

Trustees, University of Massachusetts Medical School and Hospital and Chionchio, 5 MLC 1272

The University of Massachusetts Medical Center is a branch of the University located in Worcester.

The University's Board of Trustees is a public employer within the meaning of Section 1 of the Law.

Local 2616 of Council 41, the American Federation of State, County and Municipal Employees, is an employee organization within the meaning of Section 1 of the Law, and is the exclusive representative for the purposes of collective bargaining of certain employees at the Medical Center, including John Chionchio.

John Chionchio is a public employee within the meaning of Section 1 of the Law.

Findings of Fact

John Chionchio has been employed at the Medical Center for approximately one-half years, for four of which he has been a carpenter in the physical plant. Six months after he began his employment, Chionchio became a steward in the physical plant and served continuously in this role until July, 1977. On that date he was elected president of Local 2616, the exclusive bargaining representative of fewer than 100 employees at the Medical Center physical plant. As a steward, Chionchio played an active role in handling employee grievances, a responsibility he continued to fulfill for some time after he became president of his local. In his capacity as steward, Chionchio presented grievances once a month to Leslie Greig, the director of the physical plant. Until the incidents giving rise to this case, Chionchio had never been the subject of disciplinary action.

In all times material to this case, Chionchio's immediate supervisor was Ernest Malanson (Malanson), head carpenter at the Medical Center. Above Malanson in the reporting structure was Clarence Twohig (Twohig), construction assistance engineer. Twohig reported to Leslie Greig (Greig), director of the Medical Center physical plant in the Spring of 1977 and now physical plant director at Cape Cod Hospital.

Between July 1, 1975 and April 4, 1977, the Medical Center and Local 2616 were parties to a collective bargaining agreement which contained a clause that union representatives would have "reasonable access" to the Medical Center for the purpose of conferring with members of the bargaining team on questions arising under the agreement. The clause required prior approval from a department head and stated that union representatives must conduct themselves so as not to interfere with the orderly conduct of the Medical Center's business. While the parties were engaged in negotiations for a new bargaining agreement, there were discussions about the Medical Center's policies regarding time off for union business. Chionchio was a member of Local 2616's bargaining team. On April 4, 1977, a successor agreement was entered into. This agreement contained a clause specifically providing for paid time off for union stewards for grievance processing and required that requests for time off be made in advance.

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Although the collective bargaining agreement prior to April 4, 1977 did not provide for paid time off for union business, Chionchio and other stewards had never been denied this benefit. The Medical Center's only requirement was prior notification. There had been some dissatisfaction on the employer's part with the manner in which the four or five union stewards in the physical plant were accounting for their time. On September 8, 1976, Engineer Twohig had sent similar memos to Chionchio and the other stewards. Twohig's memo stated that Chionchio had been advised previously by Greig that he was to notify his foreman and account for his time as all other tradesmen did. The document pointed out that on many occasions Foreman Malanson was unable to account for Chionchio's time, particularly time spent in his function as Chief Steward. Twohig ordered that a sign-in and sign-out form initialed by Chionchio and Malanson be used in the future. The final paragraph of the memo noted that Chionchio's responsibilities as a steward did not preclude his productive efforts as a carpenter. Chionchio received the Twohig memorandum, as did other stewards in the physical plant. Although the forms were apparently used to some extent, Chionchio and Malanson had worked out a procedure whereby Chionchio would leave Malanson a note stating that he was going on union business on those occasions when the foreman was not in his office. If Malanson was in the office, Chionchio would speak with him prior to leaving on his steward's duties.

Chionchio was sworn in as president of Local 2616 at 5:30 p.m. on Tuesday, March 29, 1977.¹ On March 30th, he reported for work at his regularly scheduled hour of 8:00 a.m. At 8:05, locksmith Norman Gaulin phoned Malanson to say that he needed a carpenter's assistance in installing a lock on a door. Between 8:20 and 8:25, Malanson personally assigned Chionchio to help Gaulin. Chionchio did not indicate any impediment to his performing the task. When Chionchio arrived in Gaulin's shop, he told the locksmith that he had to go on union business, could not assist him, and would try to get another carpenter to help him with the door. Chionchio then went on his coffee break. He did not see Malanson in the cafeteria and apparently made no effort to find him. When no carpenter arrived to assist Gaulin, the locksmith went to the labor shop, where he encountered Malanson. The foreman asked why no work was being done on the door. When the locksmith related his conversation with Chionchio, Malanson became angry because Chionchio had not told him that he (Chionchio) could not work on the door when the assignment was given, he did not know where Chionchio was, and because he believed it was not Chionchio's prerogative to assign work to employees.

Malanson went to Director Greig's office and recounted the incident and his feelings about it. Greig called Gaulin in, and the three men discussed what had happened. Later in the morning, another meeting was held in Greig's office. In attendance were Chionchio, Greig, Twohig, and a union officer present at Chionchio's request. Greig informed Chionchio that, in the future, either he or his secretary was to be informed directly before Chionchio took paid time off for union business. This same reporting procedure was quickly made applicable to all employees engaged in union business, but was thereafter

¹All dates are 1977 unless otherwise indicated.

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ed for all union representatives, including Chionchio. No witness at
could pinpoint exactly when the new policy was discontinued, but it
d in effect at least through the beginning of work on March 31.

ring the afternoon of the same day, March 30th, Malanson found a note
desk. The note read: "Union--JC--1:30--4:30--3/30/77." Chionchio's
y ended at 4:30 p.m. Prior to leaving the note, Chionchio had contacted
Malanson nor Greig to say that he was going on union business.

the morning of March 31st, Malanson left his office early to go to a job
As he was returning at approximately 10:00, he saw Chionchio in a corridor
to another employee. Malanson asked Chionchio if he was working on a
s assignment. Chionchio replied that he was not and that he was going
n union business all day. When Malanson arrived back at his office, he
note that read: "Union--JC--8:00--3/31/76."² Prior to leaving the note,
io had contacted neither Malanson nor Greig.

Malanson called Greig and reported the episode. The director ordered
n to find Chionchio. During various times in the morning and early
on, Malanson, Greig, and the Medical Center's chief of security
d for Chionchio but were unable to locate him. At approximately 3:00
Malanson walked into the Medical Center library, where he observed
io lying on a couch with his head slouched to one side and shoulders
g. Malanson proceeded to Greig's office and reported that he had
Chionchio asleep in the library.

3:15, Malanson, Greig, and Carol LeDuc, the Medical Center's employ-
nager, arrived back at the library. They found Chionchio in roughly the
sition in which Malanson had seen him 15 minutes earlier. Chionchio was
umped position with his head resting on the back of a couch and his
osed. On his chest was a small book. Greig and LeDuc walked up to
io and Greig called his name two or three times. Chionchio opened his
the third call. After the two men exchanged a few words, Greig
Chionchio to return to the carpenters' shop immediately, at which
Chionchio exited from a door leading towards the shop. However, he did
urn to the shop and was not seen by Malanson again for the rest of

Chionchio's time sheet showed that he took eight hours of paid union time
h 31st. For the 24 hours of work time left in the week of his election
union presidency, Chionchio spent one and a half hours at the March
eting with Greig; 19 hours on union business; and three and one-half
oing carpentry work. For the 40-hour workweek between April 4th and
th, Chionchio logged twenty-seven and one-half hours on union business
lve and one-half hours doing his carpenter's job. None of this union
s denied him, and no inquiries were made by Greig or other supervisors
he nature of his union business.

t hearing; the parties stipulated that the note in fact referred to
1, 1977.

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On April 4th, the Medical Center's Vice-Chancellor for Administration Finance wrote to Chionchio to notify him that the Medical Center proposed discharge him for refusing to help Gaulin; not clearing his absences for on business with either Malanson or Greig after being ordered to do so; for sleeping in the library and then not reporting to the carpenters' p after being ordered to do so by Greig. Only one other employee of the ical Center had ever been found sleeping on the job. This individual, an pholic, had been given rehabilitative counseling and placed on sick leave. Union representative prior to Chionchio had been disciplined in connection h taking time off for Union business.

On April 4th and 12th, a hearing at which Chionchio was represented was d before Dr. Roger Bulger, the Medical Center's Chancellor/Dean. By letter April 14th; Dr. Bulger informed Chionchio that the proposed discharge had n reduced to a three-day suspension without pay. Chionchio served the pension on April 18th, 19th, and 20th.

At some point after the discipline was imposed, Chionchio filed a evance under the grievance procedure of the collective bargaining agree- t. The Medical Center refused to process the grievance, claiming it was timely filed. That decision was not appealed and there was been no further ion on the grievance. On June 28, 1977, Chionchio filed the instant charge h the Commission.

Opinion

The Union has charged that the Medical Center violated Sections 10(a)(3) (1) of the Law by accusing newly-elected Union president Chionchio of dequate performance, having him followed and watched, discriminatorily lying a sign-out policy to him, and suspending him for three days. Under tion 10(a)(3) of the Law, an employer may not discriminate against an loyee with regard to hiring, tenure, or terms and conditions of employment order to discourage union membership or activity. Town of Somerset, 3 MLC 8 (1977). In order to establish a prima facie case, a charging party must er evidence tending to prove the following essential elements: concerted, tected activity; employer knowledge of the activity; and employer motivation penalize or discourage union activity. Town of Somerset, supra. Since egal activity is rarely admitted, a charging party may meet his burden by ablishing his case through circumstantial evidence and the reasonable erences drawn therefrom. Harwich School Committee, 2 MLC 1095 (1975).

Holding a union office and performing the functions inherent therein is arly concerted, protected activity under the Law. Mt. Wachusett Community lege, 2 MLC 1400 (1976); Town of Wareham, 3 MLC 1334 (1976). In the case , judice, the Union established Chionchio's role as a union officer, and the ical Center admitted knowledge of his union activities. The case thus ns on the question of whether or not the Medical Center's actions against onchio were motivated by his assumption of the presidency of Local 2616. determining the existence of improper motive, the Commission traditionally ks to such factors as: the employer's general hostility toward the union l coincidences of timing between union activity and employer adverse ion, Ronald J. Murphy, supra; inconsistent or shifting reasons for the

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, St. Elizabeth's Hospital, 1 MLC 1248 (1975); sudden resurrection of grossly condoned transgressions, Mt. Wachusett Community College, 1 MLC 1275; and comparative treatment of employees, triviality of reasons, and undue severity of the penalty, Town of Wareham, 3 MLC 1334 (1976). We examined these factors in the context of the Union's charges and we find that the Union has failed to prove even the slightest degree of illegal discrimination on the part of the Medical Center.

In contrast to the Union's charges, the evidence shows that Physical Plant Director Greig had good reason to criticize Chionchio's job performance. On March 30th, Chionchio failed to carry out the assignment from his foreman to checksmith Gaulin or to inform his foreman that he would be unavailable for union business. At a meeting later that same morning, Greig called Chionchio's performance unacceptable. At that same meeting, Greig ordered Chionchio to inform him or his secretary before taking time off for union business. A few hours later, Chionchio took the afternoon off for union business. Chionchio's evasiveness and contradictory testimony on the point lead us to believe Greig's testimony that the carpenter left for the afternoon without informing Greig or his secretary.

Less than 24 hours after Greig's prior notification order, Chionchio took the entire day off for union business without first contacting Greig or his superior. Throughout the day of March 31st, Chionchio's superiors searched for him openly and unsuccessfully. When found late that afternoon, Chionchio was reclining on a couch with his eyes closed. Upon the return of his superiors to the same spot fifteen minutes later, Chionchio's position was substantially unchanged. He opened his eyes in response to Greig's third call of his name. When ordered to return to the carpentry shop, Chionchio did so.

The Union did not dispute Chionchio's failure to perform his assigned work or to report to his superior twice within twenty-four hours after the notification order from Director Greig. Its contention seemed to be that the Medical Center was not entitled to require that Chionchio obtain permission before disappearing from his workplace. Believing that the Director's order was wrong, Chionchio was within his rights to come and go as he pleased and to reject work assignments. This position cannot withstand scrutiny. Chionchio's status as a union president and the consequent protection of the Law do not take from his employer the right to assign work and to enforce reasonable, non-discriminatory rules for the conduct of business. A union officer has no right in the abstract to ignore orders unless such as those involved in this case. If, as the Union seemed to believe, Chionchio believed that the notification rule and work order violated the parties' collective bargaining agreement, the procedure he should have followed was to comply at the time and grieve later. As the National Labor Relations Board has noted in an uncannily similar case, rights which arise under a collective bargaining agreement should be redressed through the procedure created by the agreement, not through a refusal to obey orders. International Shipbuilding Co., 94 LRRM 1422 (1976).

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The Union also seemed to dispute the Employer's charge that Chionchio was sleeping in the library. Unrebutted Employer witnesses testified to Chionchio'sumped position for a period of at least fifteen minutes and to Greig'sveral unsuccessful attempts to rouse him. The carpenter's testimony was at he merely closed his eyes for a very few minutes to think about what ituld be like to have an arbitration hearing in Boston on a grievance thennding before the Union's grievance committee. Chionchio did admit that heard his superior call his name. It is unnecessary for us to decide whethernot Chionchio was actually asleep. The issue is the Medical Center's motive r disciplining the carpenter for several reasons, one of which was sleepingthe job. We need only decide whether or not the charge was a pretextsking a discriminatory motive. On the record in this case, we find that themployer's conclusion that Chionchio had been asleep in the library when heostensibly on paid union business was a totally reasonable one constitutingnon-discriminatory motive for the discipline which followed.

The Union's charges of discriminatory application of the reporting policyso lack merit. At hearing, Chionchio admitted that the requirement offorming Greig prior to taking paid union time was announced to all unionrepresentatives shortly after it was communicated to Chionchio on March 30th. When the policy was rescinded sometime after March 31st, it was rescinded forl union representatives, including Chionchio. Thus, there was no disparate discriminatory treatment of Chionchio.

The charge that Plant Director Greig followed and watched Chionchio ispresumably a contention that the Medical Center was engaged in illegal surveillance in violation of Section 10(a)(1) of the Law. The Union'svidence consisted of Chionchio's vague assertions that Greig followed him andopped up" at various times. Specific dates, times, and contexts were notven. Additionally, a Ms. Pratt testified that Greig told her he wasoking for Chionchio, twice asked her if she had seen Chionchio, and requestedhat she notify him if she did see the carpenter. Ms. Pratt also did notecify a date on which these events occurred. Director Greig and Foremanlanson testified that they, along with the Medical Center's security chief,ad looked for Chionchio for most of the day of March 31st. Greig admittedasking Pratt to notify him if she saw the carpenter. Their search, theitnesses testified, was in response to Chionchio's unauthorized absence fromis job and was also an attempt to find him to notify him of the cancellationf a meeting on the afternoon of March 31st.

While all of this testimony establishes that the Medical Center'supervisory personnel were indeed looking for Chionchio, it does not establishsurveillance" within the meaning of Section 10(a)(1) of the Law. Anemployer searching openly for an employee who has been absent from his workplacewithout permission for more than a day in violation of specific ordersannot be said to be engaging in the observation and compilation of informationrich have been found to be characteristic of illegal surveillance. National Labor Relations Board v. Collins and Aikman Corp., 15 LRRM 826 (1944); Plymouth County House of Correction and Jail, 4 MLC 1555 (1977). Even thoughmployees may have subjective fears and suspicions in the presence of management, merely subjective impressions do not convert the legitimate exercise of



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sion into illegal surveillance. West Point Manufacturing Co., 52 LRRM 963); Peerless of America, Inc., 81 LRRM 1472 (1972).

The record in this case contains no basis for the conclusion that the Employer's disciplining of Chionchio shortly after his election to the presidency was discriminatorily motivated. There is no evidence of animosity toward either the Union or its officers. In fact, the record shows quite the reverse in that the Employer permitted paid time off for business at a time when it was not obligated to do so. As early as the Spring of 1976, it informed Chionchio and other stewards that both prior to and during the fulfillment of their work duties were mandatory for union members. The discipline of Chionchio in the Spring of 1977 was consistent with the earlier reprimand of the carpenter for the same offense. Additionally, the Employer's reasons for the discipline have never shifted, and we cannot say that those reasons are trivial or that the penalty of a three-day suspension is unduly severe. See American Shipbuilding, Co., supra, where a longer suspension for the same offense was found not to be excessive.

In fact, the only evidence in this case from which we might infer illegal discrimination is the coincidence in timing between Chionchio's election as president in April 1976 and the employer actions complained of by the Union. This case illustrates the wisdom of the principle that such coincidences of timing standing alone as in this case, insufficient to prove discriminatory discrimination. The evidence here is that Chionchio had been reprimanded and suspended in September of 1976 for absenting himself from his carpentry duties without notice to account for his time. His activities on the two days after his suspension were identical in character to the conduct his employer had previously found him objectionable. The difference appears to have been that in the Spring of 1977 he added refusals to follow the orders of his superiors and increased the amount of time in which he disappeared from his work station without prior notice or permission and failed to perform his carpenter's job.

WHEREFORE, we hold that the complaint against the Employer ought to be dismissed.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman
GARRY J. WOOTERS, Commissioner
JOAN G. DOLAN, Commissioner