

ITEM #1

BEFORE THE LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD OF THE STATE OF NEVADA

-o-

Case No. 1

*Issued  
above  
Mar 15  
1970*

LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA, LOCAL UNION  
NO. 169 - FOR REGINALD D. J.  
BECKER

Plaintiff

vs.

WASHOE MEDICAL CENTER  
Defendant

-o-

DECISION OF THE BOARD

A public hearing was held before the Board at the Washoe County Court House in Reno, Nevada, on Saturday, 31 January and Sunday, 1 February 1970. The Plaintiff was represented by JOSEPH GRODIN, ESQ. of the firm of Brundage, Neyhart, Grodin and Beeson, 100 Bush Street, San Francisco, California, 94104. The Defendant was represented by WILLIAM L. HADLEY, ESQ., Deputy Washoe County District Attorney. Several witnesses were called by each side and numerous exhibits were introduced in evidence. There was considerable conflict in the testimony of various witnesses making it somewhat difficult to determine where the truth lies regarding various issues. In this opinion, no attempt will be made to discuss and analyze the testimony of each witness even though the Board members have carefully considered the testimony given by each one.

FACTS:

From all the evidence presented the Board finds the following facts which are considered to be essential to a decision:

1. The Defendant, WASHOE MEDICAL CENTER, is a government

1 employer as a County Hospital of Washoe County, Nevada.

2 2. On 8 August 1968 REGINALD D. J. BECKER was first  
3 employed by WASHOE MEDICAL CENTER as an electrician.

4 3. MR. ROY SAMPSON, Personnel Director of Washoe Medical  
5 Center testified that when Mr. Becker first applied for a job  
6 at the hospital he had a brace on one leg and had been unemployed  
7 for two and a half years. At that time there was no opening for  
8 an electrician. Mr. McLeod (position not stated) said - "We can  
9 use him as a mechanic and pay him electrician's wages." Mr.  
10 Becker was first hired on that basis. Soon after he was hired  
11 he went to Sampson and complained about the tools. Sampson  
12 consulted Becker's supervisor and was informed no additional  
13 tools were needed. Sometime later Becker went to Sampson again  
14 and complained about the wages he was receiving. He said he  
15 was rated as only step 4 and thought he should be jumped up  
16 to step 8. Sampson explained the hospital policy is one step  
17 a year if the employee deserves it. Sampson consulted Becker's  
18 immediate supervisor, Mr. Dixon, and was informed Becker did  
19 not deserve any higher wage at that time. Becker was told he  
20 should first consult his supervisor on all such matters and not  
21 go over his head. On cross-examination it appears that this  
22 event took place when Becker had been at the hospital about  
23 one year.

24 4. One of the hospital rules provided no "soliciting"  
25 was allowed on the hospital premises during working hours. The  
26 rule was directed primarily against outside commercial salesmen  
27 selling to employees, or to patients, and against employees  
28 "soliciting" other employees regarding matters of no benefit  
29 to the hospital. Management did not prohibit display, or sale,  
30 of medical books, or medical equipment, at a stall set up on  
the premises, or solicitation of money donations for United Fund  
or other such charities.

The "no solicitation rule" was set out in the "Employee's  
Handbook" and was posted on the hospital bulletin board about  
every six months after sometime in 1964.

5. REGINALD BECKER is a pleasant, sociable type of person  
who enjoys talking with other people. He testified at the  
Hearing before the Board - "I work with my hands and can talk  
at the same time."

6. Prior to his employment at Washoe Medical Center, Mr.  
Becker had always worked in the construction trade and had never  
before been employed where most of his work was electrical repair  
and maintenance. Several witnesses testified he preferred to  
work on new installation, concerning which the quality of his  
work was very good. He did not like repair work or "preventative  
maintenance", such as cleaning panels or transformers, and in  
this field he frequently did not finish a job he had started  
or failed to do a job his supervisor directed him to do. From

1 all the testimony it appears that Mr. Becker is more of a  
2 "leader" than a "follower". If given the opportunity, he may  
3 have worked out well as a supervisor in position to give orders  
4 rather than a workman required to take orders, and remain in  
5 "chain of command". At Washoe Medical Center his temperament and  
6 character did not fit in well where he was required to follow  
7 rules and submit to supervision.

8 7. In February 1969 Mr. Becker went over the head of his  
9 immediate supervisor, Mr. Dixon, to the Assistant Administrator  
10 William Rundio and suggested additional lights were needed at  
11 nurses' stations. Upon investigation, Rundio decided no addi-  
12 tional lights were needed where Becker contended they should be  
13 installed. Rundio advised Becker he should always follow the  
14 chain of command and take such matters up with his immediate  
15 supervisor, Mr. Dixon.

16 8. On 4 March 1969 Mr. Rundio, Assistant Administrator  
17 consulted Dixon regarding Becker's work and then called in Mr.  
18 Becker. At that time, Becker was told he had not been doing  
19 the work directed by his supervisor Mr. Dixon, but had been  
20 performing other work on his own without first consulting his  
21 supervisor as the rules provided he should do, and as he had  
22 been instructed to do. Becker was apologetic and promised he  
23 would follow the rules in the future.

24 9. In April or May 1969 early one morning, Miss Ruth  
25 Hoffman, the Supervisor of the Surgical Ward, found Mr. Becker  
26 drilling a hole into a wall where there are some gas pipes.  
27 She testified there had been no request for any electrical work  
28 and Becker had taken it upon himself to come in and do some work.  
29 He had crossed the line into an area where no one is allowed  
30 without first being sterilized. He had taken no precaution.  
31 Mr. Becker testified that on this occasion he had been told to  
32 replace a burned out ballast and repair a broken switch on the  
33 wall. Miss Hoffman and Becker had an argument. Miss Hoffman  
34 went to Mr. Dixon, Becker's Supervisor. Then Dixon and Miss  
35 Hoffman went to see Mr. Forrester, the Director of Plant Services.  
36 Miss Hoffman stated that in the future she would not allow Mr.  
37 Becker to come into her department unless Mr. Forrester came  
38 with him.

39 10. MR. LEONARD HAGAN, Superintendent of the Laundry and  
40 Linen Department testified as to the quality of Mr. Becker's  
41 work in his department. He said that on one occasion (no date  
42 was established) a "conditioning tumbler" was out of order.  
43 Dixon sent Becker to repair it. Becker said a new complete  
44 starter unit was needed. The new unit was ordered. When it  
45 came it was not the correct one. Then it was discovered that  
46 the new unit was not needed at all. The only thing needed to  
47 put the old unit in perfect running condition was new contact  
48 points. He said that later sometime in August or September,  
49 Becker repaired a switch in the laundry. It never did work  
50 after that until someone else discovered only a minor adjustment  
51 was needed.

1 11. MR. JOHN G. BOYD - a salesman for Consolidated Electric  
2 Company who sells light globes, light fixtures and other such  
3 electrical merchandise to Washoe Medical Center testified he met  
4 Reginald Becker 9 or 10 months before this Hearing (that would  
5 be in April or May 1969), at which time Becker found fault with  
6 the ballasts and switches and told Boyd there would be changes  
7 made. Boyd testified Becker said to him - "Heads will be rolling  
8 before long."

9 12. About May or June 1969, according to Mrs. Margaret  
10 Clifford, Superintendent of Central Supply Department, soon  
11 after Mr. Forrester was hired as Director of Plant Services  
12 (5 May 1969) Mr. Becker came into her department and during a  
13 conversation with her complained about the way Forrester was  
14 doing things. She testified Becker said to her - "We are planning  
15 something. We'll get Forrester."

16 13. In June 1969 Laborers' International Union of North  
17 America, Local Union No. 169 began efforts to unionize the  
18 employees in the Maintenance Department of Washoe Medical Center.  
19 Mr. Becker took an active part in the unionization effort. He  
20 helped prepare and distribute leaflets and membership cards.  
21 He talked with other employees and urged them to join the Union.  
22 Mr. Becker testified he did this at all hours on the premises  
23 before July 1969 at which time there was put on the bulletin  
24 board and distributed to employees, a document referred to as  
25 "The Blue Notice" (Def. Exhibit E) which again stated the rule  
26 against solicitation. Becker testified that after receiving  
27 that notice he solicited union membership on the premises only  
28 before or after working hours, or during the noon lunch period.  
29 Becker testified he arranged meetings of employees from various  
30 departments of the hospital at the Labor Union's office in Reno  
and took a very active part in the union's effort to unionize  
all of the departments of Washoe Medical Center. He contends  
that was the sole reason for his discharge. Three other employees  
were very active in the unionization effort, none of whom have  
been discharged.

31 14. Sometime in June 1969, Mr. Dixon took Mr. Becker with  
32 him to see Mr. Forrester and discuss the quality of Becker's  
33 work. At that time Becker was told that the quality of his work  
34 was excellent, but the quantity of work he was getting done was  
35 below standard. He was performing unnecessary work on his own  
36 without consulting his supervisor and was not keeping his super-  
37 visor informed where he was, or what he was doing. He was told  
38 he must try to get along better with people in other departments,  
39 as there had been complaints about his attitude and conduct.

40 15. In August 1969 again Mr. Dixon took Mr. Becker to Mr.  
Forrester's office to discuss unsatisfactory performance. Mr.  
Forrester testified he had prepared a written warning in the  
nature of a reprimand. The sum and substance of the complaint  
was that Becker was not performing a sufficient quantity of work,  
was doing too much on his own without supervision and did not



1 recognize Dixon as his supervisor. He apparently resented any  
2 control over him. Becker admitted he had not reported to Dixon  
3 as he should. He was apologetic and promised to do better. He  
4 asked Forrester to not put the written reprimand in his official  
5 personnel file. Forrester changed it to a verbal reprimand and  
6 did not place the paper in Becker's personnel file. On cross-  
7 examination (when later recalled) Forrester contradicted himself  
8 saying he prepared the written document for his own file and not  
9 to be placed in Becker's personnel file. It is undisputed there  
10 was such a conference at which Becker's work was criticized.  
11 Becker contends, however, that this and other such criticism of  
12 his work was because of his union activity and constituted  
13 "discrimination".

14  
15 16. On 15 September 1969 Mr. Becker was delivered his  
16 annual Job Evaluation Report prepared by his supervisor Mr. Dixon.  
17 It is in evidence as "Defendant's Exhibit I". It stated the  
18 following:

19 Above Average	3	Quality of work Neatness of work Acceptance of Responsibility
20 Average	5	Emotional stability Attendance Health Personality Initiative
21 Below Average	9	Quantity of work Organization of work Compliance with instructions Performance in emergency Reaction to criticism Improvement endeavor Adherence to policy Relation with company workers Communications

22 Mr. Becker was the only employee of the Maintenance Depart-  
23 ment who received a below average mark on any subject. There  
24 were 16 other employees in the Maintenance Department (all members  
25 of the Union) who were rated. Their reports are in evidence as  
26 "Defendant's Exhibit G".

27 Mr. Becker refused to sign his report contending he had not  
28 been fairly rated. Mr. Dixon testified he told Becker if he  
29 would sign it he, Dixon, would try to get him his next annual,  
30 regular raise. Dixon testified he had typed on the bottom of  
the form under comments the words:

"Mr. Becker is trying very hard to cooperate  
with us. He has shown great improvement in  
most areas and I believe that this will continue.  
Therefore, I recommend his increase to the next  
step".

Mr. Dixon testified he liked Becker and his purpose in doing

1 this was to give Becker an incentive to try harder to cure the  
2 defects in his performance. Becker did receive his raise to  
the next step in line.

3  
4 17. Sometime in October 1969 just before an election was  
5 held, a meeting of employees was called by Mr. CARROLL W. OGREN,  
6 Chief Administrator of the hospital. He pointed out what the  
7 hospital had done for its employees and tried to discourage the  
8 unionization. One witness, however, Mr. ARTHUR C. SHEA, an  
employee called by the Union, testified Mr. Ogren made no promise  
if they voted against the Union and did not threaten anything  
if the employees voted for the Union. According to Mr. Shea,  
Mr. Ogren said: "But if you do vote the Union in, it may be for  
the best."

9  
10 18. On 29-October 1969 under the supervision of this Board  
11 an election was held for the employees of the Maintenance Depart-  
12 ment to determine whether or not they desired to be represented  
13 for purposes of collective bargaining by Laborers' International  
14 Union of North America Local Union No. 169". Twenty-four employ-  
ees were eligible to vote. Twenty-two cast ballots - 20 Yes,  
2 No. This Board then certified that Union as the bargaining  
agent for the employees of the Maintenance Department of Washoe  
Medical Center.

15 19. Immediately after the election on 29 October 1969 the  
16 Union became very active in an effort to unionize all the other  
17 departments of Washoe Medical Center. Union literature and  
membership cards were circulated in all departments. Mr. Becker  
was very active in this effort.

18  
19 20. Soon after the concentrated effort to unionize all  
20 departments of the hospital started, Mr. Roy Sampson, Personnel  
21 Director of Washoe Medical Center prepared and circulated among  
22 all employees a three page circular entitled "Think About It",  
23 in opposition to unionization. It consisted of a series of  
questions and answers such as "Do I have to belong to a Union  
to work at Washoe Medical Center", or "Why are Unions making an  
effort to organize Washoe Medical Center"? (See Pl. Exhibit 2  
for details).

24 21. MRS. MARGARET CLIFFORD, Superintendent of Central  
25 Supply testified that on many occasions when there was no electrical  
26 work to be done in her department, Mr. Becker would come in and  
27 visit with her and other employees. She also testified that on  
28 14 November 1969, during working hours, Mr. Becker came in with  
29 the three page folder, entitled "Think About It" prepared by Mr.  
30 Sampson (Item 20 above), in his hand and engaged in conversation  
with her, and two other employees, for thirty minutes or more  
regarding the Union. During that conversation he said, referring  
to the folder: "This is the best thing that could ever happen  
for the Union. Sampson is full of lies. Everytime I ever talk  
with him he is all lies." She testified she reported this to  
her immediate supervisor, Mrs. Maida Pringle, and discussed it

1 with Mr. Rundio, Assistant Administrator. Evidently Mrs. Pringle  
2 reported it to Mr. Forrester, Director of Plant Services as he  
3 testified that on the day he notified Becker of his termination  
4 he confronted Becker with mention of the event. Becker denied it,  
5 but he, Forrester, preferred to believe Mrs. Pringle. As far as  
6 Mr. Forrester was concerned this was hearsay, but it was not hear-  
7 say evidence at the Hearing before this Board because Mrs. Clifford  
8 testified under oath that she was present and heard Mr. Becker  
9 make the statements about Sampson and had earlier heard him make  
10 a threat against Forrester.

11 22. On 20 November 1969 Mr. Forrester called Mr. Dixon,  
12 Becker's immediate supervisor, to his office and discussed Becker's  
13 work, his attitude and his remarks to Mrs. Clifford six days  
14 before that. Then Forrester told Dixon to go get Becker. Mr.  
15 Becker was brought to Mr. Forrester's office and there notified  
16 that his employment was terminated as of that day.

17 23. In his testimony at the Hearing Mr. Becker contended  
18 the "below average" marks on his "Job Evaluation Report" and all  
19 the complaints about his attitude and work performance were  
20 harassment constituting discrimination against him because of his  
21 union activity.

22 24. At the Hearing before this Board - on Saturday, 31  
23 January 1970, Mr. Becker testified that at the time of his  
24 discharge from Washoe Medical Center his salary was One Hundred  
25 Sixty Dollars (\$160.00) a week. The day after his discharge, on  
26 21 November 1969, he went to work in a position he still held and  
27 his salary was Three Hundred Sixty-Five Dollars (\$365.00) a week.

#### 28 THE ISSUE

29 The sole issue in this case is whether or not Reginald Becker  
30 was discharged from Washoe Medical Center in violation of the  
Local Government Employee-Management Relations Act, Section 9(1),  
a portion of which reads as follows:

"A local government employer shall not discriminate  
in any way among its employees on account of member-  
ship or non-membership in an employee organization."

The Plaintiff - the Union acting for Mr. Becker - contends  
that in being discharged, "Becker was discriminated against  
because of his membership in, and activities on behalf of, the  
Union". (Pl. Brief page 6).

The Union has the burden of proof to establish the truth  
of that contention.

1 The Defendant, Washoe Medical Center, denies there was any  
2 discrimination against Becker for his Union activities, and  
3 contends he was discharged for other reasons. This is an affirma-  
4 tive defense on which the Defendant has the burden of proof.

5 THE EVIDENCE

6 The nature of this controversy is such that each side must  
7 rely mainly upon the testimony of interested persons and some  
8 conclusions must rest upon conjecture or inference. All testimony,  
9 however, was taken under oath and this Board is duty bound to  
10 give credence to such testimony even when presented by interested  
11 persons.

12 The testimony presented by the Plaintiff's witnesses must  
13 be accepted as true in establishing the fact there was extensive  
14 Union activity at Washoe Medical Center and Mr. Becker was very  
15 active in that effort, which was known to the management of the  
16 hospital. This is not denied by the Defendant.

17 The real reason for the discharge of an employee is sometimes  
18 difficult to determine. Direct evidence is not always available.  
19 Therefore, this Board in some cases may be justified in drawing  
20 inferences and reaching conclusions from purely circumstantial  
21 evidence, or the sequence of events.

22 NAT. LABOR RELATIONS BOARD vs PUTNAM TOOL CO.  
23 U.S. 6th Cir (1961) 290 Fed 2d 663

24 NAT. LABOR RELATIONS BOARD vs ENGLISH MICA CO.  
25 U.S. 4th Cir (1952) 195 Fed 2d 986

26 EASTERN COAL CORP. vs NAT. LABOR RELATIONS BOARD  
27 U.S. 4th Cir (1949) 176 Fed 2d 131

28 In this case at bar, however, the evidence presented by the  
29 Union establishes only a possibility that Mr. Becker may have been  
30 discharged because of his extensive Union activity.

1 Mr. Becker testified that he could not remember any criticism  
2 of him or his work until after he began his Union efforts. It is  
3 well established that the Union first began its effort to unionize  
4 the Maintenance Department sometime in June 1970. Witnesses for  
5 the hospital testified to specific troubles with Mr. Becker which  
6 occurred prior to that time as related in the Statement of "Facts"  
7 above.

8 When full credit is given to all the evidence presented by  
9 the Plaintiff it amounts to the proposition that Becker engaged  
10 in Union activity and was later discharged. This at best leads  
11 only to a "suspicion" that Mr. Becker may have been discharged  
12 because of his Union activity.

13 "Suspicion" alone is not enough to conclusively establish  
14 that Union activity was the sole reason, or the real reason, for  
15 discharge. It was so held in the case of:

16 PETITION OF UNION TRUST CO. OF PITTSBURGH  
17 Sup. Ct. of Pa (1941) 20 Atl 2d 779

18 The facts in that case were that an employee named Nichols  
19 was a member of the AF of L. He circulated membership applications  
20 among other employees. The Assistant Manager told Nichols he  
21 would not be employed much longer if he continued to make labor  
22 trouble. Later he was transferred to the night shift and then two  
23 months after that he was discharged. The employer made no affirma-  
24 tive defense and offered no evidence to establish any reason for  
25 the discharge. The National Labor Relations Board held Nichols  
26 had been discharged for labor activity. The case was appealed to  
27 the Pennsylvania Supreme Court.

28 The Court said at page 782 of 20 Atl 2d:

29 "Nichols was a member of the AF of L. He was threatened. He  
30 was transferred from one shift to another. He was discharged.  
There is not one scintilla of evidence that the discharge was



1 due to any labor activity any more than there was to support  
2 a finding that the transfer was due to that reason. Suspicion  
3 may have its place, but certainly it cannot be substituted for  
4 evidence."

5 To the same effect:

6 PENN LABOR RELATIONS BOARD vs KAUFMANN DEPT. STORE  
7 Sup. Ct. of Pa (1942) 29 Atl 2d 90

8 PENN LABOR RELATIONS BOARD vs ELK MOTOR SALES CO.  
9 Sup. Ct. of Pa (1957) 130 Atl 2d 501

10 The uncontroverted testimony presented by the Defendant's  
11 witnesses - even though they were interested persons as members of  
12 management at the hospital, must be accepted as true in establish-  
13 ing the reason, or reasons, for Mr. Becker's discharge other than  
14 his Union activity.

15 The hospital officials who discharged Becker know the real  
16 reason, or reasons, for his discharge, and under oath stated he  
17 was discharged for several reasons, among which are:

- 18 1. He was dissatisfied with his job and his pay.
- 19 2. He did not follow instructions.
- 20 3. He refused to stay in "chain of command" and went over  
21 the head of his immediate supervisor.
- 22 4. He violated the hospital's rule against soliciting on  
23 the premises during working hours, by soliciting member-  
24 ship in the Union.
- 25 5. The quantity of his work was below standard probably  
26 because he spent so much time visiting with other people.
- 27 6. He was unable to fit into the working environment and  
28 procedures of a hospital.
- 29 7. He did not get along well with some other employees such  
30 as the superintendent of the surgical ward who refused  
to allow him in her department unless the Director of  
Plant Services came with him.
8. He was the only employee in the Maintenance Department  
who received even one below average mark on the Annual  
Job Evaluation Report. Mr. Becker had nine below average  
marks (as listed in item 16 of Facts above stated).

1 9. He downgraded and condemned the management to an outside  
2 salesman (Item 11 of Facts above stated).

3 10. About May or June 1969, in talking to another employee,  
4 he made threats against the Director of Plant Services.  
5 (Item 12 of Facts above stated). Later, on 14 November  
6 1969, to the same employee he made very disparaging  
7 remarks showing contempt for the Personnel Director  
8 (Item 21 of Facts above stated).

9 Some of this was denied by Mr. Becker, but the several  
10 witnesses called by the hospital were not discredited on cross-  
11 examination by the Union's very able counsel. They were not  
12 impeached by other means. Therefore, this Board is duly bound to  
13 accept their statement of specific facts constituting the reasons  
14 for the discharge of Mr. Becker as being the true reason, or  
15 reasons.

16 NAT LABOR RELATIONS BOARD vs TEX-O-KAN FLOWER MILLS  
17 U.S. Cir. Ct. 5th Cir. (1941) 122 Fed 2d 433

18 CHESAPEAKE & OHIO R.R. vs MARTIN  
19 283 U.S. 209 (1930) 75 Law Ed 983

20 PENN R.R. CO. vs CHAMBERLAIN  
21 288 U.S. 333 (1932) 77 Law Ed 819

22 NAT LABOR RELATIONS BOARD vs WALTON MFG. CO.  
23 369 U.S. 404 (1962) 7 Law Ed 2d 829

#### 24 THE LAW

#### 25 THE GOVERNMENT EMPLOYER'S RIGHT TO DISCHARGE AN EMPLOYEE.

26 Section 9-1 of the Local Government Employee-Management  
27 Relations Act (N.R.S. 288.140) reads as follows:

28 ".....A local government employer shall not discriminate in  
29 any way among its employees on account of membership or non-  
30 membership in an employee organization."

Section 10-2 (N.R.S. 288.150) reads as follows:

"2. Each local government employer is entitled, without  
negotiation or reference to any agreement resulting from  
negotiation:

(a) To direct its employees;

- 1 (b) To hire, promote, classify, transfer, assign, retain  
2 suspend, demote, discharge, or take disciplinary  
3 action against any employee;  
4 (c) To relieve any employee from duty because of lack  
5 of work or for any other legitimate reason;  
6 (d) To maintain efficiency of its governmental operation  
7 (e) To determine the methods, means, and personnel by  
8 which its operations are to be conducted; and  
9 (f) To take whatever actions may be necessary to carry  
out its responsibilities in situations of emergency.  
(underlining supplied)

10 Sub-section (b) gives the employer the right to discharge an  
11 employee for any reason, or for no specified reason at all (subject  
12 of course, to the anti-union prohibition in Section 9-1). Under  
13 the rules of statutory construction this section is in no way  
14 effected by the more limited section (c) that follows it. Sub-  
15 section (c) is merely an additional specification of the employer's  
16 right, but does not, in any way, limit the right specified in  
sub-section (b).

17 Therefore, this statute specifically reserves to the govern-  
18 ment employer the common law right to discharge an employee for  
19 any cause, or no cause at all, as long as the discharge is not  
20 discrimination because of union membership or activity, which is  
21 prohibited by Section 9-1.

22 In the case of:

23 PENN LABOR BOARD vs ELK MOTOR SALES CO.  
24 Sup. Ct. Pa (1957) 130 Atl 2d 501

25 Mr. Justice Jones speaking for the Court said: (At  
page 507). "The appellee (employer) had the unquestioned right to  
26 discharge Braumgratz for any reason, or for no reason, so long as  
it was not done for a reason prohibited by the Statute."

27 The Nevada Statute is even more definite in this regard than  
28 the National Labor Relations Act (29 U.S.C.A. 151 etc.). In  
29 construing that act, in the case of:

1 NAT LABOR RELATIONS BOARD vs TEX-O-KAN FLOWER MILLS  
2 U.S. 5th Cir (1941) 122 Fed 2d 433

3 Mr. Justice Sibley speaking for the Court said: "So  
4 far as the National Labor Relations Act (29 U.S.C.A. 151 etc.)  
5 goes the employer may discharge, refuse to re-employ for any  
6 reason, just or unjust, except discrimination because of  
7 union activities and relationships".

8 To the same effect:

9 PENN LABOR RELATIONS BOARD vs ELK MOTOR SALES CO.  
10 (1959) 130 Atl 2d 501

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

16 Counsel for the union in his brief has cited several National  
17 Labor Relations Board cases to the contrary, but as far as research  
18 has been able to determine the great weight of authority among  
19 the courts follow the case of:

20 NAT LABOR RELATIONS BOARD vs TEX-O-KAN FLOWER MILLS  
21 U.S. Cir Ct 5th Cir (1941) 122 Fed 2d 433

22 In that case Judge Sibley speaking for the Court said  
23 (at page 439 of 122 Fed 2d):

24 "But it remains true that the discharger knows the real  
25 cause of discharge, it is a fact to which he may swear. If  
26 he says it was not union membership or activity, but something  
27 else which in fact existed as a ground, his oath cannot be  
28 disregarded because of suspicion he may be lying. There must  
29 be impeachment of him, or substantial contradiction, or if  
30 circumstances raise doubts, they must be inconsistent with  
the positive sworn evidence on the exact point."

That case has been cited and followed by many courts. It is  
true it has been overruled by the U. S. Supreme Court on one point,  
but approved on the point above discussed. In the Tex-O-Kan case  
the Court made a distinction between the kind and amount of  
evidence required to justify a "cease and desist order" and the  
evidence needed to "order an employee reinstated". Later cases  
have held there is no real distinction and a "Cease and Desist

1 Order" requires just as much proof as an "Order To Reinstate an  
2 Employee".

3 NAT. LABOR RELATIONS BOARD vs WALTON MFG CO  
369 U.S. 404 (1962) 7 Law Ed 2d 829  
4 where the Supreme Court said:

5 "There is no place in the statutory scheme for one  
6 test of the substantiality of evidence in reinstatement  
cases and another test in other cases."

7 The fact that an employee cannot be discharged for labor  
8 union activity does not give him a protective shield against being  
9 discharged for any other reason even if it is in some way connected  
10 with his union activity.

11 NAT. LABOR RELATIONS BOARD vs WALTON MFG. CO.  
12 (1961) 286 Fed 2d 16

13 In that case Mr. Justice Jones speaking for the Court at  
page 25 of 286 Fed 2d said:

14 "It is well settled that an employee may not be dis-  
15 charged because of union activity. It is also true that  
16 union membership and union activity do not insulate an  
employee from being discharged where an unlawful motive has  
not been shown."

17 The Court then cites many cases in support of that statement.

18 In this case Mr. Becker's solicitation of other employees to  
19 join the Union when carried on during working hours, on the  
20 premises, in departments where he had no other reason to be present  
21 could be a valid reason for discharge as a violation of the "no  
22 solicitation rule" even though that violation was connected with  
23 "union activity". It has been held in many cases that an employer  
24 is not guilty of "discrimination" or "unfair labor practice" if  
25 he enforces a rule prohibiting "union activity" on his premises  
26 during working hours.

27 Many such cases are cited and discussed in 29 U.S.C.A. 158 --  
28 Note 82 beginning on page 421.

29 Just as a union has the right to contact employees, at a  
30 proper time and place, to persuade them to join the union, an



1 employer has the right to impart to the employees his view as to  
2 the advantages or disadvantages of joining the union. He cannot,  
3 of course, promise any reward for not joining, or any penalty for  
4 joining. He would be guilty of "discrimination" against union  
5 membership if he does anything to prevent any employee from using  
6 his own free will to decide whether he will or will not join a  
7 union.

8 In this case this Board considers it was not a violation of  
9 the Statute for the management of Washoe Medical Center to call a  
10 meeting of its employees before the election to endeavor to dis-  
11 courage the selection of Local Union 169 as their bargaining agent,  
12 or to prepare and distribute the circular entitled "Think About  
13 It." This is a two way street and there must be preserved to the  
14 employer just as much right to, without coercion, discourage  
15 joining a union as there must be granted to the union the right  
16 to properly encourage joining the union.

17 In this case a witness called by the Union, Mr. Arthur C.  
18 Shea, testified that at the meeting called by the hospital Admin-  
19 istrator a day or so before the election, Mr. Ogren did not promise  
20 anything if the employees voted against the Union and did not  
21 threaten anything if they voted for the Union. At one point the  
22 witness quoted Mr. Ogren as saying:

23 "But if you do vote the union in, it may be for the best."

24 In this evidence the Board fails to find any proof of  
25 "unfair labor practice" by the Defendant, Washoe Medical Center.

26 LOSS OF WAGES

27 It cannot be said that Mr. Becker's discharge has resulted  
28 in any monetary loss to him. The very day after discharge he  
29 went to work in a position he still held at the time of the  
30 Hearing, for a salary of Three Hundred Sixty-Five Dollars (\$365.00)

1 a week, which was Two Hundred Five Dollars (\$205.00) a week more  
2 than he was making at Washoe Medical Center.

3 Therefore, it seems reasonable to assume that in seeking an  
4 order of this Board to reinstate him in his former position, Mr.  
5 Becker seeks only a moral victory and probably would not return  
6 to Washoe Medical Center if the opportunity became available.

7 THE LENGTH OF THIS DECISION


8 This case probably could have been decided by a one page  
9 memorandum decision. The Board, however, believes that a long  
10 written opinion setting out all the major facts, and points of  
11 law involved, is advisable in this case because this is the  
12 first action of this kind before this Board under a new Nevada  
13 Statute. It is hoped this rather long opinion may serve as a  
14 guide line for the assistance of both labor and management in  
15 similar cases that may arise in the future.

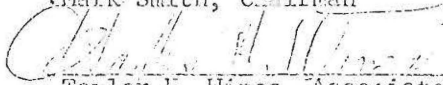
16 CONCLUSION

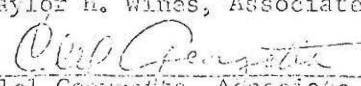
17 The Board concludes the following:

- 18 1. The Plaintiff has failed to carry its burden to prove that  
19 the discharge of Mr. Becker was discrimination because of  
20 his union activity.  
21 2. The Defendant has established by substantial evidence that  
22 Mr. Becker was discharged for reasons other than his union  
23 activity.  
24 3. The petition of the Union for and on behalf of Reginald  
25 Becker for reinstatement in his former position at Washoe  
26 Medical Center is denied.

27 The Local Government Employee-  
28 Management Relations Board

29   
Mark Smith, Chairman

30   
Taylor H. Wines, Associate Member

  
Clel Georgefta, Associate Member