

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN NURSES ASSOCIATION,	:	
	:	
Complainant,	:	
	:	Case II
vs.	:	No. 23584 Ce-1796
	:	Decision No. 16611-C
ST. AGNES HOSPITAL,	:	
	:	
Respondent.	:	
	:	

ORDER AMENDING EXAMINER'S FINDINGS OF FACT
AND REVERSING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

Examiner Dennis P. McGilligan having, on May 10, 1979, issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter wherein he found that the above-named Respondent had violated the terms of a collective bargaining agreement by constructively discharging an employe without just cause; and on May 30, 1979, the Wisconsin Employment Relations Commission, on its own motion, having notified the parties of its determination to set aside said decision and to review the entire record in the matter for the purpose of deciding whether said decision should be affirmed, reversed or modified, in whole or in part; pursuant to Section 111.07(5), Stats., and the Commission, having reviewed the entire record, the Examiner's decision and the parties' post-decision briefs filed in support and in opposition thereto, and being satisfied that the Examiner's Findings of Fact should be amended and that his Conclusions of Law and Order should be reversed, makes and issued the following

ORDER

IT IS HEREBY ORDERED:

1. That Findings of Fact 6 and 13 be amended to read as follows:

6. That Ethel Baker was hired as a registered nurse by the Respondent on April 9, 1949; and that she has been employed at the Hospital continuously since that time; that during this period of time Baker had a generally good work record; that on August 7, 1978 Baker submitted a document entitled "resignation Form" to the Hospital; that this form, signed and completed by Baker stated:

"I, Ethel G. Baker, hereby submit my resignation effective Aug. 30th, for the following reason: moving to Ft. Meyers, Fla. . . ."

that Baker's resignation was accepted by the Hospital and initialed by both Betty Quandt, R.N. on August 8, 1978 and Scott Sears, sometime prior to August 29, 1978.

13. That the Respondent's refusal to allow Ethel Baker to withdraw her resignation did not constitute a constructive discharge.

2. That the Conclusions of Law and Order contained in the Examiner's decision be reversed, and that the following Conclusion of Law and Order be substituted therefor:

CONCLUSION OF LAW

That Respondent, St. Agnes Hospital, by refusing to allow Ethel Baker to withdraw her resignation, did not violate the 1978-1979 bargaining agreement between it and St. Agnes Hospital Nurses' Council of the Wisconsin Nurses Association and thus did not commit an unfair labor practice within the meaning of Section 111.06(1)(f), Stats.

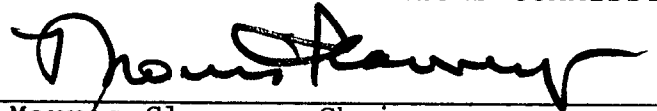
ORDER

That the instant complaint be, and the same hereby is, dismissed.

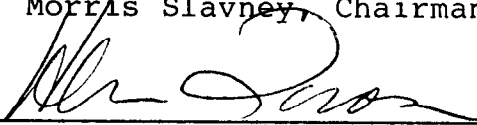
Given under our hands and seal at the City of Madison, Wisconsin this 17th day of October, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

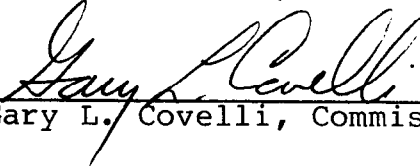
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AMENDING EXAMINER'S FINDINGS OF FACT
AND REVERSING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

THE EXAMINER'S DECISION:

In the decision under review herein, the Examiner found that Respondent St. Agnes Hospital had constructively discharged Ethel Baker in violation of the just cause provisions contained in the applicable bargaining agreement and thereby committed an unfair labor practice within the meaning of Section 111.06(1)(f), Stats. The Examiner's rationale is accurately set forth by the following excerpts from his Memorandum accompanying Findings of Fact, Conclusions of Law and Order:

"Whether or not there has been a violation by Respondent as alleged by Complainant depends on whether or not Ethel Baker effectively resigned her employment or if she in fact was constructively discharged.

"The record supports a finding that Ethel Baker by her actions intended to quit her employment with the Hospital. However, shortly before her last day of work, Baker learned that she would be unable to work as a registered nurse in Florida as she had planned. Thereafter, Baker attempted to withdraw her resignation from the Hospital but without success.

"In situations where an employe has in fact submitted a resignation, a later attempt to withdraw it has been upheld in some cases but not in others. The undersigned is of the opinion that the former approach is a more reasonable and equitable one, particularly under the circumstances herein where Ethel Baker worked for the Hospital over a long period of time with a good work record and the Hospital could have taken her back without any hardship or difficulty.

"In the instant case, the record is clear that the Hospital immediately accepted Baker's resignation and processed it. The Hospital also made a commitment to one employe, Mary Ann Evenson, to fill Baker's vacant position. The Hospital further made arrangements to train other employes to fill Evenson's old position. However, the evidence is undisputed that during this same period of time the Hospital was taking on RN new hires at the rate of no less than three per month, over and above nurses returning from leaves of absence. Between August 22, 1978 and September 25, 1978 the Hospital hired five new registered nurses. All of these were hired after Baker attempted to withdraw her resignation on August 29, 1978. Between September 25, 1978 and November 6, 1978 the Hospital took on three more registered nurses. As a registered nurse with many years of experience in various capacities with the Hospital, the undersigned finds it reasonable to conclude that Baker could have filled some if not all of these eight positions upon her return to work.

"The record also indicates that some part-time work was available in October or early November of 1978 in Baker's former position on Corridor Five West.

"Based on the above the undersigned finds that the Hospital would have suffered no loss or hardship if it had permitted Baker to retract her resignation and return to work on or around October 9, 1978. Consequently, the undersigned will treat Baker's resignation as a discharge for purposes of the instant review."

The Examiner then proceeded to find that the Respondent lacked just cause for its constructive discharge.

Discussion:

Even assuming, without deciding, that an employe is entitled to withdraw his/her resignation after acceptance by the Employer if the Employer has not relied on such resignation to its detriment, the Commission finds no support for the Examiner's conclusion.

In this regard, the Examiner found, and the record supports, that once Baker submitted her resignation on August 7, and before her attempted revocation of same on August 29, the Employer both accepted and relied on Baker's resignation. The Employer made a commitment to employe Everson to fill Baker's vacant position, 1/ and further made arrangements to train other employes to fill Everson's position.

Notwithstanding the above facts, the Examiner concluded that the Employer's refusal to accept Baker's withdrawal of her resignation constituted a constructive discharge because the Employer had been hiring registered nurses at the rate of no less than three per month, that five nurses were hired between August 22 and September 25, and that all five newly hired nurses were working by October 9, 1978. However, the Examiner did not find, nor would the record have supported such a finding, that the Employer, on August 29 would have suffered no loss or hardship by allowing Baker to rescind her resignation which became effective at the conclusion of the following day, August 30. Instead, the Examiner found no loss or hardship would have resulted to the Employer as of October 9, some five weeks after Baker's last day of work.

Again, assuming as the Examiner found, that Baker had a right to retract her resignation unless such a retraction was detrimental to the Employer, the Commission disagrees with and therefore reverses the Examiner's conclusion that the Employer's employment situation five weeks after Baker's last day of work and her notice of withdrawal of resignation can be used as the basis for finding a constructive discharge.

The critical date in determining Baker's rights and the Employer's obligations is the date Baker requested to withdraw her resignation. This is the date the Employer had to make its decision. It is clear from the record that as of said date, August 29, Baker had unequivocally submitted her resignation, and that said resignation had been accepted and relied upon by the Employer when it (1) proceeded to post Baker's job and offer same to Evenson, who accepted, and (2) train employes to fill Evenson's position. The Commission is persuaded that the offer, acceptance and reliance noted above extinguished Baker's ability to unilaterally retract 2/ her resignation and thus that the Employer had no contractual obligation to continue her employment beyond the resignation's effective date.

1/ Due to a lack of patients in 5 West, Everson did not actually begin working in Baker's vacated position until November 14.

2/ Support for this conclusion is found in the rationale expressed in Schallock v. Industrial Commission of Wisconsin and Sprogue Creative Company of Wisconsin, Inc., Cir. Ct. of Dane County, (1/58).


Based on the above, the Commission has concluded that the Examiner erred when finding that Baker was constructively discharged and thus has reversed his resultant finding that Respondent committed a contractual violation and unfair labor practice.

Dated at Madison, Wisconsin this 17th day of October, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner