

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHVIEW HOME AND	:	
NORTHVIEW HOSPITAL OF	:	
WAUKESHA COUNTY EMPLOYEES,	:	Case LXVI
LOCAL 2490, AFSCME, AFL-CIO,	:	No. 27375 MP-1186
	:	Decision No. 18402-C
Complainant,	:	
	:	
vs	:	
	:	
WAUKESHA COUNTY,	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Richard W. Abelson, District Representative, AFSCME, Council 40, 2216 Allen Lane, Waukesha, Wisconsin 53186, appearing on behalf of the Complainant.

Michael, Best & Friedrich, Attorneys at Law, by Mr. Marshall D. Berkoff, 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Northview Home and Northview Hospital of Waukesha County Employees, Local 2490, AFSCME, AFL-CIO, having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, hereinafter Commission, alleging that Waukesha County committed prohibited practices within the meaning of Section 111.70 of the Municipal Employment Relations Act; and the Commission on January 26, 1981, having appointed Stuart S. Mukamal, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) Wis. Stats.; and Stuart S. Mukamal having on March 3 and March 17, 1981, conducted hearings in the matter; and prior to any further action in the matter, Stuart S. Mukamal having resigned his employment with the Commission; and the Commission on October 21, 1981, having substituted the undersigned as Examiner; and the Examiner having considered the evidence, briefs and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Northview Home and Northview Hospital of Waukesha County Employees, Local 2490, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization, and its offices are located at 2216 Allen Lane, Waukesha, Wisconsin 53186.

2. That Waukesha County, hereinafter referred to as the County, is a municipal employer, and has its offices at 515 West Moreland Blvd., Waukesha, Wisconsin 53186; that the County operates Northview Home and Hospital; that at all times material herein, Don Kingsley was the Director of Maintenance and Housekeeping for Northview Home and Hospital, and acted on behalf of the County; that Shirley Rego, an employe of the County at Northview Home and Hospital, was classified as the "Laundry Supervisor", a position included in the bargaining unit; and that Rego acted as lead worker on behalf of the County.

3. That Connie Lang, was employed as a seamstress by the County at Northview Home and Hospital from January 7, 1980 until the date of her discharge on June 16, 1980; and that Lang was a probationary employe during the period January 7, 1980 through June 16, 1980.

4. That at all times material herein, the County and the Union have been parties to a collective bargaining agreement covering the wages, hours and conditions of employment of employes in the Laundry and Sewing room; and that said agreement provided, in pertinent part, as follows:

ARTICLE VII
EMPLOYEE DEFINITIONS

7.01 Probationary Employee -All newly-hired employees entering into regular part-time and regular full-time employment shall be considered probationary employees serving a probationary period of employment of six (6) calendar months. If a probationary employee is dismissed during the probationary period, he shall not have recourse through the grievance procedure.

5. That on May 13, 1980, Rego informed Kingsley that Lang was leaving her work area to help employes in the laundry; that Kingsley directed Rego to tell Lang to stay in her own area and further directed Rego to document the dates and time Lang was out of her own area.

6. That on June 12, 1980, Rego reported to Kingsley that Lang was continuing to leave her work area and was assisting in the laundry; that Kingsley told Rego to talk to Lang and to provide him a summary of any memos of Lang's leaving her area.

7. That on June 12, 1980, an article appeared in the newspaper, Waukesha Freeman, concerning a grievance filed by Mary Bennett, an employe in the laundry at Northview Home and Hospital.

8. That on June 13, 1980, during her lunch break, Lang composed a document, hereinafter referred to as the "letter", which stated as follows:

"To the Waukesha Freeman

We the employees of Northview Nursing Home would like to support Mary Bennett with her grievance. The favortism (sic) at Northview is a real concern to us all.

All we ask is that the County Board make a fair decision. Instead of one made in someone's office months ago;"

and that Lang and two other employes signed the letter at that time.

9. That on June 13, 1980, at or about 1:10 p.m. Rego met with Lang and, at Lang's request, Lang's union Steward, Mary Bennett, at which time Rego told Lang not to leave her area to work in the laundry as it took away work from the laundry employes.

10. That on June 13, 1980 at or about 3:25 p.m., Lang circulated the letter she had composed to other employes who signed it and returned it to Lang; and that Lang retained possession of this letter from June 13, 1980 to June 16, 1980.

11. That sometime prior to 8:00 a.m. on June 16, 1980, Rego prepared and submitted the following report to Kingsley:

"TO: Mr. Kingsley

FROM: Shirley Rego

DATE: 6-13-80

SUBJECT: Our previous conversation about Connie Lang

At your suggestion I had spoke to Connie Lang on May 13-80 at 1:00 p.m. I explained to Connie at that time to do her own work because when Connie takes it upon herself to help in the laundry area it takes work away from the laundry girls and then they have nothing to do she should help Vicki Kahl the other seamstress with making of drapes if she runs out of her assigned work.

On May 29-80 Connie made the remark I don't feel like sewing anymore she closed up her sewing machine and helped Mary Bennett at 2:00 with sorting personnel clothing.

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Connie has stopped her work on numerous occasions anytime from 2:00 to 2:30 in the afternoon, to stand around and talk.

May 27-80 helped Mary Bennett with folding, and had not been told to do so.

May 29-80 helped with folding again.

June 2-80 helped Sharon Paul with folding.

June 11-80 at 2:45 helped with folding.

June 12-80 at 8:45 helped Sharon Paul with personnel clothing.

June 13-80 Connie helped Mary Bennett fold bibs at 9:20.

I had spoke to Connie Lang again on 6-13-80 with Mary Bennett present of the on going problem.

These are just a few of the dates that had been documented there has been numerous times this has happened before. Which has not been included in documentation.

Connie Lang had been a fair employee when she first started and her sewing abilities had been good. The last 3 months has shown to me a change in attitude.

At this point in time I feel Connie's attitude and not adhering to our conversation I had with her is insubordination."; and that this report was signed by Shirley Rego.

12. That on or before June 16, 1980, Kingsley decided to discharge Lang; that at approximately 8:00 a.m. Kingsley requested Lang to come to his office; that Lang requested the presence of a Union representative which Kingsley denied; and that Lang refused to go to Kingsley's office whereupon Kingsley went to Lang's work area and discharged her at approximately 8:30 a.m.

13. That at the time of her termination, Lang still had the letter she composed in her possession; that Kingsley and Rego had no knowledge of the letter nor of Lang's having written it or circulated it.

14. That at all times material herein, except for Lang's actions with respect to the letter, Lang was not a Union officer or steward and her only Union activity was to attend one Union meeting.

15. That Lang's discharge was not based, in whole or in part, on her composing and circulating the letter or on any other protected concerted activity on her part.

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

CONCLUSIONS OF LAW

1. That Waukesha County's discharge of Connie Lang was not based, in whole or in part, on her protected concerted activity on behalf of the Union, Local 2490, and therefore Waukesha County, by its authorized agents, did not violate the provisions of Section 111.70(3)(a) 1 and 3 of the Municipal Employment Relations Act.

Based on the above Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 5th day of January, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Union alleges that the County discharged Connie Lang on June 16, 1980 because of her drafting and circulating a letter on June 13, 1980. The letter was addressed to a local newspaper and was in response to an article which appeared in the paper on June 12, 1980, about another employe's grievance.

UNION'S POSITION

Lang was engaged in lawful, concerted activities by authoring and circulating a "petition" on behalf of another employe. Both Rego and Kingsley had knowledge of Lang's activity and Lang was discharged because of Rego's and Kingsley's animus toward Lang for this activity. Lang's job performance was good and she had no record of discipline and no one spoke to her about her job performance during the period, January 17, 1980 and June 13, 1980. The reasons indicated for her discharge were clearly pretextual in nature and support the conclusion that Lang's discharge was solely due to her protected activity. Lang was improperly denied Union representation at the meeting when she was discharged.

COUNTY'S POSITION

Lang was not active in Union affairs as she was not an Union officer or steward and her only activity in Union affairs was to attend one Union meeting. Lang's drafting and circulating a letter to the editor of a local newspaper is not protected activity within the meaning of Section 111.70(2) Stats. Also, the letter is somewhat derogatory to the County and, as such, has lost its statutory protection.

The Union has the burden of showing, by clear and convincing proof, that the County had knowledge of Lang's activity. In that regard, the evidence clearly shows that neither Kingsley nor Lang knew of it. Both testified that they had no knowledge of Lang's letter. The timing of the events also show that the County's decision to discharge Lang was not connected with her letter. There was no evidence of any anti union animus toward Lang. The reasons for Lang's discharge were not pretextual as the evidence supports the facts relied on by Kingsley to discharge Lang. Lang was not entitled to a Union representative at the time of her discharge as the meeting was not an investigatory interview.

DISCUSSION

Complainant Union must prove by a clear and satisfactory preponderance of the evidence that Lang was engaged in protected concerted activity; that the County's agents had knowledge of such activity; that the County's agents were hostile toward such activity; and that the discharge of Lang was motivated at least in part, by anti-union animus 1/

Turning to the first element required to be proved, the undersigned concludes that Lang's drafting and circulating the letter to the newspaper was protected activity. The purpose of this letter was to show support for a grievance matter, and, as such was protected concerted activity. The County argued that inasmuch as the letter was not addressed to it, the letter cannot be protected activity. This contention is rejected as the Commission has held that a letter addressed to one other than the employer can be protected activity. 2/ The County also argues that the letter contained derogatory comments which constituted disloyalty to the County, and therefore the letter is not entitled to protection. This argument is not persuasive. The context of the letter in light of the newspaper article relates to a grievance dispute and does not disparage the service performed by the County, therefore, the undersigned finds that Lang's actions were protected.

1/ Milwaukee Board of School Directors (Riley Elementary School-II) (17651-A) (1/81); Town of Caledonia, 17684-A (10/80); Hillview Nursing Home 14704-A (6/77) affirmed Dane Cty. Cir. Ct. (2/80); Juneau County 12593 (1/75).

2/ Juneau County, supra.

Turning to the second element, the undersigned concludes that the Union failed to show by clear and satisfactory evidence that the County, through its agents, had knowledge of Lang's protected activity. No evidence was presented that either Rego or Kingsley had knowledge of Lang's drafting and circulating the letter. Rego and Kingsley both denied any knowledge of Lang's activity.

Although no direct evidence of knowledge by Rego and Kingsley was submitted, the Union argues that knowledge on their part may be reasonably inferred from Rego's contradictory testimony. The Union points out that only one meeting between Lang and Rego took place on June 13, 1980; however, Rego's testimony indicates she had two meetings with Lang on June 13, 1980. A fair reading of the record indicates that on cross examination, Rego was asked a question which referred to June 13, 1980. Rego's response was consistent with her direct testimony as to the events of May 13, 1980. It is apparent from the record as a whole that Rego's testimony referred to the two meetings which occurred on May 13, 1980 and June 13, 1980, respectively. Rego also testified that she did not work on June 14 or 15, 1980; however, the time records indicate that she did, in fact, work on June 15, 1980. Rego's testimony as to when she prepared the memo dated June 13, 1980, to Kingsley was contradicted by the dates in the memo. The undersigned finds that these inconsistencies, standing alone, are not a sufficient basis on which to support an inference of knowledge on Rego's part.

The timing and sequence of events also preclude the necessary inference of knowledge on Rego's and Kingsley's part. Lang drafted the letter during her lunch break on June 13, 1980 and at 1:10 p.m. that same day, Rego met with her relative to Lang's leaving her work area to assist in the laundry. Rego met with Kingsley prior to this meeting. Since Lang had just drafted the letter and still had it in her possession, there was insufficient time for Rego to gain knowledge of the letter, to meet with Kingsley, to determine a problem with Lang, and then to meet with Lang. The timing supports a conclusion that Lang and Kingsley did not have knowledge of the letter. Lang circulated the letter at quitting time to employees at the time clock. There was no evidence that Rego or Kingsley were aware of this or of the contents of the letter prior to Lang's discharge. Lang still had the letter in her possession at the time of her discharge. A review of Rego's memo of June 13, 1980 to Kingsley reveals that no discipline is recommended and apparently is a recap of their prior meeting. This memo does not support an inference of knowledge on Rego's part.

The Union argues that knowledge of Lang's activity may be inferred as the reasons for her discharge are clearly bogus. Kingsley made the decision to discharge Lang based on the June 13, 1980, memo from Rego. The memo indicates that Lang was given a directive not to work out of her area and then lists dates on which Lang did not comply with this directive. The undersigned concludes that these facts, and the fact that Lang was near the end of her probationary period, provide a basis for Lang's discharge which is not so spurious as to support an inference of knowledge on Kingsley's part.

Therefore, based on the above, the undersigned concludes that Kingsley and Rego had no knowledge of Lang's activity.

Having concluded that the County had no knowledge of Lang's activity concerning the letter, it follows that her discharge was not based, in whole or in part, on such activity. Therefore, the undersigned concludes that the County by its discharge of Connie Lang did not commit a prohibited practice under the Municipal Employment Relations Act.

A secondary issue was raised concerning the County's refusal to allow Lang to have a union Steward present at her discharge. The Commission has held that an employe is not statutorily entitled to the presence of a union representative at a meeting called for the purpose of imposing already-decided upon discipline. 3/ In the present case, Kingsley had already determined to terminate Lang prior to the meeting and the purpose of the meeting was to carry out this decision. Under these circumstances, Lang was not entitled to a union representative.

3/ Waukesha County, 14662-A (1/78).

Therefore, for the reasons set forth above, the Complaint is dismissed.

Dated at Madison, Wisconsin this 5th day of January, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner