

Regular Meeting of the
Hillsborough County Board of Commissioners
December 9, 2009
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. Pappas, Comm. C. Holden, Comm. M. Clemons, R. Chadwick, C. Kirby, B. Moorehead, E. Robinson, M. Rusch, G. Wenger, and L. Stonner.

Also Present: T. Dubois, S. Lyons, P. Martel, A. Lemieux, and J. Grygiel

1. Pledge to the Flag

Comm. Pappas called the meeting to order at 9:15 a.m., followed by the Pledge to the Flag led by M. Rusch.

Comm. Holden is delayed due to the snow storm.

Minutes

Motion: To approve the Board of Commissioner's meeting minutes dated November 10, 2009. By Comm. Clemons, second by Comm. Pappas. Motion carried.

Comm. Holden joined the meeting at this time.

There was discussion regarding the need to approve minutes of the Executive Committee and Delegation when two or more Commissioners attend due to the recent interpretation from the Attorney General's Office. Comm. Holden expressed her opinion that approving Executive Committee and Delegation minutes seems like overkill, but noted that because of the change in the requirements, she is prepared to proceed with approving the minutes. She indicated that she is working on changing the requirements.

Mr. Wenger offered that perhaps in the future, if a majority of the Commissioners did not attend one of the meetings, a cover sheet could be attached to a set of minutes with a notation that a majority of the Commissioners did not appear, and no action was taken by the Board of Commissioners at the meeting. This would be appropriate for the times that a majority of the Commissioners did not attend.

Motion: To approve the Executive Committee meeting minutes dated September 9, 2009, noting that Commissioners Holden and Pappas attended the meeting. By Comm. Holden, second by Comm. Pappas. Motion carried.

Motion: To approve the Executive Committee meeting minutes dated October 23, 2009, noting that Commissioners Holden and Pappas attended the meeting. By Comm. Holden, second by Comm. Pappas. Motion carried.

Approval of Payroll Register

Motion: To approve the Payroll Register dated November 25, 2009 in the amount of \$1,159,053.34, subject to review and audit. Motion by Comm. Holden, second by Comm. Pappas. Motion carried.

Approval of Accounts Payable Registers

Motion: To approve the Accounts Payable Register dated November 30, 2009 in the amount of \$608,626.02 and the Accounts Payable Register December 8, 2009 in the amount of \$5,293,651.27, subject to review and audit. By Comm. Clemons, second by Comm. Holden. Motion carried.

Sheriff's Extraditions

Motion: To approve the Extradition Vouchers dated: September 21, 2009 in the amount of \$490.65, October 23, 2009 in the amount of \$529.16, and October 27, 2009 in the amount of \$987.13, for a total of \$2,006.94, noting that these have previously been approved by the County Attorney. By Comm. Holden, second by Comm. Clemons. Motion carried.

Mr. Wenger informed the Board that Belknap County is starting its planning process for the 2010 Annual Conference and is looking for input; they will be having an open meeting relative to the conference; they are interested in seeing if they can work with Primex and tie it in to a year-long process so that it is more educational for everyone.

Mr. Wenger referred the Board to emails relative to an opening for a County representative on the Local Government Center board. There are 12 school board members, 12 community members, 1 County member and 6 Employees representatives on the board. Comm. Holden noted that it is a commitment for 1 day a month on Thursday plus other committee meetings, so the commitment is somewhat significant.

Mr. Wenger noted that the letter from the Attorney General's office would be appropriate to discuss in Non-Public Session because it is time-sensitive and relates to potential litigation. Ms. Robinson noted that part of the document is confidential.

Mr. Wenger noted that he does not have a clean copy of the lease for the County Attorney's Nashua space; he is awaiting news relative to finalizing the lease.

The Board agreed that it will address grievances, as scheduled, following a brief recess.

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

The Board recess at 9:28 a.m.

The Board moved out of recess at 9:48 a.m.

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

S. Lyons, representing the Union, informed the Board that Miss Grandmason's grievance is being withdrawn at her request. He informed the Board that regarding Miss Grygiel's grievance, a resolution has been reached between the parties, so that grievance will not need to be heard today. He requested that the Board hold in abeyance the Class Action grievance relative to the pay of LNA's in training because those matters are being discussed in the bargaining process, and there may be a resolution through that process; there may not be a need for the Board to make a decision. Comm. Pappas polled the Board, and a general agreement was made to hold the Class Action grievance in abeyance.

Motion: To table the Class Action grievance. By Comm. Clemons, second by Comm. by Comm. Holden.

The Board discussed the appropriate action; Mr. Moorehead recommended tabling the action. Attorney Kirby offered that her concern is that it would be held out indefinitely; there has been a history of a long time in scheduling grievances; if they are denied, it can take up to a year for them to be heard by an arbitrator, so her preference would be for the Board to consider setting a time certain, at which time the Board would hear the grievance as opposed to holding it out there until the completion of negotiations or until a decision is reached by the PLRB. She noted that if the Board sets a date, it still has the option of extending that time, if the parties agree to it. She offered that just "holding it in abeyance can be problematic."

Comm. Holder withdrew her second to the motion on the floor.

There was discussion relative to setting a 60 day time limit. Comm. Clemons inquired if that is acceptable to the Union, to which Mr. Lyons agreed to the time and noted that this grievance relates to a training period, and once the training period ends, there is no further exposure to potential damages or pay-outs; he noted that he would respectfully ask for 90 days because of scheduling requirements and timing of the Board meetings. Mr. Moorehead offered that he would agree with 90 days.

Comm. Clemons withdrew the motion.

Motion: To table the Class Action suit for 90 days. Motion by Comm. Clemons, second by Comm. Holden. Motion carried.

Comm. Pappas recognized Mr. Lyons; she noted that some of the grievance material is difficult to read. Mr. Lyons responded that he will attempt to make darker, clearer copies. Mr. Lyons presented grievance #0584-Amy Lemieux, the remaining grievance for the Board to hear today. He explained that this grievance relates to a memorandum that was given on August 21, 2009 relative to a pattern of sick leave use, specifically noting that August 19 is listed relative to alleged abuse. Mr. Lyons went on to explain that Ms. Lemieux provided a Doctor's note indicating that she had abscessed wisdom teeth. He explained that in the bargaining agreement, a Doctor's note is only required for an absence of 3 days or more, and Miss Lemieux brought in a note for one day. He explained that that day is included in consideration of a pattern of sick leave use; he further explained that this is part of an ongoing issue the bargaining unit has with the Nursing Home of not recognizing a Doctor's note when proceeding with any type of discipline or process relative to a pattern of sick leave use. He further explained that in this instance, Miss Lemieux was not required to provide a Doctor's note. Mr. Lyons requested that the memorandum be expunged from the employee's file and the employee be cleared. Miss Lemieux was given an opportunity to speak and chose not to speak.

Mr. Moorehead responded that this is not discipline; it is a situation where nursing staff met with Miss Lemieux to discuss the fact that she was demonstrating a pattern of four days off occurring before or after a day off. He noted that 10.3 of the contract was not violated because no discipline occurred, and there is no written warning in the file to be expunged; if the pattern were to continue, then it would result in progressive discipline, up to and including discharge. He explained that staffing at the Nursing Home is critical to take care of the residents. Mr. Moorehead recommended that the Board deny this grievance.

Mr. Lyons responded that the basic evidence, as it has been in other cases, is that there is no good day to be sick at the Nursing Home. He re-iterated that this person brought a Doctor's note and asked how it could be used against a person as a part of a pattern.

Comm. Clemons asked the grievant when she had the surgery; she responded that it was on August 19th. He then asked when her next day off was scheduled; she responded that her next day off was Friday; she already had the weekend off so she only took one day off. Comm. Clemons asked Miss Lemieux if she had had the surgery done before her days off, would she not have needed to be out for an extended period. She responded that was correct. Mr. Lyons noted that the issue here is that it is contiguous with days off.

Ms. Dubois informed the Board that she called Miss Lemieux into the office to speak with her relative to patterns of calling in sick with a day off. She explained that Miss Lemieux did give her the note; Miss Lemieux told her that she would be having dental surgery on the 26th and 27th. She noted that she arranged for Miss Lemieux to have personal leave for those two days so that she would not continue with the pattern of being out. Ms. Dubois noted that she did not use it as a discipline, but rather pointed out that she had taken many days next to scheduled days off; she explained that she tries to work with employees to take time off without using any sick time. Comm. Clemons inquired if she was going in for surgery to have her teeth removed, why would she want to take a personal day; he noted that this is legitimately being ill. Ms. Dubois noted that her recommendation was based on the fact that Miss Lemieux had already used quite a bit of her sick time. She noted that two personal days can be used for sick time. Comm. Clemons noted that, in his opinion, personal days need to be used for issues such as legal business or family business, but not when one is personally ill.

Ms. Dubois responded that the two days Miss Lemieux actually took were from her sick time. Comm. Pappas asked for clarification. Ms. Dubois responded that an employee gets two personal days out of your regular personal time, and then you have two days you can take out of your sick time for other issues.

Mr. Lyons noted that Miss Lemieux was told that she needed to use that time to avoid an abusive pattern. He explained that she would have used sick time had she not been told to use personal time to avoid an abusive pattern. He explained that this is a problem that has occurred in the past, one where a person is legitimately sick with advance notice given. He indicated the Union's position that legitimate sick leave use at the Nursing Home continues to be seen as abuse and personal time has to be used to avoid the next step in the discipline process.

Mr. Moorehead summarized by saying that this is not discipline; it is an effort to get the employee to improve attendance, particularly before and after a day off; he emphasized that this is not discipline and it does not violate 10.3, and it is an effort to get the employee to improve.

Ms. Martel noted that there are two different copies of the memorandum; one has a blank in the area: a Union Representative was present, and the other indicates that the offer was "declined." She suggested that the copy that the office has in her file has "declined" written on it; this is the one that she was given. Ms. Dubois noted that she gave Miss Lemieux the copy so that she could return to the unit; later the Grievant requested Union representation, and met in Ms. Dubois office a second time. Comm. Clemons asked the Grievant if this is what she remembers happening and the Grievant replied in the affirmative. It was agreed that the copy in the file should not be the one with "declined" on it. Mr. Lyons noted that the document she signed did not contain "declined."

The Board agreed to take the grievance under advisement, and will discuss it in Non-Public Session.

Motion: To move into Non-Public Session:

- to discuss the grievance consistent with RSA 91-A 3 II (a),
- to address a personnel issue with Mr. Wenger consistent with RSA 91-A 3 II (a),
- to discuss County Obligations pursuant to RSA Chapters 168-B, 168-C, and 169-D in regard to County Reimbursement to the State Department of Health & Human Services with E. Robinson, C. Kirby, and G. Wenger.

The Board moved into Non-Public Session at 10:25 a.m.

The Board met with Legal Counsel, C. Kirby, relative to the pending grievance.

The Board met with Mr. Wenger relative to a personnel issue.

The Board met with E. Robinson, C. Kirby, and G. Wenger to discuss County Obligations pursuant to RSA Chapters 168-B, 168-C, and 169-D in regard to the State Department of Health & Human Services' threatened litigation.

No Action was taken during Non-Public Session.

The Board moved out of Non-Public Session at 11:27 a.m.

Motion: To move out of Non-Public Session and return to the regular meeting. Motion by Comm. Clemons, second by Comm. Holden. Motion carried.

10. Adjourn

There was no further business for consideration; Comm. Pappas entertained a motion to adjourn.

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

The meeting adjourned at 11:28 a.m.

Signed 12/23/2009

Comm. Michael Clemons, Clerk
Hillsborough County Board of Commissioners

Date