

**Akron General Medical Center and Akron General
Medical Center Employees' Union. Cases 8-CA-
9170 and 8-CA-9329**

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

November 16, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND PENELLO

On June 25, 1976, Administrative Law Judge James T. Youngblood issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting 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 brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as herein modified.¹

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 as modified below and hereby orders that the Respondent, Akron General Medical Center, Akron, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order as so modified:

1. Add the following as paragraph 1(c):

"(c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

¹ The recommended Order of the Administrative Law Judge contains no general cease-and-desist provision relating to infringement of employee Sec 7 rights. Because Respondent's violations of Sec 8(a)(3) go to the very heart of the Act, we shall issue a broad order requiring Respondent to cease and desist from in any other manner infringing upon the rights guaranteed to its employees by Sec 7 of the Act *N L R B v Entwistle Mfg Co*, 120 F 2d 532 (C.A. 4, 1941)

The National Labor Relations Act, as amended, gives all employees the following rights:

- To organize themselves
- To form, join, or support unions
- To bargain as a group through a representative they choose
- To refrain from any and all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT alter or otherwise change the work schedules of any of our employees, including Penny Dangerfield, because of their having filed grievances with the Union.

WE WILL NOT discourage membership in, or activities on behalf of, Akron General Center Employees' Union, or any other labor organization, by altering the work schedules of our employees, including Penny Dangerfield, or otherwise discriminating in regard to the hire or tenure of employment or any terms or conditions of employment of our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them in Section 7 of the Act.

WE WILL make Penny Dangerfield whole for any loss of wages she has suffered by reason of the unlawful discrimination against her.

AKRON GENERAL MEDICAL CENTER

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge: On July 23, 1975, the General Counsel issued a complaint in Case 8-CA-9170, alleging that Respondent engaged in conduct violative of Section 8(a)(5), (3), and (1) of the Act, in that it engaged in various unilateral changes without bargaining with the Union, discontinued certain past practices, and terminated certain employee benefits of union officers because they were engaging in union activities or protected concerted activities. On October 16, 1975, the General Counsel issued a complaint in Case 8-CA-9329 alleging additional 8(a)(1), (3), and (5) violations and specifically alleged that the Respondent had discriminatorily altered the work schedule and refused to promote employ-

ee Penny Dangerfield to a full-time position because Respondent believed she had joined, assisted, or favored the Union or engaged in other protected concerted activities. On the same date the General Counsel issued an order consolidating the complaints for hearing. A hearing in this matter was held at Akron, Ohio, on December 15, 16, 17, and 18, 1975, and January 20 and 21, 1976.

At the hearing all parties were represented by counsel and were given an opportunity to introduce relevant evidence and to examine and cross-examine witnesses. The General Counsel and the Respondent filed post hearing briefs which have been duly considered.

On May 14, 1976, the Respondent, the General Counsel, and the Charging Party entered into a settlement stipulation disposing of all the matters involved in the consolidated complaints with the exception of the alleged discriminatory altering of Penny Dangerfield's work schedule and the failure to promote her to a full-time position. The settlement stipulation requested that this matter be resolved by the Administrative Law Judge based upon the record as a whole. The settlement stipulation has been accepted. Therefore, this Decision will deal only with the alleged discrimination against Penny Dangerfield.

Upon the entire record, including my observation of the witnesses, their demeanor, and after due consideration of the briefs filed herein, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Akron General Medical Center (herein the Respondent or Employer), is an Ohio corporation with its principal place of business located in Akron, Ohio, where it is engaged in business as a nonprofit hospital at 400 Wabash Avenue, Akron, Ohio.

Annually, in the course and conduct of its business operations, Respondent derives gross annual revenues in excess of \$250,000 from the operation of its hospital and annually receives supplies valued in excess of \$50,000 transported to its facilities in interstate commerce directly from States outside the State of Ohio.

Respondent admits, and I find, that it is now and has since the effective date of the health care amendments to the Act been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is found as admitted that the Akron General Medical Center Employees' Union (herein Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent and the Union have had a collective-bargaining relationship since 1968 and during that period have entered into collective-bargaining agreements, the most recent of which was executed on May 16, 1973, with an expiration date of April 1, 1976.

Article 2, sections 1 and 2, of that agreement define the

bargaining unit and exclude from the unit "part-time employees working 20 hours or less per week and temporary employees." Appendix I of the contract defines the various job classifications which are material to this proceeding, as follows:

Regular Full-time—A permanent employee working 40 hours a week and eligible for all employee benefits.

Regular Semi-full time—A permanent employee working in excess of 20 hours a week and less than 40 and eligible for some employee benefits.

Regular Part-time—A permanent employee working 20 hours or less each week and is not eligible for employee benefits.

Temporary Full-time—An employee who is employed to work 40 hours a week for a definite, short, and temporary period of time, and is not eligible for any employee benefits.

Temporary Semi-full time—An employee working in excess of 20 hours a week and less than 40 for a definite, short, and temporary period of time, and is not eligible for any employee benefits.

Temporary Part-time—An employee who is employed to work 20 hours or less each week for a definite, short, and temporary period of time, and is not eligible for any employee benefits.

On-Call—A person carried on the payroll who may be called upon in cases of emergency or during periods of excessive absenteeism.

The contract is silent as to whether an oncall person is included within the bargaining unit, however, it appears that the practice between the parties has been that they are not covered by the collective-bargaining agreement. While the contract states that temporary and part-time employees work specified hours there is no such specification with regard to a person oncall.¹

Penny Dangerfield began her employment with the Respondent in October 1973 in the food service department. At that time she was hired as a part-time worker supposedly working 20 hours or less a week. She testified, however, that beginning in January 1974 and continuing through the latter part of September 1974 she worked a little more than 20 hours a week. In late September 1974 she became ill and notified the Respondent that she was not able to work. Mrs. Driever, her supervisor, informed her that she would be placed on call until she was able to return to work. Dangerfield returned to work in the latter part of October 1974. On returning to work she was placed in oncall status and for several weeks was called by her supervisor to work as she was needed. After this first 2-week period she worked according to a posted schedule

¹ Art 7, sec 6, of the agreement contains what appears to be a work preservation clause for unit employees, it provides as follows

Employees who are scheduled, by job classification, less than 80 hours per pay period shall not work in excess of three quarters of their bi-weekly hours compliment which cannot exceed 48 hours in any three month period (e.g., an employee who was hired to work three days a week or six days in a pay period cannot work more than 36 hours in excess of their allotted time in any three month period) The contract does not provide a penalty for breach of this provision

which gave the date and hours she was to work. She testified that she continued working on a schedule until a couple of months before the hearing. Since that time she has been oncall and worked only when she was called. Dangerfield testified that around the first of the year in 1975 she requested Mrs. Driever to put her back on part time and was informed that at that time there was a freeze on jobs. After being placed on a regular work schedule Dangerfield's hours picked up and she worked in excess of 20 hours a week. This continued through mid-April 1975.² The record adequately reflects that many oncall and part-time employees were worked in excess of 20 hours per week during the period January 1975 through mid-April 1975. On March 18, 1975, the Union filed on behalf of some eight employees a grievance claiming that these part-time and oncall employees were incorrectly classified according to the amount of hours worked; that this precluded them from becoming semifull- or full-time employees within the bargaining unit. The Union also claimed this practice to be a violation of article 7, section 6, *supra*. The Union requested, among other things, that each employee named in the grievance be reclassified bringing their status to either full time or semifull according to the amount of hours worked. The Union also requested retroactive seniority, plus all other benefits these employees had been denied by their exclusion from the bargaining unit.

On March 25, 1975, Loretta Rogers, the union president, posted a notice on the hospital bulletin board informing part-time and oncall employees who were not in the bargaining unit to visit the union office. The notice advised these employees that if they were working over the number of hours in the contract, three-quarters of their biweekly complement, they could receive benefits such as those received by the employees within the bargaining unit. Penny Dangerfield saw this notice and visited the union office. After a discussion with Loretta Rogers and after reviewing her paycheck stubs, they concluded that she had been working in excess of 20 hours a week and should be reclassified.

On April 9, 1975, Penny Dangerfield filed a grievance. This grievance stated that she had worked over the amount of hours for part-time employees and had not been allowed to join the Union and had not been given credit for any of the benefits of a semifull-time employee. She requested retroactive seniority as a semifull-time employee and that she be made a union member and receive all benefits such as retroactive hospitalization coverage, paid vacation, wage increases, etc.

The hospital responded to this grievance on April 11, 1975, stating that Penny Dangerfield was an oncall employee not represented by the Union and, as the contract did not specify the hours for an on-call employee, this would not be a timely grievance. On April 16, 1975, Dangerfield filed an additional grievance. This grievance speci-

fied that after she had filed the first grievance Mrs. Baker, the department head, had changed her work schedule cutting down the amount of hours and was only letting her work less than 20 hours a week. She requested that she be paid for all of the hours that she had lost. Numerous other grievances were filled by part-time and oncall employees requesting that their status be changed.

On April 19, 1975, Mrs. Driever, the administrator or head dietician of the food service department, called all of the employees who were working at that time to a meeting. At this meeting, she advised all the employees present that as a result of the numerous grievances that had been filed by the Union that the hospital administration had informed her that she must cut back the hours, and in the future the part-time and oncall employees would be working less than 20 hours a week. Mrs. Driever explained that she had tried to be a nice guy in giving the extra hours because they needed the work but now she could no longer do this because of the pressures from the administration brought on by the numerous grievances filed. Thereafter, Penny Dangerfield and many of the other employees were put on a schedule working less than 20 hours a week.

In June 1975 Dangerfield filled out a bid sheet requesting that she be given a full-time position. However, she was not promoted to full time. As a result of this on June 16, 1975, she filed an additional grievance. At the time of the hearing, Dangerfield's status had not been changed. She continued to be an oncall employee working from a regular schedule up until a couple of months before the hearing.

Discussion and Conclusions

As indicated previously the remaining issues to be resolved in this proceeding are the discriminatory alteration of Penny Dangerfield's work schedule and the refusal to promote her to a full-time position. The General Counsel contends that the alteration of the work schedule was for discriminatory reasons and that the refusal to promote her to a full-time position was likewise discriminatory in violation of Section 8(a)(3) and (1).

The Respondent contends that because Dangerfield was an "on-call" person and thereby excluded from the bargaining unit she had no contractual right to file a grievance; that the alteration of her work schedule cannot be unlawful discrimination because it was complying with the demands of the Union; and the refusal to promote Dangerfield had nothing to do with her union activities but was strictly for poor attendance.

Dangerfield's status in the bargaining unit may not be as clear as Respondent contends. It is quite possible that by increasing her hours to that enjoyed by bargaining unit employees Respondent may have unwittingly placed her in the bargaining unit. Moreover, even if she were excluded from the unit this would not, in my view, preclude her from filing a grievance, particularly where the grievance raises her status in the unit. As this issue is not, in my view, determinative of the issues involved herein I will make no further comments in this regard.

Dangerfield was classified as an oncall person and under the contract it is true that there are no set hours for an oncall employee. However, during the period of January

² G C Exhs 3(a) and 8 were two documents setting forth the actual hours worked by Dangerfield during the critical period involved herein, namely from January 1975 to May 1975, however, at the time of this writing these exhibits were not contained in the exhibit file and apparently are lost. As the Respondent admittedly worked Dangerfield in excess of 20 hours a week, these documents are not essential to this Decision.

1975 through mid-April 1975, Dangerfield worked in excess of 20 hours a week. And her schedule was altered for the sole reason that the Union and Dangerfield filed grievances requesting that she and other employees be promoted to full-time positions and placed in the bargaining unit.

Her work schedule was altered to her detriment simply because she and other employees filed grievances through the Union. The testimony of both Mrs. Baker and Mrs. Driever shows that this was the only reason the schedules were altered.

The argument that this was done because the Union demanded it in the grievance is misplaced. While the Union could have complained that this increase in working hours of nonbargaining unit employees was depriving bargaining unit employees of overtime, it did not do so. On the contrary, it sought to protect the nonbargaining unit employees. It did not demand that the Respondent alter or decrease the hours of nonbargaining unit employees; it wanted these employees placed in the unit and given the protection of the union contract. Thus, the Union was telling the Respondent that as it saw fit to work nonbargaining unit employees the same as bargaining unit employees then it should place them in the unit and give them the same protection as unit employees. There was no demand to alter the working hours of nonunit employees.

Respondent had been enjoying the fruits of its contract violations by working nonunit people rather than paying overtime to its unit employees. Naturally it would attempt to rectify the situation by not breaching its agreement with the Union any longer. Thus, it altered the work schedule to obtain this result. But this did not satisfy the nonunit employees or the Union, as they sought bargaining unit status for the part-time and oncall employees involved. In fact most of the grievances were resolved in this manner. Whether this was a proper result, I do not decide. It is sufficient for the purposes of this Decision that the Respondent admittedly altered the work schedule of its employees, including Penny Dangerfield, to their detriment because of the grievances filed by these employees and the Union.

Having increased the working hours of its nonunit employees, Respondent could not alter these hours to the detriment of these employees because of their filing grievances. The filing of a grievance is a protected right. And where the grievance is filed pursuant to a contractual right protesting a breach of contract, and for the purpose of determining the bargaining status of a union with respect to certain employees, it is certainly protected by Section 7 of the Act. It therefore follows that if an employee is disciplined or placed in a disadvantaged position because of the filing of such a grievance it certainly tends to interfere with, restrain, and coerce employees in violation of Section 8(a)(1) and discourages union activity in violation of Section 8(a)(3).³

Accordingly, as the Respondent admittedly altered the work schedules of its employees, including Penny Dangerfield, to their disadvantage, because they filed grievances through the Union, I find and conclude that it has engaged

in conduct violative of Section 8(a)(1) and (3) of the Act. Additionally, I find that the failure to place Dangerfield back on the schedule that she was working at the time of the alteration of the schedule was likewise violative of Section 8(a)(1) and (3) of the Act, and that such discrimination shall continue until rectified.

The testimony of the Respondent's officials, Mrs. Baker and Mrs. Driever, indicates that the reason they would not give Dangerfield a full-time position was because of her poor attendance. The record reflects that Dangerfield did have a poor attendance record and that she had received several verbal warnings and one written warning for this and other violations of company rules. It was suggested by Mrs. Baker, and admitted by Dangerfield, that she apply for full-time status in some other department where absenteeism would not be so critical. It is contended by the General Counsel that the refusal to give Dangerfield a full-time position was because of her filing the grievances and because of her joining the Union on April 21, 1975. The record does not reflect that Dangerfield was a firm union adherent or that the Respondent had any knowledge of her union activities, other than filing the grievances, or the fact that she got other people to sign union cards. Dangerfield herself testified that she did not think the hospital was aware of her union activities.

In view of my other findings and conclusions, I deem it unnecessary to decide whether or not the refusal to grant Dangerfield a full-time position was also discriminatory as alleged in the complaint. The remedy which I shall recommend will adequately compensate Dangerfield and correct any discrimination committed against her.⁴

CONCLUSIONS OF LAW

1. Akron General Medical Center is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Akron General Medical Center Employees' Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By altering the work schedule of Penny Dangerfield and other employees of Respondent because of their filing grievances through the labor organization involved herein, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. By failing to reinstate the work schedule as existed in the latter part of April 1974 and enjoyed by Penny Dangerfield and other employees because they filed grievances through the labor organization involved, Respondent is continuing to violate Section 8(a)(3) and (1) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I find it necessary to order Respondent to cease and desist therefrom and take certain affirmative action de-

³ See *Mrs. Baird's Bakeries, Inc.*, 189 NLRB 606 (1971), and cases cited therein.

⁴ As a semfull-time employee, Dangerfield may not have worked any more hours because as a semfull-time employee she would work in excess of 20 hours per week but something less than 40.

signed to effectuate the policies of the Act. As I have found that Respondent engaged in the discrimination against Penny Dangerfield by altering her work schedule because of the filing of grievances thereby decreasing her wage earnings, I shall order Respondent to make her whole for any loss of pay she suffered from April 19, 1975, to May 14, 1976,⁵ with interest at 6 percent per annum in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this case, I hereby issue the following recommended:

ORDER ⁶

Respondent, Akron General Medical Center, Akron, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Altering or otherwise changing the work schedules of its employees, including Penny Dangerfield, because of their having filed grievances with the Union.

(b) Discouraging membership in, or activities on behalf of, Akron General Center Employees' Union, or any other

labor organization, by altering the work schedules of its employees, including Penny Dangerfield, or otherwise discriminating in regard to the hire or tenure of employment or any terms or conditions of employment of its employees.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Act.

(a) Make Penny Dangerfield whole for any loss of wages she has suffered by reason of the discrimination practiced against her in the manner provided in the section herein entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant and necessary to determine the amounts of money due under the terms of this recommended Order.

(c) Post at its Akron, Ohio, place of business, copies of the attached notice marked "Appendix."⁷ Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by the Respondent's representatives shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁷ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

⁵ April 19, 1975, is used because this is the date Mrs. Driever testified that she advised the employees their schedules would be altered. As part of the settlement agreement between the parties herein, Dangerfield was promoted to a full-time position on May 14, 1976, the date the settlement stipulation was signed.

⁶ 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.