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VOLUNTARY FACT FINDING

In the Matter of Fact Finding
Interpretation between:

HURLEY HOSPITAL

-and

LOCAL 1603, 1603B and 825,
Council 29, American Federation
of State, County and Municipal
Employees AFL-CIO

George T. Roumell, Jr.

RECEIVED
MAY 12 1971
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

VOLUNTARY FACT FINDER'S
INTERPRETATION OF PREVIOUS
REPORT AND RECOMMENDATIONS

Appearances:
For the Employer:
Edwin Browne, Esq.
Assistant City Attorney
for the City of Flint,
Michigan

Appearances:
George M. Maurer, Jr., Esq.
Attorney for the Unions

Following a lengthy strike and lengthy Fact Finding
hearings, the undersigned as a Fact Finder appointed by the
Michigan Employment Relations Commission issued a Report and
Recommendations therein as to the settlement of various labor
issues between the parties.

Hurley Hospital

The Report was dated January 28, 1971.

Among the issues between the parties was the question of color coding. The Report discussed this issue from pages 31 through 38 and made recommendations concerning same.

On February 5, 1971 the Director of Hurley Hospital wrote the Fact Finder a letter concerning the Report in regard to color coding. Specifically, the letter in part read as follows:

" We also request interpretation and instruction concerning your subsequent paragraph two on page 30 concerning the uniform coding. The language in this paragraph reads as follows:

'That said language be interpreted to mean that the Hospital will change the policy which was in existence at Hurley Hospital prior to the existing dispute over the change to color coding. In other words white uniforms may be worn using a color patch designation and where applicable in the past, aprons.'

The first sentence of the quotation is not entirely clear to us, although we believe it is your intent that we should change back to the policy which was in existence at Hurley Hospital prior to the existing dispute. We also have concern relative to the second sentence and your use of the word 'may'. Specifically, was it your intent to interpret to us that (1) employees who have already purchased and are wearing colored uniforms may continue to do so? and (2) that employees who have already purchased and are wearing colored uniforms may continue to do so? Was it also your intent that Hurley Hospital would be allowed in the latter event to instruct future new hires to purchase uniforms in accordance with the color coding?

Also - and we enclose a memorandum from Miss Jean Scott relative to the wearing of pant uniforms by female employees - do we have the right to request female employees wearing pant uniforms to do so only if they wear a color coded top or smock? In this case, the change from dresses to pant suits was authorized upon the request of the employees and with the provision, from the very beginning of our approval, that the color coded system would be followed as far as the top of the uniform is concerned."

In response to said February 5, 1971 letter, the Fact Finder on February 17, 1971 wrote Hurley Hospital's Director, Milton Sacks, in part as follows:

" As to the other matter set forth in your letter, it has come to my attention that your hospital and the unions involved entered into a collective bargaining agreement based upon the report and recommendations. Under these circumstances, I assume that it is no longer necessary for me to answer your letter of February 5, 1971.

If my assumptions are incorrect, you are to consult with the unions involved, who are getting copies of this letter. If the parties so agree then the parties are to advise me jointly in writing that an answer to yours should be forthcoming from me. Upon receipt of such a letter, I then will arrange to set up a meeting between the parties to ascertain what they believe should be the answer to the question raised. After I have heard the parties, I will render a recommendation."

The Fact Finder did not hear from the parties again until he received a letter dated April 28, 1971 from George M. Maurer, Jr., attorney for the unions. The letter stated that the parties had not agreed on an interpretation of the color coding discussion set forth in the Report and Recommendations and asked that a meeting be set for the purposes of presenting their respective arguments so that the Fact Finder could render an interpretation. Such a meeting was held on May 8, 1971 and the parties did present their various arguments.

It should be pointed out at the offset that the Fact Finder did indicate to the parties that he believes that he has completed his work on January 28, 1971 in regard to this matter. Therefore, as the parties asked him to return voluntarily and not under State appointment, this matter should be construed as a voluntary Fact Finding interpretation and that the expenses

involved would be shared equally between the parties. The parties accepted this position and have agreed to share the Fact Finder's fees and expenses equally.

It is further noted that the Fact Finder's statement in his February 17, 1971 letter, namely, that the parties entered into a collective bargaining agreement following the issuance of the January 28, 1971 Report and Recommendations was true. The contract entered into between the parties did not deal specifically with the problem of color coding.

At the May 8, 1971 hearing, the parties conceded that the Fact Finding Report and its Recommendations were incorporated into the terms of the contract negotiated by the parties. The Hospital readily agreed that whatever the interpretation is to be placed on the Fact Finder's Report and Recommendations as to color coding, said Report as interpreted is part of the contract.

Section 55 of the contract provides for management rights and is as follows:

" The Hospital will reserve all rights, responsibilities, and prerogatives normally exercised by the Hospital in the past, subject only to such restrictions of those rights as are expressly provided in this agreement".

The Fact Finding Report and Recommendations as to color coding clearly indicated that the recommendations would be restricting the management rights in the area of color coding policy.

The basic issue now before this Fact Finder is as set out in Mr. Sacks' February 5, 1971 letter. The issue is further compounded by the issuance of a memorandum dated April 20, 1971 which is attached hereto as Appendix A setting forth

the Hospital's interpretation of the Fact Finder's Report and Recommendations as to color coding.

It is unnecessary to repeat the reasons why the Fact Finder issued the recommendations he did as to color coding. They are clear and concise in the Report. The significant language in the Report as to color coding is found in Paragraph 3 at Page 36 where it is stated:

"The Fact Finder is not going to recommend the adoption of a color coding uniform policy as proposed by the hospital".

It should be clear to all parties. At page 38 there appears a paragraph number 2. This language was repeated in Mr. Sacks' letter. For the purpose of clarity, even though redundant in this interpretive Report, the language is as follows:

" 2. That said language be interpreted to mean that the hospital will change the policy which was in existence at Hurley Hospital prior to the existing dispute over the change to color coding. In other words, white uniforms may be worn using a color patch designation and (where applicable in the past) aprons."

This language is clear. The policy in dispute here was developed in October, 1969 under the previous contract between the parties. It was about that time that the hospital attempted and did to some extent change its color coding policy. From about October, 1969, the Union resisted the change even to the point of going out on strike for approximately four weeks. The policy before October, 1969 was as follows:

1. White uniforms would be worn by all employees except as noted hereafter with a colored patch on their left sleeve indicating the color scheme of their particular classification, i.e., light yellow for housemaid and ward helpers.

2. Housemaids also were to wear light yellow aprons and dietetic employees were to wear light green aprons with their white uniforms.

3. Orderlies and male nursing assistants were to wear white uniforms with the blue stripe on the sleeve of their white uniforms.

4. There was color coding for the inhalation therapist.

The above pre-October, 1969 policy incorporated a previous arbitration decision by Mayor Robert Blackwell of Highland Park on the point.

The Hospital's attempt to change this predominantly white color coding scheme brought about a serious labor dispute. The Fact Finding Report and Recommendations was designed to settle this dispute and the Report speaks for itself. However, it must be noted that the Fact Finder emphasized the use of the strike criteria in resolving the color coding dispute. He recommended no color uniform except as was the previous policy. The previous policy was the policy outlined above which was in effect prior to October, 1969. This is the policy that the Hospital is to return to.

One other point was raised at the May 8, 1971 meeting and that was the issue of pant uniforms. The color coding issue applies to all uniforms. The fact that the hospital is permitting the use of pant uniforms now does not alter this point. The concept in the Report was the color of the uniforms regardless of whether they are skirt, pants, shorts or any style of uniform that the hospital may permit. The issue is whether these uniforms are going to be color coded or white. The Fact Finder in his Report and Recommendations recommended white except as already noted in regard to color patches, aprons in housekeeping and dietetic, inhalation therapists, and the stripe on the orderlies' sleeves.

The point was well taken in Director of Employee Relations, Robert E. White's memorandum of January 29, when he stated:


"White uniforms may be worn using colored patch designation, a name pin, and, where applicable aprons."

Thus, it is clear that the memorandum of April 20, 1971 is incorrect. New employees shall be given the option at their discretion of following either the white coding policy or adopting colored uniforms. However, no employee should be refused employment because he or she desires not to wear colored uniforms. Present employees who are wearing colored uniforms may continue to do so at their option. Likewise, no employee should be denied promotion because of the employee's selection of the option not to wear colored uniforms. Furthermore, there is no distinction between pants and skirt uniforms. This Fact Finder recommended that there shall be no mandatory colored coding policy and that no employee

should be discriminated against in relation to his hire or tenure of employment because of exercising the option which he was granted in Fact Finding, namely, to wear a white uniform except as already noted herein. For these reasons paragraphs 1 and 2d of the April 20, 1971 memorandum are incorrect. Paragraphs 3, 4 and 5 were not before the Fact Finder and therefore the Fact Finder makes no comment concerning same. Paragraph 6 is consistent with the Report.

The Fact Finder hopes that the parties now have a clear understanding of the Report and the Recommendations as to color coding.

It may finally be noted that the parties did agree to binding Fact Finding and that this interpretation, which the parties readily admitted at the May 8, 1971 hearing, is binding on both parties.


George T. Roumell, Jr.
Fact Finder

Dated: May 11, 1971

HURLEY HOSPITAL

Memorandum

To: Distribution "A"

April 20, 1971

Subject: Uniform Regulations

1. Effective immediately all newly hired employees will be required to wear uniforms as specified below:

Nursing Assistants: Female - light blue uniform
Male - Light blue jacket and white trousers

Ward Clerks and Nursing Transcribers - light pink uniform

Emergency Room Technicians - Same as Nursing Assistants;
Female employees may wear an optional white smock

Central Supply Porters - dark blue shirt and trousers and a patch

Central Supply Aides - blue uniform

Inhalation Therapists and Aides - green top and white trousers or skirt

Housemaids and Ward Helpers - light yellow uniform

Janitors - gray shirt and trousers and a patch

Kitchen, Cafeteria and Food Service Employees - light green uniform

Dietary Porters - green shirt and trousers and a patch

Laboratory Assistants - gold top and white trousers or skirt

X-Ray, Physical Therapy and Laundry employees will wear an identifying patch. The Hospital will supply all patches required.

2. Employees already wearing white uniforms with exceptions as listed below, may continue to do so in accordance with the report and order of the Fact-Finder, Mr. George T. Roumell Jr., dated January 28, 1971. The exceptions referred to are:

A. All employees in white uniforms will be required to wear an identifying patch supplied by the Hospital and in accordance with their Classification or Department. Patches are to be worn on left sleeve, one inch below shoulder seam.

B. Orderlies and male Nursing Assistants will be required to wear a blue strip on the sleeve of their white uniforms.

C. Women employees in Dietary will be required to wear a green apron. Women employees in Housekeeping will be required to wear a yellow apron.

D. Female employees wearing pant suits are required to wear a colored top in accordance with the colors specified in Section 1 above. These regulations will be enforced on and after May 17, 1971.

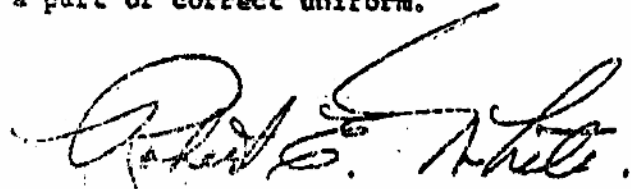
E. Present employees already wearing colored uniforms may continue to do so.

3. Jewelry other than wedding rings and engagement rings or wrist watches, may not be worn while on duty. An exception may be the employee with pierced ear lobes who may wear very plain stud earrings. No other kind of earrings are permissible while in uniform and on duty.

4. Hair should be clean and neatly coiffed. All employees with long hair should wear it up or pulled back in a hair net, if necessary. Male employees who wear beards, must keep them neatly trimmed and shaped.

5. Uniforms are at all times to be clean and neat and worn in style and in good taste. Failure to comply with any part of this paragraph will result in employees being sent off duty without pay.

6. The identification name pin is a part of correct uniform.

A handwritten signature in dark ink, appearing to read "Robert E. White". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.