

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO, AND ITS AFFILIATE 1199W,	:	
	:	
Complainant,	:	Case VI
	:	No. 17809 Ce-1534
vs.	:	Decision No. 12616-B
	:	
FAMILY HOSPITAL,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Perry & First, Attorneys at Law, by Mr. Richard Perry, for the Complainant.

Mr. Alan S. Brostoff, Attorney at Law, of Counsel for Complainant.

Honeck, Mantyh & Arndt, Attorneys at Law, by Mr. William J. Mantyh, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission by National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W, on April 1, 1974, wherein it alleged that Family Hospital <sup>1/</sup> had committed violations of Section 111.06(1)(a) of the Wisconsin Statutes; and the Commission having appointed Stanley H. Michelstetter II as Examiner to make and issue Findings of Fact, Conclusions of Law, and Orders in the matter; and hearing having been held before the Examiner on June 20, 1974; and Complainant having filed on December 23, 1974 a motion to amend its complaint to allege a violation of Section 111.06(1)(c)1. in addition to the aforementioned provisions of the Wisconsin Statutes; and the Examiner by Order dated March 10, 1975 having granted that motion; and the Examiner, having considered the evidence and arguments of Counsel, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Complainant National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W, is a

<sup>1/</sup> During the course of the hearing the complaint was amended to reflect the correct name of the Respondent.

labor organization with offices at 1012 North Third Street, Milwaukee, Wisconsin.

2. That Respondent Family Hospital is an employer with offices at 2711 West Wells Street, Milwaukee, Wisconsin engaged in health care; and that after August 25, 1974 Respondent became an employer within the meaning of the Labor Management Relations Act as amended by virtue of amendments thereto effective on that date.

3. That in approximately June 1971 Respondent hired Julia Meier as a nurses' aide and thereafter transferred her to its hospital complex as a nurses' aide on September 11, 1972, which position she has continued to hold at all relevant times.

4. That at all relevant times Respondent had the following rules in effect:

#### "BULLETIN BOARDS

Announcements and other information of importance to you will be posted on bulletin boards throughout the hospital. Read the board notices regularly, particularly those in your work area and at the time clock.

Posting of anything other than official hospital business must be approved by the Hospital Administrator or his designate.

. . .

#### HOSPITAL RULES

The Hospital expects every employee to observe basic rules and regulations. These are common sense rules which require fair play with your Supervisors, co-workers, and most of all, the patients for whose care we are responsible. If you violate these rules, some of which are listed below, you will be subject to disciplinary action or immediate discharge.

. . .

Entering an unauthorized area at any time.

. . .

#### UNAUTHORIZED AREAS

Certain areas of the Hospital are restricted. Personnel entering such areas must observe special precautions for protection of patients and employees. These rules are strictly enforced."

5. That in November or December 1973 Complainant began an organizational campaign among Respondent's employes and in that regard distributed literature at the entrance to Respondent's premises and held meetings in November or December 1973.

6. That Respondent's chief executive and agent, Walter G. Harden, and other agents of Respondent were aware of the immediately foregoing facts.

7. That in response thereto during December 1973, Respondent's Personnel Director, Terrence W. Reiss, formulated a statement of Respondent's official policy as found in its outline for orientation of new employes:

"32) Hospital's Position on Unionism (December 1973)

Mention the fact that there is currently a union campaign being conducted by 1199 W.

It is the hospital's position that it is not in the best interest to our employes or patients that an outside union represent any of the employes at Doctors Hospital Complex.";

that the foregoing was in fact Respondent's policy; and that the foregoing statement was thereafter regularly read to employes during their orientation by agents of Respondent.

8. That at 11:00 p.m. on February 20, 1974, Julia Meier commenced her normally assigned work shift; that at about 2:00 a.m. of February 21, 1974 took her customary combined one-half hour lunch and fifteen minute break; that she left her seventh floor assigned work station and took an elevator up to the cafeteria; and that she displayed a notice to other employes which advocated collective bargaining, the selection of Complainant as the employes' representative, reported income statistics for Respondent, and invited employes to attend Complainant's meeting scheduled in the evening of February 21, 1974.

9. That at the end of her break, Meier took the aforementioned notice, entered the service elevator, rode down to the sixth floor (not her assigned work station), left the elevator, walked six to seven feet to the kitchen bulletin board, a bulletin board associated with the sixth floor nurses' station, posted the aforementioned notice, returned to the elevator before the doors closed and rode up to the seventh floor; and that thereafter she completed her normally assigned work shift at 7:30 a.m., without incident, and went home.

10. That the nurse responsible for the sixth floor nurses' station, sixth floor head nurse Diane Wirtz (thereafter Diane Mueller)

observed the posted notice described in Finding of Fact 8; that she removed the notice; and that thereafter but before 8:00 a.m. she told William Lange, Harden's assistant, that Meier had posted the aforementioned notice and gave the notice to Lange.

11. That Harden arrived at work at about 8:00 a.m.; that Lange went to Harden's office and told him that Meier had posted the notice and gave the notice to Harden; that Harden thereupon read the notice or otherwise became aware of the contents thereof favorable to Complainant; that at all relevant times prior thereto Harden was not aware of the name of any employe who was a supporter of Complainant; that Harden decided to discipline Meier solely on the basis of her support for Complainant and for the purpose of discouraging her in that support; that Harden thereupon told Lange to have Dr. Barbara J. Brown, Assistant Administrator, Patient Care Services, call Meier at home and have her report to his office; and that Harden and Lange entered a budget meeting and did not discuss the matter or read the notice during that meeting.

12. That thereafter, but prior to 10:00 a.m. on February 21, 1974, Brown called Meier at home and told her to report to Harden's office immediately; and that at 10:00 a.m. Meier arrived at Harden's office.

13. That at or about 10:00 a.m. February 21, 1974, Brown, Lange, Reiss and Harden met and discussed the discipline to be imposed on Meier and the pro-Complainant content of the notice and Meier's support for Complainant; that Reiss suggested that Meier could be disciplined ostensibly for having posted the aforementioned notice without permission of the head nurse; and that Harden thereupon decided that Meier should be suspended.

14. That Meier was thereupon invited into Harden's office; that Harden asked her and she admitted that she had posted the notice as described above; that Harden asked her if she was "sorry" and she replied that she wasn't; that Harden asked her if she would do it again and Meier answered that she would; that only then did Harden ask her if she knew it was wrong to post notices; that Meier answered that there were "a lot of other things posted up there"; that Harden then stated that it had to be initialed by the head nurse before it could be placed on the bulletin board; that Harden asked her if she had read the aforementioned rules and Meier answered that she had done so; and that thereupon Harden told Meier she was indefinitely suspended without compensation or other benefits pending either reinstatement or discharge.

15. That the aforementioned discipline was motivated solely because of Meier's support of Complainant and was intended to dissuade her from that support.

16. That by letter dated February 28, 1974 Respondent reinstated Meier with full benefits effective Friday, March 1, 1974 at 11:00 p.m.; and that as a result of the foregoing suspension, Meier suffered the loss of \$98.80 wages and \$4.00 shift premium; and that Meier suffered no other damages.

On the basis of the foregoing Findings of Fact, the Examiner makes and files the following

#### CONCLUSION OF LAW

That Respondent Family Hospital by its officers and agents having suspended its employe Julia Meier solely on the basis of her support for Complainant National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W discriminated against Meier and interfered with her rights under Section 111.04 of the Wisconsin Employment Peace Act in violation of Sections 111.06(1)(a) and (c) thereof.

On the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and files the following

#### ORDER

IT IS ORDERED that Family Hospital, its officers and agents, shall immediately:

1. Cease and desist from:  
Discouraging membership and activity of employes in or on behalf of National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W, or any other labor organization, by disciplining or otherwise discriminating against any of its employes with regard to hiring, tenure of employment, or in regard to any term or condition of employment.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
  - (a) Pay Julia Meier the sum of \$102.80 which the Examiner has determined is the extent of the loss of wages and benefits suffered by reason

of the discrimination against her.

- (b) Notify all employees, by posting in conspicuous places on its premises, where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Appendix A shall be signed by Walter G. Harden on behalf of Family Hospital. Appendix A shall be signed and posted immediately upon receipt of a copy of this Order and shall remain posted for sixty (60) days thereafter exclusive of the day of receipt. Reasonable steps shall be taken by the Respondent to insure that said notice is not altered, defaced or covered by other material.
- (c) Notify the Wisconsin Employment Relations Commission in writing, within ten (10) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 22nd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Stanley H. Michelstetter II

Stanley H. Michelstetter II  
Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Examiner, and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employes that:

1. WE WILL pay to Julia Meier the sum of \$102.80 which the Examiner determined to be the loss which she suffered as a result of her discriminatory suspension for the period February 21 to March 1, 1974.
2. WE WILL NOT discourage membership in National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W, or any other labor organization of our employes, by discharging, laying off, suspending, or otherwise discriminating against any employe with regard to his hire, tenure or employment, or in regard to any term or condition of employment.
3. WE WILL NOT in any other manner interfere with, restrain or coerce our employes in the exercise of their right of self-organization, to form labor organizations, to join or assist National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or any mutual aid or protection.

All our employes are free to become, remain, or refrain from becoming, members of National Union of Hospital & Health Care Employees, a Division of RWDSU, AFL-CIO, and its Affiliate 1199W, or any other labor organization.

Family Hospital

By \_\_\_\_\_

Walter G. Harden

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1975.

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THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF EXCLUSIVE OF THAT DATE AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

On February 21, 1974 at about 2:45 a.m. Julia Meier posted a notice favorable to Complainant (hereafter the Union) on a bulletin board associated with the sixth floor nurses' station. Later that morning the Respondent's (hereafter Employer) chief executive officer, Harden, determined that she should be disciplined and had her called to his office. When she arrived, he personally disciplined her.

It is the Employer's position that Harden disciplined her for having been in an area she was not authorized to be in, for having violated the Employer's rule against soliciting and for having posted the notice without the authorization of the head nurse of the sixth floor nurses' station. Complainant has alleged that the instant case is an example of the discriminatory enforcement of all of the foregoing rules. In any case, it alleges that the Employer disciplined Meier for her support of the Union.

The Employer supported its position solely by the testimony of Harden, and determination herein primarily rests on the credited facts disclosed by that testimony. At pages 58 and 59 of the official transcript, the Employer's Counsel asked Harden if prior to February 21, 1974 he was aware of the Union's activity at the hospital. Harden at first denied "formal notification of any Union activity" and pretended not to know of any of that activity as follows: "In fact, if anything was being conducted by the Union or any of its representatives, it was very surreptitious." However, in further examination by the Employer's Counsel he admitted that in November or December he had knowledge of the Union's distribution of leaflets at the entrance to the hospital and of the content of Union literature.

Commencing at page 75 of the transcript, the Examiner questioned Harden with respect to the Employer's position and activities concerning the Union's organizational campaign. Harden testified that he would know of any official position of the Employer with respect to the Union's organizational efforts. <sup>2/</sup> He then testified as follows:

"Q Do you approve or review the material that is given in the orientation?

A Yes, I do.

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<sup>2/</sup> The Employer's outline for its series of orientation lectures for new employes was amended December 1973. The added provision appears in Finding of Fact 7.



Q So, you are familiar with all the material--

A --Yes, I am--

Q --with respect to the orientation of the employees?

A Yes.

Q Have you instructed that the employees be oriented with respect to the organizational campaign of Respondent-- of Complainant, rather?

A No, I have not, because I have not been aware officially of any campaign by Complainant.

Q So, to your knowledge, there is no position taken by the Hospital with respect to the organizational campaign of Complainant at orientation meetings?

A That's correct.

Q Have you seen Exhibit 6? Are you familiar with Exhibit 6?

A That's correct.

Q Is that the outline?

A That is correct.

Q Are you familiar with page 12 of such and the material that I have bracketed there?

A Yes.

Q Is that the official position of the Hospital?

A It is the official position of the Hospital as stated in the paragraph--the second sentence under Item 32, on page 12.

Q Okay. That--that is the one that says "It is the hospital's position that"?

A That's correct.

Q Okay. It ends that way.

EXAMINER MICHELSTETTER: Have you--I don't know if both of you saw this.

MR. PERRY: I just saw it now.

EXAMINER MICHELSTETTER: Okay. I don't know if you have had a chance to see that so that we're--

MR. PERRY: --I would hope to get copies.

EXAMINER MICHELSTETTER: Okay.

BY EXAMINER MICHELSTETTER:

Q So, it is the Hospital's official position that organization by an outside union, such as Complainant, is not

in the best interest of its employes or patients?

A "That's correct."

Thereafter at pages 82 and 83 of the transcript Harden attempted to explain his having concealed the Employer's anti-union animus and activity by again implying that he and the other agents of the Employer were unaware of the Union's organizational activities, by denying that he actually was aware of the relevant portion of the outline, and by implying that the Personnel Director on his own, solely in response to articles appearing in the Milwaukee Journal newspaper, prepared that section from a nine and one-half year old general statement of policy by the Employer's board of trustees to the same effect.

First, Harden and the Personnel Director were actually aware of Union activity in December when this was written. Second, if Harden was unaware of Union activity and unaware of this statement, how could he know the Personnel Manager's basis for writing that statement? Thirdly, when he thought it to be to his benefit, Harden emphatically stated that he would be aware of any official policy of the Employer concerning the Union's organizational effort, and denied that there was any such policy. Thereafter he admitted that the stated policy was in fact the official policy of the Employer. Finally, Harden testified that he was familiar with all of the contents of the outline, specifically including page 12, when he thought that that testimony would also benefit his position, and denied that knowledge when he discovered that it would hurt his position. The Examiner discredits the foregoing testimony as a deliberate fabrication to avoid revealing that Harden and at least the Personnel Manager were actively engaged in a campaign against the Union (reading the above-mentioned statement to newly hired employes during their orientation program). The Examiner further concludes from the above-mentioned contradictions and others discussed below, and from Harden's testimony and demeanor as a whole, that his testimony is deliberately evasive, misleading and false in its entirety.

Similarly, Harden's testimony with respect to his activity on the morning in question prior to the meeting with Meier gives strong evidence of his intent. Harden testified that at 8:00 a.m. or 8:15 a.m. on the morning of February 21, 1974, his assistant, Lange, came into his office and reported that Meier had been "observed posting . . . unauthorized material on the sixth floor Nursing Station" and that "I told him that I wanted to speak with Mrs. Meier in my office as soon as possible." He later claimed that he was unaware of Meier's pro-Union views or the content of the posting at the time he made that

decision. He admitted that Lange had given him the posted material and that he read it, although he claimed that he read it after he made the decision to have Meier called to his office. During direct examination at page 59 of the transcript, Harden gave the emphasized, unresponsive answer to his Counsel's question:

"Q Was this the first knowledge you had of a specific employe involved with Union material?

A No.

Q Who else did you know specifically was involved with Union material?

A I don't have the names; I did not inquire.

Q Was Mrs. Meier the first one whom you did know the name of who was specifically--at least in this case--posting Union material?

A I did not call her to my office for that purpose.

Q Well, you had read the material. Is that correct?

A I read--I called her to my office prior to reading the material." (Emphasis supplied.)

Thus, it is clear that Harden asserted that he had no knowledge of the pro-union nature of Meier's activity when he first decided to discipline her and, thus, could not have been motivated by her union activities.

However, the record implies the opposite. The evidence of prior discipline of employes for violating the rule against posting without supervisory authorization, when it was enforced, clearly indicates that in no case had the chief executive of the hospital ever directly disciplined an employe for its violation. If so, Harden must have been at least mildly surprised that Lange was bringing him this matter if, in fact, all Lange said was that Meier had posted a notice without authorization. Therefore it is highly incredible that Lange did not tell Harden of the pro-union nature of Meier's action.

Secondly, the Employer stipulated later in the hearing that the "controversial" <sup>3/</sup> nature of the posted material was, at least, part of its motivation for disciplining Meier. In the instant testimony Harden admitted that Meier was the first employe he knew by name who supported the Union, but denied that he read the material prior to having Meier

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<sup>3/</sup> The testimony at page 77 clearly demonstrates that "controversial" means pro-union as opposed to the Employer's anti-union viewpoint.

called back to work for discipline. Harden testified that during his meeting with Lange he had no time to further discuss the incident because he had to attend a budget session which lasted until his meeting with Lange, Brown and Reiss. If so, he had no time to read the posted material, although it must have been read prior to that later meeting. The Examiner concludes that Harden must have read the posted material when it was handed to him.

At page 59 of the transcript Harden testified that he went into that later meeting a few minutes prior to disciplining Meier. At one point he admitted that the content of the material was discussed during that meeting. But at pages 60 and 61 of the transcript, when he testified as to exactly what was said, he omitted any reference to the discussion of that content. It was at this meeting that Harden elected to impose the theretofore unheard of penalty of suspension for a no-posting rule violation and his having concealed the discussion concerning the nature of the posted material is a most telling omission.

Finally, after this meeting, Harden called Meier into his office and disciplined her. Although his version of what happened materially differed from Meier's, the Examiner credits Meier's version at pages 12 - 17 of the transcript. The repeated ambiguous questioning as to whether she was "sorry" leads the Examiner to believe that this employe, called "on the carpet" by four of the Employer's highest officials, was being asked whether she was sorry for supporting the Union. Only after Meier persisted in that support were the "reasons" for her discipline and the discipline itself revealed. On the basis of the foregoing facts and Harden's willful concealment of certain material portions thereof, the Examiner concludes that the no-posting rule was a mere pretext for the Employer's sole motivation--Meier's support for the Union. <sup>4/</sup>

The Union requested that the Employer be ordered to reimburse Meier for lost pay (including shift differential) of \$102.80 plus compensation for call-in overtime which it claims she has been denied since her suspension; that the Employer be ordered to expunge any reference to the instant suspension from its records; pay interest on the foregoing sums

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<sup>4/</sup> This finding exceeds the degree necessary to establish unlawful discrimination: St. Joseph's Hospital v. W.E.R.B. 264 Wis. 396, 59 N.W. (2d) 448 (1953); Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B. 35 Wis. 2d 540, at pp. 560-562, 151 N.W. 2d 617 (1967). Meier and Harden both testified that Harden mentioned only the rule concerning posting on the bulletin board during the disciplinary session. In this context the Examiner concludes that the Employer's later asserted justification must also be mere pretext for its real motivation.

at the rate of ten percent per year; pay the attorneys' fees of the Union in prosecuting this matter. Employee Delores Stewart testified that her call-in overtime was reduced at about the same time Meier's was. Thus, it appears that the change in Meier's call-in overtime was the result of some factor other than the instant unfair labor practice. It is not the policy of the Commission to award either attorneys' fees or interest on back pay awards. <sup>5/</sup> The Examiner concludes that the payment of \$102.80 alone will effectuate the policies of the Wisconsin Employment Peace Act with respect to the economic aspects of the remedy.

The Union by brief also requested a cease-and-desist order of the nature given herein. Effective August 25, 1974, the Employer became an employer within the meaning of the Labor Management Relations Act, as amended. The cease-and-desist order granted herein is consistent with the policies of that act as well. <sup>6/</sup>

Dated at Milwaukee, Wisconsin, this 22nd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Stanley H. Michelstetter II

Stanley H. Michelstetter II  
Examiner

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<sup>5/</sup> United Contractors (12053-A) 12/73, p. 13, (12053-B) 1/74; Mueller Color Plate Co. (8780) 12/68; Rice Lake Jt. School District No. 1 (12756-A), B) 12/74.

<sup>6/</sup> Section 8(a)3 thereof; see for example Proctor-Silex Corp. 159 NLRB No. 50, 62 LRRM 1451 (1967); Mallory Battery Co. 176 NLRB No. 103, 71 LRRM 1320 (1969).

Nor is there evidence indicating the existence of a personnel record of the instant action which could be used to discriminate against Meier by being the basis of future discipline.