vaillancourt was recognized by Comm. Pappas. He commented that he is starting his eighth term as a representative and he has three words to say, "Elections have consequences." He noted that some people do not think they do, and explained that one of the defeated State Reps from Ward 2 went up to the person that defeated him and said, "I hope you will continue to carry on the policies we have tried to introduce this past year, such as the bottle bill." Rep. Vaillancourt offered that he thought to himself, "This is absolutely flabbergasting, the people don't want your policies carried on or they wouldn't have voted you out of office and voted new people in."

Rep. Vaillancourt continued that he believes that it is time stop giving increases year after year and to think of rolling back spending and offered to work with the new Board on those efforts. He noted that it is his belief that the Delegation Clerk could be a half-time position, and that the legal person that is full time could be cut back or eliminated and the County could hire outside services.

Rep. Vaillancourt noted that a particular concern of his is to get a proper percentage on the money we have in reserve. I haven't seen the latest report, but the month before that showed that only 9 million dollars was invested at a rate of 2% or more; some 22 million were invested at 0.1%, which costs us over one-half million dollars a year in interest. He expressed his hope that the Board will work with the new County Treasurer to review the Investment Policy so that we invest our money at more than 0.1% return on investment."

## 10. Non-Public Session

While waiting for those participating in the Grievance Hearing, Comm. Pappas suggested that the Board address other business; she inquired if there any requests for Non-Public Session; being none, she suggested that the Board proceed with hearing the Grievance.

There were no requests for Non-Public session.

Comm. Pappas entertained a motion to recess until all parties involved in the Grievance Hearing were present.

**Motion:** To enter into recess. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

The Board entered Recess at 10:44 a.m.

The Board moved out of Recess at 11:16 a.m.

**Motion:** To come out of Recess. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

## 8. Grievance – Chemical Worker's

Comm. Pappas asked if the Grievant wished to be heard in Public or Non-Public Session. The Grievant; Kristin Hurley chose to proceed in Public Session. Those participating included Shari Tinkham-President of Local 1046-C, Mary Davis-International Representative with the Chemical Worker's Council, Kristin Hurley-RN and Staff Development Coordinator at Hillsborough County Nursing Home, Carol Turgeon-RN and Vice-President of Local 1046-C, Heidi Bernier-RN and Assistant Director of Nurses at the Nursing Home, Kathy

Covert-RN and Director of Nursing at the Nursing Home, and B. Moorehead, Nursing Home Administrator. Commissioner Pappas introduced herself and the Board and recognized M. Davis.

Ms. Davis explained that the grievance before the Board involves K. Hurley, who took a full time position as a Staff Development Coordinator with the County in March of 2009; prior to that she worked for the County on a per diem basis. Ms. Davis indicated that the issues relating to this grievance:

1. There is a dispute as to whether Ms. Hurley's position is salaried exempt or salaried non-exempt, and whether as a supervisor she should be a grade 24 or 25, other supervisors are grade 25.
2. Ms. Hurley is a grade 24, and she is being asked to supervise.
3. The County's position is that Ms. Hurley's position is that of a salaried, exempt employee so that when she supervises on a weekend, she does not receive any compensation such as the shift differentials that other nurses receive when they supervise.
4. She does not receive additional compensation for working on a holiday such as the head nurses would receive; she is given a Monday or Friday off, or an additional day off and this poses a hardship to her in her position because it takes her away from her Staff Development position, which also includes wound care.
5. Ms. Hurley is on a 7-week rotation and would like to be removed from that rotation.
6. Ms. Hurley works numerous hours over 40 during the week; a salaried exempt staff person would be paid for 40 hours; a non-exempt staff person would be entitled to overtime and to the shift differentials as per the contract.

Ms. Davis provided historical information relative to Ms. Hurley's hiring and job classification:

1. She noted that Ms. Hurley was classified as a salaried non-exempt employee when hired and during the grievance procedure when that information came out, Ms. Hurley was told, at a grievance meeting, that the County had made a mistake when the County entered that position into the Munis system, and that somehow it was entered as a salaried non-exempt instead of a salaried exempt position. Ms. Davis indicated that the County clarified that the position was indeed an exempt position and she was not entitled to overtime.
2. Ms. Davis offered that Ms. Hurley has tried to work with the County to resolve the compensation issue prior to bringing the grievance forward, but it has not been resolved.

Ms. Hurley was recognized; she explained that it has not been an easy decision to move forward with the grievance hearing; she noted that she is nervous and is not familiar with the procedure, but feels that it is right to be at this meeting. She explained that she is grieving the weekend supervisory on call duties as well as the employee status and current classification, both of which were changed without prior notification. She explained her issues:

1. Hourly to salaried changes occurred after she applied for the position, and that is where there is a difference of opinion.
2. It was her understanding that she was an hourly employee, not a salaried employee.
3. The change from non-exempt to exempt took place during the grievance process.
4. In November, 2008, she was told by the Director of Nursing that the part-time Staff Development position opened and that it included weekend supervisory duties that would include every 7th weekend.
5. There was no official posting of this job until January 21, 2009.

She explained that her per diem hours were running out, which is why she went part time. She further explained that in January, 2009, she told her Director of Nursing that she wanted to return to per diem status in a supervisory position; at that time her Director stated that she had never taken her off the per diem status. She noted that in February, 2009, she applied for the full time Staff Development Coordinator job because she

found herself in need of benefits. Ms. Hurley asked to do the off-shift duties instead of the weekend supervisory duties, but her Director explained that this was the lead Staff Development Coordinator position, and it included infection control duties. Ms. Hurley explained that the Director informed her that the Staff Development Coordinator II position includes weekend supervisory duties, and that the Director had to do this herself when she was in that position, and that she couldn't change that. Ms. Hurley noted that she has copies of the job posting change to support her claim. Ms. Hurley indicated that she is the only exempt person on the rotation schedule. She noted that all the head nurses and other supervisors are at the higher grade and are all non-exempt employees.

Ms. Hurley noted that she is an educator and she asked to be moved to the higher grade (25) position. She noted again that all the other weekend supervisory personnel receive a differential, but she does not and explained that a salaried employee that is scheduled to work holidays, weekends, and on call receive a differential. Ms. Hurley noted that she is required to use sick days for appointments and vacation time for emergencies, and indicated that there is no benefit to working as a salaried employee; there is no chance of overtime. She explained that the job posting listed full time, 40 hours a week, it did not specify that it was a salaried position, and she was not told that she would be salaried. She noted that her checks always had different amounts but when that changed and she became aware of the change, she contacted the Nursing Home Business Office and was told by K. Holt that she did not have to punch the time clock any longer because she was salaried and had been for weeks; that is how she was informed that she was a salaried employee. Ms. Hurley noted that Ms. Covert approached her sometime after that conversation with the Business Office and had an angry affect and was a little indignant at that point. Ms. Hurley noted that her Director indicated that she had previously informed her that she and Brenda (Cunnen) were salaried and that they don't need to punch the clock; Ms. Hurley noted that she does not remember ever having that conversation with her director, and that is one of the things that she is contesting; that had a big effect on her life. Ms. Hurley noted that the HR file (Human Resources) is going to confirm that she gets differentials. She noted that there are other people in the same position whose acceptance letter indicates that while they are salaried, they are exempt, and hers says that she gets the differentials. She noted that it is her belief that the Collective Bargaining Agreement (CBA) confirms that she is entitled to differentials. She noted that if she goes in on call, there is no additional compensation; her position as Staff Development Coordinator has developed into a huge job; it now includes wound care for the entire facility, and the increased responsibilities are significant and put her license at risk with all the change. She also noted that no one takes over her duties when she is taken out of Staff Development, when she returns she has to catch up on the events of the previous three days. She suggested that there are a lot of jobs that have evolved that are not logically part of a Staff Development Coordinator position, including:

1. doing the IT job of training people on how to use the phone system,
2. stocking central supply,
3. ordering central supply even though there is a very capable purchasing agent,
4. acting as wound care nurse for a 300-bed facility,
5. floor nurse under a separate bargaining agreement,
6. and supervisory, which is a recognized separate full time position.

Ms. Hurley referred the Board to her email (9/3/09) to Human Resources (HR) asking if she is exempt or non-exempt and to the HR Director's response (9/4/09) that the position is non-exempt. She noted that she took the steps to clarify the position. When she spoke with Mr. Moorehead, she was told that she was non-exempt, that there had been a problem with the Munis system, and that they were not sure when it occurred but that had been corrected and now she is exempt. She noted that all her documentation supported that she was non-exempt and they actually took her from a non-exempt status and changed her to an exempt status during this grievance process with no notification to her. She noted that it is her belief that if she makes a mistake in her job, she is responsible for the consequences and asked the Board to consider what happens when Administration makes a mistake. She noted that she has been asked to take the consequences of that mistake and that has been happening for some time, and there has been a big impact to her. Ms. Hurley noted her

opinion that the CBA is a good contract that everyone worked very hard for; she expressed her belief that if the contract is applied in its entirety that would be the ideal.

Ms. Hurley asked that the Board approve a “cease and desist” on supervisory duties and that the duties of the Staff Development Coordinator be revised or reviewed so that they are fair and reasonable so that everyone can be happy with her position. She requested that the employee classification be returned to the non-exempt status and that she be compensated for back pay.

Comm. Clemons asked Ms. Hurley if she was to be called out for an emergency for three or four hours, such as a child in trouble at school, and then if she returned, would she be compensated for that time. Ms. Hurley responded that it is a gray area; there are different applications to that situation. She noted that on a week that she worked 40 hours Monday through Thursday and took Friday off, and was told she had to use a vacation day. She further noted that if she had to go out for an appointment, she believes that she is compensated for that, but that is something she rarely does.

Comm. Clemons noted that she is asking the Board to review a policy; he asked the bargaining unit representative if this is something that belongs in negotiations, to which Ms. Tinkham responded that there has been some discussion to that effect, and it is her understanding that at that time there would be no overtime, but there was no discussion about differentials or holidays so she thinks that was unclear; she noted that she had hoped that she and Tom Flygare could come to some agreement; that did not happen so it is likely that it will be discussed at the next negotiating session. She noted that in the meantime, Ms. Hurley is the only person in the entire building who supervises that is not compensated. Ms. Davis informed Comm. Clemons that back in 2007 when the bargaining unit did discuss the Staff Development Coordinator being on a seven week rotation, there was one point in the negotiations where her notes reflect that Mr. Moorehead said that “we could talk about the count,” but that fell through the cracks and that conversation was never completed. Ms. Davis explained that Ms. Hurley is the first person that has ever been in the rotation since 2007; there was a period when nobody was doing the seven week rotation; Ms. Hurley started the rotation in 2009 as a Staff Development Coordinator because there were not two full time positions. She is the first person who is using this agreement and it was not a complete agreement relative to how a person is compensated for working on the weekend.

Mr. Moorehead commented that from what he has been told and from the documentation he has seen, it is his belief that:

1. Ms. Hurley was well aware of the fact that the weekend rotation was part of this job.
2. Grades of individuals in the bargaining unit are negotiated at the table and are contractually included in the body of the CBA.
3. The grade 24 that Ms. Hurley was at and the grade 25 that the Head Nurses are in now is negotiated.
4. Even though Ms. Hurley indicates that she was unaware that she is salaried, he has an issue with that because when he goes back to the weekend coverage from the time she took the position up to the time she grieved her status, she was weekend supervisor 11 times between 4/18/09 1/17/10, and she was weekend supervisor 12 times, which is every 7<sup>th</sup> weekend. He went on to note that at no time when she worked during those dates did she ever get compensation or shift differential for overtime.

Mr. Moorehead asked the Board to note that Ms. Hurley said that she was now asked to work weekends, but that has been going on since 4/18/09. He noted that she has also said that she has been asked to do wound care recently, but wound care has been the same for probably 20 years; it has been the responsibility of the Staff Development Coordinator since he was employed at the Nursing Home 11 years ago.

Mr. Moorehead explained that in March, 2007, there were negotiations that discussed the 7<sup>th</sup> weekend rotation; he noted that he received a voicemail from Tom Flygare this morning indicating that it was Mr. Flygare’s recollection through his memory and his notes that the formal agreement reached by the bargaining unit back

in March, 2007 relating to when the 2<sup>nd</sup> full time Staff Development person was hired, and that that person would be required to do the weekend rotation. Mr. Moorehead noted that his notes relative to the negotiations and those of R. Dempsey also reflect this.

Mr. Moorehead informed the Board that the February, 2009 job posting indicated that the person in that position was responsible to work every 7<sup>th</sup> weekend. He noted that he has a note from Ms. Hurley to K. Covert dated 10/29/09 in which Ms. Hurley indicated that she would be happy to fill her supervisory responsibilities until there is a new person there with her. He indicated that this illustrates that Ms. Hurley knew at that time that supervisory duties were required, and it confirms the dates that she did work as a supervisor.

Mr. Moorehead addressed the issue of exempt vs. non-exempt; he noted that Ms. Hurley met with staff and him to discuss this grievance in July or August at which time Ms. Hurley indicated that she had received several emails from HR stating that her status was hourly or non-exempt. He explained that he told Ms. Hurley several times during that meeting that the position was a salaried position. He noted that he then checked with HR and learned that HR did in fact have her listed as hourly. Ms. Chandler looked further and reviewed the job description duties and responsibilities and the FLSA statutes (Fair Labor Standards Act), and then Ms. Chandler informed Mr. Moorehead and Ms. Hurley by letter that there was a mistake in her classification and she is a salaried employee, exempt from overtime. Ms. Chandler also indicated that the original hourly status was mistakenly entered into the Munis system. He noted that he is not sure when the error occurred, but he believes it was in 2003 or 2004. Mr. Moorehead summarized by recommending that the grievance be denied, noting that it is his belief that management did not violate any section of the CBA.

Ms. Covert informed the Board that Ms. Hurley is an excellent nurse who works on all units; she is highly skilled and is able to do many different things; when the Staff Development position opened up, the administrative staff thought that she would be a great candidate, and she was interested in the position. She noted that Ms. Hurley knows the facility well and is capable of picking up and doing almost any job in the facility. Ms. Covert noted that Ms. Hurley assumed the position in March, 2008, not March '09, and it was discussed at length with her that she would be a salaried employee. Regarding Ms. Hurley's comment that a discussion had an angry affect and that she became indignant, Ms. Covert explained that she is usually calm and does not yell at people, and she does not understand where that came from. She noted that Ms. Hurley had said she was willing to work off shifts, but that is not true and that Ms. Hurley never wanted to work off-shifts. She noted that Ms. Hurley said that she would rather continue working in the supervisor role than work off-shifts because Ms. Hurley has children, and Ms. Covert indicated that she could respect that. Relative to the on-call part as well as the supervisory role, Ms. Covert noted that it was explained at the very beginning and she has documentation that shows that they had a meeting on April 13, 2009, then there were two Staff Development Coordinators and the meeting was to break up the responsibilities. She referred to her notes and indicated that one of the things mentioned was that Ms. Hurley will be supervising every 7<sup>th</sup> weekend. Ms. Covert indicated that she had wanted to give Ms. Hurley ample time to become adjusted to the supervisor role because even though she was qualified, she had not done it. Ms. Covert noted that she set Ms. Hurley up for a couple of weekends so that she could work with a person who was skilled in that role and so that Ms. Hurley would feel comfortable in the role.

Ms. Covert addressed Ms. Hurley's issue with being away and her wound care responsibilities not being covered and explained that Ms. Bernier, Ms. Dubois or she will cover the responsibilities of the wound care nurse. Ms. Covert explained that the floors will be notified when Ms. Hurley is off on the weekend; Ms. Bernier or Ms. Dubois will routinely go to the floors to see the wounds and the wound care would be done, unless there were to be an emergency; 95 percent of the time, someone is covering Ms. Hurley's responsibilities. Ms. Covert noted that Ms. Hurley would certainly be able to leave if there were an emergency or one of her children was sick, and explained that Ms. Hurley was given time off when her son went off to college. Ms. Covert noted that she does not want to see the administrative staff characterized as being regimented and unwilling to give time off because that is not true. Ms. Covert explained that she started at Hillsborough County in November, 2007 as a staff development coordinator, and noted that when she took the

position she was very aware that it was a salaried position, and that she would work every 7<sup>th</sup> weekend supervising. She noted that the position fit her life well at the time, and added that she did not get to do the supervisor functions because the day shift supervisor left and she moved into that role. Ms. Covert explained that Ms. Hurley is correct when she stated that no one else has ever worked the weekends, but she was willing and would have done it had the other opportunity not arisen.

Ms. Bernier asked to clarify some statements. She noted that Ms. Hurley stated that she wasn't aware that wound care nursing was going to be part of her duties; however, she noted that Ms. Hurley, J. Nelson, another Staff Development Coordinator and she attended a Wound Care Conference together, and in July, 2009, Ms. Hurley and she were selected to go to Chicago to attend an Advanced Wound Care seminar. Ms. Bernier noted that she went because she was the person writing the policies and procedures and guidelines for wound care and Ms. Hurley went because she was the wound care nurse and this provided her with advanced knowledge that would assist her in those duties. Ms. Bernier noted that she wished to clarify Ms. Hurley's comment regarding her being responsible for stocking Central Supply; she noted that Ms. Hurley is responsible for stocking her wound care supplies; they come in from Purchasing in boxes and Ms. Hurley is responsible for stocking the 2 wound treatment carts at the facility. Ms. Bernier expressed her belief that as the wound care nurse, that goes along with Ms. Hurley's position because she needs to know what is on hand, if it is being used too quickly, or if it needs to be re-ordered. Ms. Bernier explained that Ms. Dubois and she have covered wound care issues when Ms. Hurley is not at the facility and noted that every single issue may not be covered but all of the nurses are familiar with the wound care guidelines; the guidelines give specific instructions for dealing with the wounds that they discover and for the appropriate action. Ms. Dubois noted that if the nurses have questions on a day when Ms. Hurley is off, they usually contact her and she will go and look at the wound. Ms. Bernier offered that job descriptions may not cover everything that one does during the course of the day, and it is not unusual for a nurse to do tasks that are not listed in the job description for a particular position; she noted that on one occasion she was scrubbing walls and bathrooms along with the housekeeping department staff. She summarized by saying that "we all do what we need to do to make Hillsborough County Nursing Home a good facility and to provide good care for our residents."

Ms. Hurley addressed the Board, noting that she believes it is important for it to understand that her children are 18 and 20; she does not have little ones at home, and they are capable of handling themselves. She noted that she worked 3:00 to 11:00 for years without a problem and had no problem with off time. She noted that her son was in an auto accident the past summer and she was asked to use personal days for her time off; she understood that because she was a salaried employee, it was not a benefit; she would have to use personal or vacation days.

Ms. Hurley returned to the issue of wound care and noted that in the past there has always been a vending machine so the supplies were accurate; the machine tracked the supplies. She explained that wound care supplies are expensive and it is a concern of hers that the nurses do not have access to the supplies if they run out. She explained that wound care has evolved and is a job in its own right.

Comm. Clemons inquired about how much additional compensation Ms. Hurley is asking for in this grievance, and noted that it appears that the additional compensation amount she is requesting is \$65,000. Ms. Hurley noted that she was hired as an hourly employee and changed to a salaried employee with increasing duties that are placed upon her including wound care. She explained that she has to stay as late as she does to get the job done and to protect her license and to protect the facility. She noted that if she does not stay to complete her responsibilities, her job is very much at risk. Ms. Hurley returned to the issue of people taking over for her when she was out, and noted that while people do take over on occasion, it is not the norm.

Ms. Covert asked Ms. Hurley if she remembered that during orientation she offered as much time with her as she wanted, and Ms. Hurley specifically told her that she was comfortable and was a very qualified nurse that had all the skills that it takes to be in charge of that building. Ms. Hurley responded that she does not recall that.

Ms. Davis noted that she wished to bring up an additional point; she noted that she put in an information request September 20, 2010, and explained that one of the requested items was for the County to tell the bargaining unit how it came to classify the Staff Development position as a salaried exempt position and the criteria that it uses under the law. She noted that the response received under request number 8, which read: "Please explain how and why the County determined the STD to be classified as a salary/exempt position;" the County's response was, "The County does not maintain documents responsive to this request." Ms. Davis responded, "I found it to be highly unusual that the County does not have records as to how they determine a classification to be salaried or hourly, and I just wanted to bring that up...if you had any information that would help us understand why the County has taken the position that it is a salaried/exempt position it would be helpful." Comm. Pappas responded that she does not know the answer, but it is something the Board can look into.

Comm. Clemons noted that this is above his purview and suggested that Ms. Davis take it up with the Administrator. Ms. Davis responded that she was told that when she put in an information request, it should be directed to the County, so her understanding was that anything that wasn't under the Board's jurisdiction would be addressed by someone else. Ms. Davis referred to the response that the County does not maintain documents and noted that she would think that the County would have to maintain documents. Ms. Davis explained that the bargaining unit is trying to determine if Ms. Hurley was hired as an hourly/non-exempt employee, and the County is saying that it was a mistake, that it was entered into the Munis system wrong, and Ms. Hurley has received documentation to that point, but the bargaining unit is just trying to determine if it is a mistake, or what should that position be.

Comm. Clemons asked Ms. Hurley when she first became aware of the situation that she is grieving. Ms. Hurley asked if he was referring to the exempt/non-exempt part or salary/hourly. Comm. Clemons replied, "All of them." She responded that it was at different times; relating to the salaried issue, she was informed by K. Holt in the Business Office after she had started and she had gone down and inquired because her checks were no longer... Comm. Clemons asked when that occurred. She responded that she did not know. He asked, "Two years ago?" Ms. Hurley responded that it was when she started this position. Comm. Clemons noted that he could not understand why she did not grieve it at that time. Ms. Hurley responded that when she had spoken with her Director of Nursing, her affect was not very friendly. She continued and noted that it is not easy going up against Administration and she had no one else to go to; her direct supervisors are the Director of Nursing and the Administrator; she also noted that her Director of Nursing was out for a long time and we did the best we could going through the channels. She further explained that when she inquired of Ms. Chandler about her status, she had no reason not to believe her response; she is the Human Resources Director and is a very knowledgeable woman; Ms. Chandler assured her that she was non-exempt, and she believes that Administration has confirmed that she was indeed, non-exempt, but for some reason they felt they needed to change that from non-exempt, and if she is not exempt; she believes that she should be getting differentials and overtime. She inquired that if she was to be working as a salaried person, what is the benefit of working as a salaried employee, particularly if you have to use your vacation days and personal days for any time off if you are with your son, for example, when he is in surgery. Ms. Hurley emphasized that there were two people in Staff Development; and her co-worker that had done the off-shifts was in the same position as she was; she also was not getting differentials.

Comm. Clemons asked again what amount she is asking for, to which Ms. Hurley explained that she is looking for shift differentials and holidays. Comm. Clemons asked for clarification and Ms. Hurley responded that the amount is \$31,000. She noted that she understands that this is a shocking figure; she explained that this is the work that she is giving to the County; it is her time away from her family, and it is her understanding that being an hourly employee means that one is non-exempt. She further noted that if Human Resources considered her a non-exempt employee, she had no reason to believe otherwise. Comm. Clemons asked Ms. Hurley exactly when she found out that she was on salary; to which Ms. Hurley responded that she joined the union early this year, and once she joined and she realized she was under a protective blanket of the CBA, she

started looking into this a little bit more and what was included, as well as what she was, and was not, covered for. She noted that she has addressed this issue on numerous occasions with her administrators protesting the situations.

Mr. Moorehead explained that there is a 10-day window for notification and requested that this grievance be denied for the reasons previously stated and for the timeliness of the grievance.

Ms. Covert informed the Board that Ms. Hurley became a salaried employee the day she started the position and administration has the punch detail that shows that information. She suggested that if she, personally, thought she was hourly and there was an issue, she would be at Human Resources immediately or would go up the chain of command...there are people to go to. She noted that from March, 2009, Ms. Hurley has received a 40-hour paycheck with no complaints. Ms. Davis noted that she wished to respond to Mr. Moorehead's issue with the timeliness and offered that under the Labor Laws, it is well known that if a person is paid the incorrect wage, each day that they are paid the incorrect wage starts a different time frame, so it would be the union's position that this would not be untimely.

Comm. Clemons asked Ms. Hurley if she were eligible to join the Chemical Worker's Union when she was first started at the Nursing Home. Ms. Hurley asked if he was referring to when she first started in Staff Development; he responded in the affirmative. Ms. Hurley responded that she was a per diem employee for most of her career at the facility; when she started it was at part time and there was not even a posting for this as a part time position. She explained that the position evolved into the current position; her per diem hours went over 1,000 that first year; she was straddled between part time and a per diem position. She indicated that as far the Chemical Worker's, they did not know of that position because she was not a member of that union. She indicated that it was her ignorance, but it is embarrassing to say; as far as it applying to her she did not know that. Comm. Clemons asked if anyone approached her from the union; she responded that there were people that suggested that she join because most of the head nurses were in the union. She explained that she did join the beginning of this year. Comm. Clemons asked how much time she worked as a non-member of the Chemical Worker's Union. Ms. Hurley responded that she joined in February of this year.

Ms. Covert noted that the day that they were discussing salary, she definitely told Ms. Hurley that she was salaried; she indicated that she gave Ms. Hurley a copy of the union contract and told her that she could be in the union. Ms. Covert continued, noting that Ms. Hurley took it with her to read. Ms. Covert indicated that she had to go to Ms. Hurley a couple days later to get it back, and summarized by saying that Ms. Hurley was well aware that she could become a member at that time; that was the day that she discussed the hourly rate with Ms. Hurley.

There being no further discussion, Comm. Pappas closed the hearing. The parties excused themselves from the meeting. The Board considered the facts before it and agreed to discuss the manner in Non-Public session.

**Motion:** To move into Non-Public session with Mr. Wenger consistent with RSA 91-A: 3 II (a) and (c). Motion by Comm. Holden, second by Comm. Clemons. Pappas-yes, Holden-yes, Clemons-yes. Motion carried.

The Board moved into Non-Public session at 12:12 p.m.

The Board discussed the grievance presented earlier in the meeting. No action was taken during Non-Public session.

The Board moved out of Non-Public session at 12:21 p.m.

**Motion:** To move out of Non-Public session. Motion by Comm. Holden, second by Comm. Clemons. Motion carried

Comm. Pappas asked if there were any other business before the Board.

Mr. Wenger asked if all Board members would be able to attend the December 15<sup>th</sup> meeting, noting that there are other grievances scheduled for that meeting. All Commissioners replied in the affirmative. There was discussion relative to Administrative reviews being on the Agenda for the next Board meeting, and a general agreement that the forms would be sent out to the Administrators for self-evaluation with a request that they be returned no later than 2 days prior to that meeting so the Board has time to review them.

**11. Adjourn:**

Comm. Pappas asked the Board if it wished to address any other business; there being none, a motion to adjourn was entertained.

**Motion:** To adjourn the meeting. Motion by Comm. Holden, second by Comm. Clemons. Motion carried.

The meeting adjourned at 12:24 p.m.

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Comm. Michael Clemons, Clerk  
Hillsborough County Board of Commissioners

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Date