

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF COMPLAINT AGAINST *
EMPLOYER: *
PUBLIC SERVICE EMPLOYEES LOCAL *
UNION 1132 *
Complainant, *
and *
UNIVERSITY OF KANSAS MEDICAL CENTER *
Respondent. *

Case CAE 6-1976

FINDINGS OF FACT CONCLUSIONS OF LAW ORDER

Comes now on the 27th day of May 1976 the above-captioned case for hearing. The complainant appeared by its representative, Mr. Lloyd Rose, Assistant Business Manager, Public Service Employees Local Union 1132. The respondent appeared by its representative, Mr. B. E. Smith, Director of Personnel, University of Kansas Medical Center.

The hearing was conducted by Mr. Jerry Powell, duly appointed hearing examiner for the Board.

The case comes before the Public Employee Relations Board upon complaint of Public Service Employees Local Union 1132, under date of March 26, 1976 by Mr. Lloyd Rose, Assistant Business Manager, Public Service Employees Local Union 1132. The complaint alleges in substance a "prohibited practice" as defined by K.S.A. 75-Supp 4333, subsections (b) (1), (3) and (4) as follows:

"On March 4, 1976, Mr. Frank Briscoe, a member and officer of Local 1132, discussed an employee's termination, on his own initiative, during his break time, with a supervisor, Nancy Harold, RN; who is not a part of the employees certified unit. Mr. Briscoe was given a written reprimand for this action.

We believe the actions of the Medical Center has resulted in coercion and intimidation of Mr. Briscoe, and possibly other employees of the appropriate certified unit, in his right to form, join, or participate in the activities of employee organizations of his own choosing."

STATEMENT OF PROCEDURES BEFORE THE BOARD

1. Complaint filed March 29, 1976 by Lloyd Rose, Assistant Business Manager, Public Service Employees Local Union 1132, on behalf of Mr. Frank Briscoe alleging violations of K.S.A. 75-Supp. 4333,

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subsections (b) (1), (3), and (4) by the University of Kansas Medical Center.

2. Answer to complaint filed April 9, 1976 by Mr. R. C. Mills, Assistant to the Chancellor, University of Kansas Medical Center, denying all charges.

3. Prehearing conference held May 7, 1976 at University of Kansas Medical Center.

4. Hearing conducted May 27, 1976 at Eleanor Taylor Building, 39th and Rainbow Boulevard, University of Kansas Medical Center, Kansas City, Kansas.

FINDINGS OF FACT

1. Public Service Employees Local Union 1132 was certified February 9, 1973 by the Public Employee Relations Board as representative for Service and Maintenance employees of the University of Kansas Medical Center.

2. Mr. Frank Briscoe, an employee of the University of Kansas Medical Center, and Ms. Nancy Harold, Head Nurse of the Recovery Room, were involved March 4, 1976 in a short conversation concerning a former employee of the Medical Center.

3. On March 5, 1976, Nurse Harold reported the conversation with Mr. Briscoe to Ms. Mary Ann Eisenbise, Director of Nursing Services (see Respondent's Exhibit No. 3).

4. On March 23, 1976 a warning notice was issued to Mr. Briscoe for violating Article 19 and/or 21 of the Memorandum of Agreement (see Complainant's Exhibit No. 1).

5. Mr. Frank Briscoe was serving in the capacity of Secretary-Treasurer of the local union at the time of the incident for which the warning notice was issued (see T-29).

6. Mr. Frank Briscoe was not serving in the capacity of Union Steward at the time of the conversation with Nurse Harold (see T-7 and Complainant's Exhibit No. 2).

7. Mr. Briscoe did not obtain a pass pursuant to Article 19 of the Memorandum of Agreement prior to his visit with Nurse Harold (see T-24).

8. Mr. Briscoe was not asked by union business representatives to inquire about Martha Judie (see T-25).

9. The type questions asked by Mr. Briscoe of Nurse Harold was of the nature that a union steward might ask in investigating a grievance (see T-93).
10. Mr. Frank Briscoe, in his capacity as a maintenance plumber, has occasion to be in the general area of the Recovery Room on his return from checking the vacuum pumps (see T-9, 14, and 81).
11. The conversation between Mr. Briscoe and Nurse Harold lasted no more than three to five minutes (see T-69).
12. The Recovery Room, near or in which the conversation took place, is a restricted area (see T-65).
13. Nurse Harold did not inform Mr. Briscoe that the Recovery Room was a restricted area (see T-71).
14. Mr. Briscoe was on his break period when the conversation with Nurse Harold took place (see T-110 and Complainant's Exhibit No. 1).
15. Nurse Harold was not on break when the conversation took place (see T-68).
16. Nurse Harold does not have authorized break periods (see T-73).
17. Nurse Harold did not inform Mr. Briscoe that she was not on break (see T-73).
18. Nurse Harold did not inform Mr. Briscoe that she could not or would not discuss Martha Judie's case, rather only that she would file an official report (see T-10, 70, and 72).
19. Nurse Harold's first impression was that Mr. Briscoe was representing the union. (see T-67).
20. Nurse Harold asked Mr. Briscoe's identity about midway through the conversation (see T-71 and Respondent's Exhibit No. 3).
21. Warning notice was not initiated by Mr. Briscoe's immediate superior, Mr. Robert Wheeler (see T-77).
22. There are no listed rules and regulations adopted by the University of Kansas Medical Center governing employees' conduct which have been certified to the Union and posted on bulletin boards as required by Article 15 of the Memorandum of Agreement (see T-98).

CONCLUSIONS OF LAW AND OPINIONS

The Public Employee Relations Board has been asked to determine whether Mr. Briscoe was issued the warning notice for violating Article 21 and/or Article 19 of the Memorandum of Agreement or whether he received the notice because of his choice to form, join and participate

in an employee organization.

Articles 19 and 21 of the Memorandum of Agreement read as follows:

"ARTICLE 19

STEWARD SYSTEM

Section 1 - The Medical Center agrees to recognize stewards who have been designated by the Union to serve in this capacity. The number of stewards, selected from among employees in the appropriate unit, shall not exceed one (1) chief steward and nine (9) line stewards. It is agreed that the Union in appointing such stewards does so for the express purpose of promoting an effective relationship between supervisors and employees by helping to settle problems at the lowest possible level of organization.

Section 2 - The Union agrees to provide the Medical Center a current list of all stewards and alternate stewards designating the area of the appropriate unit in which each serves as a steward. Location and changes in location of line stewards shall be discussed with the Medical Center Director of Personnel prior to their appointment. The Medical Center Director of Personnel will be notified immediately in writing and/or verbally when an alternate steward is replacing a steward. The Chief Steward is not restricted to any area in performing his assigned functions as long as he remains within boundaries of the appropriate unit. The steward and alternate steward list provided by the Union will be maintained on a current basis.

- (a) The function of the line steward is to serve as a Union point of initial contact and information for all employees in the appropriate unit. Stewards will be allowed reasonable time during working hours, without loss of pay or leave, for the purpose of discussing grievances or other appropriate matters directly related to the work situation of employees in the area of the appropriate unit represented by the steward. Reasonable time for this purpose shall be interpreted to mean up to fifteen (15) minutes per contact, but no more than two (2) hours per week total for all grievance handling in the area. The steward is permitted to discuss the problem(s) with the employee or employees immediately concerned and if appropriate, to attempt to achieve settlement with the supervisory personnel involved. Before attempting to act on any employee grievance, the steward will insure that the employee has discussed the matter with his supervisor. The steward may be present during the discussion between the employee and supervisor if the employee so requests. Before leaving his post, the steward will request permission of his immediate supervisor and advise him: (1) that his absence involves Union Business; (2) the location to which he is going.
- (b) It is understood that the work and service provided by the Medical Center are the primary concern and such requests for absence on Union business will be evaluated by the supervisor in light of the steward's assigned work and the conditions existing at the time. If the supervisor feels that he cannot excuse the steward at the requested time, he should advise the steward of the time he may be excused. On arriving at his destination, the steward will seek out the person in charge and advise him of: (1) the purpose of his visit; (2) the name of the employee he wishes to see. The supervisor will normally make the employee available. If the employee is not

available because of work demands, the supervisor will inform the steward when the employee will be available.

Section 3 - The function of the Chief Steward is to assist the line stewards when necessary. He will observe the procedures set forth in Section 2 of this article.

Section 4 - It is agreed that the time off during working hours granted to stewards will not be used for discussion any matters connected with the internal management and operation of the Union; the collection of dues or assessments; the solicitation of membership; campaigning for elective office in the Union; the distribution of literature; or the solicitation of grievances or complaints.

Section 5 - An employee desiring to leave his post to discuss an appropriate matter with a steward will obtain prior permission from his supervisor."

"ARTICLE 21

UNION REPRESENTATIVE

Representatives of the Union, previously accredited to the Medical Center in writing by the Union, shall be permitted to come on the premises of the Medical Center for the purpose of investigating and discussing grievances, or alleged violations of the Memorandum of Agreement with employees in the appropriate unit they represent, if they first obtain permission to do so from the Medical Center's Personnel Director or his designated representative. In no case shall visits be allowed to interfere with the scheduled work of the employees. If the visit of the Union representative occurs at a time when the Personnel Director or his designated representative is not on duty, then the Union representative shall check with the Security Guard who will locate the proper Acting Department Head for visitation authority."

The language of Articles 19 and 21 sets out certain responsibilities for the union. That is, the union must certify to the management of the University of Kansas Medical Center the names of all persons designated to serve as stewards or representatives. Further, these designees must abide by the stated procedures for investigating or solving problems and grievances. If, then, Mr. Briscoe was not acting in the capacity of a union steward or union representative, his choice to participate in the activities of an employee organization should not have been considered when he was issued the warning notice for his conversation with Nurse Harold.

Mr. Briscoe has testified that he was not serving as a union steward or union representative at the time of the incident and Complainant's Exhibit No. 2 does not list Mr. Briscoe as a union representative or union steward. In addition, the language utilized in Complainant's Exhibit No. 1, "...we have no record that you are a Union Steward or Union Representative.....", would indicate that management officials

at the University of Kansas Medical Center did not consider Mr. Briscoe a union steward or union representative. The conversation which took place between Mr. Briscoe and Nurse Harold was of the nature which might have been carried on by a union representative investigating a grievance. However, logic dictates that any individual familiar with the Martha Judie situation could, out of sheer curiosity, ask the same questions.

Mr. Briscoe also testified that he was not questioning Nurse Harold on behalf of the union. Further, the University of Kansas Medical Center had agreed, pursuant to Article 19 of the Memorandum of Agreement, to allow time off the job for stewards to investigate grievances. In light of the above-mentioned facts, there is no evidence on file that would indicate that Mr. Briscoe was serving in the capacity of a union representative or union steward. Therefore, there could be no violation of either Article 19 or 21 of the Memorandum of Agreement.

The question to be addressed goes to the limits an employer can impose rules in regard to any employees' right to discuss union matters during working hours. The Board is of the opinion that an employer cannot and may not enforce a "gag rule" upon its employees. Rather, the employer must endeavor to institute rules and regulations regarding such matters as an employee who might leave his work station and matters involving the disruption of the work schedule of other employees. The Board finds nothing in the Memorandum of Agreement pertaining to these issues. Article 15 of the Agreement sets out a procedure for management to follow in establishing such rules and regulations. However, testimony in the hearing pointed out no such rules and regulations as having been developed. The warning notice does not cite Mr. Briscoe for violating any rule or regulation. Therefore, the Board will not concern itself with this issue.

In the absence of any stated violation except the alleged violation of sections 19 and/or 21 of the Memorandum of Agreement, the Board can only conclude that Mr. Briscoe was issued the warning notice because of his association with the union. Had Mr. Briscoe not chosen to join and

participate as an officer in an employee organization, he could not have been charged with the violation as stated on the face of the warning notice.

"On March 4, 1976, at 10:00 am, you discussed an employee on behalf of the Union with Nancy Harold RN, head nurse, in the Surgery Recovery Room. This is not proper because we have no record that you are a Union Steward or a Union Representative. Further, if you were a Union Steward or a Union Representative, and did intend to discuss Union business, you should have obtained a pass." (Emphasis added.)

Evidence has been offered that a warning notice is the mildest form of discipline and is much favored in labor relations to alert an employee of a transgression. However, the Board is unable to find a stated transgression which would warrant the issuance of a warning notice.

Accordingly, it is the opinion of the Board that the management of the University of Kansas Medical Center engaged in a "prohibited practice" as defined in K.S.A. 75-Supp. 4333, subsections (b)(1), (3), and (4).

IT IS THEREFORE ORDERED THAT the management of the University of Kansas Medical Center cease and desist from further conduct designed to coerce or discourage public employee organization.

IT IS FURTHER ORDERED THAT the warning notice issued Mr. Frank Briscoe March 23, 1976 be withdrawn from his personnel file upon receipt of this Order.

IT IS SO ORDERED THIS 26th DAY OF August, 1976.

A B S E N T

Nathan W. Thatcher, Chairman, PERB

Garold A. Been
Garold A. Been, Member, PERB

Phyllis Burgess
Phyllis Burgess, Member, PERB

E. Jay Rennick
E. Jay Rennick, Member, PERB

Richard R. Rock
Richard R. Rock, Member, PERB