

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TYPOGRAPHICAL UNION :
NO. 23, :
 :
Complainant, : Case I
 : No. 16040 Ce-1445
vs. : Decision No. 11310-B
 :
NORTH SHORE PUBLISHING COMPANY, :
 :
Respondent. :
 :

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas P. Krukowski, appearing on behalf of the Complainant.
Binder, Zirbel & Howard, Attorneys at Law, by Mr. James G. Howard, appearing specially on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having failed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission on September 1, 1972; and the Commission having appointed Marshall L. Gratz, a member of its staff, to act as Examiner with respect to said complaint and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.70(4)(a) of the Wisconsin Municipal Employment Relations Act and Sec. 111.07(5) of the Wisconsin Employment Peace Act; and the Examiner, upon notice to the parties, having conducted a hearing on the matter on October 13, 1972; and during the course of said hearing, Respondent, by its Counsel, having filed a motion requesting the Examiner to dismiss the complaint on the ground that the Commission lacked jurisdiction of the subject matter of the complaint; and the Examiner having deferred ruling on said motion; and the Complainant having thereafter presented its case-in-chief; and the Respondent having declined throughout the hearing to cross-examine Complainant's witnesses or to present a case-in-chief; and the Respondent having at the same time requested preservation of its right to recall Complainant's witnesses adversely and to present a case-in-chief in the event that the Examiner should find that the Commission has jurisdiction of the subject matter of the complaint; thereafter,

on October 26, 1972, the Examiner having issued an Order denying said motion to dismiss and holding said proceeding in abeyance either until such time as the County Court, Misdemeanor Branch, County of Milwaukee, finally adjudicated the issues then pending before it which issues were in common with those raised by the instant complaint, or until the Examiner was shown that said Misdemeanor Branch adjudication would not be forthcoming within a reasonable period of time, whichever was earlier; and Complainant having informed the Examiner in writing that said Misdemeanor Branch has finally adjudicated the issues pending before it which were in common with certain issues raised by the instant complaint; and Complainant having requested that the instant proceeding proceed forthwith; and the Respondent having waived further hearing and any transcript; and the Examiner having considered the evidence and arguments of Counsel 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 Milwaukee Typographical Union No. 23, hereinafter referred to as Complainant, is a labor organization and maintains offices at 1012 North Third Street, Milwaukee, Wisconsin.

2. That North Shore Publishing Company, hereinafter referred to as the Respondent, is an employer engaged in publishing and maintains its principal place of business at 3514 North Oakland Avenue, Milwaukee, Wisconsin.

3. That since at least September 1, 1971, and at all times material herein, Complainant has been the exclusive collective bargaining "representative" of certain of Respondent's employees within the meaning of Sec. 111.02(4) of the Wisconsin Employment Peace Act.

4. That certain of the employees of the Respondent, which employees were represented for the purposes of collective bargaining by the Complainant and which employees were employed as Tape Perforators, Process Camera Men, Strippers, Photon-Compstar Technicians and Paste Makeup Men, engaged in a work stoppage and picketing beginning on September 6, 1972 and continuing until sometime after September 19, 1972, which work stoppage and picketing were authorized by the Complainant.

5. That pursuant to an order by the Respondent, the following advertisement appeared in The Milwaukee Journal on September 14, 17

and 18, 1972 and in the Milwaukee Sentinel on September 14, 17 and 19, 1972:

"PRINTING JOBS
for Experienced

**Tape Perforators
**Process Camera Men
**Strippers
**Photon-Compstar Technicians
**Paste Makeup Men

Full benefits, advancement opportunities

NORTH SHORE PUBLISHING CO.

3514 N. Oakland Ave.
Milwaukee
Phone Personnel 962-2700"

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the work stoppage, engaged in by Milwaukee Typographical Union No. 23 and the employes whom it represents, constituted a strike within the meaning of Sec. 103.43 of the Wisconsin Statutes.

2. That, by failing to state in its advertisements of employment appearing in The Milwaukee Journal on September 14, 17 and 18 and in the Milwaukee Sentinel on September 14, 17 and 19, 1972 that a strike existed in the advertised employment at the advertised place of employment, North Shore Publishing Company engaged in unfair labor practices within the meaning of Section 111.06(1)(1) of the Wisconsin Employment Peace Act.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that North Shore Publishing Company, its officers and agents shall immediately:

1. Cease and desist from advertising for employment while a strike or lockout exists in such advertised employment at the advertised place of such employment without disclosing in such advertisement the existence of such strike or lockout.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin

Employment Peace Act:

- (a) Notify all of its employes by posting in a conspicuous place on its premises, where notices to all of its employes are officially posted, a copy of the Notice attached hereto and marked "Appendix A". Such copy shall be signed by the President of North Shore Publishing Company and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for sixty (60) days thereafter. Reasonable steps shall be taken by the Respondent 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 the receipt of a copy of this Order as to what steps it has taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 29th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Marshall L. Gratz
Marshall L. Gratz, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employes that:

WE WILL NOT advertise for employment while a strike or lockout exists in the advertised employment at the advertised place of employment without disclosing in such advertisement the existence of such strike or lockout.

NORTH SHORE PUBLISHING COMPANY

By _____

Dated _____

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

NORTH SHORE PUBLISHING COMPANY

I Decision No. 11310-B

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Complainant, in its complaint, initially alleged that the Respondent advertised the existence of job openings at the North Shore Publishing Company without stating in the advertisement that a "labor dispute" was in progress at the place of the proposed employment, in violation of Secs. 103.43 and 111.06(1)(1) of the Wisconsin Statutes.

The Respondent did not file an answer prior to the hearing. At the hearing, held on October 13, 1972, Respondent refused to answer the allegations in the complaint for the reason that Respondent challenged the Commission's jurisdiction of the subject matter of the complaint and was concerned that its interposition of an answer would jeopardize said challenge. Thereupon, Respondent moved for dismissal of the complaint on the grounds that Complainant's president had sworn out a criminal complaint alleging violation of the same Sec. 103.43 on the basis of facts identical to those alleged in the instant complaint and that pursuant to said criminal complaint, Respondent had been summoned to appear on October 27, 1972 before the County Court, Misdemeanor Branch, County of Milwaukee. The Examiner deferred ruling on said motion. Complainant thereupon presented its case-in-chief. Respondent declined throughout the hearing to cross-examine Complainant's witnesses or to present a case-in-chief of its own; however, Respondent did request preservation of its right to recall Complainant's witnesses adversely and to present a case-in-chief at a later date in the event that the Examiner were to find that the Commission had jurisdiction of the subject matter of the complaint.

Subsequent to the October 13, 1972 hearing, the Examiner issued an Order on October 26, 1972 denying Respondent's motion to dismiss and holding the proceeding in abeyance pending a final adjudication of the issues then pending before the Misdemeanor Branch which were in common with those raised by the instant complaint, or until such time as the Examiner were shown that a Misdemeanor Branch adjudication of such issues would not be forthcoming within a reasonable period of time, whichever would be earlier. 1/

1/ North Shore Publishing Company, Dec. No. 11310-A (10/72).

On January 10, 1973, Counsel for Complainant informed the Examiner in writing that the Misdemeanor Branch had held the Respondent guilty of a violation of Sec. 103.43; enclosed with said communication was a certified copy of the Judgment Roll in the case of State of Wisconsin v. North Shore Publishing Co. ^{2/} Upon receipt of said certified copy, the Examiner telephoned Counsel for the Respondent on January 12, 1973. In that telephone conversation, Respondent's Counsel waived any transcript and any further hearing in the instant matter.

The Examiner has reviewed the record and reached the following conclusions for the reasons stated hereinafter.

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 labor relations."

Sec. 103.43(2) of the Wisconsin Statutes 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 . . . 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. ^{3/}

The Complainant, at all times material hereto, has been the exclusive collective bargaining representative of employes of the Respondent employed prior to September 6, 1972 as Tape Perforators, Process Camera Men, Strippers, Photon-Compstar Technicians and Paste Makeup Men. Pursuant to a unanimous strike authorization vote by the membership of the Complainant, a substantial majority of the aforesaid employes engaged in a work stoppage and picketing beginning on

^{2/} County Court, Misdemeanor Division, County of Milwaukee, Wisconsin, Case No. 2-155334, decided 12/28/72.

^{3/} Chuck Wagon Industrial Catering Service, Dec. No. 7093-B (8/5/66); Milwaukee Cheese Company, Dec. No. 5972 (8/1/61); Infant Socks, Inc., Dec. No. 7879 (1/19/67).

September 6, 1972 and continuing^{until}/sometime after September 19, 1972. Complainant paid "strike benefits" to the employes who engaged in said work stoppage. From the foregoing facts, the Examiner concludes that employes employed in some or all of the aforementioned job classifications were engaged in a strike within the meaning of Sec. 103.43(1).

Beginning on September 14 ^{4/} and ending on September 19, 1972, there appeared in The Milwaukee Journal and the Milwaukee Sentinel a total of six advertisements, each of which offered employment with the Respondent at its Oakland Avenue plant in the positions of Tape Perforators, Process Camera Men, Strippers, Photon-Compstar Technicians and Paste Makeup Men. Under such circumstances, and in view of the fact that Respondent has in no way denied that it authorized the placing of such ads in said newspapers on such dates, the Examiner is willing to conclude that said advertisements were placed by authorized agents of the Respondent. None of the advertisements stated that there was a strike in existence among employes who prior to the strike had been employed at the Employer's Oakland Avenue plant in the advertised-for positions.

Based on the foregoing facts, the Examiner concludes that Respondent did, in fact, attempt to influence, induce and persuade workmen to accept employment in this State by means of Respondent's failure to state in the aforesaid advertisements for employment that there was a strike at the place of the proposed employment when in fact such a strike actually existed in such employment at such place. It follows that such conduct by the Respondent was in violation of Sec. 103.43(1). Respondent therefore committed a misdemeanor. ^{5/}

The aforementioned strike authorization vote, work stoppage and picketing arose in response to an impasse in negotiations concerning

^{4/} The complaint did not initially contain allegations concerning advertisements appearing on September 14. However during the hearing, Counsel for Complainant moved to amend the complaint to conform to evidence that advertisements appeared on said date in both of the newspapers mentioned hereinafter. The Examiner granted said motion to amend.

^{5/} This conclusion gains support from the Judgment rendered by the County Court of Milwaukee County in State v. North Shore Publishing Company, supra note 2, in which Respondent was found guilty of a violation of Sec. 103.43 pursuant to a criminal complaint asserting facts identical to those contained in the instant complaint, as amended. The Examiner takes administrative notice of said Judgment.

proposed changes in the wages and conditions of employment of employes of Respondent represented by Complainant. Negotiations concerning such proposed changes had been carried on since September of 1971 but the parties were unable to reach an accord on certain of the issues outstanding between them. Under such circumstances, the Examiner concludes that a ". . . controversy as to employment relations . . ." within the meaning of Sec. 111.06(1)(1) existed throughout the period September 6, 1972 to September 19, 1972, and perhaps thereafter.

The Examiner also concludes, based upon all of the foregoing facts, that the aforesaid misdemeanor committed by the Respondent was committed ". . . in connection with [a] controversy as to employment relations". It is thus concluded that the Respondent committed unfair labor practices in violation of Sec. 111.06(1)(1) of the Wisconsin Employment Peace Act.

Dated at Milwaukee, Wisconsin, this 29th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner