

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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AMALGAMATED MEAT CUTTERS AND BUTCHER :  
WORKMEN OF NORTH AMERICA, LOCAL UNION :  
NO. 444, AFL-CIO, :  
: :  
Complainant, : Case II  
vs. : No. 9330 MP-7  
: Decision No. 6655  
: :  
ROCK COUNTY MENTAL AND COUNTY HOME, :  
: :  
Respondent. :  
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Appearances:

Mr. Charles F. Zalesak, Business Representative, for the  
Complainant.

Mr. William F. Donovan, District Attorney, 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 Rock County Court House, Janesville, Wisconsin, on September 27, 1963, James L. Greenwald, Examiner, being present; and the Board having considered the testimony and briefs of Counsel and being fully advised in the premises, does hereby make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization and has its offices at Madison, Wisconsin.

2. That Rock County Mental and County Home, hereinafter referred to as the Respondent, is an institution operated by Rock County, Wisconsin for the care and maintenance of aged and mentally ill persons, and has its facilities at Janesville, Wisconsin.

3. That for approximately six years prior to May 19, 1961 the Respondent did not employ a butcher or meat cutter, but rather engaged independent contractors to butcher, cut and prepare meats for its kitchens at an average cost of \$112 per month; that in April 1961 the Respondent determined to employ a butcher and A. J. Steinborn, the Respondent's Superintendent, interviewed two applicants for the position, one of them being Gerald Johnson, a resident of Janesville, Wisconsin; that during the course of interviewing Johnson, Steinborn informed Johnson as to the nature of the duties of the position and indicated that although the Respondent did not at that time have a need for a full-time butcher, Steinborn advised that the anticipation of the completion of a new 150-bed addition could result in sufficient work to occupy the services of a full-time butcher and meat cutter.

4. That on May 19, 1961 the Respondent employed Johnson as a butcher at a salary of \$300 per month; that Johnson continued in such employment until August 1, 1963, on which date he was terminated from employment; that while employed Johnson's duties consisted of butchering, meat cutting, distributing cold storage foods and meats to the kitchens and the cleaning of the meat processing and cold storage area; that also during the course of his employment Johnson was reprimanded on a few occasions and also commended for the manner in which he performed his duties; that on January 1, 1962 and January 1, 1963 the Respondent increased Johnson's monthly wage to \$315 and \$330, respectively, upon the suggestion of Steinborn to the Salary and Personnel Committee of the Rock County Board, after consultation with the State Board of Personnel, and as finally approved by the County Board action in adopting its budgets for the years 1962 and 1963.

5. That on July 9, 1963 the Complainant filed with the Wisconsin Employment Relations Board a petition for election, pursuant to Section 111.70 of the Wisconsin statutes, wherein the Complainant requested the Board to conduct an election to determine the bargaining representative of the employees of the Respondent employed in an alleged appropriate collective bargaining unit involving employees whose principal duties consisted of cutting and processing of fresh meat, canned meats, poultry, fish and cheese; and that on July 19, 1963 the Board issued a Notice of Hearing on said petition setting hearing thereon for August 1, 1963 at Janesville, Wisconsin; that a copy of said Notice of Hearing was sent to the parties and received by them on July 20, 1963.

6. That on July 8, 1963 Complainant, through its Business Representative, Charles F. Zalesak, sent a letter to the Respondent, which Steinborn received the following day, as follows:

"This is to notify you that Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local #444 with offices located at 3228 University Avenue, Madison 5, Wisconsin has authorization for representation under the Act--Sec. 111.70 Wisconsin State involving Municipal Employees and our organization has filed a notice with the State Employment Relations Board requesting an election for certification.

To eliminate a time consuming procedure, Local #444 Union is requesting a recognition by the Employer so we can proceed with negotiations of an agreement concerning wages, hours and all other conditions of employment for the Employee involved. I would appreciate a meeting with you or other authorized people in the nearest future to further discuss this matter. You may reach me by phone in my office. CEdar 3-7822 to arrange a meeting in your office.

Let me hear from you."

7. That on July 9, 1963 Steinborn, after receipt of the above letter, called Johnson into his office and questioned Johnson as to his knowledge of the matters stated in the Complainant's letter; and that during said conversation, Steinborn advised Johnson that he

saw no good in the Complainant's request, as it pertained to only one employe; and on that said occasion Steinborn advised Johnson that he knew that the Respondent's Board of Trustees would not honor the Complainant's request; and that said Board of Trustees might abolish the position rather than be involved in the matter.

8. that the Respondent's Board of Trustees holds regular monthly meetings to discuss and act upon matters concerning the management and operation of the Respondent's facilities; that at no time prior to the receipt of the Complainant's letter on July 9, 1963 did said Board of Trustees discuss or consider eliminating the butcher position, nor the return to custom butchering and meat cutting by independent contractors; that, however, following the receipt of the Complainant's letter, Steinborn placed same on the agenda for the July 10, 1963 meeting of the Board of Trustees; and that at said meeting the Board of Trustees considered the request in Complainant's letter.

9. That on July 12, 1963 Steinborn called employe Kenneth Levzow into his office and displayed Complainant's letter to Levzow and questioned him as to what he knew of the matter; that after Levzow disclaimed any knowledge thereof, Steinborn requested Levzow to speak to Johnson; that immediately thereafter Levzow sought out Johnson and emphasized the retirement benefits derived from employment with Respondent and expressed opinion that Steinborn and his wife, who was the Assistant Superintendent, were not difficult persons to work for; and that during the course of said conversation Levzow suggested that Johnson contact the representative of the Complainant and advise him to forget about the matter; that Levzow further expressed the opinion that if Johnson were successful in persuading the Complainant to withdraw its request and petition, mentioned in the letter, Steinborn would give Johnson another chance.

10. That on July 18, 1963 Steinborn, by letter, advised Johnson that the Respondent had decided to change its method of processing meat and that the Board of Trustees had determined to return to cutting and processing meat on a custom basis; and that, therefore, the letter constituted a two weeks' notice of Johnson's termination; and that the employment of Johnson was terminated as of August 1, 1963.

11. That subsequent to August 1, 1963, and continuing thereafter, the Respondent utilized independent contractors for the purpose of custom butchering and meat cutting at the rate of four cents a pound, which work was performed at the facilities of the Respondent with the use of the Respondent's equipment, except for knives; and for services performed in August and September 1963 the Respondent paid the individual employed as the custom butcher \$91.28 and \$141.36 and that for the same period the Respondent paid an additional independent contractor \$75 as partial payment for services performed in August and September 1963; and that on or about November 1, 1963 the Respondent's facilities were to be increased to house an additional 150 patients, requiring additional employes and 25% additional butchering and meat cutting; and that it also contemplated a reduction from three kitchens to a central kitchen thus resulting in greater efficiency in the distribution of meats and cold storage products from the meat cutting center to the central kitchen.

12. That the Respondent, by the activities of its Superintendent, A. J. Steinborn, terminated the employment of Gerald Johnson to discourage membership in the Complainant; and that Steinborn, in the same capacity, by interrogating employes Gerald Johnson and Kenneth Levzow concerning their possible concerted activity, and the discharge of Gerald Johnson by Superintendent Steinborn on August 1, 1963 interfered with, restrained and coerced Gerald Johnson in his effort to

affiliate with Complainant; and that further the Respondent's action in terminating the employment of Gerald Johnson and in abolishing the butcher position was also motivated for the purpose of avoiding recognition of the Complainant as the collective bargaining representative for its butcher in an appropriate collective bargaining unit and to avoid negotiation with the Complainant on wages, hours and conditions of employment affecting said position.

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

CONCLUSIONS OF LAW

1. That Rock County Mental and County Home, by discharging employe Gerald Johnson, discriminated in regard to the tenure of his employment, to discourage membership in, and activities on behalf of Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, thereby has engaged in, and is 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 Rock County Mental and County Home, by interrogating employes concerning their possible concerted activities, by requesting Kenneth Levzow to dissuade Gerald Johnson to cease and desist from his organizational activity and by abolishing the butcher position, and by engaging independent contractors to perform custom butchering and meat cutting, interfered with, restrained and coerced employes in the exercise of the rights guaranteed them by Section 111.70 (2) and has, thereby, engaged in, and is 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 Rock County Mental and County Home, its officers and agents, shall immediately --

1. Cease and desist from:

- (a) Discouraging membership in Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or any other labor organization of its employes, or by discriminating against them in any manner in regard to their hire, tenure or any term or condition of employment;
- (b) Interrogating its employes concerning their membership or activity, or the membership or activity of other employes in Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or any other labor organization;
- (c) Requesting any of its employes to seek to discourage any other employe from their activity in and on behalf of Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or any other labor organization; and
- (d) In any other manner interfering with, restraining or coercing any of its employes in the exercise of their right of self-organization, to affiliate with or be represented by Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or by any other labor organization of their choice in conferences and negotiations with Rock County Mental and County Home, 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 terminate the services of the independent contractors who are engaged in custom butchering and meat cutting;
- (b) Immediately recreate the position of butcher and assign thereto the duties performed by the occupant thereto just prior to August 1, 1964;
- (c) Immediately offer to Gerald Johnson reinstatement

to his former job without prejudice to any rights and privileges which he previously enjoyed;

- (d) Make whole Gerald Johnson 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, August 1, 1963, to the date of an unconditional offer of reinstatement less any net earnings which he may have received during said period;
- (e) Notify all of its employees by posting in conspicuous places in its facilities, where all employees may observe them, copies of the Notice hereto attached and marked "Appendix A"; copies of such notice shall be signed by A. J. Steinborn, Superintendent, 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 Rock County Mental and County Home and by A. J. Steinborn, Superintendent, to insure that said notices are not altered, defaced or covered by any other material; and
- (f) Notify the Wisconsin Employment Relations Board in writing within five (5) days of the receipt of a copy of this Order what steps Rock County Mental and County Home has taken to comply therewith.

Given under our hands and seal at  
the City of Madison, Wisconsin this  
9th day of March, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/  
Morris Slavney, Chairman

S E A L

Arvid Anderson /s/  
Arvid Anderson, Commissioner

Zel S. Rice II /s/  
Zel S. Rice II, Commissioner



STATE OF WISCONSIN  
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MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint the Union alleged that the Employer had committed prohibited practices in abolishing the butcher position and terminating the employment of Gerald Johnson in reprisal for the latter's activity on behalf of the Union and as a result of the Union's written claim for recognition.

The Employer in its answer denied that the elimination of the position and the termination of Johnson's employment were for the purposes claimed by the Union and alleged that the action of the Employer in said regard was motivated by economic reasons.

Johnson testified that he was interrogated by Steinborn on July 9, 1963, after Steinborn had received the Union's letter requesting recognition as the exclusive collective bargaining representative for employees engaged in the duties of cutting and processing fresh meat, canned meats, poultry, fish and cheese. Johnson was the only employe performing such duties. Steinborn interrogated Johnson concerning his knowledge of the Union's demands and gave Johnson to understand that before the Employer

would recognize and deal with the Union that it would eliminate Johnson's position.

Levzow, employed by the Employer as a gardener and storekeeper and who apparently had become friendly with Johnson during the latter's course of employment, admitted that within a few days following the receipt of the letter Steinborn displayed the Union letter to him, interrogated him as to his knowledge thereof and as to his knowledge concerning Johnson's activities therein; and further that Steinborn requested Levzow to speak to Johnson. Although Levzow denied that Steinborn had instructed him to attempt to dissuade Johnson from the latter's activity or interest on behalf of the Union, it is inconceivable to the Board that Levzow would have taken it upon himself to dissuade Johnson without at least an implied request from Steinborn. Levzow sought out Johnson and attempted to persuade Johnson to renounce his interest in the Union and to inform the Union representative that he was no longer interested in being represented by the Union. Levzow went so far as to state if Johnson would do so, that in all probability Steinborn would give him another chance.

It is significant to note that at no time prior to the conduct of the hearing did the Employer put forth any reason other than an economic one for the elimination of the butcher position and the termination of Johnson's employment. As a matter of fact the two-week notice sent to Johnson terminating his employment as of August 1, 1963 merely stated the reason therefor to be one of economics as did other material correspondence written by the Employer and no such defense was alleged in its formal answer to the complaint, as filed with the Board. However, during the course of the hearing the Employer's witnesses testified with respect to

alleged shortcomings of Johnson as an employe. Said alleged shortcomings were based primarily on unsubstantiated statements made by kitchen employes who were not called to testify. The record discloses only one specific incident where Johnson was reprimanded by the Employer for his failure to maintain a clean working area. It is further significant that during the course of his employment Johnson received two wage raises and at no time received any warning notices or further reprimands concerning the manner in which he was performing his duties.

We next confront ourselves with the primary defense put forth by the Employer to the effect that the position was eliminated and Johnson terminated for economic reasons. It should be noted that for a period of six years prior to Johnson's employment as the butcher, the butchering and meat cutting and food processing was performed by independent contractors at the average monthly cost of \$112. In April 1961 the Employer determined to establish the butcher position and hired Johnson to fill same at a starting salary of \$300 per month. One of the reasons given for the establishment of this position was that the Employer contemplated a greater work load for the butcher when the 150-bed addition was to be completed in the fall of 1963, and it desired to have a trained employe in its employ at the time when such addition was completed. At the time of the establishment of the position the Employer was aware, by the very nature of the wages paid to Johnson, that the cost would increase, e.g. from \$112 per month to \$300 per month, and certainly the increased cost was further called to the attention of the Employer and its Board of Trustees when Johnson was given yearly increases in 1962 and 1963. There is no evidence in the record to establish, or even infer, that the Employer was

concerned with the cost of the butchering and meat cutting operation even compared to custom butchering and meat cutting until it received the Union's letter on July 9, 1963, requesting recognition as the bargaining representative for the employee occupying the position. Steinborn became so concerned with the demand that he immediately placed the request made by the Union as it concerned the butcher position on the agenda of the very next meeting of the Board of Trustees. We are satisfied that it was only after the receipt of the Union's request that the Employer became concerned with the position, not because the wages being paid to Johnson were uneconomical, but for the reason that Johnson sought to engage in Union activities and had requested the Union to represent him for the purposes of conferences and negotiations with the Employer on matters concerning his wages, hours and working conditions.

We conclude that the reasons alleged by the Employer for the elimination of the position and the termination of Johnson's employment were pretexts in an attempt to camouflage the real and true motivation for its action. The fact that the Employer returned to the use of independent contractors to perform the work previously performed by Johnson at what appears to be a reduced cost does not change the situation. The Employer argued that the employment of Johnson was in the form of an experiment to determine whether or not it was economically feasible to employ a full-time butcher and meat cutter and it would have us believe that it required a two-year experiment to establish that it was more economic and feasible to have the work done by independent contractors. It appears incredible to the Board that the Employer, through its experienced administrator and knowledgeable Board of Trustees, would have taken

two years and two pay raises to determine that the work should be done by independent contractors. Furthermore, if this were truly an experiment and trial period, it appears unreasonable and improbable that the Employer terminated the "experiment" prior to the opening of the 150-bed addition. Furthermore, in the Board's opinion, the Employer did not establish to the Board's satisfaction that the cost of butchering and meat processing after the termination of Johnson's employment was more economical than prior to Johnson's termination for the testimony with regard to the cost of the services performed by independent contractors did not cover all the services performed by them or the indirect costs from having some of Johnson's duties transferred to other full-time employees between August 1 and the date of the hearing and the figures produced in evidence only covered partial payment for services performed during the period.

We therefore conclude, from the competent and credible evidence adduced at the hearing and from inferences more than amply supported by the testimony and other evidence, that the true reason for the elimination of the position and the termination of Johnson's employment was because of his Union activities and, as such, such action by the Employer violates the provisions of Section 111.70 of the Wisconsin Statutes and we have therefore so found and have issued an order remedying such violation.

During the course of the hearing Counsel for the Employer requested the Board to consider statements made in the Union's letter protesting the discharge of Johnson to constitute a prohibited practice pursuant to Section 111.70 (3) of the Statutes. The letter in question stated as follows:

"I am in receipt of a copy of a letter dated July 29, 1963, to Mr. Morris Slavney Chairman of Wisconsin Employment Relations Board written and signed by William Donovan District Attorney notifying the Board two days prior to a scheduled hearing on Representation election filed by Retail Meat Cutters Union, Local #444, involving an employee employed at the above mentioned Institution. I take quite a few exceptions to some of the statements made in this letter and from discussion on the phone with you and facts available to me I am of the opinion that your untimely action to change the operation of your Institution by eliminating a position that was in existence for a period of twenty-six months is nothing but an effort to discriminate against an employee because of his recent Union activity to join our Retail Meat Cutters organization.

The Local #444 Union is making a formal request that this employee be reinstated to his former position which he was originally hired for. Your refusal to reinstate the said employee, Gerald Johnson, on or before August 10, 1963 will leave me no alternative but to file a Prohibited Charge against the Employer. May I add that in my opinion the employee has been exposed to very shabby treatment and violation of his rights that has never been experienced by the undersigned since his connection with the Union. The common courtesy any individual or organization is entitled to is a meeting of all involved to discuss the issue. Our Local or the employee never received this consideration. Let me hear from you."

The Board regards the position of the Employer in this regard as totally without merit, since the letter made no unlawful demands upon the Employer, but rather constitutes a request that the Employer correct what the Union believed to be violations of the Statute.

Dated at Madison, Wisconsin this 9th day of March, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/  
Morris Slavney, Chairman

Arvid Anderson /s/  
Arvid Anderson, Commissioner

Zel S. Rice II /s/  
Zel S. Rice II, 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 Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, 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 Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or any other labor organization, or in any other manner interfere with, restrain or coerce our employees in the exercise of their right to organize, or affiliate with, and be represented by Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or any other labor organization of their choice, in conferences and negotiations with Rock County Mental and County Home 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 Gerald Johnson reinstatement to his former position as butcher, without prejudice to any rights and privileges which he previously enjoyed and we will make Gerald Johnson 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, August 1, 1963, to the date of our unconditional offer of reinstatement less any other earnings which he may have received during said period.

All our employees are free to become, remain, or refrain from becoming and remaining, members of Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 444, AFL-CIO, or any other labor organization.

ROCK COUNTY MENTAL AND COUNTY HOME

By \_\_\_\_\_  
A. J. Steinborn, Superintendent

Dated at Janesville, Wisconsin this  
\_\_\_\_\_ day of March, 1964.

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