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In the Matter of

DETROIT CITY HOSPITAL EMPLOYEES UNION, LOCAL NO. 1

-and-

CITY OF DETROIT, Detroit, Michigan

On May 14, 1968, the undersigned, Leon J. Herman, was appointed by the Labor Mediation Board as its Hearings Officer and Agent to conduct a fact finding hearing relative to the matters in dispute between the above parties, pursuant to Section 24 of Act 176 of Public Acts of 1939 as amended, and the Board's regulations. Accordingly, and upon due notice, a hearing was scheduled and held on July 17, 1968 at the Pick Fort Shelby Hotel, Detroit, Michigan.

The Union was represented by Helen Jean Guercio, Executive Secretary and Business Representative; Benjamin Williams, Richard Ware, Jessie J. Gray, Murdo Morrison and Bennie Thomas, all aggrieved employees; Benny Guercio, Business Representative, and Edward Torbert.

Nick Sacorafas, Assistant Corporation Counsel and Peter Jason, Assistant Corporation Counsel; and Thomas Budday and Philip Russell, both of the Health Department of Herman Kiefer Hospital, appeared on behalf of the City.

The Union has filed Grievance No. 142 alleging intimidation and threats by supervisors against employees taking 15 minutes washup time, as well as the following individual grievances to the same purport:

Detroit City of

Grievance No. 143, Jessie Gray; Grievance No. 144, Curtis Miller; Grievance No. 145, Murdo Morrison; Grievance No. 146, Benny Williams; Grievance No. 147, Richard Ware; Grievance No. 148, Murdo Morrison; Grievance No. 149, Wilfred Taylor; Grievance No. 150, Benny Williams; Grievance No. 151, Benny Thomas; and Grievance No. 152, Benny Williams.

The charge generally is that the employees are attendants at Herman Kiefer Hospital, which specializes in treatment of contagious diseases; that as a result it is necessary for them to wash up frequently, and that they require 15 to 20 minutes washup time before the lunch hour and at quitting time; that it has been the practice in Herman Kiefer Hospital ever since these employees were hired to give them this washup time, and that no restriction was placed upon them until shortly before the inception of the current Union contract between the parties hereto, when supervisors in the Hospital began to institute a series of penalties against the grievants for taking the necessary washup time. It is contended that these employees were either officers of the Union or were active in Union support, and that as a result they were picked out by supervision for these penalties while other employees guilty of the same alleged infractions were not penalized. All the incidents for which penalties were issued occurred before the effective date of the current agreement between this Hospital and the Union. It is further contended that the penalties were excessive and over and above those announced prior thereto by the administration.

The City replies that the disciplinary penalties were the direct result of a defiance of authority by the employees and an attempt to invoke the contract before its effective date. The City policy was stated to permit employees to check out within the 5 minute period before leaving the Hospital. That these grievants would sign out 15 or more minutes before quitting time and then proceed to wash

up, against instructions and over the objection of their supervisors, apparently in an attempt to invoke the Contract before the Contract became effective.

Grievance No. 142 dated September 10, 1967 and addressed to Phillip Russell, housekeeping supervisor, alleges:

The union asks for a hearing in that a senior institutional attendant, (immediate supervisor Mr. Gentry) advised employees he would suspend them if he saw them take wash up time. Further he advised employees the wash-up time was not in the contract, "if it was I would be the first to know about it."

The hospital supervision is violating the "equal treatment" article of the contract, ARTICLE NO. 2, SECTION D, which says all employees will be treated equal.

Some employees are given the wash up time, while others are being refused. The union requests that all employees be given wash-up time, and that all employees be treated equal. Discrimination is obvious, in that management allows many employees the right to wash up time.

Grievance No. 146 of Benny Williams dated September 10, 1967, reads as follows:

The Union asks for a hearing on suspension of Employee. ARTICLE 2, SECTION D of the contract says you will treat employees equally. We say you give some employees wash up time but suspend some, like this employee, to intimidate them.

Union requests you pay all loss of pay and remove suspension. As this was Concerted Activity and protected by law.

Subsequent to the above incident, Mr. Williams was again penalized and grievances were filed by him protesting the discipline in each case.

It was agreed that the testimony of Mr. Williams would suffice for the Union's case and the testimony of the other grievants was waived, with the understanding that each of these grievants would be similarly treated.

The Contract between the City and the Union was signed on August 22, 1967 by the negotiators and confirmed by the City Council on September 5, 1967. Sometime during the following week it was signed by Jerome P. Cavanagh, Mayor of the City of Detroit. It is the contention of the Union that the effective date of the contract is August 22, 1967, the date shown in the contract as the date of agreement. In support of this agreement the Union has submitted an opinion and award by Malcolm House, an Arbitrator in case No. 5430 0069 68 between the same parties and heard under the auspices of the American Arbitration Association. In the statement of facts Mr. House said "The current labor agreement between the City of Detroit, a Michigan Municipal Corporation, (hereinafter referred to as the "Employer" or the "City"), and the Detroit City Hospital Employees Union, Local No. 1, (hereinafter referred to as the "Union"), became effective on August 22, 1967 to remain in full force and effect until midnight, September 1, 1968."

The City contends that the contract did not become effective until endorsed by the mayor sometime in the week after September 5, or at the earliest on the date of its approval by the City Council on September 5, 1967.

A careful reading of Mr. House's opinion in the matter in arbitration establishes that the date when the contract became effective was in no way vital or even material to his determination of the issues

presented to him. It is apparent that by stating the effective date as August 22, 1967 in his statement of facts, he merely intended to indicate the date which appeared upon the face of the agreement. The agreement itself contains no specification of an effective date, but only a termination date. It is elementary that an agreement cannot become binding and effective until it has been signed by both parties. In the case of the City the contract could not become effective until the date it was signed by the Common Council, in the absence of a contract provision setting another date, and this being the case the contract could not have become effective until the date of such signature, September 5, 1967. The date of concurrence by the Mayor is irrelevant.

The Union stated that it is presenting this proceeding under the contract, under statute and under the Health Department grievance procedure. For purposes of this report the contract is disregarded. All the incidents involved in this proceeding, as far as Benny Williams is concerned, occurred between August 11 and August 31, 1967, and thus do not fall within the terms of the contract, which has no application whatever.

On August 4, 1967, the administration posted a bulletin addressed to all hospital employees which read:

All hospital employees taking unauthorized wash-up time contrary to approved past practice will be deducted for the amount of time taken.

Until a labor agreement is formally signed by the City of Detroit and the certified bargaining representatives, no current provisions will be effective.

On August 9, 1967, Mr. Williams received the following admonition:

This is to inform you that you are violating an important regulation of the HEALTH DEPARTMENT by failing to observe the allotted wash up time set by this department. If at a future date, there is a change in the time now being observed, you will be notified by someone in authority.

Therefore, until you are notified, by someone in authority, all excessive wash up time will be deducted from your wages. If the matter is continued further, other action will be taken.

C. Gentry

On August 15, 1967 at 11:47 a.m. and at 3:15 P.M., Mr. Williams signed the time sheet as of 12:00 noon and 3:30 P.M. He informed his supervisor, Mr. Gentry, that he was observing the allotted wash-up time stipulated in the contract. Mr. Gentry objected to Mr. Williams signing out fifteen minutes before quitting time and then taking time to wash up, rather than washing up first and then checking out within the last five minutes before the check-out time. He recommended that Mr. Williams be given an eight hour suspension, which was done.

On August 21, at 11:45 a.m. Mr. Williams signed the time sheet prior to his lunch period as of 12:00 noon. When questioned by Mr. Russell, the housekeeping supervisor, he stated that he would use the 15 minutes as wash-up time. In view of the previous disciplinary action, Mr. Williams was suspended for 24 hours.

On August 21, 1967 at 2:45 P.M., Mr. Williams entered the housekeeping office and noted his quitting time on the time sheet as 3:30 P.M. He told Mr. Russell that he was exercising his right to additional wash-up time as planned for in the proposed draft of the Union Contract. When Mr. Williams was asked why he was signing out 45 minutes before quitting time he acknowledged that an error had been made and returned at 3:15 P.M. to sign out again. Mr. Thomas

advised him then that he should wait until 3:25 P.M., but he proceeded to check out anyhow and then went to wash-up. This time he was given a 5-day suspension.

On August 30, 1967 Mr. Williams appeared at the housekeeping office at 3:15 P.M. and signed out as of 3:30 P.M. He was again reminded that if he signed out early it would be an infraction of the existing rules and that he would again be subject to disciplinary action. He proceeded to sign out and was suspended for 40 hours.

All these suspensions are the subjects of grievances filed by Mr. Williams and herein presented.

It is further contended by the Union that only Union officials or Union members who were active in Union affairs were given penalties for early sign-outs, while others were permitted to do so without penalty. The City has denied this, saying that it only penalized employees who checked out well in advance of quitting time.

The City has expressed no objection to the employees taking a 15 minute wash-up period, and in fact has agreed to a 15 minute period in the contract that it signed with the Union. Its objection is to employees signing out 15 minutes before check-out time, while putting down the later check-out time on their time sheets, and then going to wash up. Mr. Williams explained that he preferred to do it in this manner because the office contained much material which he did not want to handle because of possible infection, so he preferred to wash up and then leave directly from the mens' room rather than return to the time office.

It appears obvious from Mr. Williams testimony that the Union was determined to flex its muscles prior to the signing of the contract and to test out its ability to enforce an early check-out rule. Apparently only active Union members and Union officials were so penalized, but the probability is that only active Union members and Union officials were engaged in this concerted effort to subvert the Hospital policy as to check out, and for that reason only they were disciplined. Whatever Mr. Williams' personal objections might be to returning to the time office after washing up, the fact is that a hospital rule had been established and had been posted, and that he intentionally and determinedly sought to flout the rule in spite of the admonitions of his supervisor and repeated penalties. Moreover, I gravely doubt that Mr. Williams would have been subject to potential infection had he merely entered the housekeeping office and signed the time sheet without touching any of the other materials scattered around the office.

The proper procedure in such case, and I am certain that Mr. Williams and the other Grievants well knew it, was to file a grievance protesting the rule if they felt it was unfair or inequitable, but to follow the rule until the grievance had been heard and determined. It follows, then, that the Hospital was right in applying discipline to these employees who were patently insubordinate. The Hospital, however, neglected to follow its own rule in one respect. The posted notice specifically says that an employee who takes unauthorized wash-up time will have his pay deducted for the amount of time taken. This should have been done at least for the first violation. Successive penalties of 8, 24 and 40 hours could then properly have been imposed for succeeding violations. Instead, the Hospital began meting out suspensions for the first violations, in violation of its own posted rule.

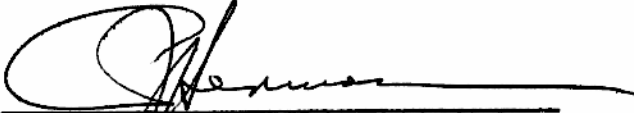
I find as a fact:

1. That the contract between the Detroit City Hospital Employees Union, Local No. 1 and the City of Detroit as it affected Herman Kiefer Hospital did not become effective until September 5, 1967.
2. That on August 4, 1967, the administration properly posted a bulletin with respect to wash-up time procedure.
3. That the Grievants deliberately violated the terms of the rule posted on August 4, 1967 and to that extent were subject to penalty.
4. That the proper penalty for the first violation should have been a deduction of pay for the amount of time taken, with successive penalties of 8, 24 and 40 hours for succeeding violations.
5. That the City did not commit an unfair labor practice in connection with wash-up time at Herman Kiefer Hospital.
6. That Hospital supervisors did not intimidate nor threaten employees with regard to taking 15 minutes wash-up time, and did not refuse the Grievants sufficient wash-up time.
7. That the Grievants acted in concert in an effort to violate and subvert the rule of the Hospital instead of following the proper procedure in such case.

I recommend:

1. That the penalties complained of in the grievance submitted herein be amended to a first penalty of time deducted and succeeding penalties of 8, 24 and 40 hours, insofar as applicable, and that the City reimburse the employees for any additional suspended time.

2. That no further relief be granted to the Union or the Grievants.


Hearing Officer

Detroit, Michigan,
August 21 1968.