LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

DAVE LEROY DAVIS, Complainant, vs. BILL HARRISON, General Manager of the Centennial Coliseum; JAMES D. VERNON, GERRY GROW, ROY PAGNI, ERNIE YORK, and ROY BANKOFIER, members of the WASHOE COUNTY FAIR AND RECREATION BOARD, Respondents.	CASE No. A1-00234

DECISION

On April 21, 1973, Dave LeRoy Davis, filed a complaint for reinstatement alleging that respondent Harrison, contrary to the provisions of NRS 288.270(1)(d)[1], unlawfully discharged him from his employment because he, Davis, had signed a petition for recognition of an employee organization. The petition was subsequently presented to the respondent Fair and Recreation Board, a local government employer.

The respondents answered asserting that the discharge of complainant was a result of continued insubordination, failure to properly perform his work, inability to work harmoniously with fellow employees, and disruption of the work force.

A hearing was held on the complaint on September 12, 1973, and the matter was submitted after the filing of post-hearing statements.

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1. NRS 288.270(1)(d) provides in pertinent part: "It is a prohibited practice for a local government employer or its designated representative willfully to:...(d) Discharge or otherwise discriminate against any employee...because he has formed, joined or chosen to be represented by any employee organization."

Although there is a substantial conflict in the testimony, the following facts may be discerned.

The organizational activities at the Coliseum began in early 1973. In February of that year Davis signed a union pledge card and on March 21, 1973, he signed a union membership list. The list was not mailed to the Fair and Recreation Board until April 9 and received in their offices on April 10, 1973. Davis' employment was terminated prior thereto on March 29, 1973.

There is no testimony to indicate that either Davis personally or any other employee of the Coliseum advised Harrison that Davis had signed the pledge card or membership list until the actual receipt of the membership list by the Fair and Recreation Board on April 10. Further, the testimony discloses that Davis was not a prime mover in the unionization activities; other individuals active in the movement had not been terminated or otherwise discriminated against in their employment.

The testimony also discloses that on March 21, 1973, respondent Harrison, at a round table meeting of Centennial Coliseum employees, suggested that they might consider joining the county employees association.

Respondents, at the hearing on this matter, set forth numerous reasons for the discharge of complainant. Among these was Davis' failure to wait until receipt of safety instructions before operating a forklift which resulted in injuries to a fellow employee, Davis' failure to instruct the personnel at the Coliseum on the installation of a public address system when specifically directed to do so, his failure to properly administer the system of days off, his continuing to park his automobile inside the Coliseum facility when directed not to do so, and his failure to maintain a good working relationship with other employees.

Even considering the evidence in the light most favorable to complainant, we find that he has failed to sustain his burden of proving that his discharge was the result of his union activities.

In this Board's first decision, Laborers' International Union of North America, Local Union No. 169-For Reginald D.J. Becker vs. Washoe Medical Center, designated Item #1 rendered in 1970, we stated at page 8: "When full credit is given to all the evidence presented by the Plaintiff it amounts to the proposition that Becker engaged in Union activity and was later discharged. This at best leads only to a "suspicion" that Mr. Becker may have been discharged because of his Union activity. 'Suspicion' alone is not enough to conclusively establish that Union activity was the sole reason, or the real reason, for discharge." Cited with approval was Petition of Union Trust Co., of Pittsburgh, 20 A.2d 779 (Pa. 1941).

As noted in the Laborers' International Union decision, supra, an employer, pursuant to NRS 288.150(2), is entitled to discharge an employee for any reason or for no reason at all so long as the discharge is not within the anti-union prohibitions of NRS 288.270(1).

"Even in a case where the employee has extensively engaged in union activity to the displeasure of the employer and is discharged, the employee has no right to be reinstated if the employer can show the discharge was for any other reason than union membership or activity." Id at 12.

The testimony in the instant case fails to disclose that complainant "intensively engaged" in union activity or even that his employer was aware of any union activity on the part of complainant.

This finding forecloses the necessity of this Board

determining whether or not complainant was a "supervisory" employee and not entitled to belong to any bargaining unit established among the employees at the Centennial Coliseum.

FINDINGS OF FACT

1. That complainant, Dave LeRoy Davis, was an employee of the Washoe County Fair and Recreation Board employed at the Centennial Coliseum in Reno, Nevada.

2. That during the months of February and March of 1973, Dave LeRoy Davis signed a union pledge card and union membership list expressing his desire to belong to an employee organization at the Centennial Coliseum when it was established.

3. That on March 29, 1973, Dave LeRoy Davis' employment at the Centennial Coliseum was terminated by Bill Harrison, General Manager of the Coliseum.

4. That the union membership list was not mailed to the Washoe County Fair and Recreation Board until April 9, 1973, and not received in their office until April 10, 1973.

5. That at the time of the termination of Davis' employment none of the respondents were aware that Davis had signed the union pledge card or the union membership list.

6. That Davis was discharged from his employment for reasons other than union activity.

CONCLUSIONS OF LAW

1. That the Washoe County Fair and Recreation Board is a a local government employer within the provisions of Chapter 288 of the Nevada Revised Statutes.

2. That complainant Dave LeRoy Davis has failed to carry his burden of proving that the termination of his employment was based upon union activity.

3. That the discharge of complainant was not in violation of NRS 288.270(1) (d).

4. That respondents established by substantial evidence that complainant was discharged for reasons other than his union activity.

The complaint for reinstatement is denied.

Dated this 12th day of July, 1974.

Dennis Pletzke, Chairman

Harriet Trudell, Vice Chairman