

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 23 & 43-80:

UNITED FOOD AND COMMERCIAL)
WORKERS, LOCAL NO. 684,)
Complainant,)
- vs -)
COONEY CONVALESCENT HOME,)
LEWIS AND CLARK COUNTY,)
MONTANA,)
Defendant.)

FINAL ORDER

No exceptions having been filed, pursuant to ARM 24.26.215,
to the Findings of Fact, Conclusions of Law and Recommended
Order issued on April 16, 1981;

THEREFORE, this Board adopts that Recommended Order in this
matter as its FINAL ORDER.

DATED this 15th day of May, 1981:

BOARD OF PERSONNEL APPEALS

By John Kelly Adkins
John Kelly Adkins
Chairman

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy
of this document was mailed to the following on the 21 day
of May, 1981:

United Food and Commercial Workers
Local No. 684
P.O. Box 873
Helena, MT 59624

John P. Adkins, Deputy
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, MT 59601

Jennifer Jacobson

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STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 23 & 43-80:

UNITED FOOD AND COMMERCIAL)	
WORKERS, LOCAL NO. 684,)	
)	FINDINGS OF FACT,
Complainant,)	CONCLUSION OF LAW
)	AND RECOMMENDED
vs.)	ORDER
)	
COONEY CONVALESCENT HOME,)	
LEWIS AND CLARK COUNTY,)	
MONTANA,)	
)	
Defendant.)	

* * * * *

I. INTRODUCTION

On June 16, 1980 Complainant filed an unfair labor practice charge against Defendant alleging it had violated 39-31-401(1) MCA by interfering, restraining or coercing certain employees represented by the union at Cooney Convalescent Home. Defendants motion for a more definite statement, pursuant to 39-31-405 MCA and ARM 24.26.581, made on June 27, 1980 was granted. Complainant filed a more definite statement on July 30, 1980. On December 11, 1980 Complainant filed another unfair labor practice charge against the County alleging violations of 39-31-401(1) and (4) MCA when the Deputy County Attorney interviewed or attempted to interview Complainant's witnesses. Defendant filed answers in which all allegations were denied. Both charges were combined for convenience of this Board. A hearing was held on February 2, 1981 under authority of 39-31-406 MCA and pursuant to ARM 24.26.212, 24.26.215 and 24.26.682 et seq. Complainant was represented by Kathy Van Hook, Defendant by John P. Atkins.

II. ISSUES

1. The issue raised in ULP 23-80 is whether the employer's conduct constitutes a violation of 39-31-401 (1) MCA. Under this charge the union listed ten different counts under which it alleged

1 the employer had interfered with, restrained or coerced certain
2 employees. Those are summarized as follows:

- 3 a. Inquiring about union meetings.
- 4 b. Intimidation of an employee who wanted to call the
5 union.
- 6 c. Delay in allowing an employee to call union representative.
- 7 d. Not allowing certain employees to talk about the union
8 at work.
- 9 e. Not allowing certain employees to talk because it might
10 be thought they were talking union.
- 11 f. Not allowing a certain employee to talk to nurse's aides
12 at all.
- 13 g. Not allowing a certain employee to talk about the union.
- 14 h. Stating to an employee "we are going to crucify you."
- 15 i. Stating to an employee "you can talk but don't talk
16 union."
- 17 j. Stating that a certain employee was a shop steward and
18 directing her to put chairs away.

19
20 2. In ULP43-80 the question is whether the employer violated
21 39-31-401(1) or (4) MCA when its attorney interviewed or attempted
22 to interview certain employees who had been previously identified
23 as prospective witnesses for the charging party in ULP 23-80.

24
25 I took under advisement a motion from the employer to dismiss
26 count No. 10 (j. above) in ULP 23-80 on the basis that it occurred
27 after the first charge was filed. That motion is hereby denied.
28 If proved, it would tend to show the continuing conduct of the
29 employer which complaint alleges as the basis for this charge.
30

31 III. FINDINGS OF FACT

32 Based on the evidence on the record, including the sworn

1 testimony of witnesses, I find as follows:

2 1. Complainant is the certified exclusive representative
3 for the non-supervisory, non-management employees employed by
4 Lewis and Clark County Cooney Convalescent Home, a public employer.

5 2. On or about January 10, February 4 and March 13, 1980
6 Joan Lester, the Charge Nurse at the Home and a supervisory person,
7 asked Sally Pankratz, who is a member of the bargaining unit,
8 about the union meeting and the turn out for it. She did so
9 because some of the people in the bargaining unit had been inquir-
10 ing of her about the union and because Pankratz had, on several
11 occasions, complained to her about being the person (Pankratz) to
12 whom all union activity questions were directed.

13 3. On or about February 28, 1980 Belinda Graf, a bargaining
14 unit employee, received a warning letter from the administrator of
15 the facility. During a coffee break she went from the second
16 floor to the first floor to make a telephone call to the union.
17 When she came down she talked to Sally Pankratz in the hall and
18 was seen doing so by Joan Lester. When Belinda and Sally went
19 into a patient's room to use the telephone, Lester followed them
20 in and told them they could not use a patient phone to make their
21 calls. She advised them that they could use other phones in the
22 building, but not those of the patients. Graf returned to her
23 duties without calling the union. Pankratz proceeded to tell
24 Lester that she had nothing to do with the incident, where upon
25 Lester replied that if she had nothing to do with it, why did she
26 instigate things like that. She further advised Pankratz to just
27 do her job and stay out of it. Graf had left the second floor
28 without telling anyone which was contrary to common practice in
29 the Home to cover emergency situations. Graf was not threatened
30 by Lester.

31 4. During mid-March of 1980 the administrator held a discip-
32 linary meeting for Sally Pankratz in his office, among others who

1 were present at different times during the course of the meeting,
2 in addition to Pakratz and the administrator, was Mrs. Ashley,
3 Director of Nursing Service. Pankratz stated that she had a right
4 to have a union representative present during the meeting, the
5 administrator said she did, Pankratz continued to talk as the
6 administrator pointed to the telephone. Pankratz continued to
7 talk as other employees were called in from time to time; when the
8 discussion became heated, Pankratz again stated that she wanted to
9 call the union, she was then handed the telephone by the administra-
10 tor.

11 5. The policy of the Home, with respect to labor relations,
12 is governed by the collective bargaining agreement between it and
13 Complainant. There is no policy, informal or otherwise, which
14 prohibits employees from using the telephone to call the union
15 during a disciplinary hearing. Nor is there a policy which prohibits
16 employees from talking about the union unless it interferes with
17 their work.

18 6. Doris Kautz is a former supervisor at the Home. She
19 told some of the bargaining unit members not to talk about the
20 union around her, that she did not want to hear anything about the
21 union. The administrator had told her that she was not to become
22 involved in the union and was not to talk about it.

23 7. On or about May 14, 1980 Sally Pankaratz and Vi Betts,
24 both bargaining unit members, were found talking in the T.V. room
25 by Joan Lester. Neither was on coffee break. Lester told them
26 that for their own good they should do their work and stop talking.
27 She said nothing about the union.

28 8. On or about May 18, 1980 Kautz told Betts she did not
29 want her talking about anything. She did so because it was inter-
30 fering with her, Betts', work. Kautz had been advised by the
31 Director of Nursing Service that she could prohibit such conduct,
32 if it interfered with work.

1 under 39-31-201 MCA, to self-organization, to form, join, or
2 assist any labor organization, to bargain collectively through
3 representatives of their own choosing on questions of wages,
4 hours, fringe benefits, and other conditions of employment. The
5 allegation in this first charge is not that the particularized
6 protections of 39-31-401(2), (3), (4) or (5) MCA have been violated
7 but rather that there has been an independent violation of
8 39-31-401(1) MCA. In such cases the National Labor Relations
9 Board has attempted to strike a balance between the interests of
10 the employer and those of the employees. Because of the similarity
11 of the Montana Collective Bargaining for Public Employees Act and
12 the National Labor Relations Act, the Board of Personnel Appeals
13 has been guided by NLRB precedent. The Montana Supreme Court, in
14 State Department of Highways v. Public Employees Craft Council,
15 165 Mont. 349, 87 LRRM 2101 (1974), held that private sector
16 precedent is relevant in interpreting the Montana collective
17 bargaining law when its language and that of the NLRA are similar.
18 With respect to the sections with which we are concerned in this
19 first charge, they are identical.

20 In attempting to deal with the ten separate counts listed
21 under the first charge it would seem that some should be dismissed
22 on the grounds that Complainant failed to carry its burden of
23 proof. Therefore, because the substantial evidence on the record
24 does not support the charge, I must conclude as follows:

25 1. Belinda Graf's protected rights under the act were not
26 violated by Defendant when Joan Lester told her she could not use
27 the patient's telephone.

28 2. Sally Pankratz' rights were not violated by the admini-
29 strator during the March 1980 disciplinary meeting because he
30 offered to let her call the union. Her propensity to talk was the
31 reason for the delay.

32 3. With respect to items i, e, f, g and i shown above under

1 ULP 23-80, not only did Complainant fail to prove by a preponder-
2 ance of the evidence that such conduct was engaged in by Defendant,
3 it failed to show any interference, restraint or coercion of
4 employee rights which might have followed from such alleged conduct.
5 The only uncontroverted testimony on the subject is that of Defen-
6 dant's administrator and other supervisory personnel to the effect
7 that employees could talk about whatever they wished, as long as
8 it did not interfere with their work. Such seems a reasonable
9 policy.

10 The proposition urged by Complainant that Defendant interfered
11 with employee rights under the Act when one of its supervisory
12 personnel inquired about the union meetings must fail also.
13 Again, there was no showing that any harm resulted from the inquiry
14 and there appeared to have been questions from employees to the
15 supervisor regarding the meetings. To ask if a meeting was well-
16 attended does not constitute an interference with union activities.
17 This inquiry was sufficiently isolated so that it may not be
18 construed to amount to an unfair labor practice. West Texas
19 Equipment Co., 142 NLRB 1358, 53 LRRM 1249 (1963); Diechbroder
20 Express, Inc., 168 NLRB 113, 67 LRRM 1081 (1967); Blue Flash
21 Express, Inc., 109 NLRB 591, 34 LRRM 1384 (1954).

22 Complainant's assertion that York's statement to Pankratz
23 interfered with her protected rights are completely controverted
24 by her testimony that she has felt no reluctance to participate in
25 union activities since.

26 The one remaining count under the first charge is that Vi
27 Betts was called a shop steward and told to put chairs away.
28 Clearly, as an employee she could be told to replace the chairs
29 and, just as clearly, being called a shop steward does not carry
30 its own indicia of harm. I fail to see complainant's connection
31 here.

32 Finally, while dealing with ULP 23-80, I must consider the

1 totality of the employer's conduct in this matter and decide if
2 the employer violated employee rights under 39-31-401(1) MCA.
3 Taken together, if all ten counts under the charge had been proved,
4 I must conclude complainant would still have fallen short of
5 convincing me that an unfair labor practice was committed. There
6 was no showing that concerted activities had been affected in the
7 least. Typically these kind of charges (8(a)(1) of the NLRA)
8 involve things such as discharge or discipline for engaging or
9 attempting to engage in protected concerted activity; they do not
10 involve insignificant assertions which, even if proved, amount to
11 nothing more than bickering between employees and supervisors.

12 The second charge brought by Complainant was that Defendant
13 violated 39-31-401 (1) and (4) MCA when the Deputy County Attorney
14 went to Cooney to interview prospective witnesses at their job
15 site. Section 39-31-401(4) MCA prohibits the discharge of or
16 discrimination against an employee because he has signed or filed
17 an affidavit, petition or complaint or given any information or
18 testimony under the Act. There is no evidence on the record to
19 prove that any of the subject employees were discharged or discrim-
20 inated against. For that reason the 401 (4) charge must be dismissed.
21 The NLRB has held that an employer has a legitimate purpose in
22 interrogating employees when the information sought relates to an
23 unfair labor practice proceeding against the employer. Despite
24 the inherent danger of coercion the NLRB permits a limited privi-
25 lege in the investigation of facts concerning issues raised in a
26 complaint. Johnnie's Poultry Co., 146 NLRB 770, 55 LRRM 1403
27 (1964), 59 LRRM 2117 (CA8, 1965). There is no evidence on the
28 record to show that the employer did not comply with the safeguards
29 identified by the NLRB in Johnnie's Poultry, supra. There was
30 nothing in the record to show that the employer's attorney went
31 beyond the necessities of preparing his case for hearing; that he
32 inquired into matters of union membership; that he discussed union

1 activities; that he dissuaded employees from joining or remaining
2 as members of the union; or that he otherwise interfered with
3 their rights. In the matter of May Department Stores, Co., 70
4 NLRB 94, 18 LRRM 1338; NLRB v. Joy Silk Mills, Inc., 27 LRRM 2012
5 (1950).

6
7 V. CONCLUSION OF LAW

8 Defendant Cooney Convalescent Home, Lewis and Clark County,
9 did not violate 39-31-401(1) or (4) MCA by any of the actions
10 alleged in the complaints filed in ULP 23 or 43-79.

11
12 VI. RECOMMENDED ORDER

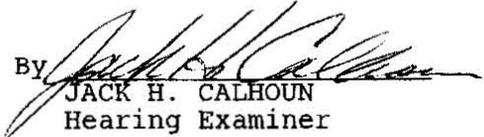
13 That ULP 23-80 and ULP 43-80 be dismissed.

14
15 VII. NOTICE

16 Exceptions to these Findings of Fact, Conclusion of Law and
17 Recommended Order may be filed within twenty days of service of
18 thereof. If no exceptions are filed, the Recommended Order shall
19 become the Final Order of the Board of Personnel Appeals. Address
20 exceptions to: Board of Personnel Appeals, Capitol Station, Helena,
21 Montana 59601.

22
23 Dated this 16th day of April, 1981.

24
25
26 BOARD PERSONNEL APPEALS

27
28 By 
29 JACK H. CALHOUN
30 Hearing Examiner

31 CERTIFICATE OF MAILING

32 The undersigned does certify that a true and correct copy of

1 this document was mailed to the following on the 16 day of
2 April, 1981:
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4

5 United Food and Commercial Workers
6 Local No. 684
7 P.O. Box 873
8 Helena, MT 59601

9 John P. Adkins, Deputy
10 Lewis and Clark County Attorney
11 Lewis and Clark County Courthouse
12 Helena, MT 59601



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