

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS & HELPERS UNION,
LOCAL NO. 43, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF
AMERICA,

Complainant,

vs.

CITY OF LAKE GENEVA,

Respondent.

Case VI
No. 12144 MP-52
Decision No. 8604-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Complainant.

Mr. James L. English, City Attorney, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and a hearing on such complaint having been held before Herman Torosian, Hearing Officer, at Lake Geneva, Wisconsin, on July 25, 1968; and the Commission having considered the evidence and arguments of both parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Teamsters, Chauffeurs & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter referred to as the Complainant, is a labor organization representing employes for the purposes of collective bargaining and has its offices at 1624 Yout Street, Racine, Wisconsin.

2. That the City of Lake Geneva, hereinafter referred to as the Respondent, is a municipality organized under the laws of the State of Wisconsin, having its principal office at 623 Main Street, Lake Geneva, Wisconsin.

3. That Charles Wohl commenced his employment with the Respondent on April 29, 1959, as an employe in the Street Department; that in 1962 Wohl was transferred to the Sewerage Department, where his duties consisted primarily of performing work in and about the Sewerage

Treatment Plant, which work did not require any substantial physical effort and consisted primarily of changing flow sheets, drawing sludge, performing various tests in sewage treatment, and performing general maintenance work; however, that in two of said six years Wohl spent two to three months rodding sewers.

4. That prior to November 1966 the work of cleaning catch basins and storm sewers maintained by the Respondent was performed by employees in the Respondent's Street Department; that in November 1966, after such work had been completed for that year, the Respondent determined that such work should henceforth be performed by employees in the Sewerage Treatment Plant; that the Respondent, in November 1966, at a time when there were only two individuals employed in the Sewerage Treatment Plant, namely, Wohl and Lester Schultz, the supervisor, in anticipation of the added work of cleaning catch basins and storm sewers hired Robert Shepstone, and in the spring of 1967 hired one Williams; that after Williams was employed, he and Shepstone commenced the duties of cleaning catch basins and storm sewers; that while this work was being performed, Williams quit, and within a week the Respondent hired one Kutz to replace Williams; that thereafter Kutz and Shepstone continued the work of cleaning catch basins and storm sewers; that Wohl, during 1967, did not participate in cleaning catch basins or storm sewers, but continued to perform his duties as before in and about the Sewerage Treatment Plant.

5. That in January 1968 Kutz was transferred to the Street Department; that the Respondent did not hire anyone to replace Kutz in the Sewerage Treatment Plant; that on or about April 23, 1968, while on a one-week vacation, Wohl entered a restaurant where he was confronted by George Nouffer, Chairman of the Respondent's Sewerage Treatment Plant Committee and an agent of the Respondent; that a conversation ensued between Nouffer and Wohl, wherein Nouffer questioned Wohl as to his reasons for his affiliation with the Complainant; that after Wohl refused to give any explanation for his membership in the Complainant, Nouffer informed Wohl that he was discharged, that, therefore, Wohl did not return to his job after the completion of his vacation; that on May 6, 1968, the Complainant filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that the Respondent had committed a prohibited practice in violation of Section 111.70 of the Wisconsin Statutes, and wherein it alleged that on or about April 22, 1968, the Complainant sent a letter to Respondent's Mayor requesting recognition as the bargaining agent for employees employed in the Sewerage Treatment Plant; that following receipt of said letter, the

Respondent had discharged Wohl because of his membership in the Complainant; and that in said complaint Complainant requested the Commission, among other relief, to issue an order adjudging that the Respondent had committed prohibited practices and that Wohl be reinstated with full seniority and full back pay.

6. That on May 9, 1968, prior to any Commission action on the complaint, Wohl was reinstated by the Respondent to his former position and given back pay for the time lost as a result of his discharge in April 1968, and that Wohl had been so re-employed after he had been advised by Nouffer that the Sewerage Treatment Plant Committee had determined to return Wohl to employment.

7. That on or about June 3, 1968, Wohl and Shepstone were assigned by Schultz to commence the cleaning of catch basins and storm sewers, which work required at least two employes, and that after performing such duties for three days, Wohl, during the middle of the work day, returned to the plant and advised Supervisor Schultz that he was quitting, and that thereupon, on that date, Wohl terminated his employment.

8. That the termination of Wohl by the Respondent in April 1968 was in reprisal for his membership in the Complainant and that by said discharge the Respondent intended to, and in fact did, interfere, restrain, coerce and discriminate against Wohl because of his membership in the Complainant.

9. That on June 24, 1968, the Complainant filed an amended complaint, wherein it re-alleged the allegations contained in the original complaint, and further alleged that, following Wohl's reinstatement, the Respondent had required Wohl to perform additional duties and further made Wohl's job conditions so intolerable that he would resign, and that on or about June 6, 1968, the Respondent constructively discharged Wohl.

10. That Respondent's assignment of Wohl along with Shepstone, to the cleaning of catch basins and storm sewers in June 1968 was not motivated by Wohl's membership in, or activity on behalf of the Complainant, but due to the fact that, with the exception of supervisor Schultz, Wohl and Shepstone were the only two employes to whom such work could be assigned; that the termination of Wohl's employment on or about June 6, 1968, resulted from Wohl's own choice because of the heavy physical effort required to perform such work; and that such termination of employment did not constitute a constructive discharge by the Respondent.

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

CONCLUSIONS OF LAW

1. That the Respondent, City of Lake Geneva, by discharging Charles Wohl during the last week of April 1968, because of his membership on behalf of the Complainant, Teamsters, Chauffeurs & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, committed a prohibited practice within the meaning of Section 111.70(3)(a)2 and 1, Wisconsin Statutes.

2. That since the termination of employment of Charles Wohl on or about June 6, 1968, resulted from Wohl's free choice to quit his employment, and not from any unlawful action by the Respondent, City of Lake Geneva, to interfere with, restrain, coerce, or discriminate against, Wohl because of his membership in the Complainant, Teamsters, Chauffeurs & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, the Respondent, City of Lake Geneva, with respect to such termination of employment on or about June 6, 1968, did not commit, and is not committing, any prohibited practices within the meaning of Section 111.70, Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Commission makes the following

ORDER

IT IS ORDERED that the Respondent, City of Lake Geneva, its officers and agents shall:

1. Cease and desist from discouraging membership in the Complainant, Teamsters, Chauffeurs & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, by discharging or otherwise discriminating in regard to the hire or tenure of employment, or any term or condition of employment, or in any other manner interfering with, restraining or coercing its employees in the exercise of their right to form, join or assist Complainant, Teamsters, Chauffeurs, & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activity for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action which the Commission finds will effectuate the policies of Section 111.70, Wisconsin


Statutes:

- (a) Notify all of its employees by posting in conspicuous places on its premises, including the Sewerage Treatment Plant, where notices to all its employees are usually posted, a copy of the Notice attached hereto and marked "Appendix A." Such Notice shall be signed by a representative of the Respondent, City of Lake Geneva, and shall be posted immediately upon receipt of a copy of the instant Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent, City of Lake Geneva, to insure that said Notice is not altered, defaced or covered by other material.
- (b) Notify the Wisconsin Employment Relations Commission, in writing, within ten (10) days of receipt of a copy of this Order as to what steps it has taken to comply therewith.

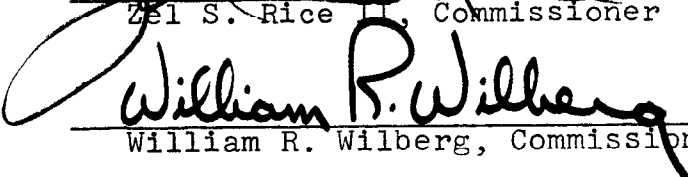
Given under our hands and seal
at the City of Madison, Wisconsin
this 17th day of February, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in Teamsters, Chauffeurs & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization, by discharging, laying off or otherwise discriminating in regard to the hire or tenure of employment of employees, or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to form, join or assist Teamsters, Chauffeurs & Helpers Union, Local No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, or engage in other concerted activity, for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

CITY OF LAKE GENEVA

By _____

Dated this _____ day of _____, 1969.

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.

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Pleadings

On May 6, 1968, the Union filed a complaint with the Commission wherein it alleged that the Municipal Employer committed a prohibited practice by discharging employe Wohl in the latter part of April, 1968, within a few days after the Municipal Employer had received a letter from the Union requesting recognition as the collective bargaining representative for the employees employed in the Sewerage Treatment Plant. Prior to setting hearing in the matter, Wohl was returned to active employment. However, Wohl's employment was terminated on or about June 6, 1968, and thereafter, and on June 24, 1968, the Union filed an amended complaint, wherein it alleged that the Municipal Employer committed a prohibited practice by constructively discharging Wohl on or about June 6, 1968, and in that respect alleged the following:

"6. Thereafter, on or about April 24, 25 or 26, 1968, the Chairman of the Sewerage Department told Charles Wohl, an employee of Respondent working for the Sewerage Treatment Plant, that he could not join the union and that he would fire him, if he continued to support Local 43. Charles Wohl, however, refused to repudiate Local 43.

7. Although Charles Wohl was then on vacation, the Chairman of the Sewerage Department discharged him.

8. After the complaint was filed herein, the Respondent reinstated Charles Wohl and paid him full back pay from the date it had discharged him to the time of reinstatement.

9. Upon his reinstatement to work, however, Respondent, through its agents, required him to perform duties of a type that he had not been required to perform from the time he had become an Assistant Superintendent to the time of his 'discharge' and repeatedly criticized and ridiculed him because of his support for Local 43.

10. Such duties were imposed upon Charles Wohl and the criticism and ridicule were directed at him to penalize him for his support of the union and to make the job conditions so intolerable that he would resign.

11. As a result of said actions set forth in Paragraphs 6, 7, 8, 9 and 10, Respondent constructively discharged Charles Wohl on or about June 6, 1968."

At the hearing the Union moved to amend its amended complaint to specifically include as a prohibited practice the discharge of Wohl in April 1968. The Municipal Employer objected to such amendment, contending that it was not timely, and further, that it would serve no useful purpose since Wohl had been reinstated with full back pay and seniority by the Respondent following the filing of the original complaint. The motion to amend the complaint is hereby granted. The fact that Wohl was reinstated by the Municipal Employer, with full back pay and seniority, does not preclude the Commission, if it should determine that the discharge in April 1968, was unlawful, from issuing an order which would protect employes from such action in the future who would engage in concerted activity.

The principal facts material to the disposition of this proceeding are fully recited in the Findings of Fact. The evidence with respect to Nouffer's conversation with Wohl during the latter's vacation, wherein Nouffer attempted to learn the reason for Wohl's membership in the Union, establishes that Nouffer questioned Wohl as to his reasons for joining the Complainant, and that when Wohl refused to divulge same, Nouffer summarily discharged Wohl, and that the reason given to Wohl by Nouffer at the time, to the effect that Wohl was being discharged on "general principles," is no reason at all, and that the true motivation for Nouffer's action was the failure of Wohl to divulge his reasons for joining the Union. We, therefore, have concluded that Wohl's discharge in April 1968 was unlawful and in violation of Section 111.70(3)(a)2 and 1.

Within a month after Wohl had returned to work, he, along with Shepstone, was assigned to cleaning catch basins and storm sewers, which work entailed strenuous physical effort. Although Wohl had been an employe in the Sewerage Treatment Plant for approximately six years, he had never been assigned such work, which required the utilization of two employes. In the past, two employes other than

Wohl, who had greater seniority, had been assigned this work. In June 1968, Wohl and Shepstone were the only two individuals outside of Supervisor Schultz, who were employed in the Sewerage Treatment Plant, and, therefore, the work of cleaning catch basins and storm sewers, which would take two to three months, was necessarily assigned to Wohl and Shepstone. No evidence was adduced as to why the Municipal Employer had not hired an employee to replace Kutz, junior in seniority to Wohl, who had been transferred to the Street Department in January 1968. Evidence also disclosed that following Wohl's termination in June 1968 the Municipal Employer hired one employee to replace him. There was no evidence that any additional employees were hired by the Municipal Employer.

There is no question that the cleaning of catch basins and storm sewers required more physical exertion than was required in the duties normally performed by Wohl. The fact that Wohl, on or about April 23, 1968, was discharged for his Union activity and later reinstated and required to perform catch basin work for the first time on or about June 3, 1968, does not establish that the Municipal Employer intended to make his job so intolerable that he would be forced to quit his employment. There is absolutely no evidence, although alleged by the Union, that Wohl was criticized or ridiculed for his support of the Union since his return to work on May 9, 1968, by the Municipal Employer or any of its agents. Superior Schultz testified that although he and Nouffer discussed the assignment of catch basin work to Wohl, it was ultimately Schultz's decision to assign Wohl to perform said work. When Wohl was assigned the catch basin work, the Municipal Employer did not hire anyone to perform the duties Wohl had previously been performing, but instead, said duties were performed by Schultz. Schultz also testified that he attempted to persuade Wohl not to quit his employment. Such testimony was corroborated by Shepstone.

Since the Union has not established that the Municipal Employer's assignment of Wohl to cleaning catch basins and storm sewers was unlawfully motivated for the purpose of making Wohl's job conditions so unfavorable that he would be forced to quit, we have concluded that Wohl voluntarily quit his employment and, therefore, the Municipal Employer has not committed a prohibited practice with regard to the termination of Wohl's employment on or about June 6, 1968.

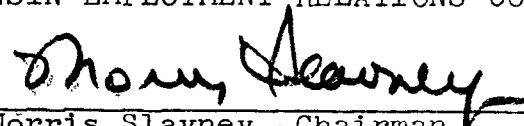
The fact that in April 1968 the Municipal Employer re-employed Wohl, with full back pay and without loss of benefits, nor the fact that Wohl terminated his employment thereafter, does not entirely

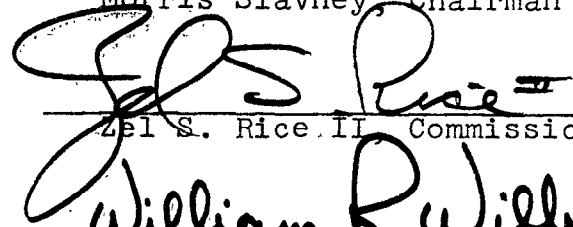
cleanse the unlawful nature of the April 1968 discharge, since such unlawful activity interferes with rights of all employes of the Municipal Employer to engage in lawful concerted activity. We, therefore, have ordered the Municipal Employer to cease and desist from discharging or otherwise discriminating against its employes because of their concerted activity, and we have required the Municipal Employer to post a notice to its employes with respect thereto.

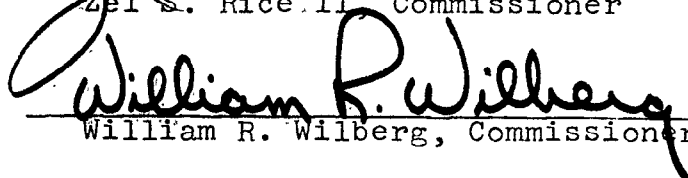
Dated at Madison, Wisconsin, this 17th day of February, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice, II, Commissioner


William R. Wilberg, Commissioner