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County of Los Angeles
Report of the Hearing Officer

In the Matter of
Social Services Union,
Local 535, SEIU, AFL-CIO
Charging Party
and
Felton Pidgeon, Director,
Food Services, Martin Luther King,
Jr. Hospital
Respondent

Case No. UFC 10.14
Ella Nelson, Eleanor Brice
Employees

Hearings: March 20 and May 8, 1979

Hearing Officer: Spencer D. Pollard, appointed by the
Employee Relations Commission.

Issues:

1. Did the Director of Food Services at Martin Luther King, Jr. Hospital unlawfully discriminate against Ella Nelson and Eleanor Brice for union activity?
2. If so, what is the proper remedy?

Finding of Fact:

The two employees, Ella Nelson and Eleanor Brice were classified as Community Workers and were assigned to the Dietary Section of Food Services at Martin Luther King, Jr. Hospital. Two unfavorable events which happened to them there are interpreted by them and by the Union as unlawful retaliation for an episode of union activity by Ms. Brice.

One unfavorable event occurred on December 4, 1978, when the Director of Food Services issued each of them a "gram", that is a notice of concern and a promise of "stronger disciplinary action" if their attendance did not improve. After the two employees filed charges of unfair practice over these "grams", a much worse event happened on February 1, 1979, when they were taken off the interesting work they were doing in the nutrition program of the hospital -- teaching and counselling patients in groups and classes about their diets -- and given relatively menial jobs in the Social Services Division, telephoning patients to remind them of their upcoming appointments.

The Union activity, which the employees and the Union says triggered the unfavorable events, had occurred on or about November 13, 1978. The Director of Food Services received a telephone call from the Personnel Department of the hospital asking him to release either Eleanor Brice or Ella Nelson for a meeting. The Director chose Ms. Brice and she attended the meeting which was a "Meet and Consult" session with representatives of the Health Services Administration. There is no evidence of any other Union activity on the

and Ms. Brice attended only one "meet and consult" meeting with management representatives. She was selected to attend that meeting by the Director of Food Services. It stretches credibility to believe that the Director would embark on a campaign against Ms. Brice for attending a meeting which he directed her to attend.

The second reason is that Management has an adequate defense for the more serious unfavorable event that befell the grievants, their transfer from teaching and counselling about nutrition to looking up patients' phone numbers and calling to remind them of hospital appointments. Management's defense is that the nutrition work should and will be done by home economists and dieticians with the requisite professional qualifications.

Ms. Brice and Ms. Nelson had built up a remarkable program. Part of Ms. Nelson's testimony is as follows:

Q. BY MR. LEPIE: Would you describe some of the work that you did under the -- while you were working in the Dietary Department?

A. Yes.
We planned and performed programs in different areas in the community and in the hospital.

Q. What sort of programs were these?

A. Educational programs.

Q. Could you name some of the programs?

A. Hypertension.

Q. What sort of program would hypertension programs be?

A. We had a program that we went to the clinic areas once a week and talked to the patients about hypertension and gave them samples of low sodium foods.

Q. Did you instruct them generally in the relationship between diet and hypertension?

A. Yes.

Q. And you instructed them generally in how to prepare and purchase foods which would be less harmful or therapeutic to their condition?

MISS TOY: Leading the witness. I object. He might ask a question that's more general in nature.

THE HEARING OFFICER: Yes, I think on direct examination it's better not to suggest answers to the witness, but just ask questions.

Q. BY MR. LEPIE: What would the purpose of this hypertension class be?

A. To teach the patient how to eat better and to do so on low budgets.

Q. Eat better with relationship to their hypertension?

A. In relation to their hypertension.

Q. Were there other programs, such as the hypertension clinic, which you ran?

A. I taught prenatal -- the prenatal class, nutrition in the prenatal class for approximately four years, every Monday.

Q. Were there any others?

A. Yes. We did one class in peds., outpatient peds., inpatient, for young peds., giving the young people instructions that was in the hospital; program on obesity, we worked with the obese outpatients, both peds. and adults, and employees obesity class, to name a few.

Q. Well, were there any other -- strike that. Of those groups which you ran, which of those were ongoing regular groups that you ran, as you said for the pediatric that you did every Monday or something like that?

A. The pediatric, the hypertension, the peds. in and out, ongoing.

Q. Was the renal class ongoing?

A. Yes.

Q. Was there a fracture clinic which was ongoing?

A. Yes.

Q. What would you do in the fracture clinic?

A. We would first prepare and sample foods that could be consumed by drinking or through a straw for patients that had fractures and had teeth wired and then generally Mrs. Brice would go over and work with patients and show them how they could also buy and prepare regular foods and blend them together and have entire meals in a glass.

Q. Who was it who wrote up the material for those classes -- these classes?

A. Last supervisor we had, Linda Brown, Elinor Brice and myself.

MISS TOY: What are the names?

THE WITNESS: Linda Brown, Elinor Brice, Ella Nelson.

MISS TOY: thank you.

Q. BY MR. LEPIE: When you gave these classes and did the material was your supervisor there with you or --

A. No, not always, she would sometimes go, but most of the time we went alone.

Q. You say "we"?

A. Elinor Brice and myself.

Q. I see.
Did you and Mrs. Brice make changes or modifications in these programs on your own?

A. Yes.

Q. Are there programs that you and Mrs. Brice worked up on your own?

A. We created, yes.

Q. Were there other activities you were involved in which were not of an ongoing nature?

A. Yes.

Q. Could you give me some examples of that?

A. "Good Nutrition Week" every year. We were instrumental in creating a carnival and we did it every year after it was created for "Good Nutrition Week."

We also created other things during "Good Nutrition Week." "I'll Take the Stairs" was my idea, Mrs. Brice named it, and my ex-supervisor made the buttons that we handed out.

(From Tr. I, 16-19)

Ms. Brice and Ms. Nelson received dozens of letters of praise and commendation for their work in these programs.

The testimony of the Director of Food Services about the work of the two women was this:

Q. So you had no idea what work Brice and Nelson would do after they were transferred out of your department; is that correct?

A. Very true, yes.

Q. What did you think about the work that they've been doing in your department?

A. They done a very good job.

Q. How did you react when you were told that those employees who you thought were doing a very good job were going to be transferred to do some work and you had no idea what that work was going to be?

A. Well, we were going to make changes in that department anyway, so there was no reaction at all, in that particular unit.

Q. What kind of changes?

A. There was said that they were going to make changes in that unit, patient nutrition, education, you know.

Q. What kind of changes?

A. Most of the employees in that unit would be -- like the home economists were more or less consulting, two dieticians preparing and testing out recipes, preparing and passing out literature for patients and et cetera.

We was going to eliminate our participation in organizing and carrying out health fairs, any other type of big, large program, production programs.

Q. Is it the general rule that you understand in your position as Director of Health Services, that if you have a certain responsibility you're supposed to fulfill that responsibility as economically as you can?

A. Right.

Q. Why would you want to use a dietician who is a professional and a highly paid employee to do the work that was done by Community Workers?

A. The dietician, that was part of their responsibility, in addition to -- especially those dieticians in outpatient clinic. Most all the dieticians are involved in some type of programs on their particular unit.

As far as patient contact, they have most of the contact with the patients, so they would know the needs of the patient, that's part of their responsibility.

(From Tr. II, 42-44)

It is the view of the Hearing Officer that, as good as the programs of Ms. Brice and Ms. Nelson may have been, it cannot be considered irrational or discriminatory for Management to want them carried out by trained professionals, even at greater expense.

Another facet of the Director's defense was that the actual transfer of the two women from their nutritional programs was not

initiated by him but was the result of a "regionalization" of Community Workers at the order of higher authority. This defense was supported by the testimony of Andrea McLinn, Regional Personnel Officer for the Southeast Region of the Health Services Department of the County (Tr. II, 84, 87-89). The letters of transfer received by the two women from the Regional office of the Health Services (Union Exhibits 3 and 5) seem to bear this out. A paragraph in each letter says:

As you are probably aware, Medical Social Service functions have been regionalized and placed under the direction of Ms. Tessie Cleveland, Chief of Regional Social Service. No doubt you are also aware that the Dietary Section has been reorganized with respect to responsibilities for patient nutrition education. Your knowledge and skills as a Community Worker II will be more effectively employed in Regional Social Service, and you should have more opportunities for professional development in that Division.
(From UX3)

Another issue in this case is whether the "grams" issued to the two grievants about their attendance were part of an unfair labor practice. The Director of Food Services signed those notices on December 4, 1978.

County Management says that the grams were not disciplinary in nature, but only a form of counselling, not put into the employee's permanent file. According to Management, the "grams" are removed even from the unit file after six months. However, the Union points out that the "grams" issued to the grievants are entitled, in capital letters "Warning Grams Regarding Attendance Record". Also, a sentence in each notice says: "If you do not improve, then I will be

forced to take stronger disciplinary action against you." It is clear to the Hearing Officer that these grams are disciplinary in nature, corresponding to the usual second step in progressive discipline, after oral warnings. If County Management does not intend them to be so, then the notices should be reworded.

There are other questions that the Union raised about the attendance grams, for example, whether Ms. Nelson's sick leave of twelve days and three hours and Ms. Brice's sick leave of seventeen days and five hours in a year's time were excessive by reasonable standards. There is also a question whether the document behind the "grams", the Guidelines For Attendance, issued by the Director of Food Services on October 24, 1974, has a reasonably uniform definition of "occasion" in its stated rule that: "Grams will be given to employees when sick more than one occasion per month." As interesting as such questions are, the Hearing Officer is limited in the present case to the issue whether the attendance "grams" issued to the grievants were a form of unfair discrimination against them for union activity. The Hearing Officer finds little evidence of such discrimination. The grievants received their "grams" earlier than other employees in Food Services, and other employees may have been allowed more absences under the somewhat unspecific rules of the attendance policy, but there is no clear discrimination for Union activity which was in itself minimal in the case of Ms. Brice and practically non-existent in the case of Ms. Nelson.

Final Order:

It is the determination of the Hearing Officer that Mr. Felton

Pidgeon, Director of Food Services at Martin Luther King, Jr. Hospital, did not engage in unfair labor practices in violation of the rights of Ella Nelson and Elinor Brice.

dated November 27, 1979 signed Spencer D. Pollard
Spencer D. Pollard, Hearing Officer