

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

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 bar-

gaining 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 an alleged violation of said agreement in a complaint of unfair labor practices, and said agreement does not provide for final and binding arbitration.

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.

. . .

ARTICLE XVIII
General Provisions

. . .

Section 8. Union Steward: A current list of authorized Union Stewards shall be presented to the Hospital by the Union. Authorized Stewards shall have the authority to gather pertinent facts, assist employees in the processing of grievances in accordance with the terms, procedures, and limitations provided in this agreement when requested by the employee who initiates the grievance.

A grievance or alleged grievance occurs only when interpretation and application of this Agreement or the Rules and Regulations of the Hospital are at issue.

. . .

ARTICLE XIX
Grievance Procedure

Section 1. The Hospital agrees to meet with duly accredited officers and committees of the Union upon grievance matters pertaining to the meaning or application of this contract. Grievances shall be dealt with (sic) first through the immediate supervisor, then through the head of the department, and in case of failure to resolve the grievance within five (5) working days thereafter, then the grievance shall, within the next succeeding three (3) working days be put in writing and promptly submitted to the Administrator or, in his absence, the Assistant Administrator. If the matter is not satisfactorily adjusted at this level within seven (7) days from the time it is presented to the Administrator or Assistant Administrator, then the party wishing to carry the matter further may present the matter to the Wisconsin Employment Relations Board as an unfair labor practice for violating the terms of a collective bargaining agreement pursuant to the provisions of Chapter 111 of the Wisconsin Statutes, and this shall be the sole and final remedy of the aggrieved party."

5. That Elayne Lastofka, at least from February 20, 1968 to March 9, 1973, was employed as a Nurses Aide by the Respondent and was included in the collective bargaining unit covered by the aforementioned collective bargaining agreement; that Lastofka was suspended from employment for two days (April 12 and 16, 1972) by the Respondent for rough treatment

of patients, sleeping while on duty, not performing her share of the work load, not working well with fellow employes, and for showing no understanding for patients; that upon her return to active employment following such two-day suspension, Respondent's Director of Nursing, Byer, in explaining to Lastofka the basis for her suspension, advised Lastofka that future deficiencies as an employe could result in the latter's termination from employment; that on September 11, 1972 the Complainant herein filed a complaint with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that Lastofka's suspension was not for just cause under the then existing collective bargaining agreement, and that therefore the Respondent had committed an unfair labor practice within the meaning of Section 111.06 (1) (f) of the Wisconsin Employment Peace Act in that regard; that following a hearing on said complaint, the Commission, on July 27, 1973, issued its decision, wherein it found that Lastofka's suspension was for just cause under said collective bargaining agreement, and thus dismissed the complaint. 2/

6. That on the evening of March 7, 1973 Lastofka reported for work in an unmatching blouse and pants, and, on observing same, Night Supervisor Steger directed Lastofka to return home and report for duty in a matching uniform; that Lastofka did so; that approximately 3:00 a.m. Lastofka and Kathy Brockman, a Licensed Practical Nurse, were in the process of turning a bedridden elderly female patient, Mrs. H., who frequently complained of pain while being turned; that Lastofka and Brockman jointly turned said patient in accordance with the established practice of turning patients; that, however, after such turning, it was discovered that the patient was lying at the edge of the bed; that thereupon Brockman suggested that the patient be moved to the center of the bed; that before Brockman had the opportunity to assist Lastofka in such task, Lastofka single-handedly moved the patient, who at the time complained of the rough manner in which she had been moved by Lastofka; that, upon leaving the room, Brockman reported the patient's complaint of rough handling by Lastofka to Charge Nurse Lux, who, after approximately fifteen minutes following the episode, had a conversation with Lastofka, wherein Lux advised Lastofka that Brockman had reported the incident to Lux, and further instructed Lastofka not to handle patients alone and not to turn them in a rough manner; that, following such conversation, Lux reported the incident to Night Supervisor Steger; and that shortly after Lastofka learned that Brockman had reported the incident to Lux, Lastofka advised Nursing Assistant Viste that she (Lastofka) no longer desired to work with Brockman.

7. That shortly thereafter, Steger, who was on another floor, phoned Lux and requested Lux to instruct Lastofka to report to Steger's office; that Lastofka, who was standing near Lux during said phone conversation, took the phone and inquired from Steger as to the reason for the meeting with Steger; that Steger indicated that she desired to speak to Lastofka, without identifying the subject thereof; that thereupon Lastofka informed Steger that she would not meet with Steger without the presence of a union steward, none of whom were on duty, and further Lastofka requested that Steger leave a note on Lastofka's time card with regard to the requested meeting; that between 4:00 and 7:00 a.m. of March 8, 1973 Steger interviewed patient Mrs. H., and another patient, Mrs. S., who had also complained of rough treatment by a Nurses Aide, who fitted Lastofka's description; that at approximately 7:45 a.m., fifteen minutes prior to the shift change, the union steward appeared and thereupon Lastofka requested and received permission from Lux to leave her duties to speak with Steger; that then Lastofka and the union

2/ Appleton Memorial Hospital (12082).

steward attempted to speak to Steger, who refused to do so since she was busy in the emergency room and because Steger was under the impression that Lastofka had left her duties without permission; and that at that time Steger instructed Lastofka to return to her duties.

8. That thereafter during the morning of March 8 Steger reported the aforementioned activity involving Lastofka to Director of Nursing Services, Byer, who requested Steger to prepare a written report; that prior to preparing such report Lux advised Steger that on or about March 5 Lastofka had failed to relay a patient's request for pain medication to Lux; and that on March 8 Steger prepared two reports for Byer regarding Lastofka, the first merely setting forth the following:

- "1. Coming to work not in uniform.
2. Rough treatment of patients - Mrs. H. and Mrs. S. both patients on 3 South complained about the rough handling they received.
3. Co-workers also complained to me about the way she handles patients and her attitude.
4. Not passing on messages to R.N. - G. L. required pain med. Mrs. Lastofka did not tell nurse.
5. Insubordination.
6. Leaving floor at 7:40 a.m. without permission.
7. She had on a pair of pants to a pants suit. A reg. white blouse that barely met the top of the pants. (See #1)" 3/

9. That on March 9, 1973 Byer telephoned Lastofka at the latter's home and advised Lastofka that she was suspended from employment pending Byer's investigation concerning the matters related in Steger's reports, and that after interviewing other employees of the nursing staff, and reviewing additional reports from certain staff employees concerning Lastofka's rough handling of patients, Byer called Lastofka on March 17, 1973 and requested Lastofka to meet with Byer to discuss Lastofka's status; and that Lastofka at the time advised that she desired to put off said meeting for a week or so and that thereupon Byer informed Lastofka that she was being terminated as an employee as of the end of her March 8 shift.

10. That from the date of her return to work after April 16, 1972 following the two-day suspension referred to in paragraph 5, herein, until March 8, 1973 Lastofka had received no reprimands nor warnings concerning her deficiencies as an employee; but that, however, Lastofka was aware of the manner in which she was expected to perform her duties.

11. That the incidents involving Lastofka's performance as an employee in March, 1973, as found previously herein, relating to rough treatment of patients, lack of cooperation with fellow employees, and insubordination, especially in view of her previous two-day suspension in April, 1972, and the admonition given her at that time that future deficiencies could result in her termination, constituted just cause for her termination from employment, in accordance with Article II of the collective bargaining agreement existing between the Complainant and the Respondent.

Upon the basis of the above and foregoing Amended Findings of Fact, the Commission reverses the Examiner's Conclusion of Law and makes the following

3/ The second report set out said matters in detail.

CONCLUSION OF LAW

That, since the termination of Elayne Lastofka from employment on March 8, 1973 was for just cause in accordance with the provisions of the collective bargaining agreement existing between the Complainant, Local 150, Service & Hospital Employees' International Union, AFL-CIO, and the Respondent, Appleton Memorial Hospital, said Respondent did not violate any provision of said collective bargaining agreement with respect to said termination, and therefore said Respondent did not commit any unfair labor practice within the meaning of the Wisconsin Employment Peace Act with respect to the termination of Elayne Lastofka.

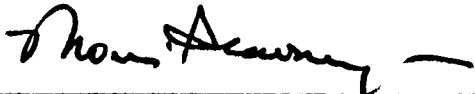
That upon the basis of the above and foregoing Amended Findings of Fact and reversed Conclusion of Law, the Commission hereby reverses the Order of the Examiner and makes the following appropriate

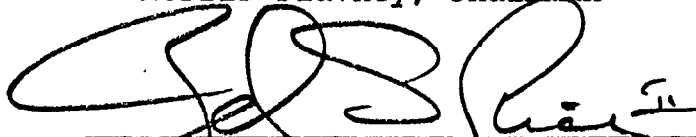
ORDER

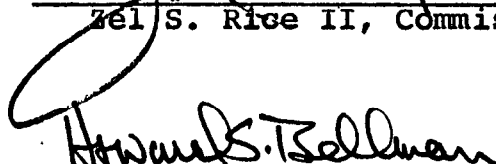
IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Mel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING AMENDED FINDINGS
OF FACT, CONCLUSION OF LAW AND ORDER

The Pleadings

In its complaint the Union alleged that the Employer had committed an unfair labor practice by discharging Lastofka without proper cause, in violation of the collective bargaining agreement existing between the parties. The Employer, in its answer, claimed that such discharge was for cause under said agreement and therefore the termination of Lastofka neither violated the agreement, nor did such act constitute an unfair labor practice within the meaning of the Wisconsin Employment Peace Act.

The Examiner's Decision and Memorandum Accompanying Same

As found and discussed by the Examiner, the Employer's basis for the discharge of Lastofka consisted of lack of cooperation with fellow employes, insubordination, rough treatment of patients, and the prior disciplinary two-day suspension of Lastofka for her deficiencies as an employe.

With respect to Lastofka's statement of March 8 that she would no longer work with Aide Brockman, partially relied upon by the Employer as establishing a lack of cooperation with fellow employes, the Examiner concluded that Lastofka had never refused an assignment to work with other employes, either before or after March 8, 1973. Therefore he found that the allegation that Lastofka failed to cooperate with fellow employes could not be sustained.

As to the alleged act of insubordination in Lastofka's failure to meet with Night Supervisor Steger when directed to do so on March 8, the Examiner concluded that the failure of Lastofka to obey such directive was not an act of insubordination, since Lastofka was not then advised that the refusal to so meet would be deemed an insubordinate act.

The Examiner also found that Lastofka had violated the Employer's practices in handling patient Mrs. H., however he did not give any weight to the alleged handling of patient Mrs. S., since the evidence relating to that incident was based on an interview between Steger and said patient, who did not refer to Lastofka by name, although said patient did describe the employe involved. The Examiner concluded that the evidence with regard to patient Mrs. S. was "at best rank hearsay."

While the Examiner discussed the failure of Lastofka to relay a patient's request for pain medication to Charge Nurse Lux, and that Nursing Assistant Viste had reported same to Lux, the Examiner concluded that Lux had no direct knowledge of said request or that Lastofka was supposed to have transmitted such request. The Examiner "gave little weight to this allegation", since neither counsel questioned Viste, who testified regarding said incident.

Further, in this Memorandum the Examiner discussed evidence concerning Lastofka's handling of patients by herself in a one-week period prior to March 8, and that such incidents were reported to the Registered Nurse. The Examiner concluded that Lastofka had not been reprimanded for said acts, nor were they called to her attention at the time of occurrence, and that the failure of the latter would "undermine the purpose of the grievance procedure."

The Examiner concluded that the only justification of the Employer's termination of Lastofka rested on the incident involving patient Mrs. H., and in that regard the Examiner considered the fact that no competent medical testimony was adduced concerning the consequence of the incident.

The Examiner concluded that there was no just cause for Lastofka's discharge, but that a two-month's suspension was proper, and ordered the Employer, among other things, to reinstate Lastofka and to make her whole, except for the period of suspension.

The Petition for Review

In its petition for review, the Employer contends that the Examiner erred in various conclusions expressed in his Memorandum with respect to (1) the lack of timely warnings regarding the rough treatment of patients, (2) the failure to advise Lastofka that her refusal to meet with Steger would be considered an act of insubordination, and (3) that she did not fail to cooperate with fellow employes on or before March 8, and in that regard the Employer calls the Commission's attention to the fact that Lastofka was not employed after March 8. The Employer also argues that no medical testimony was necessary with regard to the incident involving patient Mrs. H. The Employer contends that in the previous unfair labor practice case involving the suspension of Lastofka for a two-day period, wherein the Commission concluded that there existed just cause for such suspension, the record established that Lastofka had been warned that further deficiencies as an employe could result in her termination. Further, the Employer argues that the Examiner, having found that Lastofka had violated the Employer's practices with regard to the turning of patients, at least in Mrs. H.'s incident, exceeded his jurisdiction by substituting his judgment for that of the Employer in reducing the discharge to a suspension.

The Commission's Rationale

While the evidence did not establish that Lastofka in the literal sense refused to work with fellow employes, there is no question that she did not wait for Brockman to assist her in handling patient Mrs. H. In addition she indicated, after said incident had been reported, that she would no longer work with Brockman. Since Lastofka was not employed after March 8 she had no opportunity to carry out her stated intent not to work with Brockman.

Lastofka was indeed insubordinate when she refused to obey Steger's direction that Lastofka meet with Steger following the incident with patient Mrs. H. Lastofka desired to have a steward present for such discussion. We find insubordination in Lastofka's refusal to appear, and not in her request for Union representation. Under the circumstances leading up to the request of Steger that Lastofka meet with Steger, it is apparent to the Commission that Lastofka was aware of the subject matter of the desired meeting, and therefore we also conclude that it was not necessary for Steger to inform Lastofka that her failure to appear as requested would be considered an act of insubordination.

The record supports a finding that Lastofka improperly handled patients other than Mrs. H. Nurses Aides Schueren and Buelow testified to that effect. The description of the employe involved in the incident affecting patient Mrs. S. fitted that of Lastofka, and Steger properly concluded that Lastofka handled Mrs. S. contrary to the required practice. Lastofka was aware of the practice, and the fact that she was not reprimanded for violations thereof at the time of occurrence does not eliminate Lastofka's deficiencies as an employe.


The testimony of Charge Nurse Lux indicated that she was advised by Aide Viste that Lastofka failed to relay a patient's request for pain medication, and that Viste had heard such request made and also the response of Lastofka that she would relay such request to Lux. The fact that during her appearance as a witness Viste was not asked by either counsel concerning the matter does not disprove Lastofka's failure to make such request known to Lux. As a matter of fact, in her testimony, Lastofka, when questioned regarding the incident, did not deny that she failed to relay the message.

It is significant that upon her return to employment in April, 1972, after a two-day suspension, Lastofka was warned that any further improper handling of patients could result in her termination. While in his Findings of Fact the Examiner set forth the fact that Lastofka had received such suspension and the reason therefore, he did not set forth the fact that the aforementioned admonition was given to Lastofka on her return from said suspension. In the hearing herein, Director of Nursing Service, Byer, testified that such a warning had been given to Lastofka. Further said warning was set forth in paragraph 8 of the Findings of Fact included in the previous decision rendered by the Commission involving Lastofka's two-day suspension.

On the basis of the foregoing, contrary to the Examiner's decision, we conclude that just cause existed for the termination of Lastofka, and in that regard the Employer neither violated the collective bargaining agreement nor any provision of the Wisconsin Employment Peace Act, and therefore we have dismissed the complaint filed herein.

Dated at Madison, Wisconsin, this 14th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner