

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNITED HOSPITAL & NURSING HOME
EMPLOYEES FEDERATION, LOCAL 222,

Complainant,

vs.

MADISON CONVALESCENT CENTER,

Respondent,

and

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

Respondent.

Case II
No. 15269 Ce-1393
Decision No. 11825

Case III
No. 15270 Cw-328
Decision No. 11826

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 Madison Convalescent 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 8, 1972, 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 employes for purposes of collective bargaining, and has its offices at 1118 North 22nd Street, Milwaukee, Wisconsin.

2. That Madison Convalescent Center, hereinafter referred to as the Respondent Employer, operates a nursing care facility at 2308 University Avenue, Madison, Wisconsin; that the Respondent Employer is either owned or operated by Unicare Health Services, 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.

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4. 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.

5. That on June 1, 1970, Respondent Employer and Respondent 150 entered into a collective bargaining agreement covering employees of Respondent Employer, effective from June 1, 1970, and continuing in effect at all times material herein, which agreement contained among its provisions the following material herein:

"ARTICLE I
Recognition

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, as certified by the WERC on November 10, 1967.

Section 2. Employees will be hired on a probationary basis. This probationary period will be sixty (60) days in length and the employee may be discharged for any cause, without recourse, during this period.

Section 3. 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 60 calendar days of the effective date of this provision.

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 150. The employer shall have no obligation to obtain such authorization." 1/

6. That early in December, 1971 approximately fifty employees of Respondent Employer affixed their signatures to a statement indicating that those employees signing same were applying for membership in the Complainant and authorizing the Complainant to represent said employees for the purposes of collective bargaining; that on December 7, 1971 the Complainant filed a formal petition, accompanied by such statement, as a showing of interest in support of such petition, with the 30th Region, National Labor Relations Board, Milwaukee, Wisconsin; that, after due consideration of such petition, the Regional Director of said federal agency dismissed said petition, finding that the collective bargaining agreement existing between Respondent Employer and Respon-

1/ It should be noted that the certification referred to in Section I of ARTICLE I, as the records of the Commission indicates, involved employees of National Convalescent Hospital and not the Respondent Employer.

dent 150 constituted a bar to a representation election among the employees covered by said collective bargaining agreement. 2/

7. That at least from the effective date of the aforementioned agreement to 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; 3/ 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.

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 employees of Madison Convalescent Center to represent them for the purposes of collective bargaining, is a proper party complainant within the meaning of Sec. 111.07(2) of the Wisconsin Employment Peace Act.

2. That the fact that Madison Convalescent 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 Madison Convalescent 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 Madison Convalescent Center and Hospital and Service Employees' International Union, Local 150, AFL-CIO.

3. That the Certification of Referendum issued by the Wisconsin Employment Relations Commission on November 10, 1967, following a referendum conducted among employees of National Convalescent Hospital, a facility operated by Unicare Health Services, Inc., authorizing National Convalescent Hospital and Hospital and Service Employees' International Union, Local 150, AFL-CIO, to enter into an all-union agreement, did not, and does not, have the effect of authorizing an all-union agreement between Madison Convalescent 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.

2/ The Commission takes judicial notice of such dismissal, as reflected in the Regional Director's decision issued in Case 30-RC-1616.

3/ The Commission takes judicial notice of a referendum conducted by it on March 29, 1973 among the employees covered in aforementioned collective bargaining agreement, wherein the required number of employees failed to vote 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 April 18, 1973.

4. That, since Madison Convalescent Center, and Hospital and Service Employees' International Union, Local 150, AFL-CIO had never been certified by the Wisconsin Employment Relations Commission as being authorized to enter into an all-union agreement covering all regular full time and regular part time employees of Madison Convalescent Center, excluding supervisors, confidential, managerial, professional employees, licensed practical nurses, registered nurses, and registered occupational therapists, the application of said all-union agreement by Madison Convalescent Center and Hospital and Service Employees' International Union, Local 150, AFL-CIO, from at least January 21, 1971 to the date of this Order, 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, Madison Convalescent Center and Hospital and Service Employees' International Union, Local 150, AFL-CIO have:

- (a) In the case of Madison Convalescent 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 Madison Convalescent 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 Madison Convalescent Center pursuant to Section 111.06(1)(c) of the Wisconsin Employment Peace Act.

b. Take the following action which the Commission finds will effectuate the policies of the Wisconsin Employment Peace Act:

- (1) Physically expunge Section 3 of ARTICLE I in the collective bargaining agreement existing between them, and from all copies thereof in their possession, or in the alternative, add a Section 5 to such Article which indicates that Section 3 shall not become effective until such time that the all-union agreement set forth in such Sections have been authorized by the employees in a referendum conducted by the Wisconsin Employment Relations Commission.

2. IT IS ALSO ORDERED that Respondent Madison Convalescent Center, its officers, representatives, agents, successors and assigns, shall

preserve and produce at a supplemental hearing to be scheduled by the Commission, all dues check-off authorizations executed by former and present employees from at least January 21, 1971, to the date of this Order, as well as all payroll records, time cards, personnel records and reports 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 Madison Convalescent Center, for the period from January 21, 1971 to the date of this Order, 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 Madison Convalescent 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 Slatney
Morris Slatney, 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.

APPENDIX "A"

NOTICE TO ALL PRESENT AND FORMER EMPLOYEES OF MADISON CONVALESCENT CENTER WHO WERE EMPLOYED AT ANY TIME BETWEEN JANUARY 21, 1971, TO MAY 8, 1973.

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 Madison Convalescent 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.

WE WILL physically expunge Section 3 of Article I in the collective bargaining agreement existing between us and from all copies thereof in our possessions, or in the alternative we will add a Section 5 to such Article which indicates that Section 3 shall not become effective until such time that the all-union agreement set forth in such sections has been authorized by the employees in a referendum conducted by the Wisconsin Employment Relations Commission.

Hospital and Service Employees' International Union, Local 150, AFL-CIO, will be primarily responsible, and Madison Convalescent 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 employees for dues exacted from the wages of such employees and paid to Hospital and Service Employees' International Union, Local 150, AFL-CIO, pursuant to the unlawful all-union agreement which existed between Madison Convalescent Center and Hospital and Service Employees' International Union, Local 150, AFL-CIO, from January 21, 1971, to May 8, 1973.

MADISON CONVALESCENT CENTER

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

By _____

By _____

Dated _____

Dated _____