

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNITED HOSPITAL & NURSING HOME	:	
EMPLOYEES FEDERATION, LOCAL 222,	:	
	:	
Complainant,	:	
	:	
vs.	:	
	:	
HEARTHSIDE NURSING HOME &	:	Case I
REHABILITATION CENTER,	:	No. 15271 Ce-1394
	:	Decision No. 11822
	:	
Respondent,	:	
	:	
and	:	Case II
	:	No. 15272 Cw-329
	:	Decision No. 11823
HOSPITAL AND SERVICE EMPLOYEES'	:	
INTERNATIONAL UNION, LOCAL 150, AFL-CIO,	:	
	:	
Respondent.	:	
	:	

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 Hearthside Nursing Home & Rehabilitation Center. 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 matters, and hearing on said complaints having been held at Milwaukee, Wisconsin, on March 2, 1972, Chairman Morris Slavney, Commissioner Zel S. Rice II and Commissioner Joseph B. Kerkman being present, and on March 8, 1972, Commissioners Zel S. Rice II and Joseph B. Kerkman being present; and the Commission having considered the evidence, arguments, and briefs 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 employes for purposes of collective bargaining, and has its offices at 1118 North 22nd Street, Milwaukee, Wisconsin.
2. That Hearthside Nursing Home and Rehabilitation Center, hereinafter referred to as the Respondent Employer, operates a nursing care facility at 9325 North Green Bay Avenue, Brown Deer, Wisconsin; and that the Respondent 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 on January 11 and 18, 1972 William Smith and Roger Jacobson, temporary President and temporary Secretary-Treasurer respectively of the Complainant, conducted meetings at the Northside YWCA, Milwaukee, Wisconsin, which meetings were attended by certain employees of Respondent Employer, as well as employees of two other nursing care facilities operated by Unicare, during which discussions were had concerning, among other things, the fact that a collective bargaining agreement existing between the Respondent Employer and Respondent 150 contained an all-union agreement, which, as was contended by Smith, had not been authorized in a referendum as required by the Wisconsin Employment Peace Act; that at said meeting employees of Respondent Employer, who were in attendance, authorized Smith and Jacobson, as representatives of the Complainant, to seek legal redress resulting from the alleged unlawful all-union agreement existing between Respondent Employer and Respondent 150, including the recovery of dues deducted from the wages of the employees of Respondent Employer and forwarded to Respondent Local 150; and that in said regard Complainant, on January 20, 1972, 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.

5. That following a referendum conducted by it, among "all regular full-time and regular part-time employees of National Convalescent Hospital, Milwaukee, Wisconsin, excluding supervisors, confidential, managerial, professional and office 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.

6. That on January 7, 1971, Respondent Employer and Respondent 150 entered into a collective bargaining agreement covering employees of Respondent Employer, effective from January 1, 1971 through at least December 31, 1974, 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."

7. That at least from the effective date of the aforementioned agreement to August 15, 1972, the provisions in ARTICLE I, requiring present and future employes 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 employes of the Respondent Employer covered by the aforementioned collective bargaining agreement; 1/ that, however, Respondent Employer, at all times material herein, required such employes, as a condition of employment, to remain or become members of Respondent 150, and in said regard Respondent Employer required employes to execute cards authorizing Respondent Employer to deduct, from the wages of said employes, sums equal to monthly membership dues of Respondent 150; and that the dues so deducted from the wages of said employes were forwarded by Respondent Employer to Respondent 150.

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

CONCLUSIONS OF LAW

1. That United Hospital & Nursing Home Employees Federation, Local 222, having been authorized by certain employes of Hearthside Nursing Home and Rehabilitation Center to file a complaint of unfair labor practices on their behalf with the Wisconsin Employment Relations Commission, is a proper party complainant within the meaning of Sec. 111.07(2) of the Wisconsin Employment Peace Act.

2. That the fact that Hearthside Nursing Home and Rehabilitation Center is engaged in commerce within the meaning of the Labor Management Relations Act, as amended, and thereby is generally subject to the jurisdiction of the National Labor Relations Board, does not deprive the Wisconsin Employment Relations Commission of its jurisdiction to determine whether Hearthside Nursing Home and Rehabilitation Center, and/or Hospital and Service Employees' International Union, Local 150, AFL-CIO, has, or have, committed unfair labor practices within the meaning of Sections 111.06(1)(c) and 111.06(2)(a) of the Wisconsin Employment Peace Act, with respect to the application of the all-union agreement incorporated in the collective bargaining agreement existing between Hearthside Nursing Home and Rehabilitation Center, and Hospital and Service Employees' International Union, Local 150, AFL-CIO, in effect from January 1, 1971 through at least December 31, 1974.

3. That the Certification of Referendum issued by the Wisconsin Employment Relations Commission on November 10, 1967, following a referendum conducted among employes of National Convalescent Hospital, and Hospital and Service Employees' International Union, Local 150,

1/ The Commission takes judicial notice of a referendum conducted by it on August 2, 1972 among the employes covered by aforementioned collective bargaining agreement, wherein the required number of employes voted in favor of authorizing Respondent Employer and Respondent 150 to enter into an all-union agreement. The results of the referendum was certified by the Commission on August 15, 1972.

AFL-CIO, to enter into an all-union agreement, did not, and does not, have the effect of authorizing an all-union agreement between Hearthsides Nursing Home and Rehabilitation Center, a separate and distinct facility operated by Unicare Health Services, Inc., and Hospital and Service Employees' International Union, Local 150, AFL-CIO, as contemplated in Section 111.06(1)(c) of the Wisconsin Employment Peace Act.

4. That, since Hearthsides Nursing Home and Rehabilitation Center, and Hospital and Service Employees' International Union, Local 150, AFL-CIO had not been certified by the Wisconsin Employment Relations Commission until August 15, 1972 as being authorized to enter into an all-union agreement covering all regular full time and regular part time employees of Hearthsides Nursing Home and Rehabilitation Center, excluding supervisors, confidential, managerial, professional employees, licensed practical nurses, registered nurses, and registered occupational therapists, the application of the all-union agreement by Hearthsides Nursing Home and Rehabilitation Center, and Hospital and Service Employees' International Union, Local 150, AFL-CIO, from at least January 21, 1971 to August 15, 1972, by requiring employees to become and remain members of Hospital and Service Employees' International Union, Local 150, AFL-CIO, and to pay monthly dues to the benefit of Hospital and Service Employees' International Union, Local 150, AFL-CIO, Hearthsides Nursing Home and Rehabilitation Center, and Hospital and Service Employees' International Union, Local 150, AFL-CIO have:

- (a) In the case of Hearthsides Nursing Home and Rehabilitation Center, discriminated and interfered with the rights of its employees in violation of Sections 111.06(1)(c) and (a) of the Wisconsin Employment Peace Act, and
- (b) In the case of Hospital and Service Employees' International Union, Local 150, AFL-CIO, coerced employees in violation of Section 111.06(2)(a) of the Wisconsin Employment Peace Act.

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

ORDER

1. IT IS ORDERED that Respondent Hearthsides Nursing Home and Rehabilitation Center, its officers, representatives, agents, successors and assigns, and Respondent Hospital and Service Employees' International Union, Local 150, AFL-CIO, its officers, representatives and agents shall immediately:

a. Cease and desist from:

- (1) Entering into, performing, maintaining, or otherwise giving effect to any agreement between them, which requires membership in Respondent Hospital and Service Employees' International Union, Local 150, AFL-CIO, as a condition of employment, except as authorized in a referendum conducted among employees of Respondent Hearthsides Nursing Home and Rehabilitation Center pursuant to Section 111.06(1)(c) of the Wisconsin Employment Peace Act.

2. IT IS ALSO ORDERED that Respondent Hearthsides Nursing Home and Rehabilitation Center, its officers, representatives, agents, successors and assigns, shall preserve and produce at a supplemental

hearing to be scheduled by the Commission, all payroll records, time cards, personnel records and reports pertaining to dues submitted to Respondent Hospital and Service Employees' International Union, Local 150, AFL-CIO, from January 21, 1971, to August 15, 1972, which are necessary to determine the identity of the former and present employees who are entitled to reimbursement under the terms of this Order, as well as those records necessary to determine the amounts of reimbursement due said former and present employees.

3. IT IS ALSO ORDERED that Respondent Hospital and Service Employees' International Union, Local 150, AFL-CIO, preserve and produce at a supplemental hearing to be scheduled by the Commission all records pertaining to dues received by it, directly or indirectly from former and present employees of Respondent Hearthside Nursing Home and Rehabilitation Center, for the period from January 21, 1971 to August 15, 1972, which are necessary to determine the identity of the former and present employees who are entitled to reimbursement under the terms of this Order, as well as those records necessary to determine the amounts of reimbursement due said former and present employees.

4. IT IS ALSO ORDERED that Respondent Hearthside Nursing Home and Rehabilitation Center and Respondent Hospital and Service Employees' International Union, Local 150, AFL-CIO, post in conspicuous places on the premises of said Respondent Employer and in the offices of said Respondent Union, where notices to employees and members are usually posted, copies of the notice attached hereto marked Appendix "A" after being duly signed by representatives of Respondent Employer and Respondent Union. Such notices shall be immediately posted upon receipt thereof and remain posted for sixty (60) consecutive days. Reasonable steps shall be taken to insure that said posted notices shall not be altered, defaced or covered by any other material.

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, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

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

APPENDIX "A"

NOTICE TO ALL PRESENT AND FORMER EMPLOYEES OF HEARTHSIDE NURSING HOME AND REHABILITATION CENTER WHO WERE EMPLOYED AT ANY TIME BETWEEN JANUARY 21, 1971, TO AUGUST 15, 1972.

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

WE WILL NOT enter, perform, maintain or otherwise give effect to any agreement or arrangement between Hearthside Nursing Home and Rehabilitation Center, and Hospital and Service Employees' International Union, Local 150, AFL-CIO, which requires membership in such labor organization as a condition of employment, except as authorized in a referendum conducted by the Wisconsin Employment Relations Commission, pursuant to Section 111.06(1)(c) of the Wisconsin Employment Peace Act.

Hospital and Service Employees' International Union, Local 150, AFL-CIO, will be primarily responsible, and Hearthside Nursing Home and Rehabilitation Center will be secondarily responsible, in the manner and to the extent as shall be subsequently ordered by the Wisconsin Employment Relations Commission, for reimbursement to our former and present employes for dues exacted from the wages of such employes and paid to Hospital and Service Employees' International Union, Local 150, AFL-CIO, pursuant to the unlawful all-union agreement which existed between Hearthside Nursing Home and Rehabilitation Center and Hospital and Service Employees' International Union, Local 150, AFL-CIO, from January 21, 1971, to August 15, 1972.

HEARTHSIDE NURSING HOME AND
REHABILITATION CENTER

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

By _____

By _____

Dated _____

Dated _____