

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GENERAL DRIVERS & HELPERS UNION  
LOCAL 662,

Complainant,

vs.

SANITARY DISPOSAL, INC.,

Respondent.  
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Case II  
No. 14956 Ce-1366  
Decision No. 10927

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy,  
appearing on behalf of the Union.  
Mr. W. Thomas Devine, Attorney at Law, appearing on behalf of the  
Employer.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission on September 16, 1971; and Commissioner Zel S. Rice II having conducted a hearing in the matter on October 18, 1971, at Eau Claire, Wisconsin; and the Commission having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That General Drivers & Helpers Union Local 662, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Complainant, is a labor organization having its offices at Eau Claire, Wisconsin.
2. That Sanitary Disposal, Inc., hereinafter referred to as the Respondent, is engaged in the collection and disposal of garbage and trash and has its place of business at Eau Claire, Wisconsin; and that Dale Newton, as President of the Respondent, is in primary charge of the Respondent's operation.
3. That on March 1, 1971, the Respondent purchased a trash and garbage collection business from one Henry Woodford, which included routes in and about Eau Claire, Wisconsin; and in that regard the Respondent hired William and Timothy Woodford, the sons of Henry Woodford, as employes of the Respondent; and that William Woodford was employed as a driver from his date of hire to June 9, 1971.
4. That on or about May 1, 1971, William Woodford determined to seek representation by the Complainant for employes of the Respondent; that in said regard, about said time, William Woodford visited the offices of the Complainant and discussed the possibility of Complainant representing the employes of the Respondent for the purposes of collective bargaining; that at said meeting representatives of the Complainant advised Woodford to solicit membership applications and

initiation fees from other employees and to return the authorization cards and the initiation fees to the Complainant; that thereupon William Woodford contacted various employees of the Respondent, including its foreman, with regard to their possible membership in the Complainant; that such contact was individually made with employees and the foreman; that thereafter the Complainant filed a petition with the Minneapolis, Minnesota Regional Office of the National Labor Relations Board requesting a representation election among trash and garbage hauler employers in the Eau Claire, Wisconsin, vicinity including the Respondent; that on May 27, 1971, said National Labor Relations Board Regional Office advised the Complainant that it would not exercise jurisdiction over the employers involved; that thereupon on June 1, 1971, the Complainant filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting that an election and referendum be conducted in a unit consisting of all truck drivers and truck driver helpers (excluding office clerical employees, supervisors and guards) in the employ of nine employers alleged to constitute the "Eau Claire Garbage Haulers Association"; that following the filing of such petition the Commission set hearing in that matter for June 29, 1971, at Eau Claire, Wisconsin; that subsequently hearing on said petition was adjourned and was held on August 3, 1971; that during the course of said hearing the Complainant amended its petition to designate the Respondent as the only employer involved; and that on August 24, 1971, the Commission issued a Direction that an election and referendum be conducted among all truck drivers and truck driver helpers in the employ of the Respondent for the purpose of determining whether said employees desire to be represented by the Complainant, and whether the required number of said employees desired to authorize an all-union agreement between the Complainant and Respondent.

5. That following the issuance of said Direction the Commission set the conduct for said election and referendum for Wednesday, September 22, 1971, and on September 14, 1971, so notified the parties; and that on September 16, 1971, the date on which the complaint initiating the instant unfair labor practice proceeding was filed, the Complainant, in writing, requested to withdraw its petition for election and referendum and on the latter date the Commission issued an Order setting aside the Direction previously issued, as well as dismissing the petition initiating said proceeding.

6. That, during the course of his employment with the Respondent, William Woodford conducted himself in such a manner, with respect to customers of the Respondent, as well as with office employees of the Respondent, which was embarrassing to the Respondent, and in such a manner so as to constitute a possible loss of business; and that within a day following a complaint made by a customer of the Respondent with respect to William Woodford's personal behavior and attitude toward said customer, the Respondent discharged William Woodford on June 9, 1971.

7. That the discharge of William Woodford was not motivated by his concerted activity but rather resulted from his performance as an employee.

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

CONCLUSION OF LAW

That the Respondent, Sanitary Disposal, Inc., in discharging William Woodford on June 9, 1971, did not commit any unfair labor practices within the meaning of Section 111.06(1)(a) and 111.06(1)(c) of the Wisconsin Employment Peace Act.

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

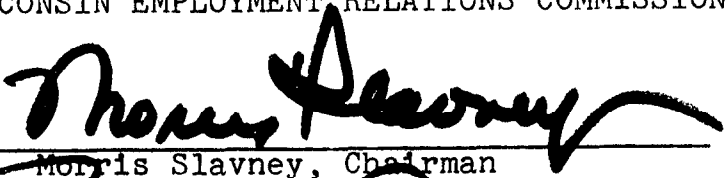
ORDER

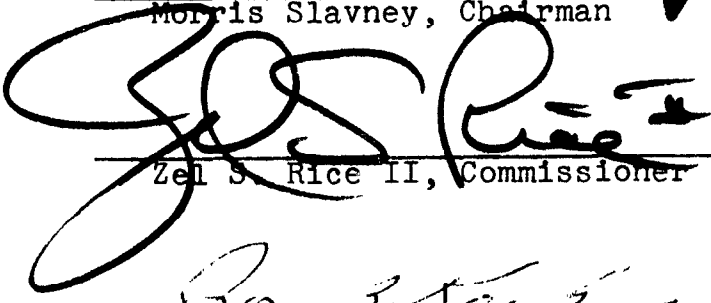
IT IS ORDERED that the complaint filed in the above entitled matter be, and the same hereby is, dismissed.<sup>1/</sup>

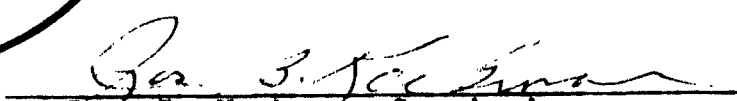
Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of April, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

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<sup>1/</sup> See Memorandum accompanying

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Union contends that Woodford was discharged because of concerted activity among the employees of the Respondent by soliciting membership in the Complainant. The only evidence adduced in the record as to possible knowledge of Woodford's activity in this regard was the fact that among those solicited was the foreman of the Respondent.

Counsel for the Complainant urges the Commission to consider the foreman's knowledge and the fact that election petitions were filed with both the National Labor Relations Board and the Commission as evidence of the Employer's knowledge of Woodford's concerted activity. However, the record is entirely barren of any evidence which indicates that the foreman, or any other person, had ever relayed Woodford's activity to Dale Newton, the President of the Respondent.

The record establishes that Woodford used abusive and discourteous language not only to the female office employees of the Respondent, but also to a customer of the Respondent, who just prior to the date of the discharge made a telephonic complaint to the Respondent with respect to Woodford's attitude and profanity. The record also establishes that Woodford showed a lack of personal respect for the President of the Respondent.

The burden of proving, by a clear and satisfactory preponderance of the evidence,<sup>2/</sup> that Woodford's discharge was motivated by his concerted activity, rests upon the Complainant. The Complainant has not met this burden. Further, assuming arguendo, that Newton had knowledge of Woodford's concerted activity, the Complainant has not established, or, under the circumstances herein, can it be inferred that said concerted activity motivated the discharge.<sup>3/</sup> We are therefore dismissing the complaint filed in the instant matter.


Dated at Madison, Wisconsin, this 11th day of April, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slayney, Chairman

  
Del S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

<sup>2/</sup> Sec. 111.07(3), Golden Guernsey Dairy Co-op, 238 Wis. 379, 6/41.

<sup>3/</sup> Lakeside Industries (4508) 4/57.