

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT COUNCIL 48, AFSCME, AFL-CIO,

Complainant,

vs.

WEST ALLIS MEMORIAL HOSPITAL,

Respondent.

Case II

No. 14477 Ce-1346

Decision No. 10209-C

Appearances:

Mr. Emil Muelver, Assistant Director, appearing on behalf of the Complainant.

Foley & Lardner, Attorneys at Law, by Mr. Herbert P. Wiedemann, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

District Council 48, AFSCME, AFL-CIO, having filed a complaint alleging that West Allis Memorial Hospital has committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act; and hearing on the matter having been conducted on April 6, 1971; and the Commission having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization representing employes for the purposes of collective bargaining and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. That West Allis Memorial Hospital, hereinafter referred to as the Respondent, is a non-profit institution providing medical services to the general public; and that it operates its facilities at 8901 West Lincoln Avenue, West Allis, Wisconsin.
3. That, following an organizational campaign among certain employes of the Respondent, the Complainant, on November 9, 1970, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it requested the Commission to conduct a representation election among the employes of the Respondent in a unit consisting of all full-time and part-time employes of the Respondent working 16 hours or more per week, employed in various departments of the Respondent, excluding administration and business departments, office employes, registered nurses, medical director, professional employes, supervisors, managerial and confidential employes; that, following a hearing on said petition, the Commission on December 10, 1970, issued a Direction of Elections, wherein it directed that separate elections be held among employes in eleven separate departments of the Respondent, including the Housekeeping Department, to determine whether the employes in said separate departments desired to establish separate departmental bargaining units and whether the employes in said departments desired to be represented, for the purposes of collective bargaining, by the Complainant.

4. That said elections were conducted on January 11 and 12, 1971, and only the employees in the Housekeeping Department voted to establish themselves a bargaining unit separate and apart from the employees in the remaining departments of the Respondent, and at the same time the employees in the Housekeeping Department selected the Complainant as their collective bargaining representative; that following said elections the Complainant timely filed objections to the conduct thereof, contending that, prior to the elections, agents of the Respondent engaged in seven specific acts which interfered with the results of the balloting; that following the hearing on the objections and the review of the record and briefs filed therein, the Commission on June 30, 1971, issued an Order overruling the objections, and on the same date issued its Certification of the results of the unit and representation votes cast by the employees in the various departments; that in said Certification the Commission determined that no question of representation existed in ten of the departments as a result of the failure of the employees in said departments to vote in favor of establishing separate departmental units; and that, further in said Certification, the Commission certified the Complainant as the exclusive collective bargaining representative of all regular full-time and regular part-time employees employed in the Respondent's Housekeeping Department.

5. That Rosella Jasniewski, a resident of West Allis, Wisconsin, commenced employment with the Respondent on August 24, 1970, as a full-time Housekeeping Aide, a position in the Respondent's Housekeeping Department; that the duties of such position included the cleaning and servicing of patient rooms, the labor and delivery room, baths and locker room; that on October 21, 1970, Jasniewski was reduced to part-time employment of three days per week because of her complaints of being tired and because, in the opinion of the Respondent's Executive Housekeeper, based on reports from Jasniewski's supervisors, of her poor work performance; that Jasniewski joined the Complainant in the latter part of November or the early part of December 1970; that Jasniewski supported Complainant's organizational efforts among the employees of the Respondent, became a member of its Organizing Committee, and openly discussed her interest on behalf of the Complainant in the presence of certain supervisory personnel of the Respondent; and that on at least one occasion, on or about December 8, 1970, Jasniewski's name, along with the names of some additional twenty-two employees of the Respondent, appeared on Complainant's organizational literature, distributed to employees of the Respondent, as a member of Complainant's Organizing Committee.

6. That on March 4, 1971, prior to the completion of her probationary period, Jasniewski was terminated from employment by being discharged on said date by the Respondent; that the action by the Respondent, with respect to said discharge, was not motivated by any concerted activity of Jasniewski on behalf of the Complainant, or any other labor organization, but that the Respondent's action in said regard resulted from Jasniewski's shortcoming as an employee.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

1. That the Respondent, West Allis Memorial Hospital, did not terminate the employment of Rosella Jasniewski for the purpose of discriminating against her because of her concerted activity on behalf of the Complainant, District Council 48, AFSCME, AFL-CIO, or for the purpose of interfering with her rights, or the rights of any of its employees, to engage in concerted activity on behalf of said labor organization, or any other labor organization, and therefore, the Respondent, West Allis Memorial Hospital, did not commit, and is not committing, any unfair labor practices in said regard within the meaning of the Wisconsin Employment Peace Act.


Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

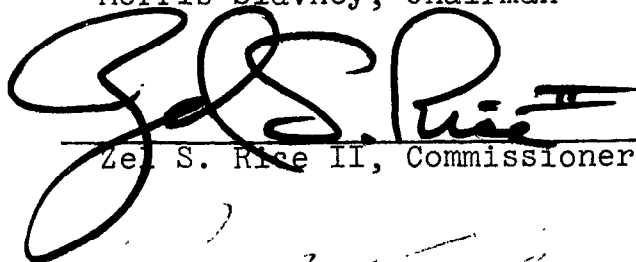
ORDER

IT IS ORDERED that the complaint filed in the instant proceeding be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 12th
day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT COUNCIL 48, AFSCME, AFL-CIO, :
Complainant, :
vs. : Case II
WEST ALLIS MEMORIAL HOSPITAL, : No. 14477 Ce-1346
Respondent. : Decision No. 10209-C

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint filed on March 10, 1971, the Union alleged that the Employer discharged Rosella Jasniewski solely because of the latter's activities on behalf of the Union's effort to organize the employees of the Employer. In addition, the Union alleged that the Employer had failed to discuss the discharge with the Union and had declined to act on the Union's request for a meeting on the matter.

In its answer the Employer denied that the discharge of Jasniewski was violative of her rights to engage in concerted activity but resulted because of her unsatisfactory work performance. It admitted that it declined to discuss said discharge with the Union but denied that it did not act on the Union's request for a meeting in that regard.

Hearing was held on the matter on April 6, 1971. At the close of the hearing ^{1/} it was agreed by the parties that the Union would file an initial brief ten days after the receipt of the transcript, that the Employer could file a reply brief ten days after the receipt of the Union's brief and that the Union, if it desired, could file a reply brief ten days following the receipt of the Employer's brief. The transcript was mailed to the parties on July 12, 1971. The Union did not file a brief within the time limits agreed upon. On the motion of Employer's Counsel the Commission issued an Order on August 12, 1971, denying the Union an opportunity to file its initial brief and granting the Employer ten days from the Order to file its brief and further permitting the Union to file a reply brief upon receipt of the Employer's brief. The Employer filed its brief with the Commission on August 24, 1971, and at the same time served a copy thereof on the Union. No reply brief was received from the Union.

^{1/} On March 10, 1971, the Commission issued an Order appointing Robert B. Moberly, a member of its staff as the Examiner in the matter, authorizing him to conduct the hearing and to make and issue Findings of Fact, Conclusions of Law and Order. Prior to the completion of the transcript and on June 30, 1971, the Commission issued an Order setting aside the Order appointing examiner because of the pending resignation of said Examiner from the Commission's staff, and further, said Order transferred the proceeding to the Commission for disposition by it.

During the course of the hearing the Union, in effect, withdrew its allegation with respect to the failure of the Employer to discuss the discharge and its declination to act on the Union's request for a meeting on the matter. The record indicated that on March 4, 1971, the Union directed a letter to the Hospital with regard to the discharge and requested a meeting to discuss it. Further, on March 9, 1971, the Administrator of the Employer directed a letter to the Union indicating that the Union had not been certified by the Wisconsin Employment Relations Commission as a collective bargaining agent for the employees in the Housekeeping Department and that until such certification is issued the Union had no representative status. As indicated in the Findings of Fact, the certification of the Union as to exclusive representative of the employees in the Housekeeping Department was not issued until June 30, 1971. The delay in issuance of the certification resulted from a hearing on the objections to the conduct of the election and the filing of briefs in support of the positions of the parties.

The concerted activity of Jasniewski is reflected in the Findings of Fact, as is the Employer's knowledge thereof. Jasniewski's concerted activity, as established in the record, consisted of becoming a member of the Union, being appointed to its Organizing Committee and engaging in open conversation in the presence of supervisory personnel concerning benefits to be gained from concerted activity. There were some additional twenty-two employees who were also active as members of the Organizing Committee, a fact known to the Employer. There was no evidence adduced with respect to any alleged interference by the Employer with the rights of said employees to engage in concerted activity or any evidence of any action against such employees for such activity.

The Employer contended that Jasniewski was hired as a full-time employee, and that she was transferred to part-time employment because she could not complete her work assignments and complained of being tired. Prior to being reduced to part-time employment Jasniewski had informed a supervisory employee that she was not capable of performing a full-time job and take care of her home.


Supervisory employees are required to submit reports to the Employer with respect to the work of probationary employees. The reports submitted on Jasniewski demonstrated her poor work performance. The record is replete with a number of reports setting forth such work record, and the Commission determines nothing can be gained from setting forth, in detail, the "complaints" regarding Jasniewski's work or her attitude toward her employment.

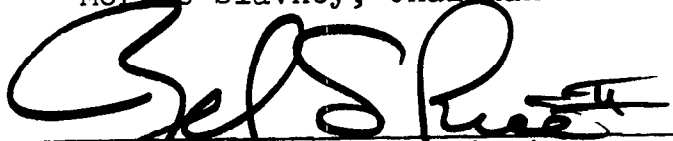
Section 111.07(3) provides that unfair labor practice complaint proceedings "shall be governed by the rules of evidence prevailing in courts of equity and the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence." Jasniewski's discharge as being unlawful within the meaning of the Wisconsin Employment Peace Act was not established by a clear and satisfactory

preponderance of the evidence. On the contrary, the evidence establishes that the Employer had just cause for discharging Jasniewski, and that such discharge was in no way motivated by her concerted activity on behalf of, or because of her membership in, the Union. We have, therefore, dismissed the complaint.

Dated at Madison, Wisconsin, this 12th day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rife II, Commissioner


Jos. B. Kerkman, Commissioner