

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The District of Columbia Nurses  
Association,

Complainant,

PERB Case No. 84-U-08  
Opinion No. 112

and

The District of Columbia Department of  
Human Services, Bureau of Clinical  
Health Services, Ambulatory Health Care  
Administration,

Respondent.

DECISION AND ORDER

On June 12, 1984 the District of Columbia Nurses Association (DCNA) filed an Unfair Labor Practice Complaint (ULP) with the District of Columbia Public Employee Relations Board (Board) against the District of Columbia Department of Human Services, Bureau of Clinical Health Services, Ambulatory Health Care Administration (DHS). The Complaint alleges that DHS discriminated against a DCNA Shop Steward by issuing her a letter of reprimand for insubordination because of her union activities. On May 10, 1984, the DCNA filed an appeal of DHS's action with the Office of Employee Appeals (OEA). DCNA requests, as a remedy, that the Board order DHS to remove the letter of reprimand from the Shop Steward's personnel file.

On July 3, 1984 DHS filed its response denying that it had unlawfully discriminated against the Shop Steward because of her union activities. DHS contends that it had just cause to issue the reprimand based on the employee's demonstrated insubordination and that her union status or activities were never considered. DHS requests that the Board either dismiss the Complaint or defer action on it pending resolution of the appeal of the adverse action to OEA.

The issue before the Board is whether or not DHS violated the Comprehensive Merit Personnel Act (CMPA) by issuing a letter of reprimand to DCNA's Shop Steward allegedly in retaliation for her union activities.

On September 14, 1984 the Board referred the matter to a Hearing Examiner for a report and recommendation on the limited question of whether the personnel action taken against the Shop Steward was based on her union activities. A hearing was held on December 12, 1984. Both parties were afforded an opportunity to file post-hearing briefs, but neither party did so. The Hearing Examiner's report and recommendation was filed with the Board on March 4, 1985. Neither party filed exceptions to the Hearing Examiner's report and recommendation.

The gravamen of the insubordination charge is the failure of the Shop Steward to report to a counseling session with her supervisor concerning allegations that the Shop Steward left her work site without permission on August 11, 1983. In its Complaint before the Board, DCNA contends that on August 16, 1983 the Shop Steward informed her immediate supervisor that she needed time off to process a grievance and that the supervisor unlawfully refused to grant permission. DCNA further contends that the Shop Steward heard nothing more regarding the incident until she received a letter of reprimand on March 12, 1984.

DHS's version of the facts differ somewhat. DHS contends that on August 11, 1984 the Shop Steward left her work site without permission. It further contends that on August 16, 1983 the Shop Steward was scheduled to attend a counseling session in the office of her immediate supervisor but she failed to attend. On the same day the supervisor and the Shop Steward discussed by telephone her failure to attend. DHS also contends that the delay from August 16, 1983 to March 12, 1984 in processing the adverse action was caused by the requirement that disciplinary notices be sent to the D.C. Office of Personnel for review and preparation of the adverse action notice.

The Hearing Examiner's report and recommendation is a thorough and detailed treatment of the issue of whether the DCNA Shop Steward was given a letter of reprimand because of her union activities. His conclusion that the basis for the letter of reprimand was the failure to meet with her supervisor in a counseling session to discuss leaving her work site without permission is sound. The Hearing Examiner ruled that the ULP charge should be dismissed.

DHS presented documentary evidence that the Shop Steward left her work site without permission on August 11, 1983. DCNA failed to present evidence denying that the Shop Steward was absent without leave on that day. The Hearing Examiner determined that this absence without leave was the reason the Shop Steward was asked to attend a counseling session with her supervisor on August 16 and 18, 1983 (Report and Recommendation page 7). The Shop Steward testified that she did not receive the memorandum from her supervisor informing her of the counseling session. Two witnesses contradicted this testimony. The Hearing Examiner ruled that the Shop Steward had received the memorandum informing her of the counseling session (Report and Recommendation page 9). DCNA did not present evidence that the supervisor exceeded her authority in requesting the counseling session. The Hearing Examiner found that the Shop Steward's failure to attend the counseling session or to contact her supervisor concerning her absence was inexcusable (Report and Recommendation page 9).

Based upon its review of the entire record, the Board finds the Hearing Examiner's analysis, reasoning and conclusions to be rational and persuasive. Accordingly, the Hearing Examiner's recommendation is adopted by the Board.

Case No. 84-U-08  
Opinion 112  
Page 3

ORDER

IT IS ORDERED THAT:

The Complaint is dismissed on the ground that there is insufficient evidence to establish a violation of the Comprehensive Merit Personnel Act of 1978.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD.  
May 30, 1985