

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TEAMSTERS, CHAUFFEURS AND HELPERS,  
LOCAL NO. 43,

Complainant,

vs.

OBENAUF GENEVA SERVICES, INC.,

Respondent.  
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Case III

No. 16365 Ce-1460

Decision No. 11515-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M.  
Levy, for the Complainant Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Teamsters, Chauffeurs and Helpers, Local No. 43 having, on January 2, 1973, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Obenauf Geneva Services, Inc., had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed John T. Coughlin, 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 hearing on said complaint having been held at Lake Geneva, Wisconsin, on February 8, 1973 before the Examiner; and the Examiner having considered the evidence, arguments 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 and Helpers, Local No. 43, hereinafter referred to as the Union, is a labor organization with its main office located at 1624 Yout Street, Racine, Wisconsin.
2. That Obenauf Geneva Services, Inc., hereinafter referred to as the Employer, is engaged in the collection of garbage and refuse with its principle place of business being located at P.O. Box 269, Lake Geneva, Wisconsin.
3. That John Obenauf and Lester Ludwig are part owners and agents of Obenauf Geneva Services, Inc.
4. That the abovementioned Obenauf and Ludwig decided not to attend the February 8, 1973 scheduled hearing in the instant matter; that the aforementioned individuals walked out immediately prior to the commencement of the hearing even though the Examiner had informed them that they had every right to make an appearance at the hearing whereby they would have an opportunity to present such testimony and evidence as they might feel would support their contentions in the matter; that the aforementioned individuals expressed no intention of

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returning to the hearing and in fact did not at any time return to said hearing resulting in the Examiner having no recourse but to conduct the hearing with only the Complainant Union being present.

5. That the Employer voluntarily recognized the Union on August 7, 1972.

6. That Eugene H. Pierce, a Union representative, in August of 1972 notified the Employer that Merle Whipple, an employee of the instant Employer, was to act as Union steward for the employees working for said Employer.

7. That on approximately December 20, 1972, the aforementioned Pierce notified the Employer that Union steward Whipple would be attending the scheduled December 27, 1972 contract negotiations meeting.

8. That Whipple commenced working for the Employer on April 15, 1967 as a truck driver; that during the time that Whipple was working for the Employer he was never laid off or suspended for disciplinary reasons.

9. That on Friday, December 22, 1972, Whipple worked from 5:00 a.m. until 1:30 p.m.; that after finishing work Whipple picked up his pay envelope which included a Christmas bonus of \$10.00 along with his regular pay; that Whipple had received \$50.00 as a Christmas bonus on the three previous Christmases; that during the time after having completed his work Whipple did drink one can of beer while opening his pay envelope; that Whipple had not been drinking on the job; that after opening his pay envelope Whipple went to Lester Ludwig's home and returned his Christmas bonus to Ludwig's daughter.

10. That on the evening of Friday, December 22, 1972, Ludwig called Whipple and told him that he was fired and that Ludwig then hung up; that Whipple called Ludwig in order to ascertain why he had been fired and Ludwig told him that he was being fired because he was drinking on the job; that there was absolutely no evidence presented at the hearing to show that Whipple had been drinking on the job.

11. That on Tuesday, December 26, 1972, Whipple returned to work but Ludwig would not allow Whipple to work; that Whipple asked Ludwig if he could attend the bargaining meeting scheduled for December 27, 1972 and that Ludwig replied "not by a darn sight"; that because of the aforementioned statement Whipple did not attend the bargaining meeting held on December 27, 1972.

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

#### CONCLUSIONS OF LAW

1. That Obenauf Geneva Services, Inc., by its authorized agent, Lester Ludwig, on December 22, 1972 discriminatorily discharged Merle Whipple, Union steward for the employees of the aforementioned Obenauf, for his concerted activity in and on behalf of Complainant Union and that by so doing the abovementioned Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 111.06 (c)(1) and (1)(a) of the Wisconsin Employment Peace Act.

2. That Obenauf Geneva Services, Inc., by its authorized agent Lester Ludwig, has bargained in bad faith by refusing to allow Union steward Merle Whipple to attend the December 27, 1972 bargaining meeting and that by so doing has engaged in and continues to engage in unfair labor practices within the meaning of Section 111.06(1)(a) and (1)(a) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that Obenauf Geneva Services, Inc., its officers and agents, shall immediately:

1. Cease and desist from:

- (a) Discouraging membership and activity of employees in or on behalf of Teamsters, Chauffeurs and Helpers, Local No. 43, or any other labor organization, by discharging or otherwise discriminating against any of its employees with regard to hiring, tenure of employment, or in regard to any term or condition of employment.
- (b) Refusing to allow Union steward Merle Whipple, or any other employee authorized individual, to represent employees of Obenauf Geneva Services, Inc., in bargaining or any other Union related matters.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:

- (a) Offer to Merle Whipple immediate and full reinstatement to his former position, without prejudice to his seniority, benefits or other rights and privileges previously enjoyed by him, and make him whole for any loss of benefits or pay he may have suffered by reason of the discrimination against him, by payment to him the sum of money equal to that which he would normally have earned or received as an employee, from the date of his termination to the date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings he may have received during said period, and less the amount of unemployment compensation, if any, received by him during said period, and, in the event that he received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.
- (b) Meet and negotiate with Union steward Merle Whipple, or any other employee authorized individual, without restriction as to who the employees of the Employer may select to represent them.
- (c) Notify all employees, by posting, in conspicuous places on its premises, where notices to all employees are usually posted, copies of the notice attached hereto and

marked "Appendix A". Appendix A shall be signed by Lester Ludwig and John Obenauf on behalf of Obenauf Geneva Services, Inc. Appendix A shall be signed and 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.

- (d) Notify the Wisconsin Employment Relations Commission, in writing, within ten (10) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 24th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

John T. Coughlin  
John T. Coughlin, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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

1. WE WILL offer to Merle Whipple immediate and full reinstatement to his former position, without prejudice to his seniority, rights or privileges previously enjoyed by him, and make Merle Whipple whole for any loss of pay which he may have suffered by reason of his discriminatory discharge.
2. WE WILL meet and negotiate with Union steward Merle Whipple, or any other employee authorized individual, without restriction as to who the employees of the Employer may select to represent them.
3. WE WILL NOT discourage membership in Teamster, Chauffeurs and Helpers, Local No. 43, or any other labor organization of our employees, by discharging, laying off, suspending, or otherwise discriminating against any employee with regard to his hire, tenure of employment, or in regard to any term or condition of employment.
4. WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right of self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs and Helpers, Local No. 43, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or any mutual aid or protection.

All our employees are free to become, remain, or refrain from becoming, members of Teamsters, Chauffeurs and Helpers, Local No. 43, or any other labor organization.

Obenauf Geneva Services, Inc.

By \_\_\_\_\_  
Lester Ludwig

\_\_\_\_\_  
John Obenauf

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

This notice must remain posted for sixty (60) days from the date hereof and must not be altered, defaced or covered by any material.

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

As noted previously, the instant Employer walked out of the hearing room just prior to the commencement of said hearing. Therefore, the testimony taken at the hearing is completely uncontroverted and the Examiner's decision, necessarily, was solely based on the testimony presented by the Union.

Dated at Madison, Wisconsin, this 24th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By John T. Coughlin  
John T. Coughlin, Examiner