

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 18397-A

Belle Ann Guild -Milwaukee (Clinic)
Client Services Assistant 4 - State employe

Jack Christenson -Milwaukee (Clinic)
Public Health Educator - State employe

Cleo Smoots - Milwaukee (Clinic)
Client Services Assistant 3 - State employe

Karen Hartberg - Milwaukee (Clinic)
Client Services Assistant 3

4. In August 1978, shortly after Hartberg began working as a CSA 3, she had a discussion with Scavotto about her work schedule, during which Hartberg stated her belief that under the bargaining agreement between the WSEU and the State she was entitled to notice of a change in work schedule. This conversation was overheard by Martich who later advised Hartberg that she would only cause problems for herself if she went to the WSEU with the issue. Martich also indicated that one of Hartberg's co-workers had gone to the WSEU with issues and had caused problems for herself. In May 1978 co-worker Guild had filed a complaint with the United States Public Health Service and the Department of Health and Social Services alleging that Martich had sexually harrassed her and other female employees. In May 1978 Guild had also filed a complaint with the Wisconsin Personnel Board and the Department of Health and Social Services alleging that Riley was following sexually biased recruitment practices. In August 1978 Scavotto had submitted a request to Riley asking for the immediate transfer of Guild due to her "blatant disrespect and contempt for supervisory authority" and contribution toward "poor morale." Hartberg subsequently made oral contact with WSEU representative Marty Beil about the question of work schedules. There is no evidence that any of Hartberg's supervisors ever learned of this action.

5. On August 15, 1978 co-worker Guild asked Hartberg to take notes of a discussion between Scavotto and Guild regarding Scavotto's accusation that Guild was coming to work late and leaving work early. Hartberg did so and was subsequently present as a potential witness at a hearing regarding the contractual grievance filed by Guild over the accusations. Imm, Riley, Scavotto, Guild, and Beil were also present at the August 23, 1978 hearing during which the grievance was settled.

6. Late in August 1978 Hartberg began sitting in on lunch time meetings with co-workers Christenson, Guild, and Smoots to discuss personnel problems with the venereal disease program. These meetings ultimately led Christenson to contact Imm about the problems. Based upon Christenson's contact, Imm's knowledge of Guild's discrimination charges, the content of the August 23 grievance hearing, and discussions between Beil and Robert Durkin, Administrator of the Department of Health and Social Services, Imm met with the staff and investigated the employees' concerns. Following said meeting Beil sent a letter to Durkin criticizing the handling of the problem by Imm. Riley was not a participant in the meeting Imm had with employees but was generally aware of the content of the discussions. On October 25, 1978 Imm issued a report and recommendations for change (Appendix A). Pursuant to said report, both Scavotto and Martich were reassigned out of the program and Christenson became a lead worker in the clinic. Said report also recommended that a new classification be established to provide promotional opportunities for employees in the clinic. During the investigation and after the issuance of the report, Hartberg telephoned Imm on several occasions to talk about problems within the program.

7. In January 1979 Hartberg's probationary period ended and she acquired permanent status as a CSA 3. Hartberg's probationary service report, completed by Scavotto, indicated average performance and contained the following statements:

Mrs. Hartberg has not had the benefit of a normal probationary period. Internal program personnel problems have made the learning experience most difficult. Therefore, the above categories are rated average, although some may have been higher or lower. Despite this handicap, Mrs. Hartberg has shown a willingness to learn and apply program policies. With her improved professional outlook, Mrs. Hartberg should become a competent and thorough investigator.

This employee can increase her value to the service by getting involved in high priority program projects that will increase her knowledge and skills of venereal disease epidemiology.

Mrs. Hartberg's high standard of conviction can be channeled towards epidemiology. With her recently completed training, this quality can be used to analyze and investigate venereal disease cases in an aggressive and thorough manner.

8. At the time Hartberg achieved permanent status, Riley was functioning as the on site supervisor and was traveling from Madison to Milwaukee on a weekly basis for meetings with the clinic staff. In February 1979, during a 4 month leave of absence due to a work related injury, Guild filed a sex discrimination complaint against Martich with the Wisconsin Department of Industry, Labor and Human Relations. During her leave of absence Guild also pursued a transfer to a position as a Parole and Probation agent. In July 1979, after having been back at the clinic for 6-8 weeks, Guild accepted a transfer to said position. In August 1979 Robert Harrah, a federal employee, arrived in Milwaukee to supervise the clinic employees. In August 1979 Christenson resigned because he had become increasingly uncomfortable with the nature of his work and this discomfort had become reflected in his work performance to an extent that the Respondent was considering his termination. Several months earlier, Christenson had voluntarily given up the lead worker position after finding himself having communication difficulties with both his supervisors and his subordinates. Smoots transferred out of the program at approximately the same time also under threat of termination.

9. In early September 1979 Riley decided that the position of Client Services Assistant should be upgraded to Public Health Educator (PHE). The decision to upgrade reflected Riley's desire to provide a career ladder for CSA's which had previously been lacking and to attract more qualified employees who could handle a program which was becoming more complex and who would be capable of functioning independently in branch offices. The position of Public Health Educator was to be in a bargaining unit represented by Complainant.

10. In late October 1979 Hartberg learned from Riley and Harrah that her CSA position was being upgraded to that of Public Health Educator and that she would have to compete for what she saw as her "own job". Hartberg subsequently told Harrah that she was going to contact Beil to discover why she couldn't simply be reclassified. Harrah advised Hartberg against such action indicating that it could reopen old wounds caused by WSEU involvement in the Imm investigation. Hartberg approached Beil about the issue of "competing for her own job". Beil contacted Riley and Imm and ultimately one of the vacancies was "closed" so that only employees of the Division of Health, in which Hartberg was employed, were eligible to apply.

11. In December 1979 Hartberg had a performance evaluation meeting with Riley and Harrah during which she was informed that her performance as a CSA 3 was acceptable. From mid December 1979 through late January 1980 Hartberg was absent from work due to vacation and medical leave. Upon her return, Harrah met with Hartberg to discuss her job responsibilities and the improvement in employee attitudes that Harrah hoped would continue unimpeded by Hartberg. Hartberg found this meeting threatening and on January 22, 1980 filed a complaint with the State Personnel Commission alleging the following:

"Because of my professional association with a co-worker Belle Ann Guild who has filed a formal complaint with the State of Wisconsin Personnel Commission and said complaint being investigated by said Commission I (Karen Hartberg) am being harassed (sic) for said association."

12. In January 1980 two vacancies with the position of Public Health Educator were posted as follows:

PUBLIC HEALTH EDUCATOR 1 - TRAINEE - PUBLIC HEALTH ADVISOR

LOCATION: Two Vacancies - Department of Health and Social Services, Division of Health, Bureau of Prevention, Milwaukee. PAY: The training program may be up to 18 months. Pay will begin between \$1199 and \$1402 per month, depending on prior training and experience. Periodic pay increases to \$1402 per month during training. Receive an additional pay increase of \$35 per month six months after completing training. Tasks to be Performed Upon Appointment: Under the direction of the Sexually Transmittable Disease Program Coordinator, participate in formal and on-the-job training. Interview patients with sexually transmittable

diseases, such as syphilis and gonorrhea, to locate all possible sex partners. Locate named sex partners and refer to medical examination; follow-up on persons with positive or reactive laboratory tests. Initiate, complete and maintain control of investigative records and report forms. Visit public and private laboratories to ensure complete and rapid reporting of positive and reactive laboratory specimens.

While on a medical leave of absence stretching from February 7, 1980 to June 16, 1980, Hartberg competed for the "closed" vacancy. Hartberg was the only individual certified for hiring for the "closed" vacancy. She was hired as a Public Health Educator effective June 29, 1980 and received the following letter from Riley informing her that she had received the position.

I would like to extend to you my congratulations for being selected for a Public Health Education I - trainee position in Milwaukee. Over the years, the Public Health Educator series has provided the Sexually Transmittable Disease Control Program with quality-oriented person power that has made our program highly successful in controlling these diseases in Wisconsin.

During the job interview, the duties and responsibilities of the Public Health Educator I - trainee position was explained to you. In addition, the employment conditions which you would consider before accepting this position were discussed. The conditions were: (1) You must use your own personal automobile in carrying out the functions of the job; (2) You would be required to travel outside of your headquarter area, involving over-night stays; (3) Your work hours and days would vary according to work assignment, conditions, and location; night work would be required; and (4) The Division of Health would reserve the right to transfer or re-locate you to other areas of the state.

I hope you will find this position in the Sexually Transmittable Disease Control Program personally and professionally challenging and rewarding. Best wishes in your new career in public health.

Hartberg's training period was to be 18 months followed by a 6 month probationary period. Hartberg was dissatisfied with the length of the training period and contacted Beil and a representative of the Personnel Commission to ask them to provide a shortened training period. Beil contacted Imm in an unsuccessful effort to have the period shortened.

13. During Hartberg's leave of absence, Harrah sent her memos which recorded the content of weekly staff meetings. From July 4, 1980 through July 27, 1980 Harrah was on vacation. During his absence Riley presided over a regular staff meeting on July 18 and subsequently issued the following memo to employees, including Hartberg:

1. Our normal work day will begin at 8:30 A.M., the only exception will be Thursday, when those working night clinic will report in at 11:30 A.M. Everyone is expected to report in unless prior arrangements have been made with Bob or Mike. If you will be taking sick leave, calls are to be made to Bob or Mike at, or before, 8:30 A.M.
2. Every Monday morning there will be a staff meeting. This will be a permanent routine unless notification of a change is received from Bob. Everyone is expected to attend the staff meeting unless prior arrangements are made or they are on sick leave or annual leave.
3. Since communication is a very important function in our job, it will be expected of everyone to report in every day in the morning and afternoon. This means PHYSICALLY, unless prior arrangements are made with Bob or Mike or if you are on sick leave or annual leave.
4. Michael McGeehin has been and is lead worker. Full cooperation is expected when working with him. Both Bob Harrah and Michael McGeehin have a history of experience and expertise and they will be certain the workloads will be distributed equally and uniformly. Casey stressed with the entire staff being relatively new, and new people joining the program, it is extremely important everyone goes in the same direction for the betterment of the program.

Karen Hartberg raised the question of flex time. She inquired if it would be permissible to go to the field at 7:00 A.M., then report in at 8:30 A.M. and leave early in the P.M. Casey stated he would prefer to remain in the 8:30 A.M. to 5:00 P.M. framework. If an exception should arise, previous arrangements should be made with Bob or Mike.

In conclusion, Casey stated our program here in Milwaukee does not have a reputation with the City as good as it could be. We have good support people in the Clerks and much talent and expertise in the field staff and as a team we can come forth with the best program Milwaukee has ever had.

Casey also noted these are work instruction -- not guidelines. They are standard operating procedures and 100% compliance is required!

14. On July 29, 1980 Harrah met twice with Hartberg to discuss her work performance. During these meetings, Harrah criticized Hartberg's record keeping and reviewed previous work procedures and policies including the requirement that employees report to work at 8:30 a.m. and between 4:00 - 4:15 and remain until 4:45 p.m. Hartberg questioned the reporting requirement stating that she felt she was a professional who should not have to adhere to strict work hours. Harrah informed Hartberg that she was expected to be present at the indicated hours. On 5 of the next 6 work days Harrah believed that Hartberg violated the reporting requirements noted above. On August 7, 1981 Harrah met with Hartberg and again reviewed the rules regarding the work day. Hartberg's compliance with these rules subsequently improved until early September when for 4 consecutive days Harrah believed Hartberg was violating the rules on work hours. On September 16 Harrah met with Hartberg and again discussed his belief that Hartberg was leaving work early or failing to return to work in the afternoon. Hartberg, believing the conference to be disciplinary in nature, replied with "no comment". Harrah also raised a question about an incident involving a new employee during which Hartberg had advised the new employee to file a grievance. Hartberg responded by stating that her remark was meant as a joke.

15. On September 17 Harrah met with all employees to review their casework. Harrah's review of Hartberg's cases revealed numerous problems with work not being completed on time and records being improperly kept. When questioned Hartberg replied "no comment". On September 19, 22, and 23 Harrah believed that Hartberg violated the reporting requirements. On September 25 Harrah learned that Hartberg had failed to make a timely report regarding a patient with syphilis.

16. In early to mid September Harrah and Riley recommended to Imm that Hartberg's trainee appointment be terminated. Imm accepted the recommendation. In late September Hartberg received the following letter from Terry A. Willkom, Acting Administrator of Respondent's Division of Health:

This is to inform you of our intent to terminate your trainee appointment effective October 4, 1980 due to your failure to meet the required standards. Specifically you have not followed established procedures, you have been absent from your station during scheduled hours, and you have ignored the instructions of your supervisor.

In addition to being informed of the reasons for our decision to terminate your employment during your training period, you are being afforded the opportunity to respond to the reasons for termination of your training agreement as stated above at a hearing on October 1, 1980 in room 275, 1 West Wilson Street, Madison, WI at 10:00 A.M. You are entitled to have a representative of your choosing at the hearing. You should contact Jerry Jensen no later than 4:30 P.M. September 29, 1980, if you desire a hearing.

If we do not hear from you by the above indicated time, we will assume you do not wish to have a hearing and your appointment will be terminated effective October 4, 1980 at 4:30 P.M.

Several days later Hartberg received another letter from Willkom amending her termination date to October 11, 1980. On or about October 1, 1980 Hartberg filed a complaint with the Wisconsin State Personnel Commission alleging that her termination was due to her having previously filed complaints with the Personnel Commission and her having supported Guild's charge of sexual harassment. On October 7 Hartberg, Beil, Guild, Harrah, Riley, and Imm attended a meeting

regarding Hartberg's termination. On or about October 23 Hartberg received the following letter from Willkom regarding the meeting.

On September 25, 1980, I informed you that I intended to terminate your trainee appointment with the Bureau of Prevention due to your failure to meet probationary standards.

On October 7, 1980, a meeting was held to discuss the specifics relating to this decision. The meeting was attended by yourself, Martin Beil, Belle Guild, Robert Hanah, Casey Riley, Ivan Imm and Jerry Jensen.

In that meeting, you were advised that the decision to terminate your training appointment is based on the following: failure to be at your appointed work station during designated hours; lack of judgment; failure to follow procedures; ineffective case management. You were unable to refute these allegations.

The documentation and the information discussed at the meeting have been given careful consideration. The decision to remove you from your Public Health Educator I-Trainee position, based on your failure to meet probationary standards, is justified in my judgment.

Therefore, pursuant to Wisconsin Administrative Code, Section Pers 14.03(1), and in accordance with Chapter 230.28, Wisconsin Statutes; you are hereby removed from your Public Health Educator I-Trainee position in the Division of Health effective at 4:30 p.m. on October 24, 1980. In accordance with the statutory provisions, you shall be restored to your former position as Client Services Assistant in the Division of Health effective October 26, 1980.

17. Effective October 26, 1980 Hartberg was terminated from her trainee appointment and restored to her former position of CSA 3. However as the CSA position had been eliminated due to the upgrade to PHE, Hartberg was laid off effective November 7, 1980.

18. The recommendation of Harrah and Riley that Hartberg's trainee appointment be terminated was based, in part, upon hostility toward Hartberg for having engaged in protected concerted activity.

Based upon the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

Respondent State of Wisconsin, through its agents Harrah and Riley, committed unfair labor practices within the meaning of Sections 111.84(1)(a) and (c) of the State Employment Labor Relations Act by terminating Hartberg's trainee appointment in part because Hartberg had engaged in protected concerted activity.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

Respondent State of Wisconsin, its officers and agents, shall immediately

1. Cease and desist from:

- (a) Terminating trainee appointments or otherwise discriminating against employees with regard to their terms and conditions of employment because of an employee's exercise of rights guaranteed by Section 111.82 of State Employment Labor Relations Act.
- (b) In any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 111.82 of the State Employment Labor Relations Act.


2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the State Employment Labor Relations Act.

- (a) Immediately offer to reinstate Karen Hartberg to her trainee appointment as a Public Health Educator I, make her whole in all respects, and pay her a sum of money equal to that which she would have earned between the date of termination of the trainee appointment and the date of the proffer of reinstatement, less any amount of money she earned or received during said period which, but for the termination and subsequent layoff, she would not otherwise have earned or received. While the period between layoff and the offer of reinstatement shall be credited to Hartberg for the purposes of her overall seniority rights, the period between the termination of her trainee appointment and the offer of reinstatement shall not be credited toward the service requirements of the training program.
- (b) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of service of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 26th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant alleges that Respondent terminated Hartberg's trainee appointment, at least in part, out of hostility toward Hartberg's protected concerted activity and that Respondent thereby committed unfair labor practices within the meaning of Sec. 111.84(1)(a) and (c) of SELRA. 1/ Respondent denies said allegations asserting that Hartberg's termination was based upon her work performance.

To meet its burden of proof Complainant must establish, by a clear and satisfactory preponderance of the evidence, that: (1) Hartberg had engaged in protected concerted activity; (2) that Respondent was aware of said activity and hostile thereto; and (3) that Respondent's action was based, at least in part, upon said hostility. 2/ As the key element of proof involves the motivation of Respondent and as, absent an admission, motive cannot be definitively demonstrated given the impossibility of placing oneself inside the mind of the decisionmaker, Complainant must of necessity rely in part upon the inferences which can reasonably be drawn from facts or testimony. On the other hand, it is worth noting that Respondent need not demonstrate "just cause" for its action. However, to the extent that Respondent can establish reasons for its action which do not relate to hostility toward an employee's protected concerted activity, it weakens the strength of the inferences which Complainant asks the undersigned to draw.

Applying the foregoing to the case at hand, it is clear that Hartberg engaged in extensive protected concerted activity and that Respondent was aware of said activity. Hartberg was a passive participant in the Guild-Scavotto confrontation and a potential witness for the WSEU in the ensuing grievance hearing. Imm and Riley both were involved in this episode as representatives of Respondent. Hartberg participated with co-workers in the Imm investigation which led to a substantial shake up in the VD program. Imm and Riley were intimately involved and affected by the controversy and thus were aware of Hartberg's activity. Hartberg contacted her union about the posting procedures for the PHE position even after Harrah warned that such action might reopen old wounds from the Imm report. As WSEU representative Beil contacted Riley and Imm about the question, they were clearly aware of this activity and it seems likely that Harrah shared that awareness both because of his supervisory relationship with Riley and the reference in Harrah's May 19, 1980 staff meeting Memorandum which mentions Hartberg's having filed a "grievance" over the equivalency of the CSA and PHE positions.

1/ Section 111.84(1) It is an unfair labor practice for an employer individually or in concert with others:

(a) To interfere with, restrain or coerce state employees in the exercise of their rights guaranteed in S. 111.82

. . .

(c) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment . . .

Section 111.82 State employees shall have the right of self organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other contractual aid or protection . . .

2/ In Muskego-Norway v WERB, 35 Wis. 2nd 540 (1967) the Wisconsin Supreme Court held that the Municipal Employment Relations Act (MERA) was violated when one of the motivating factors for the employer's action against an employee was hostility toward the employee's concerted activity, no matter how many other arguably valid reasons existed for the action. While that case arose under MERA, the Commission has found that rationale to be persuasive and thus has applied this doctrine to cases arising under SELRA. See State of Wis. (Professional-Education) (17218-A) 3/81; State of Wis. (DOA), (15699,A,B) 10/81.

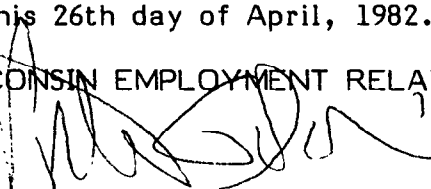
Harrah's desire to see the program succeed and to leave the turmoil behind, 5/ it is concluded that Riley and Harrah were hostile to Hartberg's renewed involvement of the WSEU and that this hostility formed a partial basis for the termination of Hartberg's trainee appointment as a PHE. 6/ Such a conclusion yields a finding that Respondent's action constituted an unfair labor practice within the meaning of Sec. 111.84(1)(a) and (c) of SELRA.

To remedy the statutory violation, Respondent has been ordered to immediately offer to reinstate Hartberg into the PHE training program. However, given Hartberg's problems complying with work procedures, the period between termination and the offer of reinstatement can not be equated with Hartberg's having served a training period. Thus Respondent's make whole obligation does not include crediting any portion of that time period toward the service requirements of the training program. Hartberg shall however be credited with seniority rights for the period between her layoff and the offer of reinstatement. Respondent's back pay obligation includes any pay differential between the PHE rate and the CSA rate apparently received by Hartberg during the brief period between the termination of the training program and her subsequent layoff. The back pay liability is also subject to reduction by factors such as wages received from employment Hartberg otherwise would not have procured, unemployment compensation benefits received, and any lay off which she might have been subjected to had she continued in the training program.

Dated at Madison, Wisconsin this 26th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

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- 5/ Harrah and Riley's sensitivity to forces which might arguably damage the VD program is demonstrated by the strong reaction to Hartberg's filing of a lawsuit against the City of Milwaukee for a work related injury and to Hartberg's apparently joking reference to the advisability of a new co-worker filing a grievance.
- 6/ While Riley and Harrah were federal employees, they nonetheless were functioning as Respondent's agents and thus Respondent is bound by their actions and motivations.

Before moving into the issue of whether Respondent was motivated in part by hostility toward Hartberg's protected concerted activity, it should be made clear that the mere presence of protected concerted activity does not automatically yield a conclusion that the employer is hostile thereto. While it may be true that if given the choice, employers generally would prefer the absence of a union or the absence of employees who engage in protected concerted activity, such a generality does not meet Complainant's burden of proof as to Respondent's hostility toward Hartberg's actions. In the same vein, it must be noted that participation in protected concerted activity does not immunize an employee from adverse employment consequences if that employee engages in conduct which warrants discipline and if the discipline is unrelated to the protected activity.

Keeping the foregoing in mind but also remembering the previously discussed validity and necessity of drawing inferences, what does the record establish as the basis for the termination of Hartberg's trainee appointment. Clearly the evidence does not portray Hartberg as the ideal employee. Indeed the record persuades the undersigned that Hartberg did violate various work procedures and that she saw criticism as akin to persecution. Hartberg's own testimony and that of Beil regarding their almost daily conversations reveal something approaching paranoia about the treatment she was receiving in the workplace. 3/ Thus it must be concluded that valid reasons for the termination of her trainee appointment did exist.

However, under Muskego Norway the inquiry does not end with that conclusion. Despite the presence of a valid basis for action, if Respondent was also motivated by hostility toward Hartberg's protected concerted activity, a statutory violation must be found. The record establishes that in July, 1978 Hartberg transferred into a program that was already enveloped by controversy. This controversy ultimately led to the removal of the immediate supervisors of the protesting employees from the workplace. While Riley, the program coordinator, was not directly implicated in the Imm investigation, the undersigned is satisfied that the turmoil left its scars on him given the investigation's negative implications for the success of a program which Riley was both responsible for and deeply committed to. However, Hartberg, as the late arrival, was hardly at the forefront of the employee protest although the impact upon her was obviously substantial given her numerous discussion with both Beil and Imm. Thus if the scope of Hartberg's protected activity was limited to the foregoing, one would be hard pressed to conclude that Respondent had met its burden of proof.

However, in late 1979 and continuing on into 1980 the record establishes that Hartberg began to raise questions about the impact of the PHE upgrade upon her employment status and engaged in the protected concerted activity of pursuing those concerns with Biel. She also subsequently contacted Biel about the length of her training program. While not persuaded by Complainant's grandiose conspiracy theory that the upgrade and lengthy training program were an attempt by Respondent to eliminate the last employee who had challenged management in the fall of 1978, the undersigned is satisfied that Hartberg's contact with Beil did resurrect the ghosts and clouds which had hung over the VD program since the Imm report. Here was an employee again challenging the manner in which the program was to be staffed and again involving the WSEU in that effort. Here was an employee who was again successfully challenging the efforts of Riley to get the program on track. Here was an employee who went ahead with her challenge despite Harrah's warning that such an act could reopen old wounds. 4/ Given the intensity of the earlier turmoil surrounding the VD program, and the intensity of Riley and

3/ This factor and Hartberg's unpersuasive denials regarding any violations of work procedures prevent the undersigned from giving any serious credence to Hartberg's testimony regarding Riley's alleged anti-union remarks.

4/ While cognizant of the limited credence which has been given to Hartberg's testimony regarding remarks allegedly made by Riley, her testimony regarding Harrah's remark was not tinged with the same degree of paranoia and thus has been found to be somewhat credible. Significantly Harrah did not deny having so warned Hartberg.

"APPENDIX A"

Report and Recommendations

The Venereal Disease Program

Bureau of Prevention

October 25, 1978

John In

Compliment Exh No. 6
4-79-86

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Introduction

On September 15, 1978, Pat Breunig and I began our investigation of the management, staff, and program problems within the Venereal Disease Program of the Bureau of Prevention. Our investigation indicates that there are a number of problems that are of long-standing and their genesis is varied and complex. Therefore, we neither offer simple solutions, nor expect that program or management staff will enthusiastically endorse the solutions we propose. However, having given this matter considerable study and serious thought, we propose to implement the recommendations contained in this report.

This report does contain a review of certain historical events and problems. We are convinced that a review of the current problems cannot occur in isolation. In fact, it is the isolated treatment of certain "historical" incidents by various persons currently involved in the VD Program that has spawned and fed many of the current problems. Parenthetically, it must be pointed out that ferreting out the "truth" in the current situation is nearly impossible. Various participants can, and do, offer lucid and believable versions of events which are divergent and/or contradictory to the representation of another person. We do not believe that conscious lies are being told. It appears that the intensity of feelings and the vantage point from which each person views the problems cause legitimate differences of opinion as to the problems and the measures which must be implemented in order to provide relief.

Extensive interviews, discussions, and investigations have preceded the preparation of this report. The listing of meetings, interviews, etc., is appended.

Background

The Wisconsin Venereal Disease Program was initiated in the 1950's. The program was similar to many other states in that it received program direction from a federal assignee who was stationed in the (then) Bureau of Preventable Diseases. The federal assignee was supervised by a section chief (physician) who was responsible for all communicable diseases. The Venereal Disease Program then, and now, receives its funding through a grant from the Public Health Service, Center for Disease Control.

When the Wisconsin Venereal Disease Program was started, there was a single federal assignee in the program. At that time, the federal assignee handled both VD and childhood immunization. In 1973, the Congress appropriated funds for an expanded program to include gonorrhea prevention and control. There are now nine positions (three federal assignees) assigned to the Program and three typists in the Madison office. The state does not pay the salary of the federal assignees.

It is important to understand the relationship between the Bureau of Prevention, the federal assignees, the Region V staff, and the Center for Disease Control. Both the Venereal Disease and Childhood Immunization Programs are heavily dependent upon the expertise of the federal assignees and the funding provided by the Public Health Service. Without federal funding, both programs would virtually cease to exist.

The federal assignees are, at the outset, placed in a tenuous position. They are told to respond to the Bureau Director as though employed by the state. It is fair to say that both Mr. Riley and Mr. Rostrom (Immunization Program) have acted accordingly at all times. Yet, they are clearly employed by the federal government. They receive

their performance evaluations from staff in the Region V Office, although I am given an opportunity for input. They obviously must satisfy two bosses. In addition to the need to satisfy two supervisors, the federal assignees have the pressure and limitation of managing categorical programs which have specific and demanding goals. Thus, the VD Program has as its goal the eradication of all venereal diseases. Certain prescribed methodologies and resources must be implemented and utilized in order to meet these goals. These demands make it difficult for the federal assignee to accede to program or staff variances which will not immediately lead to a reduction in venereal disease.

The competing pressures which the federal assignees face are not offered as an excuse for current problems. The pressures, however, are a fact. We are currently operating a program wherein Wisconsin has never had a state employee managing its VD or Childhood Immunization Programs. This is not a unique situation since most states operate in this manner. It is the federal assignee who prepares our grant applications, drafts goal statements, proposes new or changed program direction, and negotiates with the Region V office as to the grant award. I do not present this as the ideal or recommended arrangement. This is in fact the manner in which the venereal disease program has been managed (as near as can be determined) from its inception. Certain changes will be made once Dr. Jeff Davis is on board but the fact that the program manager is a federal assignee is not likely to change for some time.

Identification of Problems

When we began our review of the venereal disease program, it became obvious that we must capture the differing perspectives as to the nature and cause of the problems within the program. The following section of this report summarizes the problems as seen by program staff and by the first-line supervisor. These items are not included here in order to initiate a debate. No rebuttal is solicited. Whether all statements are complete is not essential. The point clearly is made that the chasm of trust and confidence between the staff and first-line management is so great that drastic steps must be taken to restore the program. Further, many of the statements point to the need for changes. These statements are then addressed through recommendations in another portion of this report.

The current problems being experienced in the VD Program can best be categorized as follows:

1. Inadequate guidelines/poor or ineffective supervision.
2. Communication (poor or none).
3. Paper flow problems.
4. Lack of trust/consideration among staff.

All staff agree there are problems and frustrations which have seriously affected Program effectiveness; however, there is a noticeable difference between what management/supervisors and field staff perceive to be the reasons for the problems. The following is a summary of written or verbal statements made by the persons involved. They are not listed in order of priority and no attempt has been made to discredit or to indicate the creditability of the statements. Rather, the statements are included in order to point out the scope of the problem.

Inadequate guidelines/poor or ineffective supervision:

Staff views:

1. No handbook is available detailing the procedure for handling paper flow at the Milwaukee Social Hygiene Clinic.
2. Milwaukee first-line supervisor resisted attempts by staff to teach him the paper flow system and get involved because he was "only suppose to observe."
3. Attempts to obtain "advice" from the new supervisor were unsuccessful, resulting in staff seriously questioning the professional competency and knowledge of the supervisor.
4. Staff feel review of their handling of case reports is a "police tactic" rather than a constructive learning experience because there is no feedback, or they seriously question the advice given them.
5. Staff are given assignments with few or inadequate guidelines and are expected to show results, or be criticized. They are not told they are being given an opportunity for "professional" development.

6. Staff feel there is lack of constructive feedback.
7. Staff were told they are not in the business of making friends and that establishing rapport with patients is not important--getting contact information is important.
8. Staff were told to assume all patients are "lying" to them.
9. Milwaukee first-line supervisor did not answer their questions adequately. This resulted in staff turning to each other for advice or help. They concluded he was not knowledgeable on the subject and it seriously damaged his credibility.
10. Staff feels there is too much emphasis on "statistics" and not enough on patients.
11. More effort should be directed toward patient education and they should be encouraged to speak to local groups, churches, etc., upon request. Staff time would not be a problem if the paper flow problems were corrected.
12. More syphilis case discussions are needed including all staff to broaden staff knowledge.
13. Medical and education materials/information from CDC have been limited so staff feel they are not kept up to date, or given the materials they need to perform effectively.
14. No provision for "career ladder" for staff.

Inadequate guidelines/poor or ineffective supervision:

Program supervisor views:

1. Staff have refused to review cases with first-line supervisor thereby preventing a "learning experience."
2. New assignments are made to give staff an opportunity for "professional" development, and so they can share their experiences with their co-workers and get recognition.
3. State staff have felt, for years, that feds should not be first-line supervisors to state staff resulting in poor, or no cooperation among staff.
4. Staff do not actively participate at staff meetings because of peer pressure.
5. Implementation or discussion of new program ideas is being delayed because of current problems.
6. Current problems seriously hamper or have stopped communication between staff and supervisors.
7. Confusion over whether or not feds could supervise state employees seriously damaged credibility of management.
8. Supervisor has not been able to effectively deal with staff because of open and frequent challenges to the supervisor's authority (including union involvement),

and the unwillingness of management to act on "known" abuses, or to charge employees with insubordination until the situation could be fully evaluated.

9. First-line supervisor was not made aware of the history of problems between staff and program supervisors before he accepted the position, or when he arrived in Wisconsin.

Communication (poor or none):

Staff views:

1. They understood that the first-line supervisor was to be a "working" supervisor and would take his "share" of the load including acting as backup interviewer and doing field work.
2. Serious "relationship" problems exist with health departments because of promises made but not kept by program supervisors, or because of aggressive behavior of supervisors.
3. Staff are told all contacts with staff located at Milwaukee City Health Department must be through the Milwaukee supervisor. This "bogs down" the system and results in inadequate followup/treatment of patients. Also, they can't be sure the information gets to the right person.
4. Phone messages taken by the first-line supervisor or secretary are not given to staff, or information is not complete, or is inaccurate resulting in serious problems and jeopardizing relationships with patients, physicians, health departments, etc.
5. Staff are not kept adequately informed of new program developments.
6. Staff meetings are too infrequent.
7. Staff "understand" they are not to communicate directly with each other to share ideas (one-on-one).
8. Job responsibilities of all program staff, including limitations, are not clear to staff.
9. Petty differences and misunderstandings between state/city/federal staff have resulted in poor communication and working relationships.
10. Staff should have more input into program goals and objectives.
11. Staff are apprehensive about communicating directly with Madison because they have been told they must communicate through the Milwaukee first-line supervisor or the District 2 supervisor.

Communication (poor or none):

Program supervisor views:

1. Milwaukee first-line supervisor understood he was to be a supervisor and manager and not a "lead worker."
2. All staff and their supervisors should meet to exchange ideas so they can all benefit--not just one-on-one.
3. "Personalities" are the real issue and the desire by some individuals to "control."

Paper flow problems:

Staff views:

1. Secretary (May, 1978) has not been instructed, or supervised properly resulting in staff not being able to find information (forms), duplication of efforts (physicians and patients are contacted unnecessarily because information was not recorded properly), and delays in getting people treated.
2. First-line supervisor made attempts to change the paper flow system without a thorough knowledge of the system that had been effective.
3. First-line supervisor does not give referrals to them promptly (delays of 4+ weeks) resulting in delays in treatment of patients.
4. Female repeater program, for which Wisconsin is currently getting recognition and attention from CDC, is no longer working because of the paper flow confusion, and problems among staff.
5. Some field work could be limited or eliminated if records were reviewed and checked properly by the supervisor or secretary before being assigned to the (field) worker.

Paper flow problems:

Program supervisor views:

1. State resisted first-line supervisor attempts to learn the system by deliberately not sharing information with him.
2. Staff considered first-line supervisor a threat to their "control" of the clinic and therefore withheld information from him.
3. Staff challenged first-line supervisor's association with Milwaukee District 2 supervisor, whom he looked to for assistance in learning the system when attempts to learn from the staff failed.
4. Staff are withholding information (and forms) resulting in inaccurate statistics.

Lack of trust/consideration among staff:

Staff views:

1. Frequent turn-over of staff (state and federal) is indicative of serious management and morale problems.
2. First-line supervisor leaves the clinic area when he is suppose to be back-up interviewer.
3. Staff have overheard conversations between feds on the phone (one-sided) giving them the impression they are being put down, discredited, or that the facts are being misinterpreted. They have also seen "supervisor's notes" that misrepresent the facts.
4. Staff concluded (shortly after he arrived) that first-line supervisor was getting all his instructions from the Milwaukee District 2 supervisor and it was an indication they were in for more of the same problems that were suppose to have been resolved when the latter individual was removed as first-line supervisor.
5. Staff do not feel they are being treated as professionals, but rather that they can't be trusted.
6. Staff were under the impression the Milwaukee District 2 supervisor was to stay away from the clinic, however, he was seen there frequently and talked to the first-line supervisor on the phone frequently, reinforcing their belief he was continuing to "run the show."
7. Program supervisors hold themselves "above" the staff.
8. Inadequate space, phones, and desks contribute to a poor work environment at the clinic.
9. Supervisors are not sensitive to workload and job pressures of staff resulting in unreasonable demands.
10. Supervisor should encourage comp. time when staff have put in extra time.
11. Staff should not be reprimanded when they elect not to work overtime because of previous personal commitments.
12. Staff do not feel they were unduly influenced by any one individual--they each observed or experienced things that forced them to band together to get management's attention.

Lack of trust/consideration among staff:

Program supervisor views:

1. Repeated requests to the city for adequate space, phones, and desks have been ignored indicating a lack of interest and concern on the part of the City of Milwaukee and resulting in extremely poor working conditions.

2. Staff are insensitive to management's problems.

3. One individual (primarily) has considerable "control" or influence over the other staff.

4. Staff were given opportunities to express problems or concerns to Madison, but did not take the opportunity to be candid.

5. Attempts to "supervise" effectively were constantly sabotaged or challenged.

Again, it must be emphasized that these statements are included because they give the reader some idea of the varying perceptions involved. We do not expect to dwell on the problems identified here, but rather to move ahead to solve the real problems as presented.

Many of the statements listed under "Communication" could also be listed under "Lack of trust." Many of the statements listed under "Inadequate guidelines" were a result of the tenseness of the situation, i.e., effective communication became seriously hampered, and then stopped. All staff, at one time or another, have been guilty of being insensitive and inconsiderate of their co-workers, and of not being open and honest. If questions had been asked early this year to clarify Mr. Scavotto's role and responsibilities; if state staff had not been suspicious (paranoid) about Mr. Martich's relationship with Mr. Scavotto; if

It's obvious from our discussions with all concerned that "camps" quickly developed. As tension built, the gap widened and soon constructive, effective communication became impossible. As time went on, and more people became involved, the real issues became lost in the confusion. Program staff became convinced that the supervisors were trying to build a case against them which would result in discharge. (Three of the staff are on probation.) Program supervisors were convinced that staff were trying to discredit them so they could control the program. People heard the same words, but interpreted them differently. The three new staff have no basis for comparison of the effectiveness or ineffectiveness of the program because they have only seen it and management at its worst. Their orientation has been inadequate because they have been distracted by the confusion that exists, and because management has been reluctant to act pending investigation/resolution of the problem.

Clarifying staff responsibilities through a handbook will correct many of the problems. However, position descriptions and handbooks will not heal the wounds of distrust and poor communication. All of the participants involved must be willing to "forgive and forget," but more importantly, commit themselves to being open and honest in the future and to work together to achieve a common goal--making the VD Program work. Personalities, egos, and what happened in the past, cannot be allowed to circumvent this goal if improvements are to be made. The one thing that all staff are in agreement on is the value of the Program and their sincere desire to "make it work." We must all prove our sincerity. No one individual can make it work, and no one individual can make it fail.

Most important of all, we must learn to trust each other. Trust cannot be achieved through position descriptions, handbooks, and work rules. No one can be ordered to trust--it must be earned and that sword cuts both ways.

Recommendations and Timetable

Now that some of the essential issues have been identified, it is appropriate to outline the basic and important recommendations which will be implemented. Where possible, we have also proposed a timetable and made specific assignments for the completion of tasks.

I. Personnel

A. Program Supervisors:

Mr. Fred Martich and Mr. Joe Scavotto, through mutual agreement with the Region V Office and the Center for Disease Control, will be reassigned as early as it is possible. This decision does not assume that these two individuals are largely responsible for current problems. It is rather a recognition of the fact that the lack of trust, confidence, and respect has so declined that personnel changes must be made.

Interim assignments, effective October 27, 1978, will be made for both Mr. Scavotto and Mr. Martich pending reassignment. Mr. Martich will be given special "staff support" tasks to help Mr. Riley in the preparation of federal reports, etc. He will no longer have responsibility for District 2 supervision or for general syphilis surveillance. He may be called upon for special assignments in "uncovered" areas during the interim. Mr. Scavotto will continue to have broad management responsibilities for the Milwaukee Social Hygiene Clinic until reassignment. However, these responsibilities will be executed from the Milwaukee District Office. The responsibilities of Mr. Scavotto, and those of the lead workers at the clinic, will be defined in greater detail no later than November 3, 1978.

Concurrent with this decision of reassignment, the Region V Office has also agreed to assign a new program supervisor to the Milwaukee Social Hygiene Clinic as soon as possible. The new program supervisor will serve as first-line supervisor at the clinic. The general specifications for this position shall be that the person qualifying shall have had 6-11 years of program experience and 2-5 years of management experience. It has also been agreed that the Region V Office will remain cognizant of the need for affirmative action recruitment for this position.

B. Lead Worker:

In order to assure that current problems are corrected, it has been decided to formally develop a lead worker for the Milwaukee Social Hygiene Clinic. Mr. Jack Christenson, Public Health Educator 1, will assume this responsibility effective October 27, 1978. The responsibilities of the lead worker will be further defined by November 3, 1978.

C. Career Opportunities:

The Bureau of Prevention will petition the State Bureau of Personnel to establish a new classification series (Epidemiologist). This series, if approved, will provide logical promotional opportunities for persons in the VD Program and within the Bureau of Prevention.

D. Training:

Specific training opportunities will be offered, and, in some cases, required for all employees. These training activities will be identified at least annually by the supervisory staff and discussed with each employee.

E. Job Descriptions:

All job descriptions will be reviewed and the content shall be known to all staff so that no misconceptions as to individual responsibilities causes problems in fulfilling program needs. This task will need to await the recruitment of an LTE, but will be completed by January 15, 1979.

II. Policies and Procedures

A. Handbook:

The need for a complete handbook is paramount. Therefore, the following assignments shall supercede all client oriented activities. Jack, Marge, and Belle will begin immediately to draft a VD Handbook. This document will address the statewide program and the specific procedural needs of the Milwaukee Social Hygiene Clinic. The "Handbook Team" will meet periodically with Casey Riley and Pat Breunig to assess progress and to review items for inclusion. The basic contents of the handbook must be ready by December 1, 1978.

It is intended that the handbook is designed for periodic revision. It is not intended that the handbook become a rigid and unyielding document. Further work on the handbook will be completed when we are able to hire an LTE for this purpose.

The handbook will be reviewed, modified, and implemented by management no later than February 15, 1979.

B. Operating Procedure for the Milwaukee Social Hygiene Clinic:

A separate portion of the Handbook will contain operating procedures for the Milwaukee Social Hygiene Clinic. The operating procedure shall include items such as the system to be used in assigning staff to evening clinics, methods to be used in performance review, scheduling of staff in and out of clinic, etc. The operating procedures shall be the prime responsibility of Mr. Riley and Mr. Christenson. It will be completed in rough draft no later than December 15, 1978.

III. Management and Program Issues

A. Health Education:

As soon as existing problems have been corrected, Mr. Riley and the program staff shall review current health education efforts and determine future needs. A health education operating plan shall be completed no later than six months following the arrival of the new federal assignee to the Milwaukee Social Hygiene Clinic. Cleo Smoots, Karen Hartberg and a member of the Health Education Section shall be responsible for the development of the plan. The plan must meet the needs of the program.

B. Organizational and Personnel Problems with City of Milwaukee:

Mr. Riley and Mr. Imm will immediately begin discussions with Milwaukee program staff in order to correct existing problems with and between Milwaukee personnel at the Clinic. This will include a review of the performance and expectations of the City support staff assigned to the state staff at the clinic.

C. Staff Meetings:

Staff meetings will be re-instituted on a regular basis. Some experimentation with format and location is expected. Attendance at a monthly Bureau staff meeting is currently being planned.

D. Ongoing Review of Implementation of Recommendations:

Pat Breunig, Administrative Assistant to the Bureau Director, will monitor the implementation of these recommendations until they are completed.

E. Criteria for Performance Evaluation:

Specific criteria for performance evaluation of all staff will be instituted for the Bureau of Prevention and the VD Program no later than March 15, 1979.

Conclusion

It should not be assumed that every potential need or problem has been identified in this report. Nor should it be assumed that new ideas will not, or cannot, change various aspects of the report at a later date. Changes, however, will be discussed with staff for input and consideration.

The intent of this report is to establish October 27, 1978, as the date for the start of all changes. After October 27, I expect that no one will raise any "skeletons" of past behavior or personnel problems. If this does occur, I will assume that the person(s) involved has no real desire to correct existing problems. If, therefore, anyone wants to "clear the air" one more time, it had better be done--or a time arranged for a session with the appropriate person before October 27, 1978.