

**Hospital Housekeepers of America, Inc., and Louise E. Zagacki.** Case 7-CA-14416

September 22, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS MURPHY  
AND TRUESDALE

On June 26, 1978, Administrative Law Judge Jennie M. Sarrica issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing her findings.

DECISION

STATEMENT OF THE CASE

JENNIE M. SARRICA, Administrative Law Judge: This is a proceeding under Section 10(b) of the National Labor Relations Act, as amended (29 U.S.C. §151, *et seq.*), hereinafter referred to as the Act. Based on charges filed on September 21, 1977, a complaint was issued on November 10, 1977, presenting allegations that Hospital Housekeepers of America, Inc., hereinafter referred to as the Respondent, committed unfair labor practices within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. The Respondent filed an answer denying that it committed the violations of the Act alleged. Upon due notice, the case was heard before me at Detroit, Michigan, on April 26 and May 3, 1978. Representatives of all parties entered appearances and had an opportunity to participate in the proceeding.

Based on the entire record, including my observation of the witnesses, and after due consideration of briefs, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent, a Michigan corporation with principal offices in Harper Woods, Michigan, is engaged in providing housekeeping services for medical centers and hospitals, including the operation at Holy Cross Hospital, Detroit, Michigan, the only facility involved herein. During the year preceding issuance of the complaint, a representative period, Respondent, in the course and conduct of its business operations, had gross revenues in excess of \$500,000 and purchased cleaning supplies and other goods and materials valued in excess of \$60,000, of which goods and materials valued in excess of \$50,000 were received at locations of Respondent within the State of Michigan directly from locations outside the State of Michigan.

The Respondent admits, and I find, that it is now and had been at all times material herein an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED VIOLATIONS

It is alleged in the complaint that Respondent discharged the Charging Party, Louise E. Zagacki, on August 26, 1977, because she had engaged in protected concerted activity. In its answer, Respondent asserts that Zagacki was discharged for cause, namely, violations of work standards, violations of hospital rules, patient complaints, and poor quality work, all of which were documented, and for which Zagacki had received counseling and warnings in an attempt to assist her in correcting her "misdeeds," but which persisted.

Zagacki worked for Respondent some 14 months, from June 25, 1976, until her discharge on August 26, 1977, as a housekeeper on the 7:30 a.m. to 3 p.m. shift at Holy Cross Hospital in Detroit. Under the direction and supervision of day-shift supervisors Johnnie Williams and Juliana Rietsch, Zagacki was assigned as a floater or relief housekeeper, which meant she had no permanent location assignment but received a location assignment for each day from the supervisor. Each area of the hospital requiring daily cleaning is assigned a regular housekeeper, who works 5 days a week. A group of relief housekeepers are assigned generally for 2 days in one area, for 2 more days in another area, and for their fifth day either to another area, to the administrative offices of the hospital, to the administrative offices of the Respondent, or to the Nunnery. Wherever possible, a relief housekeeper is assigned as regular relief to the same areas. Housekeepers have a supply cart for their use, which is kept in the linen closet at each location. Housekeepers receive a half-hour break for lunch and a half-hour coffee-break which all are required to take at the same time in the hospital cafeteria, where a group of housekeepers, as a matter of practice, gather at one table.

The General Counsel established by credible testimony that during August a group of 9 or 10 of the newer house-

keepers, including Zagacki, who habitually gathered at one table, complained among themselves because part-time housekeepers who worked 2 or 3 days a week were receiving more pay than they were for a 40-hour week, as were certain senior housekeepers. Additionally, they complained among themselves of what they viewed as favored treatment being accorded the housekeeper who was regularly assigned to keep the lobby clean, and of unfairness to certain individuals of their number. Specific instances talked about among themselves included the fact that one of their number, who had a hearing disability and had been assigned to the lobby location while the regular lobby housekeeper was on an extended medical absence, was being displaced upon that individual's return, whereas another of their number had lost her regular location assignment when she was absent for a much shorter period of time due to illness. At the morning coffeebreak on August 26, 1977, these particular complaints were restated and reviewed by the housekeepers, at which time Zagacki suggested that they should all get in her car and go see Mr. Bowen, president of Respondent, to have a "gripe session" with him because she was "sure Mr. Bowen did not know what was going on." That morning a part-time worker named Sophie had joined their group and was present during some of the conversation but left a few minutes before the end of the break period. As the break period was concluding Supervisor Williams came to their table and informed the housekeepers that they were to report immediately for a meeting in John T. Glass' office.

At this meeting Glass, director of housekeeping and the highest official of Respondent at the location, informed the housekeepers that he had a complaint from the Sister about several of the housekeepers going early to coffee and coming back late, and the same with respect to lunch. He also told the housekeepers that there had been a lot of hospital talk and vicious gossip around the table in the lunchroom and that this was to stop. He informed the housekeepers that they could talk about their husbands, their boyfriends, and their children, and anything else, but to keep their mouths shut about hospital matters.

At 3:30 that afternoon, Zagacki was summoned by Williams to Glass' office. Williams remained in the office while Glass told Zagacki she was discharged. The reason given to Zagacki for the discharge by Glass was poor work, repeated warnings for excessive talking, and incidents of selling items in the hospital, which was against the rules. Williams left the office, and Zagacki remained for a further conversation with Glass, during which reference was made to rumors circulating in the hospital concerning an illicit affair allegedly between Glass and the lobby housekeeper.

Respondent presented testimony and evidence relating to a number of incidents spread throughout her employment wherein Zagacki was verbally cautioned, and on two occasions reassigned, because of her excessive talking or inappropriate talking. Additionally, she was cautioned about selling greeting card and gift items on the hospital premises, which was forbidden by the rules, and about failure to complete her cleaning work because of the time spent talking with patients. However, none of these events had resulted in a reprimand, suspension, or threat of discharge.

John Glass testified that on the evening of August 25 he received a telephone call from the husband of the lobby

housekeeper. The husband stated that a neighbor informed him Zagacki was spreading rumors about an affair between Glass and his wife. The next morning, August 26, at 7:30, Glass testified, he received a phone call from Sister Reginald, the administrator of the hospital. In this call he was advised by Sister Reginald that her executive secretary had overheard housekeepers in the cafeteria talking about patient problems and other confidential information concerning Sister Reginald's vacation plans. Therefore, Glass recalled the meeting in which he informed the housekeepers that there was malicious gossip and confidential hospital information being discussed in the lunchroom; that Sister Reginald was aware of this and wanted it stopped immediately; and that henceforth they were to talk about other things or "keep their damn mouths shut," and abide by the break-time. Glass further testified that after he had discharged Zagacki he asked her whether she had said anything to a neighbor of the lobby housekeeper inferring her involvement in an affair with Glass. Zagacki told him that such a rumor was all over the hospital, and did not deny talking about it. Glass further testified that in many verbal reprimands and counseling sessions he had with Zagacki he never suspended her because he felt from the many conversations she had with him concerning her personal problems that she needed the money. However, on August 26, 1977, at some time between receipt of the call from Sister Reginald and the time he called the meeting, he reached the conclusion that Zagacki's talking problem would never change and decided to terminate her employment. Glass denied that Sophie Starzek, a housekeeper who had worked at the hospital for many years but was retired on Social Security and who worked on weekends for Respondent, ever had a conversation with him in which she passed on information about employees and that he had any conversation with Sophie Starzek on August 26. Neither the neighbor nor the husband of the lobby housekeeper nor Sister Reginald were presented as witnesses to verify Glass' testimony.

Zagacki steadfastly denied repeated verbal criticisms, warnings, and reprimands because of her talking with patients, nurses, and other housekeepers. She did not deny participating in spreading the rumor of Glass' alleged affair with the lobby housekeeper, and testified that during the morning coffeebreak of August 26, before the meeting, she had made the statement with reference to the lobby housekeeper's return to work, that "it was not who you knew or what you knew but who you laid." The General Counsel, similarly, did not call upon the neighbor or the husband or Sister Reginald to refute Glass' testimony. Nor did he present housekeeper Sophie Starzek to testify or anyone else to establish that she reported the housekeepers' conversations on this or any past occasion.

Although the variations and self-contradictions contained in Glass' testimony in other respects lend little support for crediting his recital of events immediately preceding the discharge, I am also faced with the fact that the evidence presented by the General Counsel fails to establish that Respondent was aware of the discussions among the employees during lunch and coffeebreaks concerning their working conditions. At most, the circumstances, particularly the timing of the meeting and the discharge following the employees' gripe session at coffee on August 26, might

support an inference of knowledge concerning the conversations held by employees that morning. However, I am unwilling to infer such knowledge.

The asserted phone call from Sister Reginald occurred earlier than the housekeepers' coffeebreak and could not have related the conversation engaged in that morning. Further, the particular gathering supposedly overheard by Sister Reginald's executive secretary was not identified as one in which the housekeepers also discussed their job-related dissatisfactions. Significantly, the reported conversation involved the offense of "gossip" and "inappropriate talking," something for which Zagacki was a well-known and admitted offender. This alone might justify her selection from among the group for discharge for this offense. Clearly, a complaint from the administrator of the hospital would warrant serious consideration and immediate action by the contracting company's on-premises director.

Further, if in fixing the cause for discharge Glass was attempting to conceal his real reason, the contact by the lobby housekeeper's husband the evening before would appear to be a more reasonably inferred causative factor. That this was uppermost in Glass' mind at the time is evidenced by the fact that the subject of gossip concerning the rumored illicit affair was admittedly the subject of discussion as soon as the supervisor left Glass' office at the time of discharge. Finally, although the long history of reprimands for excessive talking might ordinarily diminish the seriousness of this fault as cause for discharge, the prominence that

offense took in both of the recent telephone calls received by Glass amply supports an inference that Zagacki was finally discharged for this reason rather than for her part in the "gripe sessions" of housekeepers.

#### CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. It has not been established by a preponderance of the credible evidence that the Respondent engaged in the unlawful conduct alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>1</sup>

It is hereby ordered that the complaint herein be, and the same hereby is, dismissed in its entirety.

<sup>1</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.