

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL 150, SERVICE EMPLOYEES'  
INTERNATIONAL UNION, AFL-CIO,

Complainant,

vs.

APPLETON MEMORIAL HOSPITAL,

Respondent.  
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Case X  
No. 15950 Ce-1441  
Decision No. 12051

Appearances:

Bachman, Cummings & McIntyre, Attorneys at Law, by Mr. Thomas  
A. Wilson, appearing on behalf of the Complainant.

Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law,  
by Mr. Laurence E. Gooding, Jr., appearing on behalf of the  
Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before  
the Wisconsin Employment Relations Commission on September 20, 1972,  
at Appleton, Wisconsin, before Commissioner Jos. B. Kerkman; and  
the Commission having considered the evidence and arguments of Counsel,  
and being fully advised in the premises, makes and issues the  
following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Local 150, Service Employees' International Union,  
AFL-CIO, referred to herein as the Complainant, is a labor organization  
with offices at 135 West Wells Street, Milwaukee, Wisconsin.

2. That Appleton Memorial Hospital, referred to herein as the  
Respondent, is a private nonproprietary hospital having its facilities  
at 1818 North Meade Street, Appleton, Wisconsin.

3. That at all times material herein the Respondent has recognized  
the Complainant as the exclusive bargaining representative of certain  
of its employees; that in said relationship the Respondent and the  
Complainant have been at all times material herein signators to a  
collective bargaining agreement covering wages, hours and conditions  
of employment of such employees; and that said agreement provides that  
grievances may be presented to the Wisconsin Employment Relations  
Commission as alleged violation of said agreement in a complaint of  
unfair labor practices, and does not provide for final and binding  
arbitration of grievances.

4. That the aforesaid collective bargaining agreement in part  
provides as follows:

"ARTICLE II  
Nondiscrimination

Neither the Hospital nor the Union may discriminate  
against any employee for reasons of race, religion, sex,  
age, national origin, or Union status.

No employee shall be discharged or disciplined without  
just cause."

5. That Elayne Lastofka is a nurses aide in the employ of the Respondent since February 20, 1968, and at all times material herein has been employed in the collective bargaining unit covered by the aforementioned collective bargaining agreement; that prior to April 12, 1972, Lastofka had been observed sleeping while on duty by Josephine Steger, Registered Nurse and Night Supervisor of the Respondent; and that on several occasions there have been complaints relating to Mrs. Lastofka's rough handling of patients; and that specifically on February 25, 1972, Lastofka was warned by Karen Haley, Registered Nurse in charge of 4-North (Nights), for failure to respond to the request of a patient and for excessive roughness with patients.

6. That on April 12, 1972, Lastofka was engaged in conference with Josephine Steger, a Registered Nurse and Night Supervisor for the Respondent; that at said conference Steger reviewed with Lastofka a prepared report reprimanding her for rough treatment of patients, sleeping while on duty, as well as frequently during the night, not carrying her share of the workload, not working well with co-employees, showing no compassion or understanding for patients; that Lastofka responded to the disciplinary charges made by Steger as follows:

- "1. None of this is true.
2. Why do we have to listen to report for 1-1/2 hours, when we should be checking patients.
3. I like my job and am interested in it.
4. I would like to have 3 copies of each sheet xeroxed.
5. You are not always able to get help when needed.";

that Lastofka refused to sign the conference form as provided therein; and that Lastofka filed with Steger the following handwritten message:

"I have seen this report and would like to have 3 copies xerox-off (sic) for myself. I will confer with you later when I have received additional information from other sources. This complaint should also be signed by all complaining parties to this office.

Sincerely,

Elayne Lastofka

734-5366

Will fill in the form later";

that Steger recommended a two-day suspension without pay for Lastofka, and that Steger submitted said recommendation in writing to the Director of Nursing.

7. That Betty Beyer, Director of Nursing, received Steger's recommendation at the outset of the first shift of work on April 12, 1972; that Beyer concurred in Mrs. Steger's recommendation and that at 8:40 a.m. April 12, 1972, Beyer telephoned Lastofka and informed her that she was suspended without pay for her next two scheduled days of duty, April 12 and April 16, 1972; and that on April 12, 1972, John R. Shepard, Administrator, supported such recommendation and action.

8. That upon Lastofka's return to work on April 17, 1972, after the suspension without pay, Lastofka was called into conference with Beyer; that at said conference Beyer reaffirmed and explained again to Lastofka the reason for the suspension without pay, and that Beyer advised Lastofka that Lastofka's attitude and approach to patient care and to her job responsibility would have to improve; that Beyer warned Lastofka that another episode where Lastofka was rough with patients, or where Lastofka lacked understanding of patients, or their needs, or where Lastofka slept on duty, and did not share the workload could result in Lastofka's termination; and that at the conclusion of the interview Lastofka stated that she understood.

9. That Lastofka's deficiency as an employee, as demonstrated by her rough treatment of patients, sleeping while on duty, not carrying her share of the workload, not working well with co-employees and showing no understanding for patients, constituted just cause for her two-day suspension by the Respondent from active duty on April 12 and April 16, 1972.

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

CONCLUSION OF LAW

That, since the suspension of Elayne Lastofka from duty on April 12 and April 16, 1972, was for just cause in accordance with the provisions of the collective bargaining agreement existing between the Complainant, Local 150, Service Employees' International Union, AFL-CIO and the Respondent, Appleton Memorial Hospital, the Respondent, Appleton Memorial Hospital, committed no unfair labor practice within the meaning of any provision of the Wisconsin Employment Peace Act with respect to said suspension of Elayne Lastofka.

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 matter be, and the same hereby is, dismissed.


Given under our hands and seal at the  
City of Madison, Wisconsin, this 27th  
day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On September 11, 1972, the Union filed a complaint with the Commission alleging that the Employer committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act by suspending Elayne Lastofka from work for two days with loss of pay without just cause, and by threatening her with loss of employment without just cause, in violation of the collective bargaining agreement existing between the parties. Hearing in the matter was conducted on September 20, 1972, and at the close of the hearing oral argument was made by the parties.

Elayne Lastofka was employed as a Nurses Aide by Appleton Memorial Hospital on February 20, 1968, and during the period material hereto was under the supervision of Josephine Steger, Registered Nurse and Night Supervisor for the Hospital. Specifically on February 25, 1972, Karen Haley, Charge Nurse on 4-North, received a complaint from a patient advising her that Lastofka would not provide assistance to him when he put his light on. The Charge Nurse conferred with Lastofka advising her of her responsibilities to the patients and further counseled her regarding complaints from other patients regarding her rough handling of the patients. On April 3, 1972, a complaint was made by another patient regarding rough treatment. Mrs. Lastofka was tardy in preparing the patient for her procto and when she assumed her responsibility she removed the gown from the patient in such a way as to cause the patient's glasses to fall to the floor.

On more than three occasions Lastofka was observed sleeping by Josephine Steger, the Night Supervisor of the Hospital, during the period of time that she was on duty at her work station.

The Union argues that Lastofka was not sufficiently warned by the Employer to mend her ways and that the incidents of rough treatment of patients, failure to respond to the call light and sleeping on the job, comprise unsubstantiated complaints about Lastofka, and further points out that Lastofka's testimony regarding said incidents portray different versions of said incidents from that of the testimony presented by Karen Haley and Josephine Steger.

The Commission is satisfied that the statements and charges made regarding Lastofka have sufficient substantiation in the record and the Commission is further satisfied that the testimony of Haley and Steger should be credited, rather than that of Lastofka based on the attitude and demeanor of Lastofka during the course of the hearing.

With regard to the allegation in the complaint that Lastofka was threatened with loss of employment without just cause, the Commission is satisfied that at the conference on April 17, 1972, B. J. Beyer, Registered Nurse and Director of Nursing, exercised proper supervisory discretion in advising Lastofka that "another episode reported where she was rough to patients or where she lacked understanding of the patient or his needs, or where she slept on duty and did not share the work-load could result in termination", and that she had cause for such admonition.

The Commission has concluded that the Employer has not violated the pertinent provision of the collective bargaining agreement, and therefore, has dismissed the complaint.

Dated at Madison, Wisconsin, this 27th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

Jos. B. Kerkman  
Jos. B. Kerkman, Commissioner