

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNITED HOSPITAL & NURSING HOME
EMPLOYEES FEDERATION, LOCAL 222,

Complainant,

vs.

CARE CENTER EAST, CARE CENTER WEST,

Respondent,

and

HOSPITAL AND SERVICE EMPLOYEES'
INTERNATIONAL UNION, LOCAL 150, AFL-CIO,

Respondent.

Case I

No. 15275 Ce-1396

Decision No. 11814

Case II

No. 15276 Cw-331

Decision No. 11815

Appearances:

Mr. William L. Smith, appearing on behalf of Complainant United Hospital & Nursing Home Employees Federation, Local 222. Quarles, Herriott, Clemons, Teschner & Noelke, by Mr. Laurence E. Gooding, Jr., Attorney, and Mr. George K. Whyte, Attorney, appearing on behalf of Respondent Care Center East, Care Center West. Goldberg, Previant & Uelmen, by Mr. Kenneth R. Loebel, Attorney, appearing on behalf of Respondent Hospital and Service Employees' International Union, Local 150, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaints of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and hearing on said complaint having been held at Milwaukee, Wisconsin, on March 23, 1973, Commissioners Zel S. Rice II and Joseph B. Kerkman being present; and the Commission 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 United Hospital & Nursing Home Employees Federation, Local 222, hereinafter referred to as the Complainant, is an organization existing for the purpose of representing employees for purposes of collective bargaining, and has its offices at 1118 North 22nd Street, Milwaukee, Wisconsin.

2. That Care Center East, Care Center West, hereinafter referred to as the Respondent Employer, operates a nursing care facility at 115 East Arndt Street, Fond du Lac, Wisconsin and that the Respondent

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Employer is either owned or operated by Unicare Health Service, Inc., hereinafter referred to as Unicare, 105 West Michigan Street, Milwaukee, Wisconsin.

3. That Hospital and Service Employees' International Union, Local 150, AFL-CIO, hereinafter referred to as Respondent 150, has its offices at 135 West Wells Street, Milwaukee, Wisconsin.

4. That following a referendum conducted by it, by the Wisconsin Employment Relations Commission, among "all regular full-time and regular part-time employees of National Convalescent Hospital, Milwaukee, Wisconsin, excluding supervisors, confidential, managerial, professional and offices employees, licensed practical nurses, registered nurses and registered occupational therapists", the Commission on November 10, 1967 certified that the required number of such employees in the aforementioned collective bargaining unit authorized an all-union agreement between Respondent 150 and National Convalescent Hospital, which was owned and operated by Unicare.

5. That on May 25, 1970 Respondent Employer and Respondent 150 entered into a collective bargaining agreement covering employees of Respondent Employer, effective from May 1, 1970 through at least May 1, 1973, which agreement contained among its provisions the following material herein:

"ARTICLE I

Section 1. The Nursing Home recognizes and acknowledges that the Union is the duly authorized collective bargaining representative for all regular full time and regular part time employees excluding supervisors, confidential, managerial, professional and office employees, licensed practical nurses, registered nurses and registered occupational therapists.

Section 2. All present employees covered by this agreement who are members of the Union on the effective date of this provision shall remain members in good standing as a condition of employment. All present employees who are not members of the Union on the effective date of this provision shall become members of the Union within thirty days of the effective date of this provision.

Section 3. Employees will be hired on a probationary basis. This probationary period will be ninety days in length and the employees may be discharged for any cause, without recourse, during this period. Upon satisfactory completion of their probationary period, an employee shall become a Union member as of the thirty-first day of employment, and shall remain members in good standing of the Union as a condition of continued employment.

Section 4. The Nursing Home agrees to deduct from the wages of all employees covered by this agreement, after receipt of a signed authorization from each such employee, dues and initiation fees of Local No. 150. The Employer shall have no obligation to obtain such authorization."

6. That at no time from the effective date of the aforementioned agreement to at least the date of this Order, the provisions in Article I, requiring present and future employees to become and remain members of Respondent 150, had not been authorized in a referendum conducted by the Commission, as required in Sec. 111.06(1)(c)1 of the Wisconsin Employment Peace Act, among the employees of the Respondent Employer covered by the aforementioned collective bargaining agreement; ^{1/} that, however, Respondent Employer, at all times material herein, required such employees, as a condition of employment, to remain or become members of Respondent 150, and in said regard Respondent Employer required employees to execute cards authorizing Respondent Employer to deduct, from the wages of said employees, sums equal to monthly membership dues of Respondent 150; and that the dues so deducted from the wages of said employees were forwarded by Respondent Employer to Respondent 150.

7. That on January 20, 1972 the Complainant filed with the Commission separate complaints alleging that Respondent Employer and Respondent 150 had each committed unfair labor practices by enforcing an all-union agreement in violation of the Wisconsin Employment Peace Act; that, however at no time prior to the filing of the complaints herein did any employee or employees of the Respondent Employer authorize or request Complainant to file said complaints on their behalf, and that, further, at no time material herein has the Complainant claimed to represent any of the employees of the Respondent Employer for the purposes of collective bargaining.

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

CONCLUSION OF LAW

1. That United Hospital & Nursing Home Employees Federation, Local 222, having received no authorization from any employee or former employee of Care Center East, Care Center West to file complaints of unfair labor practices on their behalf with the Wisconsin Employment Relations Commission, and further having made no claim that it represents any employee of Care Center East, Care Center West for the purpose of collective bargaining, United Hospital & Nursing Home Employees Federation, Local 222 is not a proper party complainant within the meaning of Section 111.07(2) of the Wisconsin Employment Peace Act.

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

^{1/} The Commission takes judicial notice of its records, which indicate that following a referendum conducted by it on July 25, 1972, the employees of Respondent Employer failed to authorize an all-union agreement between Respondent Employer and Respondent 150, and the results of such referendum were certified on August 9, 1972.

ORDER

IT IS ORDERED that the complaints filed in the instant matters be, and the same hereby are, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this *8th*
day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slawney
Morris Slawney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

See Memorandum Accompanying Findings of Fact, Conclusions of Law and
Order issued today in Surfside Manor, Cases II and III.