

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO

Complainant,

V.

GREEN LAKE COUNTY, a Municipal Corporation,
and HAROLD STROSCHIN, COUNTY HIGHWAY
COMMISSIONER, GREEN LAKE COUNTY

Respondent.

Case I
No. 8561 MP-1
Decision No. 6061

Appearances :

Lawton and Cates, Attorneys at Law, by Mr. Richard L. Cates,
for the Complainant.
Mr. George E. Frederick and Mr. William P. McGovern, for the
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board at the Green Lake County Court House, Green Lake, Wisconsin, on April 9, 1962; the entire Board being present; and the Board having considered the testimony, arguments, and briefs of Counsel and being fully advised in the premises, does hereby make and file the following Findings of Fact, Conclusion of Law, and Order.

FINDINGS OF FACT

1. That the Wisconsin Council of County and Municipal Employees, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization representing employes in county and municipal employment throughout the State of Wisconsin for the purpose of conducting conferences and negotiations on questions of wages, hours and con-

ditions of employment, and has its offices at 119 Monona Avenue, Madison, Wisconsin.

2. That Green Lake County, hereinafter referred to as the Respondent Employer, is a municipal employer, having its offices at the Green Lake County Court House, Green Lake, Wisconsin; and that Harold Stroschein, hereinafter referred to as Respondent Stroschein, since September 19, 1961, and continuing at all times material herein, has been, and is the duly elected Highway Commissioner for said Respondent Employer, maintaining his office at the Highway Department Garage building, Green Lake, Wisconsin.

3. That said Respondent Employer employs approximately forty-three employees in its Highway Department, all of whom are under the supervision of Respondent Stroschein; that on December 28, 1961 a party was held in the Highway Department Shop, which party was attended by the County Highway Committee, Respondent Stroschein, and the employees of the County Highway Department; that during the course of the party, Respondent Stroschein read, to those present, a statement containing working rules and conditions of employment, previously prepared by him, as follows:

"Here is a thought I would like to have you give a little consideration. Are we giving the tax payer a dollars worth of services for each dollar he spends. If not the employees of the highway department will be critized as well as I. We are all going to have to buckle down a little more than we have in the past. Our cost of operation is way out of balance. If you are unhappy with your work or job come in the office and we will talk it over and see if it cant be corrected rather than complain to someone else that can do you no good.
Operators daily report.
Labor report weekly.
Report of materials delivered to individuals must be signed by them.
Request vacation one week in advance. Report all accidents and sickness to the office.
When driving less than 35 miles per hour drive on shoulder of road.
All machinery including trucks will stay on the job or at either county shop for summer operation.
Snow plowing driver may take them home by permission of the office only.

10 hour days from 7 AM to 6 PM

8 hour days from 8 AM to 5 PM

1-hour for lunch

Will leave shop on county time and return from job on your own time.

If it snows during the night start plowing no later than 4 A.M.

Vacation less than 5 years service 50 hrs.

Over 5 year service 100 hrs.

Sick leave 7 days"

4. That in January 1962, prior to the 12th of the month, Verlyn E. Anderson, a resident of Princeton, Wisconsin, employed as a truck driver-mechanic by the Respondent in its Highway Department for approximately four years inquired from approximately forty of the forty-three employees employed in the Highway Department as to their interest in forming a labor organization; that, after learning that some of the employees were interested in that regard, and prior to January 12, 1962, Anderson directed a letter to the office of the Complainant, inquiring as to the possibility of organizing a local union among the employees of said Highway Department; that on January 12, 1962 the Complainant, by its Executive Director, Robert J. Oberbeck, by letter, advised Anderson that a representative of the Complainant would contact Anderson to discuss the possibility of organizing and affiliating said Highway Department employees with the Complainant; that subsequently and prior to February 14, 1962 at the request of the Complainant, Anderson furnished the Complainant with the names and addresses of Highway Department employees employed by the Respondent Employer and arranged for the use of the Green Lake Village Hall for an organizational meeting to be held on the evening of February 22, 1962; that on or about February 14, 1962 the Complainant sent the following letter to all Highway Department employees:

"Dear Sir and Brothers:

You are cordially invited to attend a meeting of all Green Lake County Highway Department Employees at the Green Lake Village Hall at 8:00 p.m., February 22, 1962. This meeting is called for the purpose of explaining to all the County Highway Department employees the purpose and function of a public employee union organization.

You will be interested to know that many Green Lake County

Highway Department employees have expressed to us a very serious interest in the forming of a union organization in the Green Lake County Highway Department. Your fellow employees feel that only through a union organization can you express yourself to your highway commissioner and highway committee on matters affecting your wages and working conditions. At the present time there are over 20,000 state, county and municipal employees in Wisconsin who have joined a public employee union so that they can resolve their own problems just as you want to do.

A representative from our organization will attend the meeting and will answer any questions that you might have about a public employee organization or your employment problems with the Green Lake County Highway Department.

TIME: 8:00 p.m.

DATE: February 22, 1962

PLACE: Green Lake Village Hall

Wisconsin Law guarantees you the right to join a public employee union."

5. That during the morning of February 19, 1962 Respondent Stroschein inquired from Robert Hoffman, the custodian in the Highway Department building, as to whether he had received a "letter" and Hoffman replied, "No"; that thereupon Respondent Stroschein terminated the conversation; that at approximately 1:00 P.M., of the same day, Respondent Stroschein appeared at the rural home of Walter E. Zastrow, employed as a patrolman helper and questioned Zastrow as to what he knew about "the union"; and that, in reply, Zastrow displayed the envelope containing the letter he had received from the Complainant.
6. That on February 19, 1962, at approximately 5:00 P.M., Paul J. Hunt, a Highway Department employe for approximately 5 years, was called into the office by Respondent Stroschein, who informed Hunt that the latter was discharged "for the betterment of the department"; that Respondent Stroschein also informed Hunt that he would not be the only employe discharged; that, however, Hunt would be given a good recommendation in writing if he would voluntarily quit; that Hunt refused to quit and left the office; that shortly thereafter, and prior to Hunt's leaving the premises, Respondent Stroschein called Hunt back into the office and told Hunt that he had felt sorry for him and that he had discharged him for being the instigator of the union; that thereupon Hunt advised Respondent

Stroschein that he was not responsible for such activities; that Hunt advised Respondent Stroschein that the organizers were among the crew working west of Berlin, a town located in Green Lake County; that thereupon Respondent Stroschein identified among the crew, Verlyn Anderson, and indicated to Hunt that he would discharge Anderson and others; that thereupon Respondent Stroschein advised Hunt that he was rehired and requested him "to work against the Union", and that at that time Respondent Stroschein elicited a promise from Hunt not to attend the union organizational meeting to be held February 22, 1962.

7. That on February 19, 1962 Anderson returned to the Highway Department garage upon completion of his day's work; that at that time Respondent Stroschein, after the latter's conversation with Hunt, called Anderson into his office and advised Anderson that he was discharged, giving the reason therefore "the betterment of the department"; that Anderson was not discharged because of the manner in which he performed his duties; that at no time from the date he became Highway Commissioner, September 19, 1961 to the date of Anderson's discharge, had Respondent Stroschein or any other supervisory employe of the Respondent Employer ever reprimanded Anderson for the manner in which he performed or failed to perform his duties or for violating any of the rules established by the Respondent Stroschein; and that at the time of said discharge Respondent Stroschein advised Anderson that he was a good worker and he would furnish Anderson with recommendations if desired.

8. That in the afternoon of the following day, February 20, 1962, Respondent Stroschein, called Robert Hoffman into his office and inquired whether or not the latter was satisfied with his job and indicated that he disapproved of the "secret talk which was taking place"; that he did not think that a union would advance the interest of the employes and that if a union were chosen to represent the

employees he would not be as lenient as he had been with respect to some conditions of employment.

9. That the organizational meeting conducted by a representative of the Complainant took place as scheduled in the Green Lake Village Hall on the evening of February 22, 1962 and at said meeting employees in attendance established a labor organization known as Green Lake County Highway Department, Local 541, hereinafter referred to as Local 541; that at that time Respondent Stroschein conducted a surveillance of the building by driving his car at a slow rate of speed on the street fronting the meeting hall on two separate instances and at that time observed employee Orland Buchholz in the building; and that on March 15, 1962 Respondent Stroschein questioned Arthur Hormiller, a Green Lake Police Officer, who Stroschein had seen that evening in the vicinity of the Village Hall, as to the number of employees who were present at said meeting.

10. That on February 15, 1962 employee Orland Buchholz inquired from Respondent Stroschein as to whether Buchholz could take "a couple of days off" following his wedding to be held on February 24, 1962; that on that occasion Stroschein advised Buchholz that he could take more time if he desired; that therefore, after his wedding, Buchholz took one week off and returned to work on March 5, 1962, when he was discharged by Respondent Stroschein, on the basis that Buchholz had allegedly not received permission for taking the week off; and that subsequently Buchholz was rehired by Respondent Stroschein on March 12, 1962.

11. That Respondent Stroschein, in his capacity as Highway Commissioner of the Respondent Employer and acting as its agent, discharged employees Paul J. Hunt, Orland Buchholz, and Verlyn E. Anderson, to discourage membership in Local 541, affiliated with the Complainant; and that Respondent Stroschein, in the same capacity, by interrogating employees Robert Hoffman, Walter E. Zastrow, and Paul J. Hunt concerning

their concerted activity and the concerted activity of other employees, by requesting Paul J. Hunt to desist from and work against organizational activity and not to attend the organizational meeting, by making threats to employe Robert Hoffman to change conditions of employment if the employes chose a labor organization to represent them, and by discharging Hunt, Buchholz, and Anderson, interfered with, restrained, and coerced employes of the Respondent Employer in their efforts to form and join Local 541, affiliated with the Complainant.

Upon the basis of the above and foregoing Findings of Fact the Board makes the following

CONCLUSIONS OF LAW

1. That Green Lake County and its Highway Commissioner, Harold Stroschein, by discharging employes Paul J. Hunt, Orland Buchholz, and Verlyn E. Anderson, discriminated in regard to the tenure of their employment, to discourage membership in, and activities on behalf of Green Lake County Highway Department Employees Local 541, affiliated with the Wisconsin Council of County and Municipal Employees, and thereby, have engaged in, and are engaging in, prohibited practices within the meaning of Sections 111.70(3) (a)2 and 111.70 (3) (a)1 of the Wisconsin Statutes.

2. That Green Lake County and its Highway Commissioner, Harold Stroschein, by interrogating employes concerning their concerted activity, by requesting employe Paul J. Hunt to work against and desist from organizational activity and not to attend the organizational meeting, and by threatening to change conditions of employment if the employes chose to be represented by a labor organization, interfered with, restrained and coerced employes in the exercise of the rights guaranteed them in Section 111.70(2) of the Wisconsin Statutes, and have, thereby, engaged in, and are engaging in, prohibited practices within the meaning of Section 111.70(3) (a)1 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and

Conclusions of Law, the Board makes the following

ORDER

IT IS ORDERED that Green Lake County and its Highway Commissioner, Robert Stroschein, and their agents shall immediately

1. Cease and desist from:

- (a) Discouraging membership in Green Lake County Highway Department Employees, Local 541, affiliated with the Wisconsin Council of County and Municipal Employees, or any other labor organization of its employees, by discharging any of its employees, or by discriminating against them in any other manner in regard to their hire, tenure or any term or condition of their employment.
- (b) Interrogating its employees concerning their membership or activity in Green Lake County Highway Department Employees Union, Local No. 541, affiliated with the Wisconsin Council of Highway and Municipal Employees, or in any other labor organization.
- (c) Requesting any of its employees to work against and desist from any activity concerning Green Lake County Highway Department Employees Local 541, affiliated with the Wisconsin Council of County and Municipal Employees, or any other labor organization.
- (d) In any other manner interfering with, restraining or coercing any of its employees in the exercise of their right to self-organization, to affiliate with and be represented by Green Lake County Highway Department Employees Local 541, affiliated with the Wisconsin Council of County and Municipal Employees, or with any other labor organization of their choice, in conferences and negotiations with Green Lake County, and its representatives, on questions of wages, hours

and conditions of employment, or to refrain from any or all such activities.

2. Take the following affirmative action which the Board finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:

- (a) Immediately offer to Verlyn E. Anderson reinstatement to his former position without prejudice to any rights and privileges which he previously enjoyed.
- (b) Make whole Verlyn E. Anderson for any loss of pay that he may have suffered by reason of the discrimination against him, by payment to him of sums of money equal to that which he normally would have earned as wages from the date of his discharge, February 19, 1962, to the date of an unconditional offer of reinstatement, less any net earnings which he may have received during such period.
- (c) Make whole Orland Buchholz for any loss of pay that he may have suffered by reason of the discrimination against him, by payment to him of the sum of money equal to that which he normally would have earned as wages, from the date of his discharge, March 5, 1962, to the date of his rehire, March 12, 1962, less any net earnings received by him during such period.
- (d) Notify all of its employees, by posting in conspicuous places in the office and shops of the Green Lake County Highway Department, where all employees may observe them, copies of the Notice attached hereto and marked "Appendix A". Copies of such Notice shall be prepared by Green Lake County, shall be signed by a lawfully authorized representative thereof and by Highway Commissioner Harold Stroschein, and shall be posted immediately upon

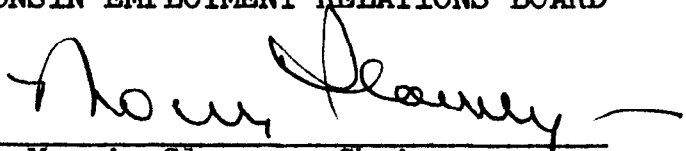
receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by Green Lake County and Highway Commissioner Harold Stroschein to be sure that said notices are not altered, defaced or covered by other material.

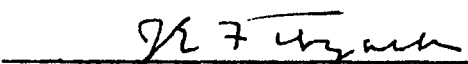
- (e) Notify the Wisconsin Employment Relations Board in writing within five (5) days from the date of receipt of the copy of this Order what steps Green Lake County and Highway Commissioner Harold Stroschein have taken to comply therewith.


Given under our hands and seal at the City of Madison, Wisconsin, this 27~~th~~ day of July, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


J. E. Fitzgibbon, Commissioner


Arvid Anderson, Commissioner

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Board and in order to effectuate the policies of Section 111.70 of the Wisconsin Statutes, we hereby notify our employees that:

WE WILL NOT discourage membership in Green Lake County Highway Department Employees Local Union 541, affiliated with the Wisconsin Council of County and Municipal Employees, or any other labor organization of our employees, by discharging any of our employees, or in any other manner discriminate against them, in regard to their hire, tenure, or any term or condition of their employment.

WE WILL NOT interrogate our employees concerning their union affiliations, activities, or sympathies or request them to work against and desist from any activity concerning Green Lake County Highway Department Employees Local 541 affiliated with the Wisconsin County and Municipal Employees, or any other labor organization, or in any other manner interfere with, restrain or coerce our employees in the exercise of the right to organize, or affiliate with, and be represented by Green Lake County Highway Department Local 541, affiliated with the Wisconsin Council of County and Municipal Employees, or any other labor organization of their choice, in conferences and negotiations with Green Lake County and its representatives, on questions of wages, hours and conditions of employment, or in the exercise of their right to refrain from such activities.

WE WILL immediately offer Verlyn E. Anderson reinstatement to his former position in the Highway Department, without prejudice to any rights and privileges which he previously enjoyed and we will make Verlyn E. Anderson whole for any loss of pay that he may have suffered by reason of the discrimination against him, by paying him the sum of money which he normally would have earned as wages from the date of his discharge, February 19, 1962, to the date of our unconditional offer of reinstatement, less any other earnings which he may have received during said period.

WE WILL make Orland Buchholz whole for any loss of pay that he may have suffered by reason of the discrimination against him, by paying him a sum of money he would have earned as wages from the date of his discharge March 5, 1962 to the date of his rehire, March 12, 1962, less any net earnings which he may have received during such period.

All our employees are free to become, remain, or refrain from becoming, members of Green Lake County Highway Department Employees Local 541, affiliated with the Wisconsin Council of County and Municipal Employees or any other labor organization.

GREEN LAKE COUNTY

By _____
Its Lawfully Authorized Agent

Dated this ____ day of _____ 1962.

By _____
Harold Stroschein, Highway Commissioner

Dated this ____ day of _____ 1962.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HERE-OF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

WISCONSIN COUNCIL OF COUNTY AND :
MUNICIPAL EMPLOYEES, AFL-CIO :

Complainant, :

v. :

GREEN LAKE COUNTY, a Municipal Corporation, :
and HAROLD STROSCHER, COUNTY HIGHWAY :
COMMISSIONER, GREEN LAKE COUNTY :

Respondent. :

Case I
No. 8561 MP-1
Decision No. 6061

MEMORANDUM ACCOMPANYING

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Complainant alleged that Green Lake County and its Highway Commissioner, Harold Stroschein, interfered, restrained, and coerced Green Lake County Highway Department employees in the exercise of the rights guaranteed them by Section 111.70, Wisconsin Statutes and further discharged employees to discourage their membership in the Complainant labor organization. The Respondents generally denied the allegations in the complaint and affirmatively alleged that the discharge of one of the employees, Verlyn Anderson was because Anderson had violated a working rule and had performed his duties in an inefficient manner.

The issue in this proceeding as to whether the Respondent has committed the alleged prohibited practices turns on the credibility of the principal witnesses for the parties. Accordingly we believe it appropriate to review the conflicts in testimony in this memorandum. There is no issue as to the concerted activity of the employees. Within a week or two following a party sponsored by the Respondents, at which Stroschein read to the employees in attendance a set of recently promulgated rules and working conditions, Anderson undertook

to form/^alocal union. He wrote to the Complainant for information and instructions, he contacted fellow employees and, pursuant to the instructions from the Complainant, hired a hall for an organizational meeting to be held on February 22, and he also supplied the Complainant with the names and addresses of the employees in the Highway Department. Prior to February 19, the Complainant sent a letter to all the employees of the Highway Department announcing the meeting to be held on February 22. The meeting was held on the date scheduled, and among those in attendance were Anderson and Orland Buchholz. Stroschein claims that he first learned of the union activity among the employees under his supervision on or about February 20 or 21 by finding a copy of the letter announcing the union meeting, which he claimed had been placed on his desk by an unknown person. Stroschein admits that he drove past the village hall during the evening of the meeting and observed Buchholz, among others, in the hall.

Stroschein denies interrogating any employees concerning the organizational activity of any employee. He admits to discharging employees, Hunt and Anderson, on February 19, and Buchholz on March 15. He denies that any of said discharges were because of the interest and activity of said employees in the union. Stroschein testified that he discharged Hunt because the latter was interfering with the work of the employees by talking about matters not concerned with union activity. He testified that Anderson was discharged because of violating the rule established against taking equipment home without permission and for the further reason that Anderson, on occasion, was observed not working when he should have been. He further testified that Buchholz was discharged for one week for failing to obtain permission to take a week's vacation following his wedding.

The testimony of the witnesses produced by the Complainant to establish that Stroschein had knowledge of the concerted activity prior to February 21 is in direct conflict with the testimony of Stroschein. Employee Hoffman testified that on February 19, Stroschein inquired as

to whether he had received "a letter" and further that on February 20 Stroschein told Hoffman that he disapproved of "the secret talk which was taking place" and that he did not think a union would advance the interests of the employes, and that if the employes chose to be represented by the union he would not be as lenient concerning conditions of employment. Employe Zastrow testified that on the afternoon of February 19, Stroschein questioned him as to what he knew about the union. Employe Hunt testified that on February 19, after Stroschein discharged him, Stroschein stated that he had been discharged for being the instigator of the union and further that, at the time, Hunt informed Stroschein that such activity had been engagedⁱⁿ/by employes working in and about the area west of Berlin, and Respondent Stroschein identified Anderson as being a member of said crew and that Anderson and others would be discharged. Hunt also testified that Stroschein requested him to work against the union and to promise not to attend the meeting on February 22.

Stroschein denies that in his conversations with Hoffman and Zastrow he inquired as to any union activity. He testified that in his conversation with Hoffman he inquired as to whether Hoffman was satisfied with his job and that Hoffman said he was but that he was not satisfied with his pay. Stroschein admits talking to Zastrow on February 19, but contends that said conversation had to do with Zastrow's duties and that there was no conversation with regard to union activity. Stroschein denies any reference to any union activity or meeting in his conversation with Hunt and he denies making any threats to Hunt for his or other employes' participation in such activities.

Stroschein does not deny that at the time of Anderson's discharge he gave any other reason to Anderson for the latter's discharge other than for "the betterment of the department", and he further does not deny that he informed Anderson that he would furnish him with a recommendation if desired. However, in the answer filed herein, and

for the first time, Stroschein alleges that Anderson was discharged for having violated a rule of the County Highway Commission and for having performed his duties in an inefficient manner. During the hearing Stroschein testified that the rule claimed violated was adopted at the party held in December and provided that employees were prohibited from driving equipment home except that snow plows could be taken home with permission of the office. The alleged inefficiency, according to Stroschein, had to do with Anderson's sitting in the cab of the truck while working with a "chipping crew on highway work" and Stroschein claims to have personally observed Anderson in this regard.

According to Anderson, on February 18, the day on which Anderson took snow equipment home he returned to the garage after the work day and proceeded to prepare another truck and plow, which he intended to take home in order to insure his driving to work the next day in light of threatening weather conditions. Anderson claimed that Stroschein observed Anderson preparing the truck and that prior to leaving the garage the superintendent advised Anderson to be sure to plow out the road to the home of another employee, since Anderson was traveling in that direction on his way home. It was not denied that Anderson had transportation to his home other than county equipment. Anderson admitted taking home snow plowing equipment on other occasions when it was snowing or snow was predicted since January 1, 1962, however, he claimed that supervisory employees had knowledge of same and that on those occasions he had other transportation home.

Orland Buchholz testified that on February 5, he requested permission from Stroschein to take two days off following his wedding on February 24. On that occasion, Stroschein informed him that he could take more time off. On Thursday prior to his wedding Buchholz attended the union meeting the night of February 22 and was observed by Stroschein in the hall. Following his wedding Buchholz took a week off, relying on Stroschein's instructions. Upon his return to

work Buchholz was discharged and a week later was rehired. Employee Lloyd Keip testified that he overheard Stroschein give permission to Buchholz for additional time off. Stroschein denied giving such permission and claims Buchholz was discharged for taking additional days off without permission.

The Board, during the hearing, observed all of the witnesses and the manner in which they testified. It has had the opportunity to evaluate and determine the credibility of the testimony. It concludes that Stroschein, by his demeanor on the witness stand and by his illogical and indirect answers, betrayed the shortcomings and falsity in his testimony. On the other hand, the Board concludes that the testimony of the witnesses produced by the Complainant was straightforward and credible, and we therefore have concluded that the overwhelming preponderance of the credible evidence supports the complaint of the Complainant.

The Board concludes that Stroschein became aware of the organizational activities of the Highway Department employees at about the time the employees received the union letter announcing the date of the organizational meeting and that Stroschein proceeded immediately in an attempt to discover who had instigated the activity and upon learning thereof he took action to demonstrate to the employees that he disapproved of their activity. We conclude that the reasons belatedly assigned for Anderson's discharge are pretexts to camouflage the true reason for the termination of his employment and that the reason assigned for Buchholz's discharge of one week is likewise a pretext, and we see no reason to make any detailed findings with regard thereto.

We have today, therefore, concluded that the Respondents have engaged in prohibitive practices, as provided in 111.70 of

the Wisconsin Statutes, and we have issued an order to remedy such violations.

Dated at Madison, Wisconsin, this 27th day of July 1952.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

J. E. Fitzgibbon
J. E. Fitzgibbon, Commissioner

Arvid Anderson
Arvid Anderson, Commissioner