

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON INDEPENDENT WORKERS UNION, :
 :
 Complainant, :
 :
 vs. : Case II
 : No. 17164 Ce-1515
 PACO'S RESTAURANT, : Decision No. 12165-B
 :
 Respondent. :
 :

Appearances:

Ms. Jacqueline Young and Ms. Mary Kay Baum for Madison Independent Workers Union.

Van Metre, Hanson & Clarke, Attorneys at Law, by Mr. Jack Van Metre, and Mr. William Louthier, Representative, Paco's Restaurant, appearing on behalf of Paco's Restaurant.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Madison Independent Workers Union having filed a complaint with the Wisconsin Employment Relations Commission, herein Commission, wherein it alleged that Paco's Restaurant had committed a certain unfair labor practice; and the Commission having appointed Amedeo Greco, a member of the Commission's staff, to act as an 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 a hearing having commenced on October 19, 1973, 1/ and reconvened on November 15; and the parties thereafter having filed briefs which were received; and the Examiner having considered the evidence, arguments and briefs, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Madison Independent Workers Union, herein the Complainant or Union, is a labor organization having its principal office at 306 North Brooks Street, Madison, Wisconsin.

2. That Paco's Restaurant, herein Paco's or Respondent, operates a restaurant at 107 State Street, Madison, Wisconsin; that Paco's President is William Louthier; and that Paco's manager is George Radel.

3. That Radel hired employe Chrisanne Collett ^{2/} as a waitress in about the early part of May; that Collett started working on or about May 14; that Radel then gave Collett five (5) dollars to obtain a bartender's license, knowing that it would take four (4) weeks to obtain such a license; and that Radel gave no indication to Collett or anyone else that her job would be of a temporary nature.

4. That in obtaining employment at Paco's, Collett did not inform Radel or Louther that the Union, of which she was a member, had previously called a strike against her former employer, the Fondue Chalet Restaurant in Madison, and that she, Collett, had joined in the strike and helped picket the Fondue Chalet before it went out of business in March; that during that strike, Collett frequently saw restaurant supplier Anthony Lapetina enter the Fondue Chalet; that during her subsequent employment at Paco's, Collett spoke to Lapetina (who also supplied Paco's), at which time Lapetina said words to the effect, "well, you are not going to start any of that union business here, are you?"; that Collett did mention her former union activity to several other Paco employes; and that neither Collett nor anyone else attempted to organize any of the Paco employes while she was employed there.

5. That about the time of Collett's hire, certain restaurant owners in the Madison, Wisconsin area met on the night of May 9; that the primary topic of discussion there centered on how to keep unions out of restaurants; that one of the speakers stated that he would provide the owners with a list of persons who had been involved in strike activity; that no one from Paco's attended this meeting; and that Louther subsequently met with certain other restaurant owners for lunch.

6. That during the course of her employment, Collett primarily worked the 11:00 a.m. to 1:00 p.m. shift as a waitress; and that, as testified to by Radel, Collett was during that time an "exceptionally good" employe.

7. That during the last week in May, waitress Patti Gorman returned from a two-week vacation; that on May 29 she spoke to Radel about returning to work; that Radel then advised Gorman that she would have the 11:00 a.m. to 1:00 p.m. shift; and that Radel and Gorman had previously agreed in the early part of May, prior to Gorman's vacation, that Gorman would be rehired for those hours after her vacation had ended, the exact date of which was uncertain at that time.

8. That on the same day, Radel informed Collett, who was the least senior waitress on the day shift, of the foregoing and advised Collett that he would be letting her go immediately in order to reinstate Gorman; that after Collett objected to Radel's proposed immediate termination, Radel and Collett then agreed that Collett could finish out the week; that on her last day of work, June 1, Collett spoke to Louther about her termination and another matter; that Collett informed Louther that the employes needed a union; and that Louther responded, "I thought you'd say that."

9. That Radel thereafter unsuccessfully attempted once or twice to contact Collett for the purpose of asking her to fill in on a part-

^{2/} Although the parties in their briefs and other correspondence have referred to this employe as "Collette", the record establishes that the correct spelling of this individual's name is "Collett".

time basis; that Collett spoke to Radel in person or or about July 5, at which time Collett indicated that she did not want to work on a part-time basis; that Radel did not thereafter attempt to contact Collett; and that Radel hired other waitresses after Collett's termination.

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

CONCLUSION OF LAW

That Paco's Restaurant did not terminate Chris Collett because of Collett's former union activities on behalf of the Madison Independent Workers Union; and that therefore Paco's Restaurant has not committed any unfair labor practice within the meaning of Section 111.06, or any other provision of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 21st day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In support of its complaint, the Union primarily argues that Paco's learned of Collett's former union activities at the Fondue Chalet, and that Respondent seized upon Gorman's return to work as a pretext for terminating Collett in retaliation for having engaged in such activities. In this connection, the Union claims that Respondent's knowledge of Collett's former activities could have been obtained as a result of the May 9 meeting where restaurant owners discussed blacklisting union supporters, through Louthier's lunch meetings with other restaurant owners, and/or through Lapetina, who knew of Collett's activities.

Respondent disagrees. It maintains in essence that it had no knowledge of Collett's former union activities and that it had to terminate Collett when Gorman returned from vacation and asked for her job back.

In resolving this issue, it must be noted at the outset that it is the Union which has the burden of proving the alleged discriminatory nature of Collett's termination. For, it is well established that for the Union to prevail here, it must prove by a clear and satisfactory preponderance of the evidence that Collett's discharge was motivated at least in part by anti-union animus and that Respondent had knowledge of Collett's former union activity. St. Joseph's Hospital (8787-A,B) 10/69, 12/69; Earl Wetenkamp d/b/a Wetenkamp Transfer & Storage (9781-A,B,C) 3/71, 4/71, 7/71; and A C Trucking Co., Inc. (11731-A) 11/73. Here, viewing the record in its entirety, and for the reasons noted below, it is clear that the Union has failed to meet this burden of proof.

For example, with reference to the question of animus, the record is devoid of any evidence which establishes that Respondent in fact bore any anti-union sentiments and that these sentiments played a part in Collett's termination. The only possible evidence upon which a contrary inference can be made was Radel's statement at the hearing wherein he testified that he would not like to rehire Collett because of the fact that she was apparently unhappy with her job. Inasmuch as Radel himself admitted that Collett was an "exceptionally good" employe, it can be inferred that Radel's present disinclination to rehire Collett is based on the fact that Collett complained about her working conditions. Any such refusal to rehire Collett because of that fact, if carried out, may constitute an unfair labor practice. Here, however, for the reason noted below, there is no evidence that such a motive played any part in Collett's June 1 termination. Accordingly, even though Radel's foregoing testimony must be viewed with suspicion, that testimony, standing alone, is insufficient to warrant finding that Collett's termination was based on anti-union considerations.

In addition, the record fails to establish that Respondent had any knowledge of Collett's former union activities. Apparently conceding that Respondent had no direct knowledge of such activities, the Union argues that Respondent had indirect knowledge of Collett's former union activities, as evidenced by the circumstances surrounding Collett's termination, particularly Louthier's statement to Collett on June 1 that "I thought you'd say that", when Collett mentioned the need for a union. The difficulty with this argument, however, is that Louthier's statement is at best ambiguous and may have reflected nothing more

than his view that, in light of Collett's prior questioning of management policies, he was not surprised that Collett was voicing a preference for a union at that time.

The Union also argues that it can be inferred that Respondent knew of Collett's union activities via certain avenues, i.e., the May 9 meeting where certain restaurant owners discussed how to keep out unions and/or through restaurant supplier Lapetina who admittedly knew of Collett's former union activities at the Fondue Chalet. As to the May 9 meeting, both Louther and Radel testified without contradiction that they did not attend that meeting, a point not disputed by the Union. Similarly, both denied that they ever subsequently learned what transpired therein. Further, although Louther admitted that he sometimes had lunch with other restaurant owners, he credibly testified that the subject of unions never came up at that time. With reference to Lapetina's knowledge of Collett's activities, the record does show, as contended by the Union, that Lapetina possessed such knowledge and that he spoke to Collett about these activities while she worked at Paco's. That notwithstanding, however, Lapetina credibly testified that he never mentioned such activities to either Louther or Radel because of a previous experience he once had in a strike situation. This testimony was corroborated by Louther and Radel who both testified that Lapetina never mentioned Collett's former activities to them.

In light of the aforementioned considerations, as well as the record as a whole, the undersigned finds that there is insufficient evidence to warrant finding the inference that Respondent in fact knew of Collett's former union activities.

Coupled with the foregoing lack of animus and knowledge, the record further shows that the Union has not disproven Respondent's claim that its termination of Collett was based on the fact that former waitress Gorman returned for work. Thus, Gorman, the Union's own witness, testified that: (1) Radel had agreed in early May that she could return to work after her vacation was over and that she would then work the daytime shift; (2) Radel honored his agreement when she asked for her job back on May 29; (3) Gorman then filled in for Collett's former hours on the 11:00 a.m. to 1:00 p.m. shift; and (4) in her opinion, Respondent had hired one employe too many for the day shift. The record further reveals that when Gorman spoke to Radel in early May about her vacation plans, there was no specific agreement at that time as to when Gorman would return to work. This was so because of the fact that Gorman was going on vacation to see her mother who was ill and that she did not know then when she would return.

In hiring Collett at about this time, Radel testified that Collett was not specifically hired to replace Gorman, but rather, was hired in the expectation that other waitresses would also be quitting shortly. However, when fewer waitresses quit than was anticipated, and when Gorman returned to work only two weeks later, Radel then concluded that he would have to terminate Collett, the least senior waitress on the day shift. Radel testified that after Collett was terminated on June 1 he thereafter attempted to contact Collett who he admitted was an "exceptionally good" employe, regarding part-time work, but that he was unable to reach her. Radel also credibly testified that when he spoke to Collett on or about July 5, that Collett at that time indicated she would not be interested in working on a part-time basis. Collett, on the other hand, testified that she told Radel during that conversation that she would be willing to work part-time. In resolving this

credibility conflict, the undersigned notes that Collett testified that she gave back her waitress uniform to another employe within a few days following this conversation. Inasmuch as this transfer of her uniform indicated that Collett did not expect to return to work, and since Radel testified that their July 5 conversation ended on the same note, the undersigned concludes that Radel's testimony regarding the July 5 conversation was more accurate than Collett's.

Accordingly, based upon the above, which establishes that the Union has not proven by a clear and satisfactory preponderance of the evidence that Collett's termination was motivated by anti-union considerations, the undersigned finds that Respondent's termination of Collett was not violative of Section 111.06 and that the complaint should be dismissed in its entirety.

Dated at Madison, Wisconsin this 21st day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner