

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY, EVERGREEN PARK
MENTAL HOSPITAL

Respondent

and

Docket No. C-2

DOROTHY COOPER

Complainant

DECISION AND ORDER

Pursuant to a Notice of Hearing to resolve a question concerning charges alleging violations of the Act a hearing was held before ad hoc Hearing Officer John W. Seybold. On July 15, 1969, the ad hoc Hearing Officer issued his Findings of Fact and Recommendations. Exceptions have been filed by the Respondent to the Hearing Officer's Report and Recommendations. The Commission has considered the record, Hearing Officer's Report and Recommendations and Exceptions and finds:

1. The Evergreen Park Mental Hospital, an institution operated by Burlington County, is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Dorothy Cooper is a public employee within the meaning of the Act.
3. Charges having been filed with the Commission alleging discrimination and unfair labor practices by the public employer under the Act, a question concerning alleged violations of Section 7 of the Act exists and this matter is appropriately before the Commission for determination and order.

4. The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, are adopted, except as modified herein.
5. On April 25, 1969 a charge alleging a violation of the Act was filed with the Commission. The public employer on May 9, 1969 objected to the jurisdiction of the Commission in this matter and expressly declined to file a formal response. The Commission on May 28, 1969 issued a Notice of Hearing for a hearing to be conducted on June 26, 1969 and served a copy of the same certified mail on counsel for the public employee, Mark Segal, Esquire, and the public employer, Sanford Soren, Esquire. Counsel for the public employer indicated on June 3, 1969 his intention not to appear at the above scheduled hearing, but to continue to contest the jurisdiction of the Public Employment Relations Commission to act as an "appeal body" from a previous decision of the Civil Service Commission denying the complainant any relief before that agency. Walter F. Pease, Chairman of the Public Employment Relations Commission, responded and advised that notwithstanding a prior determination by the Civil Service Commission that it did not have jurisdiction under its law, the Public Employment Relations Commission would exercise its jurisdiction pursuant to Chapter 303, L. 1968 to hear the matter and a hearing would be held on the scheduled date. Furthermore, counsel to the public employer was notified that the decision in this matter would be based on the record made at the hearing and that any objection to the conduct of the hearing and to the

jurisdiction of the Commission would not be deemed waived by participation in the hearing.

On June 26, 1969 a public hearing was held in this matter at which time neither the counsel to, nor the public employer appeared or presented any defense. Accordingly, the Commission finds that adequate notice and timely and reasonable opportunity to be heard and to defend has been given the public employer in the instant case. The Commission finds that full and procedural due process has been afforded to the respondent notwithstanding the course of action taken by the public employer in its refusal to appear and defend charges of violations of the Act.^{1/}

6. The record indicates that the complainant was hired as a temporary employee pursuant to a civil service procedure which provided for the attainment of permanent civil service status or removal at the end of a period of four months. In order to convert a temporary status into a permanent status a Personnel Action Form CS-6 would be filed by the public employer with the Civil Service Commission requesting permanent status. Such a CS-6 form was, in fact, prepared and submitted to the Civil Service Commission on March 3, 1969 at the expiration of the four month period which terminated on February 28, 1969. The record further reveals the receipt of a telephone call by the Civil Service Commission on the same day requesting the return of such form by the public employer and the receipt of a notice of termination

^{1/} Its failure to exhaust that procedure has left the public employer no right to present issues such as raised in points two and three of the exceptions filed with the Commission challenging the hearsay nature of testimony.

form on the following day, March 4, 1969. There is nothing to indicate the resubmission of the CS-6 form to the Civil Service Commission.

The Act does not expressly exclude a "temporary" employee from the protection "in the exercise of, the right, freely and without fear of penalty or reprisal, to form and assist any employee organization or to refrain from any such activity". Section 3 provides in pertinent part: "(d) The term "employee" shall include any employee...This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer or employed by any company owning or operating a railroad...This term shall include public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies...."

Accordingly, the Legislature has made exquisitely clear the categories of employment excepted from the broad coverage and protection afforded by the Act. To infer an additional exception in the instant case would fly in the face of the express legislative purpose to provide an all inclusive definition of "public employee" within the meaning of the Act.

Additionally the reasonable expectation by complainant of the

attainment of permanent status in accordance with the prescribed civil service procedure, as well as a similarity of interest in the terms and conditions of employment with permanent employees, warrants a finding of a "public employee" as defined in the Act. The record does not indicate any lack of a mutual interest among temporary and permanent employees with regard to the negotiation of their respective terms and conditions of employment. The public employer asserts that the granting or denial of permanent status to a "temporary" is within the absolute discretion of the public employer and Civil Service Commission and is, therefore, not reviewable by the Public Employment Relations Commission. This Commission does not dispute that the public employer and the Civil Service Commission have broad discretion under the Civil Service law, Title 11, in granting or denying permanent civil service status to a temporary employee. However, in this proceeding the Commission is simply determining whether the complainant has been penalized for exercising rights granted to her by Chapter 303. The agency mandated to effectuate and protect rights granted by the New Jersey Employer-Employee Relations Act is the Public Employment Relations Commission, and not the public employer or the Civil Service Commission. The Public Employment Relations Commission recognizes the right of the Civil Service Commission and the public employer to deny permanent status to a "temporary" employee, but finds that such right must now bow to the provisions of Section 7 of the Act to the extent that such a denial of permanent civil service status must not be in violation of any

employee's right to organize, join and **participate** in employee organizations. Thus, the Commission finds that it does have jurisdiction to hear and determine this claim.

7. The complainant was first employed by the Burlington County Mental Hospital from 1962 to 1966 as a permanent employee. She terminated her employment in good standing on July 31, 1966. She was rehired on October 28, 1968 as a "temporary" pursuant to the aforementioned civil service procedure. There is nothing in the record to indicate her performance was other than satisfactory up to and on the morning of February 27, 1969 when she was called in and asked to sign the CS-6 form for submission to the Civil Service Commission for permanent appointment.

Organizational efforts were undertaken at the public employer's hospital beginning some time during the end of January 1969. The complainant was active in the effort to "bring in the American Federation of State, County and Municipal Employees", an employee organization hereinafter referred to as AFSCME, and "spoke to the girls about the union and passed out cards". The public employer, at a meeting called on February 26, 1969 by Mr. Franks, Superintendent of the Hospital, advised a group of employees that "it was his duty to advise us about union activities, and that we could loose (sic) all our Civil Service benefits".

Mr. Louis Grasso, an organizer for AFSCME testified that the public employer attempted "to interfere.. with the organization. Well we couldn't go on the hospital grounds to pass out leaflets, they chased us off. We couldn't contact any of our people in the

hospital. I mean on their lunch hour or coffee breaks. We couldn't leave any message for union members, they would never get them. This is the way they wouldn't cooperate with us, whatsoever". Other testimony was developed concerning allegations of discrimination with respect to change of shifts and extra duty assignments against employees who were members of the union. On the afternoon of February 27, 1969 the complainant was elected president of the Local of AFSCME. On February 28, 1969, the complainant called in sick and was fired even though her absence on that day was only the second absence since she had started work on the 28th of October.

Following the discharge of the complainant, Mr. Grasso on March 4, 1969 met with Mr. Franks in the presence of the complainant. Mr. Grasso testified:

"Q. Will you tell us what transpired at that meeting?

A. I went in and I announced myself as their representative, Union representative for Mrs. Cooper and the rest of the people that belonged to the union.

Q. You had met Mr. Franks before?

A. Yes, and I done it again, I gave him my business card, we sat down and he wanted to know what I wanted. I told him that I was here on behalf of Mrs. Cooper, being fired. I asked him the reason why she got fired, and he first said that she had a bad record, which he started reading off some dates that she had quit without notice. I said, well if she had such a bad record, why was she rehired in 1968. He didn't answer me this. I asked him also if he signed her permanent status papers, with Civil Service, and he said yes, they were sent in. I asked him how he could fire her, because she took a day off, after working nine straight days, that she was sick. He also got into the law in New Jersey, the public employee has the right, after this discussion, to belong to a bona fide union, and he agreed that they had the right. I also asked him about the meeting he held on February 26th, where he took one of our union cards and held it up in front of the membership of the people attending the meeting.

- Q. Is the type of card that the girls were referring to?
- A. That's right. I asked him what right he had to do this, because this was an unfair labor practice, he admitted doing it to us. He said that he advised them to stay with Council 16, that they would lose all their rights that they had if they went with the union. He admitted this in his office to me and Mrs. Cooper. I said, I told them they wouldn't lose their rights they had under Civil Service, he said they would and he wanted them to stay with Civil Service Association Council 16, because he didn't want them to break up. To my knowledge he belonged to that Council at one time or another. I presume his head secretary is the Vice-President or something of that Council 16.
- Q. Let me ask you this question, Mr. Grasso, getting specifically to Mrs. Cooper, did you discuss further with him the reasons why Mrs. Cooper was fired?
- A. Yes.
- Q. Tell us what that discussion was?
- A. The discussion was I asked him if he fired Mrs. Cooper on Union activities, he said yes he did, and I said I am going to follow--to file charges with the Commission against him on unfair labor practice. He told me he didn't care who I filed charges with, that he wasn't going to take her back.^{2/}

The Commission finds the recommendation of the Hearing Officer that complainant was dismissed for union activities to be well supported by the record. Considering all of the facts herein, the circumstances surrounding the discharge are sufficient to warrant a finding of anti-union motivation and a pretextual refusal to afford permanent status. That refusal was tantamount to a dismissal and amounted to a penalty or reprisal for engaging in protected activity. The public employer was aware of the complainant's organizational activity; on February 26, 1969 the public employer displayed to his employees his anti-union

^{2/} It is alleged in the exceptions filed by the public employer that the Report of Hearing Officer is replete with hearsay of witnesses available to testify before the Commission. The Commission does not receive the above testimony for the truth of the matter asserted therein, but as indicative of the anti-union animus of the public employer.

bias; on the morning of February 27, 1969 complainant signed a CS-6 form for permanent appointment and was elected president of the union on the same afternoon; the following day, complainant was discharged and the Civil Service Commission was requested to return the CS-6 form for permanent appointment. Add to this the above cited testimony of the meeting on March 4, 1969 with Mr. Franks and we find clear indication of anti-union animus on the part of the public employer.

The absence of overwhelming direct evidence that the public employer has violated the provisions of the Act, does not detract from the evidence which was produced and which we find supports the recommendations of the Hearing Officer. The Commission may consider circumstantial evidence and draw reasonable inferences therefrom to warrant the finding that the complainant was denied permanent civil service status because of her activities on behalf of an employee organization.

8. Section 7 of the Act provides in pertinent part that "public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization...". It follows, therefrom, that the Commission must afford an appropriate remedy to redress a violation of those rights. See: Cooper v. Nutley Sun Printing Co. 175 A2D 639 (1961) To find otherwise would be to hold that the Act embodies unenforceable rights to public employees and to frustrate the broad public policy of the Act to prevent labor disputes.

The Commission finds that the public employer has sought to undermine the protection afforded public employees by the Act. This Act leaves a public employer free to discharge a public employee in conformity with Civil Service law and regulation subject only to the limitation that he cannot exercise this prerogative as a subterfuge for interfering or discriminating with the rights of public employees to organize.

Current concepts in employment relations suggest that public employees who have been discharged for reasons later held to be unfounded should be made whole insofar as possible; they should be entitled not only to a restoration of duties but should also suffer no loss in earnings. See: Mastrobattista v. Essex County Park Commission 46 NJ 138, 143 (1965) and authority cited therein. Such enforcement of the Act will give public employees the protection of the right secured under the Act.

ORDER

Pursuant to Section 6 of the Act, the Commission hereby orders that the respondent, Evergreen Park Mental Hospital, its officers and agents shall

1. Cease and desist from:

- (a) Discriminating against any employee in regard to his or her hire, tenure, and conditions of employment to discourage membership in Council No. 1 of the American Federation of State, County and Municipal Employees, or any other employee organization, by discharging, denying permanent status, or otherwise terminating or interrupting his or her employment.
- (b) Unlawfully threatening employees concerning their employee organization membership, activities or desires.
- (c) In any other manner directly or indirectly interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

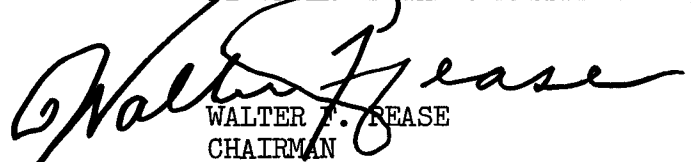
2. Take the following affirmative action, which the Commission finds will effectuate the policies of the Act:

- (a) Offer to the complainant immediate and full reinstatement to her former or substantially equivalent position without prejudice; re-submit the CS-6 form requesting permanent status to the Civil Service Commission and make her whole for any loss of earnings suffered by reason of the discrimination against her.
- (b) Preserve and, upon request, make available to the Commission or the Executive Director, for examination and copying, all payroll records, timecards, personnel records and reports, and

all other records necessary to determine the amount of backpay due under the terms of this Order.

- (c) Post at the Evergreen Park Mental Hospital, copies of the attached notice marked "appendix". ^{3/} Copies of said notice, to be furnished by the Executive Director, shall, after having been duly signed by the representative of the public employer, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter on bulletin boards where notices are available to all employees or by mailing it to each of its employees. Reasonable steps should be taken by the public employer to insure that said notices are not altered, defaced or covered by any other material.
- (d) Notify the Executive Director in writing within ten (10) days from the date of this Order, what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION


WALTER F. REASE
CHAIRMAN

DATED: September 19, 1969
Trenton, New Jersey

3/ In the event that the Commission's Order is enforced by an Order of the Superior Court, the words "an Order of the Superior Court Enforcing an Order of the Public Employment Relations Commission" shall be substituted for the words "a Decision and Order".

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the Public Employment Relations Commission and in order to effectuate the policies of the New Jersey Employer-Employee Relations Act, 1968, we hereby notify our employees that:

WE WILL NOT discriminate against employees in regard to their hire or other tenure and condition of employment to discourage membership in Council #1, American Federation of State, County and Municipal Employees, or any other employee organization by discharging, refusing permanent appointment, or otherwise terminating or interrupting their employment.

WE WILL NOT unlawfully threaten employees concerning their employee organization membership, activities or desires.

WE WILL NOT in any manner interfere with, restrain or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE HAVE offered, or will offer, to Dorothy Cooper immediate and full reinstatement to her former or substantially equivalent position without prejudice to her rights to permanent appointment.

WE HAVE made whole, or will make whole, Dorothy Cooper for any loss of earnings that she may have suffered by reason of the discrimination against her.

(Public Employer)

Dated _____ By: _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Executive Director of the Public Employment Relations Commission.

REPORT TO THE STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
IN THE MATTER OF
BURLINGTON COUNTY, EVERGREEN PARK, MENTAL HOSPITAL
Public Employer

-and-

DOROTHY COOPER, Charging Party

By: John W. Seybold Hearing Officer

Docket No. C-2

Appearances:

Lichtenstein, Levy and Segal, Esquires

By: Mark Z. Segal, Esq., and

Stephen Lichtenstein, Esq. for

Dorothy Cooper.

Witnesses for the Charging Party:

Donald Bennett

Dorothy Cooper

Betty Schull

Esther Bailey

Mary Foster

Martha Conover

Louis Grasso

Date of Hearing: June 26, 1969

Question: Was Burlington County, Evergreen Park, Mental Hospital
guilty of discriminatory and unfair labor practices
which are prohibited by the New Jersey Employer-
Employee Relations Act, Chapter 303, Laws of 1968,
(N.J.S.A. 34:13A-1 et seq.) in its discharge of

Dorothy Cooper?

Background

Mrs. Dorothy Cooper, whose present address is 2804 C Falcon Court East, McGuire Air Force Base, N.J., was first employed by the Burlington County (Evergreen Park) Mental Hospital from 1962 to 1966 as a permanent employee. Thereafter, for personal reasons, she terminated her employment in good standing on July 31, 1966, (See Tr. p. 7), and moved to Virginia. While in Virginia she accepted employment at the Martha Jefferson Hospital in Charlesville (Charlottesville?) Virginia (Tr. p. 18) in the nursing department, using references she had received from the Evergreen Park Hospital. She testifies she was told by the Director of Nurses at the Martha Jefferson Hospital that her references were "very good." (Tr. p. 18).

Subsequently she returned to New Jersey and again sought employment with Evergreen Park. She was hired on October 28, 1968 as a temporary employee and was told that established procedures would require that she remain in a temporary status for four months. (Tr. p. 19., also p. 8).

Testimony of Donald Bennett, supervising principal personnel technician of the New Jersey Civil Service Commission, establishes that Mrs. Dorothy Cooper was hired in a non-competitive status under a statute which provides for temporary employment for four months and at the end of that temporary period of time she must either attain permanent status or she must be removed from the payroll. (Tr. p. 9). Mrs. Cooper's four month period expired February 28, 1969. At the end of the four month period, in order to continue the employee's employment and to convert it to permanent status a new Personnel Action Form CS-6 was required to be filed. Such a form

was in fact prepared for Mrs. Dorothy Cooper by Evergreen Park Mental Hospital and it was received by Mr. Bennett's office on March 3, 1969. It was in the "proper form," signed by the hospital and the county. (Tr. p. 11).

Again on March 3, 1969, a telephone call was received by Mr. Bennett's office from Mrs. Jean Wells, Administrative Secretary, Clerk to the Board of Freeholders of Burlington County, asking that the form CS-6 be returned "without taking any action to record the permanent appointment." (Tr. p. 12). Mr. Bennett testified that the explanation given was that "Mrs. Cooper was too tired to accept the permanent appointment." A memorandum summarizing the facts surrounding the telephone call was prepared by Mr. Bennett for his chief, Mr. John J. Farrell, on March 20, 1969. This memorandum (Exhibit P-1) reads as follows:

March 20, 1969

Mr. John J. Farrell

Donald G. Bennett

Dorothy Cooper vs. Evergreen Park Mental Hospital, Burlington County

In response to your memorandum of March 17, 1969, directed to Mr. Walton D. Streit: CS6 form was received appointing Dorothy Cooper temporarily as Hospital Attendant effective October 28, 1968, at the Evergreen Park Hospital, Burlington County. Appointment was approved for four months temporary employment by this Office on November 13, 1968.

On March 3, 1969, CS6 form was received in this Office requesting permanent appointment. That same day, Mrs. Jean Wells, Administrative Secretary, Clerk to the Board of Freeholders, telephoned this Office and requested that the CS6 form be returned to Burlington County without any action being taken by the Civil Service Department to approve the permanent appointment. Mrs. Wells' verbal explanation was that Dorothy Cooper was too tired to accept permanent employment. The CS6 form was returned without any action being recorded.

On March 4, 1969, notice of termination of employee's services was received by this Office for Dorothy Cooper effective February 28, 1969, and her termination was recorded.

Mr. Bennett testified under subpoena. He stated that the telephone call in question was received in his office by the receptionist, Doris Richardson. Quoting from the transcript (p. 15-16):

A. Yes, the name was Doris Richardson, our receptionist.

Q. She then informed you of the nature of the telephone conversation?

A. Well, no, not immediately and not until, I believe not until Mr. Farrell had requested information concerning the entire situation.

Q. Do you have any reason to question her recollection of the facts in this matter?

A. I did, yes, and of course that's what resulted in my saying in this memo, the reason for return, the request for the reason for returning it was that Dorothy Cooper was too tired to accept employment.

Q. My question was whether the recollection of the young lady who received this telephone call, that you're satisfied it is accurate?

A. Oh, yes.

Q. And can be relied upon?

A. Yes.

Q. You made no direct inquiries yourself with the people at the hospital?

A. No, I did not.

Q. Had you received any subsequent communication from them, giving any explanation of this matter?

A. No, I have not received anything directed to the Civil Service Department in connection with this. I have had, of course, copies of other correspondence concerning the case.

HEARING OFFICER: I have no further questions.

MR. LICHTENSTEIN: I just would not for the record, Mr. Hearing Officer, the reason why we subpoena Mr. Bennett, was because as the supervisor of this Section of the Civil Service Department, he has direct, as well as implied knowledge and (of) all that takes place in the Department, and since he had prepared this memorandum to Mr. Farrell, that his testimony would be the best testimony. Of course, Doris Richardson is available if you would like to hear her testimony concerning this, but I think that Mr. Bennett is charged with knowledge of what transpired in the office.

HEARING OFFICER: Very well. I assume that an objection might be raised to the hearsay nature of the testimony; absent that objection, however, and on the basis of this witness's testimony that he does not doubt the integrity or the reliability of the young lady who received the telephone call, I see no reason for me to initiate a suggestion that she be called directly.

Testimony of Mrs. Cooper as to what transpired at the time the CS-6 form was submitted for her permanent employment is as follows: (Tr. p. 29 et seq.)

Q. Now, when was the date of the expiration of your temporary period, when you would become a permanent employee?

A. February 27th.

Q. Was it the 28th, perhaps?

A. Oh, expiration, you're saying, oh, February 28, 1969.

Q. And, prior to February 28, 1969, were you called in by your employers to sign a form?

A. Yes.

Q. When was that?

A. February 27th.

Q. In what form were you asked to sign?

A. I was asked to sign my permanent papers.

Q. Did you sign them?

A. Yes.

Q. Did they indicate to you that they were going to submit these permanent papers to the Civil Service Department for permanent employment?

A. Yes.

Q. At that time, when you signed those papers, did you refuse permanent employment?

A. No.

Q. Did you tell anyone at the hospital that you were too tired to accept permanent employment?

A. No.

Q. Were you ever advised during this four month period, at the time you signed your permanent papers, that your service was unsatisfactory?

A. No.

Q. What kind of record did you have during this four month period?

A. During the four month period?

Q. Yes.

A. The records, they were good.

Q. You performed your work?

A. Yes.

Q. No complaints were received by you from the hospital?

A. No.

Q. Now, what time of the day on February 27th did you sign the permanent papers?

A. Eleven o'clock in the morning.

Q. Did you engage in any Union activities on that same day, thereafter?

A. Yes.

Q. And, will you tell us what that was?

A. We had a meeting on Thursday, and I was elected President.

Q. Now, Thursday, what day is that?

A. Thursday, the 27th of February.

Somewhat later in Mrs. Cooper's testimony more information relative to the events surrounding the 27th and 28th of February, bearing on her permanent status, was developed. (Tr. p. 23 et seq.)

Q. And then you told us it was your intention to continue full employment with the hospital?

A. Yes.

Q. I ask you again, did you tell anyone at the hospital, at any time, that you did not intend to continue permanent employment?

A. No.

Q. Or that you were too tired or unable to continue permanent employment?

A. No, I never spoke that to anyone.

Q. Now, would you tell us what happened on February 28th?

A. February 28th I called in sick, I had gone to the hospital, I had a virus, and the Doctor told me to take off for the day, because I was real dizzy.

Q. Which hospital?

A. Evergreen Park Hospital.

Q. In other words, this is where you were employed?

A. This is where I was employed.

Q. And you were sick, but you went to the hospital anyway?

A. I went to the hospital.

Q. Who did you see at the hospital?

A. No, I called the hospital.

Q. You called the hospital?

A. Yes, I asked for the Director of Nursing, Mrs. Tomic, but Mrs. Hickbee--

Q. Now, you're going a little too fast. What I want to know, Mrs. Cooper, when you felt ill you said you called the hospital?

A. Yes.

Q. And the doctor told you --

A. The doctor told me to go home and go to bed.

Q. Which doctor told you this?

A. At the Walson Army Hospital at Fort Dix, that's where we go.

Q. In other words, you went to Walson Army Hospital when you felt sick?

A. When I felt sick, yes.

Q. You didn't go to Evergreen Park?

A. No.

Q. Now, what did you thereafter do?

A. I called when I got back from the hospital, and I told the nurse--

Q. You called who?

A. I called Mrs. Tomic.

Q. Where?

A. At Evergreen Park Hospital. Mrs. Hicbee took the message, because Mrs. Tomic wasn't there.

Q. What did you tell Mrs. Hicbee?

A. I told Mrs. Hicbee that I had been to the hospital and that I was sick, I had the virus, the doctor told me not to go in today. She gave me a hard time, she told me that I had to come in, whether I was sick or not. I told her I just couldn't because I was dizzy.

Q. What day was this?

A. This was on the 27th, no, this was on the 28th, that Friday, February 28th. And she said, well, don't bother to me (sic) in, I'll call Mr. Franks, and you know you're fired. About a half an hour later, Mr. Franks called me back and he said, "Mrs. Cooper, I have looked over your record, and you have very bad records, and I'll have to support Mrs. Hicbe," that was it.

Mrs. Cooper subsequently testified that her absence on February 28 was the second absence since she had started work on the 28th of October. (Tr. p. 29).

Discussion and Findings of Fact

The central question is whether Mrs. Cooper was discharged for her failure to report for work on Friday, February 28, when she called to report sick and her supervisor informed her that she was nevertheless required to come to work, or whether she was in fact discharged for union activity.

It is entirely clear that until February 27 management had had no intention of discharging her, or at least, if such intention existed it did not result in a decision to hold up the processing of form CS-6 for permanent employment. The evidence is also uncontroverted that Mrs. Cooper at no time claimed that she was too tired to accept permanent employment. The reason given to the Civil Service Commission was therefore not valid or correct unless it was presented merely as an opinion of management and not as a decision of the employee herself. The reason given by management and transmitted to the Civil Service Commission Office could have been that she was discharged for failure to report for work. The fact that this reason was not given creates an element of doubt about the credibility of the explanation and the dealings between the agent for the Board of Freeholders and the Civil Service Office. For some reason the Civil Service Office was not told that Mrs. Cooper had been discharged even though this position had been taken and affirmed by the Hospital authorities.

The element of subterfuge in this aspect of the case, coupled with the coincidence of this action of management on the day after Mrs. Cooper was elected President of the Union, makes it necessary to probe more deeply into the events that transpired during the period of her employment from October through February.

Organizational efforts were undertaken at the Evergreen Park Mental Hospital beginning "some time in the end of January, 1969." (Tr. p 50). Mrs. Cooper was active in the effort to bring in the union in question, the AFSCME (American Federation of State, County and Municipal Employees). She "spoke to the girls about the union and (she) passed out cards." (Tr. p. 20). As indicated, a meeting was held of certain employees on February 27, at which time Mrs. Cooper was elected President.

Management's reponse to the union activity was to call a meeting (on February 26) at which attendance was said to be mandatory. (Tr. p. 22, 33). The notice said "if you weren't there, to please contact the office and, you know, have good reason for not being there." (Tr. p. 33).

At the meeting, called by Mr. John Franks, Superintendent of the Hospital, he allegedly said "it was his duty to advise us about Union activities, and that we could loose (sic) all our Civil Service benefits." (Tr. p. 33, testimony of Mrs. Betty Schull). He "requested us to stay with Civil Service Council 16, but he couldn't tell us one way or the other."

Q. What was your understanding of what Mr. Franks meant at that meeting--what was your understanding of what would happen, from what Mr. Franks said, if you were to join the AFSCME?

A. (Mrs. Schull) Well, my understanding was if we joined the Union or performed any union activities, we would be terminated.

HEARING OFFICER: At the meeting you attended, how many people were present?

A. Is this the meeting with Mr. Franks?

Q. Yes.

A. Oh, I guess there would be about twenty there.

Q. Were the nurses and other hospital employees, beside the nurses aids, asked to attend the meeting?

A. It was just the nurses and the attendants, it would have been--I don't think there was 20 there.

Esther Bailey attended the meeting called by Mr. Franks. (Tr. p. 37-38). "He had this AFSCME card, and he held it up, and he said he thought it was his duty to advise us about the Civil Service and the Union. He said we knew what we had with Civil Service, but with a Union, you wouldn't know what you would get, and you could loose (sic) your benefits."

Q. What did you understand Mr. Franks to mean when he said that, if you were to join the Union?

A. Well, I understood it to mean that we wouldn't have a job. (Tr. p. 38).

Mr. Louis Grasso, an organizer for AFSCME, testified that the hospital management attempted "to interfere...with the organization." (Tr. p. 50). "Well, we couldn't go on the hospital grounds to pass out leaflets, they chased us off. We couldn't contact any of our people in the hospital, I mean on their lunch hour or coffee breaks. We couldn't leave any messages for Union members, they would never get them. This is the way they wouldn't cooperate with us, whatsoever.

Q. Did you attempt to obtain cooperation by discussing it with the hospital administrator?

A. Yes, I did.

Q. Who was that?

A. Mr. John Franks.

Q. Now, prior to the termination of Mrs. Cooper's

employment, did you have any conversations with Mr. Franks?

A. Yes, we did. We tried to get a bulletin board out there.

Q. What did Mr. Franks say about it?

A. He said we couldn't go on the grounds, that this was against the County rules.

Q. Are you aware of the existence of any other employee organizations, at that time?

A. Yes, Council 16.

Q. That's Council 16 of what organization?

A. The Civil Service Association.

Q. Were they active at the hospital?

A. Yes, they have, I think, six or seven officers work there at the hospital, and they go around with Mr. Franks himself, the administrator, to people and ask them to drop out of the Union and come to the Civil Service Association.

Q. Are the members of the Civil Service Association Council 16, given the right to do the things that Mr. Franks did not permit you to do?

A. Yes, they had a lot of things they could get away with, a lot of stuff, like going around the hospital, walking freely anyplace they wanted to go.

Discussing the meeting with Mr. Franks following Mrs. Cooper's discharge, Mr. Grasso gave his version of what transpired at this meeting on March 4, attended by "Mrs. Cooper, Mr. Franks and myself." (Tr. p. 52).

Q. Will you tell us what transpired at that meeting?

A. I went in and I announced myself as their representative, Union representative for Mrs. Cooper and the rest of the people that belonged to the Union.

Q. You had met Mr. Franks before?

A. Yes, and I done it again, I gave him my business card, we sat down and he wanted to know what I wanted. I told him that I was here on behalf of Mrs. Cooper, being fired. I asked him the reason why she got fired, and he first said that she had a bad record, which he started reading off some dates that she had quit (sic) without notice. I said, well, if she had such a bad record why was she rehired in 1968. He didn't answer this. I asked him also if he signed her permanent status papers, with Civil Service, and he said yes, they were sent in. I asked him how he could fire her, because she took a day off, after working nine straight days, that she was sick. He also got into the law in New Jersey, the public employee has the right, after this discussion, to belong to a bona fide union, and he agreed they had the right. I also asked him about the meeting on February 26th, where he took one of our union cards and held it up in front of the membership of the people attending the meeting.

Q. Is this the type of card that the girls were referring to?

A. That's right. I asked him what right he had to do this

because this was an unfair labor practice, he admitted doing it to us. He said that he advised them to stay with Council 16, that they would lose all their rights that they had if they went with the union. He admitted this in his office to me and Mrs. Cooper. I said, I told them they wouldn't lose their rights they had under Civil Service, he said they would and he wanted them to stay with Civil Service Council 16, because he didn't want them to break up. To my knowledge he belonged to that Council at one time or another. I presume his head secretary is the Vice-President or something of that Council 16.

Q. Let me ask you this question, Mr. Grasso, getting specifically to Mrs. Cooper, did you discuss with him the reasons why Mrs. Cooper was fired?

A. Yes, I did.

Q. Tell us what the discussion was.

A. The discussion was I asked him if he fired Mrs. Cooper on Union activities, he said yes he did, and I said I am going to follow--file charges with the Commission against him on unfair labor practice. He told me he didn't care who I filed charges with, that he wasn't going to take her back.

Other testimony was developed concerning allegations of discrimination against other employees because of their activity on behalf of AFSCME. This testimony does not appear relevant except as it may bear upon management's awareness of the fact of union organizational activity and management's general attitude in this regard.

On the basis of the facts developed at the hearing, the evidence seems persuasive that the reason Mrs. Cooper was dismissed was because of her union activity. Absent any contrary information on behalf of management the evidence appears conclusive. Management knew of Mrs. Cooper's activity. They acted within one day after she was elected President. She was vulnerable because her case was up for consideration as a permanent employee. Her absence on the night of the 28th was fortuitous from management's point of view, but her conduct, except for that absence, had given rise to no criticism. The reasons advanced by management to the Civil Service Office were evasive.

In view of the fact that management had just the day before made its determination to establish her permanent status, the only two events that could have altered this decision were her absence on the 28th or her election to the Presidency on the 27th. It is the finding of this Hearing Officer that the real and sole reason for failing to proceed with her CS-6 form for permanent status was the fact of Mrs. Cooper's union activity.

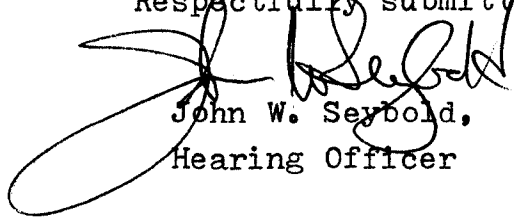
Recommendations

1. It has been established that Employer is an Employer under the Act.
2. Petitioner was a temporary employee. The Act appears to make no exception for temporary employees. Had management not discriminated against her she would have become a permanent employee. Consequently, Employer engaged in unlawful conduct in interfering with, restraining or coercing this employee in the exercise of the rights guaranteed by the Act. She is therefore clearly entitled to relief

under the Act.

3. Remedial action should therefore consist of:
 - a.) Re-instatement of Mrs. Dorothy Cooper to her position as Hospital Attendant;
 - b.) Re-submission of her form CS-6 to the Civil Service Commission with the recommendation that she be granted permanent employment;
 - c.) Payment to Mrs. Dorothy Cooper of all wages lost by her as a consequence of this unfair discrimination;
 - d.) The posting of the decision of the Commission that Public Employer was guilty of the offense charged, has been ordered to comply and has been ordered generally to comply with all provisions of the Act.

Respectfully submitted,



John W. Seybold,
Hearing Officer

July 15, 1969