

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HOTEL & RESTAURANT EMPLOYEES &
BARTENDERS INTERNATIONAL UNION LOCAL
215, AFL-CIO,

Complainant,

vs.

BILLY MOY'S ONE-WORLD INN,

Respondent.

Case II
No. 15515 Ce-1421
Decision No. 10947-A

Appearances:

Mr. Alan J. Graskamp, Organizer, appearing on behalf of the
Complainant.

Schmitt, Nolan & Hansen, Attorneys at Law, by Mr. Wayne W.
Hansen, and Krueger and Thums, Attorneys at Law, by Mr.
William F. Krueger, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Hotel & Restaurant Employees & Bartenders International Union Local 215, AFL-CIO, having on April 12, 1972, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that Billy Moy's One-World Inn had committed unfair labor practices within the meaning of Section 111.06 of the Wisconsin Statutes; and the Commission having appointed Marvin L. Schurke, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and pursuant to notice issued by the Examiner, hearing on said complaint having been held at Wausau, Wisconsin, on May 30, 1972, before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Hotel & Restaurant Employees & Bartenders International Union Local 215, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization having its principal offices at 1539 Burek Street, Wausau, Wisconsin 54401.

2. That Billy Moy's One-World Inn, hereinafter referred to as the Respondent, is an employer engaged in the operation of a restaurant located at 209 W. Washington Street, Wausau, Wisconsin; and that Billy Moy is the proprietor and only officer of the Respondent.

3. That employees of the Respondent are not and have not been represented by a labor organization for the purposes of collective bargaining; that the Complainant has sought to represent employees of the Respondent for the purposes of collective bargaining; that on

March 27, 1972, the Complainant filed with the Wisconsin Employment Relations Commission a petition to conduct an election to determine whether it represents a majority of the employees of the Respondent for the purposes of collective bargaining; and that action on said petition is suspended pending the outcome of the instant proceeding.

4. That Respondent employs approximately five persons as waitresses; that on an unspecified date during the month of December, 1971, said waitresses requested a pay increase; that at such time the Respondent refused to grant said request; that said employees received a pay increase in their pay checks dated April 4, 1972; and that said employees were not notified of such pay increase prior to their receipt of same.

5. That Respondent employs approximately six persons as busboys and/or cook's helpers; that, on an unspecified date during the first quarter of 1972, several of said employees requested a pay increase; that at such time the Respondent refused to grant said request; that, on an unspecified date subsequent to said request Billy Moy stated, during an informal discussion with two of said employees, that if wages continued to increase, the type of service offered by the restaurant might have to be changed; that during said discussion there was no mention nor reference that any such possibility was connected in any way to union activity among the employees; that said employees received a pay increase in their pay check dated April 4, 1972; and that said employees were not notified of such pay increase until receipt of same.

6. That Billy Moy was not aware of any union activity among the employees until he received notice on April 4, 1972 that a petition for election was pending before the Wisconsin Employment Relations Commission; that the wage increases specified in paragraphs (4) and (5) above were granted by the Respondent in response to the previous requests of the employees and were not granted in an effort to interfere with, restrain or coerce its employees in the exercise of their rights to form, join or assist the Complainant.

7. That Judy Koenig was employed by the Respondent as a waitress until March 26, 1972, and worked irregular hours ranging from 7 to 33 hours per week; that three other waitresses, who had been employed by the Respondent for a longer period of time, worked more regular hours ranging from 20 to 35 hours per week; that on an unspecified date in March, 1972, Judy Koenig and a bartender employed by the Respondent engaged in a loud argument on the Respondent's premises; that such argument ensued from the failure of either of the waitresses then on duty to respond to the bartender's call for waitress service at the bar; that such argument was overheard by Billy Moy, who believed that such argument would also have been overheard by and been a disturbance to patrons in the Respondent's establishment at that time; that on at least one occasion, Koenig violated established practice of the Respondent by failing to notify Moy that she would not be available to work until one half hour before scheduled to report; that Koenig refused to work on weekends more often than the other waitresses; that Koenig left word for Moy with another waitress that she desired to be scheduled off for the entire week of March 26 - April 1, 1972; that on March 26, 1972, Moy discharged said employee; that at such time Moy was not aware of Koenig's activity in and on behalf of the Complainant; and that such discharge was not motivated by discrimination against her for union activity.

Based upon the above and foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS OF LAW

1. That the Respondent's informal statements made to two employees, without knowledge of or reference to any Union activity, concerning that the nature of the Respondent's business may have to be changed, were not calculated to and did not threaten such employees and did not interfere with, restrain or coerce such employees in the exercise of their rights guaranteed by Section 111.04 of the Wisconsin Employment Peace Act and by such statements the Respondent has not committed unfair labor practices within the meaning of Section 111.06(1)(a), Wisconsin Statutes.

2. That by granting pay increases to its employees on or about April 4, 1972, pursuant to requests for same made previously by said employees and without knowledge of any concerted activity among such employees, the Respondent did not interfere with, restrain or coerce such employees in the exercise of their rights guaranteed by Section 111.04 of the Wisconsin Employment Peace Act and has not committed unfair labor practices within the meaning of Section 111.06(1)(a), Wisconsin Statutes.

3. That the Respondent's discharge of Judith Koenig on March 26, 1972 was for cause not related to her activities in or on behalf of the Complainant and the Respondent did not commit and is not committing any unfair labor practices within the meaning of the Wisconsin Employment Peace Act with respect to the termination of the employment of Judith Koenig.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

That the complaint in the above entitled matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 10th day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 12, 1972, Hotel & Restaurant Employees & Bartenders International Union Local 215, AFL-CIO, filed a complaint with the Wisconsin Employment Relations Commission alleging that Billy Moy's One-World Inn had committed unfair labor practices under Section 111.06 of the Wisconsin Statutes by threatening to operate a "carry-out" business only if the employees joined the union, terminating the employment of Judith Koenig for her union activity, granting wage increases in an effort to destroy the union majority, and refusing to accept a letter requesting recognition.

The Respondent filed its answer on May 1, 1972, in which it denied threatening to close his business if his employees joined a union; denied that he granted a wage increase in an effort to destroy the union majority; admitted that he discharged Judith Koenig, but alleged such termination was for cause and not due to union activity; and denied that he refused to accept a letter from the union.

At the hearing, on motion from the Respondent, the parties agreed to strike the allegation concerning the refusal of the Respondent to accept a certified letter from the union requesting recognition.

DISCUSSION:

In order to prove interference, restraint, coercion or discrimination against an employee because of activity in or on behalf of a union, there must be a showing of knowledge by the Respondent of the employee's union activity. Although the Union called a number of witnesses, none of them were able to testify that they had any conversations with Billy Moy concerning the Union organizational activities which were going on among employees of the Respondent or anything else evidencing that Moy had knowledge of such Union activity, so that no such showing was made in this case. Without this essential ingredient, even where certain actions taken by the employer may have had the coincidental effect of discouraging union activity, the employer cannot be found guilty of unfair labor practices within the meaning of Section 111.06(1)(a) and (c), Wisconsin Statutes. Absence of this knowledge is sufficient to be dispositive of the legal issues in this case.

The Complainant has failed to show that any of the specific actions alleged in the complaint were taken in an effort to discourage union activity. The alleged threat to change the restaurant to a carry-out business took place in an informal discussion shortly after a request by the same employees for a wage increase. There was no mention or reference to a union. Similarly, 5.5 per cent wage increases were implemented by Billy Moy pursuant to Federal wage/price guidelines, without knowledge of any union activity among his employees. It appears that on or about March 26, 1972, Billy Moy's annoyance with Judith Koenig's attitude and an accumulation of misconducts on her part had progressed to the point where termination of employment was inevitable. Moy specifically denied knowledge of Koenig's activity on behalf of the union, and Koenig admitted that she had never disclosed her union activity to Moy and had no reason to believe that he knew she was active on behalf of the Union.

The Complainant has failed to prove a necessary element for a finding that any of the conduct alleged in the complaint was motivated by intent to interfere with, restrain or coerce or discriminate against employees because of the exercise of their rights under Section 111.04 of the Wisconsin Employment Peace Act. Accordingly, the complaint filed in the instant matter has been dismissed.

Dated at Madison, Wisconsin, this 10th day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Marvin L. Schurke
Marvin L. Schurke, Examiner