

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS & HELPERS
LOCAL NO. 43

Complainant,

vs.

ALLEN BUICK COMPANY,

Respondent.

Case II
No. 15675 Ce-1431
Decision No. 11198

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, appearing on behalf of the Complainant.
Foley & Lardner, Attorneys at Law, by Mr. Stanley S. Jaspán, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Teamsters, Chauffeurs & Helpers Local Union No. 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having filed a complaint alleging that Allen Buick Company has committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and hearing on the matter having been conducted on July 10, 1972, Marshall L. Gratz, Hearing Officer, being present on behalf of the Commission; and the Commission having considered the evidence and briefs of Counsel, 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 Teamsters, Chauffeurs & Helpers Local No. 43, hereinafter referred to as the Complainant, is a labor organization having its office located at 1624 Yout Street, Racine, Wisconsin.
2. That Allen Buick Company, hereinafter referred to as the Respondent, has its principal place of business at 830 South Marquette Street, Racine, Wisconsin.
3. That the Complainant, at all times material herein, has been the collective bargaining representative of mechanics in the employ of the Respondent and that some time before May 14, 1972, and ending some time in mid-June 1972, said mechanics engaged in a strike, which strike was authorized by the Complainant.
4. That pursuant to an order by the Respondent, the following advertisements appeared in the following newspapers and on the dates noted under each:

A. Auto Sales Manager - Allen Buick Company

New car Sales Manager needed for Buick-Opel dealer in southeast Wisconsin. A real professional to assume complete responsibility for new car department. Opportunity to grow with dealer constructing new facilities.

Attractive pay plan with full benefits and extra incentives. Reply in strict confidence to arrange appointment.

(Milwaukee Sentinel, May 15 and 16, 1972;
The Milwaukee Journal, May 14 and 16, 1972.)

B. Business Manager - Allen Buick Company

A quality man to take over as Secretary-Treasurer. We are building new facilities for an expanded operation which creates a need for a man who will have authority as well as responsibility.

Prefer an experienced man, but will consider a highly capable young man with appropriate education in Booking-Accounting who we will train in General Motors accounting procedures, insurance, finance and control of all assets of the Company, including lease and rental.

Compensation commensurate with abilities and experience. Bonus, retirement, insurance and health benefits. Reply in strict confidence for interview appointment.

(Milwaukee Sentinel, May 16, 17 and 18, 1972;
The Milwaukee Journal, May 16, 17 and 18, 1972.)

5. That the positions offered in the aforementioned advertisements were supervisory positions and not positions within the striking bargaining unit represented by the Complainant; and that the duties to be performed by individuals responding to said ads was to be performed in the sales and office areas, which are located at the front of Respondent's premises, rather than in the service area in the rear of the Respondent's premises, where the mechanics perform their duties.

6. That the Respondent hired a Business Manager after the aforementioned advertisements were placed; that said Business Manager at no time during the strike performed work normally performed by the mechanics.

7. That the position of New Car Sales Manager normally involves no mechanical work; and, further, that during the strike, said New Car Sales Manager performed no mechanical work.

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

CONCLUSION OF LAW

That the failure of the aforementioned advertisements to state that a strike was in progress at the place of employment proposed in said advertisements did not constitute a violation of Sec. 103.43 and, therefore, the Employer did not engage in any unfair labor practices within the meaning of Sec. 111.06(1)(1) 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 of unfair labor practices filed by Teamsters, Chauffeurs and Helpers Local No. 43 in the above-entitled matter shall be, and hereby is, dismissed.

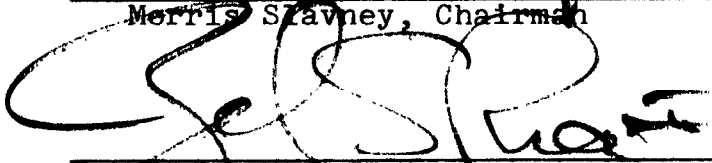
Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

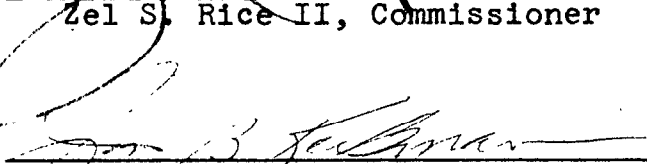
By



Morris Stavney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Complainant, in its complaint, alleged that the Respondent had solicited for personnel by newspaper advertisement at times when a strike was being conducted by its employees and that in said advertisements the Respondent had failed to apprise the prospective hirees of the then current strike; and that by such action, the Respondent had violated Section 103.43 of the Wisconsin Statutes, and in that regard committed unfair labor practices within the meaning of Sec. 111.06(1)(a) and (1) of the Wisconsin Employment Peace Act.

The Respondent, in its answer, denied violation of any statutory provision. It admitted that the Respondent placed newspaper advertisements before the public for employment in which no labor dispute existed, but denied that Respondent placed any advertisements before the public which failed to state that there was a strike or lockout at the place of the proposed employment when a strike or lockout did actually exist in such employment at such place.

A hearing was held on July 10, 1972, at which the parties stipulated to the facts and exhibits for the Commission's consideration in this matter. The parties waived the accouterments of hearing and transcript. Pursuant to stipulation at the hearing, the parties simultaneously submitted briefs on July 17, 1972.

Section 111.06(1)(1) of the Wisconsin Employment Peace Act provides that it is an unfair labor practice for an employer

"To commit any crime or misdemeanor in connection with any controversy as to employment relations."

Section 103.43(2), Wis. Stats. provides that it is a misdemeanor to violate any of the provisions of Sec. 103.43(1). Section 103.43(1) provides in pertinent part as follows:

"It shall be unlawful to . . . attempt to influence, induce (or) persuade . . . workmen . . . to accept employment in this state . . . through or by means of . . . failure to state in any advertisement . . . for employment that there is a strike or lockout at the place of the proposed employment when in fact such strike or lockout then actually exists in such employment at such place."

A violation of Sec. 103.43 has been held by the Commission to constitute an unfair labor practice.^{1/}

The Complainant, at all times material hereto, has been the exclusive representative of mechanics in the employ of the Respondent. Said employees were on strike beginning before May 14, 1972, and ending in mid-June, 1972.

^{1/} Chuck Wagon Industrial Catering Service, 7093-B, 8/5/66; Milwaukee Cheese Company, 5972, 8/4/61; Infant Socks, Inc., 7879, 1/19/67.

Beginning on May 14 and ending on May 18, 1972, Respondent placed, in The Milwaukee Journal and the Milwaukee Sentinel, a total of ten advertisements for Sales Manager or Business Manager positions. None of the ads stated that there was a strike among the Respondent's mechanics.

The positions for which the ads were placed involved supervisory positions, not in the bargaining unit, and the work to be performed by persons hired pursuant to said ads was not in fact (nor was it intended by Respondent to be) work normally performed by the mechanics. Complainant asserts that Sec. 103.43(1) requires that help-wanted ads mention the existence of a labor dispute in any employment among any employes at the place of the proposed employment. The Respondent, on the other hand, asserts that said statutory provision requires that the ads need only mention the existence of a labor dispute which involves employes doing work offered in the advertisement.

The issue presented by this case was squarely dealt with by the Wisconsin Supreme Court in Walter W. Oelfein, Inc. v. State, 177 Wis. 394, 397-398 (1922), which construed what was then Sec. 1729 p-1 of the 1919 Statutes and concluded,

"While the statute makes it an offense for an employer to advertise for help when there is a strike or lockout at the place of the proposed employment, when he fails to state in such advertisement that such strike or lockout exists, such general language is clearly modified by the subsequent language used, wherein it is stated, 'when in fact such strike or lockout then actually exists in such employment at such place.' 'Such employment at such place' cannot mean any employment at the employer's place of business, but the particular employment for which the employer has advertised for help. It cannot be assumed, for instance, that the mere fact of the existence of a strike of electricians, carpenters, or other artisans on a given job will in any way affect a bricklayer seeking employment, when in fact no strike in this craft actually exists on the job." (Emphasis in the original)

Section 1729 p-1 of the 1919 Statutes is now Sec. 103.43(1) of the Wisconsin Statutes. The language of the relevant portion of the statute is unchanged.

The Commission concludes that the Oelfein case reflects the current state of the law. We find that Complainant's arguments are not sufficient to call that decision into question. For as the Supreme Court has implied in Oelfein, the Union's proposed interpretation would make meaningless the words ". . . in such employment. . . ." To so construe the section would therefore be contrary to a basic rule of statutory construction, to-wit: ". . . effect is to be given, if possible, to every word, clause, and sentence. . . ." The fact that the Oelfein court was being asked to apply criminal rather than civil sanctions does not make that court's holding less applicable to the instant situation. It would be anomalous for identical facts to constitute both a violation of Sec. 103.43 and a "crime or misdemeanor" for unfair labor practice purposes but to constitute neither of those for purposes of the application of criminal penalties.

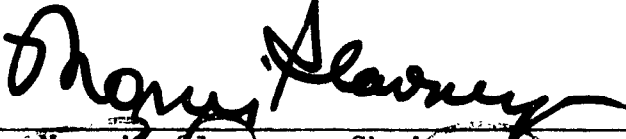
Complainant's arguments about changing conditions in the employment market should be addressed to the Legislature; for the language of the statute would have to be changed before it would permit the Complainant's proposed construction.

For the foregoing reasons, the Commission concludes that the facts presented in this case do not constitute a violation of Sec. 103.43 nor, therefore, not an unfair labor practice within the meaning of the Wisconsin Employment Peace Act.

Dated at Madison, Wisconsin, this 3rd day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

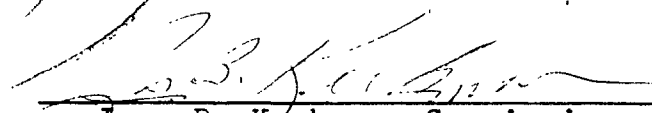
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