

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON INDEPENDENT WORKERS UNION,

Complainant,

vs.

GUS HOREMIS AND GUS PARASKEVOULAKAS 1/

Respondents.

Case I

No. 16117 Ce-1449

Decision No. 13152

Appearances:

Ms. Jackie Young, Secretary-Treasurer, and Ms. Elaine J. Koplow, appearing on behalf of the Union.

Jenswold, Studt, Hanson, Clark & Kaufman, Attorneys at Law, by Mr. Bruce Kaufman, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and hearing on such complaint having been held at Madison, Wisconsin on May 4 and 15, 1973 by the Wisconsin Employment Relations Commission, Herman Torosian, Hearing Officer being present; and the Commission having considered the evidence and 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 Madison Independent Workers Union, hereinafter referred to as the Complainant, is a labor organization having its principal offices at 306 North Brooks Street, Madison, Wisconsin.

2. That Gus Horemis and Gus Paraskevoulakas, hereinafter referred to as the Respondents, own and operate Athens Restaurant located at 401 West Gilman Street, Madison, Wisconsin; that said Respondents have owned and operated said restaurant since August or early September, 1972; that prior to their ownership, said restaurant was known as the Steak and Shish-kebob Restaurant which was in operation at the same location from January, 1972 to mid-June, 1972.

3. That, while in operation, Steak and Shish-kebob Restaurant recognized Complainant as the exclusive bargaining representative of certain of its employees; and that Complainant and Steak and Shish-kebob were parties to a collective bargaining agreement, having an expiration date in late February, 1973, covering wages, hours and terms of employment for certain employees of the Employer.

1/ During the course of the hearing held in the instant matter, Complainant amended its complaint by dropping Mr. Kamm, Vice President, Commerical State Bank, Demetrious P. Zografos and Pourtelis D. Zografos as named Respondents.

4. That sometime after Respondents opened for business, they accepted the collective bargaining agreement previously existing between the Complainant and the Steak and Shish-kebob Restaurant as binding upon the Respondents and Complainant.

5. That Michael Ratener was an employe of Steak and Shish-kebob from early January until mid-June, 1972, when Steak and Shish-kebob ceased its operations; that Ratener, between the time Steak and Shish-kebob closed and Respondents opened for business, had at least one conversation with Respondents Horemis and Paraskevoulakas at which time they discussed the Complainant and its role in representing employes; that in said conversation, Horemis stated that he thought Ratener was the person primarily responsible for a strike action against Steak and Shish-kebob, which, in Horemis' view, caused the failure of said restaurant and, further, that if any person connected with the Complainant walked past the restaurant, they would have to walk on the other side of the street or else they would "get it"; and that when Respondents opened for business in September, 1972, Ratener was not hired as an employe.

6. That shortly after Respondents opened for business, Jackie Young, Secretary-Treasurer of the Complainant, visited the premises and spoke to Demetrious P. Zografos, previous owner of Steak and Shish-kebob and to Respondent Horemis and Respondent Paraskevoulakas, concerning wages due certain employes who had worked for Steak and Shish-kebob; that Young informed Zografos, as well as the Respondents, that the collective bargaining agreement with Steak and Shish-kebob contained a provision which required Respondents to succeed to the collective bargaining agreement between the Complainant and Steak and Shish-kebob; that Respondents responded that the only "law" in their restaurant was themselves and that they were not concerned with the Complainant; that they had no intention of complying with the collective bargaining agreement which had existed between Complainant and Respondent; that they were now the owners and that she had better leave the premises; that Respondents proceeded to call the Police; and that Young left the premises when the Police arrived on the scene.

7. That Young returned to the restaurant the following week with Ratener; that Ratener and Respondents had a conversation, outside the presence of Young, wherein Respondents expressed their unhappiness with the Complainant and their belief that the Complainant would ruin their business.

8. That after said conversation, Ratener and Young gave one of the Respondents leaflets pertaining to the Complainant, which the Respondents destroyed in their presence, as well as in the presence of other employes; that Respondent Horemis advised Ratener and Young to leave and stated that if they did not do so he would "kill them"; that as Young and Ratener walked out of the restaurant, both Respondents followed them and warned them that if they ever talked about the Complainant, or ever came back to the restaurant, they would kill them or they would see to it that someone else killed them.

9. That Ellen Wold applied for a job with Respondents in September-October, 1972; that she was interviewed by Respondent Paraskevoulakas and that one of the questions she was asked was whether she had ever heard of the Complainant; and that she was not offered a job with Respondents.

10. That in the latter part of September or early October, 1972, Young and Judy Cohen, an employe of Respondent at the time, had a meeting with Edward Kamm, an officer of the Commercial State Bank, Madison, and Respondent Horemis; that at said meeting, Young informed Kamm of the incident and threats made by Respondent Horemis; that

Respondent Horemis admitted threatening Young; and that at the close of the meeting, Kamm stated that he would talk to the Respondents concerning the Complainant.

11. That sometime after September, 1972, Roberta Lichtman, an employe of the Respondents at the time, had a conversation with one of the Respondents concerning working conditions and the Complainant; and that said Respondent stated that he didn't believe in labor laws and that if she didn't like the way he ran his restaurant she should open her own restaurant.

12. That in the latter part of November, 1972, Beverly Ingle, Head Waitress, advised Lichtman that she should not associate with representatives of the Complainant if they came into the restaurant; that Ed Cumberworth, in February, 1973, visited the restaurant and spoke to one of the waitresses concerning the Complainant; that when Cumberworth asked her if she knew anything about the Complainant she responded that she was not allowed to speak about the Complainant and walked away.

13. That in February, 1973, Young informed both Mr. Kamm and Respondents' attorney, that the Complainant's contract with Respondents was about to expire and that the parties should schedule a negotiation session before said expiration; that several days prior to said expiration, Young called said attorney and inquired if he had any intention of negotiating a new agreement; that Hanson indicated that he would not be able to negotiate for a couple of weeks; that Young stated that the contract expired February 26 or 28, and that if a negotiating meeting was not held prior to the expiration date, they would set up picket lines.

14. That in late February, 1973, Complainant and Respondents met for the purpose of negotiating a new collective bargaining agreement to succeed the previous bargaining agreement; that Jackie Young and Elaine Koplow attended said meeting on behalf of the Complainant, which was also attended by both Respondents and their attorney; that a number of Respondents' employes were also in attendance at said meeting; that during the course of said meeting, Respondents' attorney stated to the employes who were present that they could proceed before the Wisconsin Employment Relations Commission if they desired not to be represented by the Complainant; and that said statement was made to the employes because the attorney, prior to the meeting, had received inquiries from the employes concerning the representative status of the Complainant.

15. That subsequently, the parties met on or about March 6, 1973, on or about March 13, 1973, and again on April 6, 1973 at which time the parties executed a collective bargaining agreement; that for the Complainant Young and Koplow attended all said meetings; Judy Cohen attended the second and third meetings and Ed Cumberworth attended the second meeting; that for Respondents, their attorney attended all the meetings; that Respondent Horemis attended the third and fourth meetings; and that Respondent Paraskevoulakas attended the fourth meeting, as well as a portion of the second meeting; that during the first and second meetings, the parties exchanged proposals and counter-proposals; that it was the Complainant's understanding that an oral agreement had been reached at the conclusion of the second negotiation meeting on or about March 6, 1973; and that a collective bargaining agreement was not executed until April 6, 1973 with an effective term from April 6, 1973 to April 6, 1974.

16. That on March 13, 1973, Beverly Ingle, Head Waitress, filed a petition with the Wisconsin Employment Relations Commission, seeking an election and referendum among employes of the Respondents classified as cooks, dishwashers, waitresses, waitors, cashiers and host; that

Beverly Ingle has been employed by Respondents as a waitress since the restaurant opened in September, 1972; and that in early 1973 Ingle became Head Waitress; that Ingle is a full-time employee working approximately 40 hours a week as a waitress; that there are between seven and 11 other waitresses employed by Respondents; that Ingle, with the approval of Respondents, schedules work, directs and assists other waitresses in setting up tables and answers whatever questions they may have; that she has no authority to hire or fire employees; that, however, on one occasion while on duty, Ingle informed one of the waitresses that she had been discharged but that Ingle did not actually discharge or recommend that said waitress be discharged, but rather only relayed said message; and although Ingle has no authority to hire, she may make recommendations, as can other employees; that Ingle spends almost all of her time performing the same duties as other waitresses and receives the same hourly rate as other waitresses.

17. That Respondents, by the totality of their conduct as set forth in Findings of Fact, 6, 7, 8, and 11, in denouncing the Complainant and threatening the lives of its representatives, interfered with the rights of its employees.

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

CONCLUSIONS OF LAW

1. That Beverly Ingle, is an employee of Respondents Gus Horemis and Gus Paraskevoulakas, d/b/a Athens Restaurant, within the meaning of Section 111.02(3) of the Wisconsin Employment Peace Act.

2. That the Respondents, Gus Horemis and Gus Paraskevoulakas, by threatening the lives of representatives of Complainant, Madison Independent Workers Union, by destroying Complainant's leaflets in the presence of its employees and by denouncing the Complainant, interfered with, restrained and coerced its employees in the exercise of their right to engage in lawful concerted activity within the meaning of Section 111.04 of the Wisconsin Employment Peace Act, and by such activity have engaged in unfair labor practices in violation of Section 111.06(1)(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 and issues the following

ORDER

IT IS ORDERED that Respondents, Gus Horemis and Gus Paraskevoulakas immediately:

1. Cease and desist from threatening the lives of representatives of the Complainant, Madison Independent Workers Union, or in any other manner interfering with, restraining or coercing its employees in the exercise of their right to engage in concerted activities, or to refrain from any and all such activities, within the meaning of Section 111.04 of the Wisconsin Employment Peace Act.
2. Take the following affirmative action which the Commission finds will effectuate the policies of the Wisconsin Employment Peace Act:
 - (a) Notify its employees by posting in a conspicuous place on its premises, where notices to all its employees are usually posted, a copy of the Notice attached hereto and marked "Appendix A." Such copy shall be signed by Gus Horemis and Gus Paraskevoulakas and shall be posted

immediately upon receipt of a copy of this Order and shall remain posted for a period of twenty (20) days thereafter. Reasonable steps shall be taken by the Respondents to insure that said Notice is not altered, defaced or covered by other material.

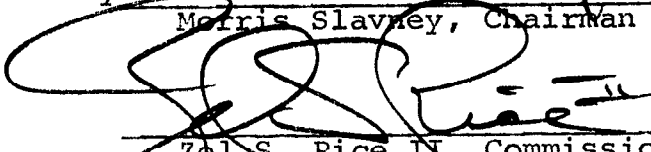
- (b) Notify the Wisconsin Employment Relations Commission, in writing, within ten (10) days from the date of this Order as to what steps it has taken to comply with this Order.

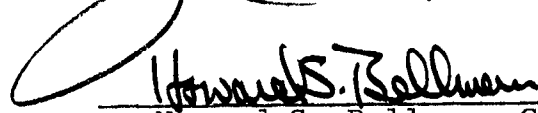
Given under our hands and seal at the
City of Madison, Wisconsin this 14th
day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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

1. WE WILL cease and desist from threatening the lives of representatives of Madison Independent Workers Union, or in any other manner interfering with, restraining or coercing employees in the exercise of their right to engage in concerted activities, or to refrain from any and all such activities within the meaning of Section 111.04 of the Wisconsin Employment Peace Act.

Dated this _____ day of _____, 1974.

By _____
Gus Horemis

Gus Paraskevoulakas

THIS NOTICE MUST REMAIN POSTED FOR TWENTY (20) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 19, 1972, Complainant filed a complaint naming Demetrious P. Zografos and Pourtelis D. Zografos as Respondents. Alleged in said complaint is the following:

"That Demetrious P. Zografos and Pourtelis D. Zografos and the new owners of the Steak and Shish-kebob Restaurant, now known as the Athens Restaurant, State St., Madison, have committed unfair labor practices in regards to breach of Union contract; Making non-membership in the Union a condition of employment; Intimidating workers at the Restaurant into not talking with union organizers nor finding out about their rights under contract."

By notice served upon both parties, said complaint was scheduled for hearing on November 28, 1972.

On November 13, 1972, Complainant amended its complaint to include Gus Paraskevoulakas and Gus Horemis as Respondents. In said complaint, Complainant alleges the following:

" . . . that Demetrious P. Zografos, Pourtelis D. Zografos Gus Paraskevoulakas, Gus Horemis, the last two individuals being the new owners of the Steak & Shish-kebob Restaurant, now known as the Athens Restaurant, State Street, Madison, have committed unfair labor practices in regards to breach of Union contract; Former employees of the Restaurant have not been paid for work done & non membership in Union was made a condition of employment; workers were intimidated into not talking with union organizers nor finding out their rights under contract."

By notice dated November 28, 1972, over the signature of Hearing Officer Herman Torosian, the scheduled hearing in said matter was postponed indefinitely pending notification of settlement or new hearing date.

Prior to any further action by the Commission, a second amended complaint was filed by the Complainant and naming "Mr. Kamm, Vice Pres. Commercial State Bank" as Respondent in addition to Respondents named by complaint in its original complaint and first amended complaint. By said complaint, Complainant alleged the following:

- "1. The Respondents have breached the Union Contract on or about The 1st of September or when the Athen's reopened in 1972. Former employees were not paid for work done; Non-membership in the Union was made a condition of employment; Workers in the Restaurant were intimidated into not talking to union sympathizers or Agents; Workers were not told that the Restaurant was under Union contract, in fact, were told just the opposite, that no Union represented them. Contract wages were not paid. Many other breaches of contract.
2. On or about the month of October, Union Agents' lives were threatened when they tried to talk to management. They were told that they would be killed if they tried fo enforce the contract.

3. On or about February 23, 1973, the above named Respondents have attempted to instigate a Company Controlled Union by giving employees the choice to individually sign a contract with management, in disregard of the already existing union recognition signed with the Madison Independent Workers Union. Respondents said that by doing this, they would refuse to negotiate with MIWU.
4. On or about February 23, 1973 Respondents have intimidated and coerced employees into not finding out their rights under the Union, and have threatened Employees for engaging in protected union activities.
5. On or about January 5, 1973 Respondents illegally discharged Roberta (whose last name is unknown to MIWU at this time) for engaging in protected union activities, and Jody Stern.
6. Refused to bargain in good faith."

On March 13, 1974, a petition was filed with the Wisconsin Employment Relations Commission by Beverly Ingle, Head Waitress, employed by Respondents seeking an election and referendum among cooks, dishwashers, cashiers, waitresses and waitors and hosts. Accompanying said petition was a 30 percent showing of interest. At the time said employees were in a unit represented by Complainant, Madison Independent Workers Union.

On March 27, 1973, Respondents filed an Answer with the Commission denying all of the allegations alleged by Complainant.

Hearing on the election and referendum petition and the complaint was held on May 4 and 15, 1973. Both matters were consolidated for the purposes of the hearing.

During the course of the hearing held on May 4, 1973, Beverly Ingle withdrew that portion of the petition requesting a referendum. Also Complainant and Respondents settled some of the matters in dispute and stipulated that the only matters for determination by the Commission were those allegations relevant to determination of whether the Respondents by their conduct, instigated the election petition filed by Beverly Ingle on March 13, 1973, or in any other way interfered with, coerced or restrained employees in the exercise of their rights under the Employment Peace Act. In this regard, Complainant amended its second amended complaint by dropping allegations five and six in their entirety and the following allegations contained in paragraph one of its complaint:

- "1. The Respondents have breached the Union Contract on or about the 1st of September or when the Athen's reopened in 1972. Former employees were not paid for work done;

. . .

Contract wages were not paid. Many other breaches of contract."

Complainant also amended its complaint by dropping Mr. Kamm, Vice President, Commercial State Bank, Demetrious P. Zografos and Pourtelis D. Zografos as named Respondents, thereby naming only Gus Horemis and Gus Paraskevoulakas as Respondents.

Also during the course of the hearing, and at the conclusion of the Complainant's case, Respondents moved for the dismissal of the

complaint on the basis that the Complainant had not presented sufficient proof to establish that Respondents had participated in the unfair labor practices as alleged. The Commission concludes that the Complainant has made a prima facie case and for said reasons Respondents' motion is hereby denied. Therefore, the determination on the merits will be made in the instant case by the Commission.

In regard to its complaint, Complainant first argues that the parties on or about March 6, 1973, reached an oral agreement with respect to the wages, hours and terms of employment covering certain employees employed by Respondents to succeed the agreement which expired in February, 1973. It is Complainant's position that said oral agreement constitutes a bar to the processing of the election petition. The Respondents deny that an oral agreement was reached between the parties.

Assuming the parties reached an oral agreement as alleged, the Commission finds that an oral agreement cannot serve as a bar nor can contracts tentatively agreed to but not signed before the filing of a petition serve as a bar. In reaching said conclusion, the Commission feels that such a determination is simple, clear, easy to follow and best serves the interests of all parties concerned. It allows for the expeditious disposition of representative cases and provides a fine balance between the statutory policy of stability in labor relations and the exercise of free choice by employees in the selection or change of bargaining representatives.

In the instant case, the parties did not execute their collective bargaining agreement in question until April 6, 1973. Therefore, said agreement does not serve as a bar to the petition filed on March 13, 1973.

Secondly, Complainant asserts that the Respondents, by their alleged conduct, were instrumental in the surfacing of the March 13 petition for election. It is argued that said conduct by Respondents interfered with the employees' rights under Section 111.06 of the Wisconsin Employment Peace Act.

It is important to note that this is not a case where an Employer, by its agents, petitioned for an election, as alleged by the Complainant, but rather the petition was filed by an individual employee, supported by a petition signed by a majority of the Respondents' employees. The Complainant contends that the Petitioner, Beverly Ingle, is a supervisor but the record establishes otherwise. Ingle is a full-time employee working approximately 40 hours a week and is classified as a head waitress. There are between seven and 11 other waitresses employed by Respondents. Ingle's duties included the scheduling of work for the waitresses, but with the approval of either Respondent. In addition to performing the duties required of a waitress, Ingle assists other waitresses in setting up tables and answers whatever questions they may have. She has no authority to hire, fire or otherwise discipline employees. In this regard, on one occasion, Ingle informed one of the waitresses that she was terminated but the decision to fire said waitress was not made by Ingle but rather by one of the Respondents. Although Ingle has no authority to hire, she may make recommendations, as can other employees. Ingle receives the same hourly rate as other waitresses.

Based on the above, it is clear to the Commission that Beverly Ingle is not a supervisor within the meaning of the Act but rather is an employee who spends a majority of her time performing the same duties as other waitresses.

The Complainant alleges at paragraph one that "nonmembership in the Union was made a condition of employment" and that "workers were not told that the restaurant was under Union contract, in fact were told just the opposite, that no union represented them." In reviewing

the record, the Commission finds no evidence whatsoever supporting said allegations. Also, the Complainant, in paragraphs three and four of its complaint, allege that on or about February 23, 1973, Respondents attempted to instigate a "Company" controlled union by giving employees a choice to individually sign a contract with management and that by so doing Respondents would refuse to negotiate with the Complainant and that Respondents intimidated and coerced employees into "not finding out their rights under the Union, and have threatened employees for engaging in Union activities." Again, there is no evidence in the record supporting said allegations. At most, Elaine Koplow, in questioning one of the witnesses, implied that a meeting was held by Respondents at which attendance was required and at which time a petition was circulated to dispose of Complainant labor organization. There was, however, no evidence to support such a finding.

The record also establishes that at the first negotiating meeting between the parties in late February, 1973, Respondents' attorney, stated to the employees present that they could contact the Wisconsin Employment Relations Commission if they no longer desired to be represented by the Complainant. In this regard, said attorney testified that prior to said meeting he had been asked by several employees what they could "do about" the Complainant. It was for said reason that said attorney informed the employees at the February meeting in said regard. While said statement was made shortly prior to Ingle's petition for election, the attorney, by said statement, was merely advising employees of their possible rights. The Commission concludes that said isolated statement, made several months after Respondents' other alleged conduct does not constitute interference.

Evidence was presented concerning the following remaining allegations in the complaint:

- "1. . . . Workers in the Restaurant were intimidated into not talking to union sympathizers or Agents; . . .
2. On or about the month of October, Union Agents' lives were threatened when they tried to talk to management. They were told that they would be killed if they tried to enforce the contract."

The material facts in regard to the above allegations appear in Findings of Fact, paragraph 5 through 13 and are uncontroverted. In regard thereto, the Commission, in reviewing the facts as outlined in paragraphs five and nine, concludes that the evidence is insufficient to find that either Michael Ratener or Ellen Wold were denied employment because of their concerted activity. With respect to Ratener, there is no evidence that he, in fact, applied for a job and was denied employment. The only evidence regarding Wold is that she applied for a job and when interviewed by Respondent Paraskevoulakas, she was asked if she ever heard of the Complainant. Given the limited facts surrounding both situations, the Commission concludes Respondents did not violate Section 111.70(1)(a) in regard thereto.

In regard to the fact contained in paragraph 12 of the Findings of Fact, which establishes that Beverly Ingle, Head Waitress, told Lichtman that she should not associate with members of the Complainant, if they came into the restaurant, the Commission finds no act of interference by the Respondents in that there is no evidence that she was speaking on behalf of the Respondents when she made said statement. Also the Commission has already concluded that Ingle is not a supervisor and therefore not an agent of the Respondents. Further, the testimony of Ed Cumberworth that he spoke to one of the waitresses at Athens Restaurant

and was told by said waitress that she was not allowed to talk to the representatives of the Complainant is hearsay and insufficient to establish interference by the Respondents.

The Commission, in reviewing Findings of Fact numbers 6, 7, 8 and 11, and the totality of the Respondents' conduct in regard thereto, and specifically Respondents' destroying Complainant's leaflets in the presence of Ratener and Young as well as in the presence of employees, and Respondent Horemis' threat to Ratener and Young that if they ever talked about the Complainant, or ever came back to the restaurant they would kill them, or they would see to it that someone else would kill them, concludes that by said conduct, Respondents, interfered with the rights of its employees, thereby violated Section 111.06(1)(a) of the Act.

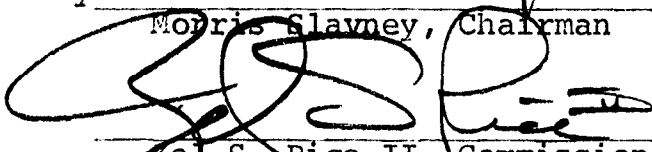
The Commission notes, however, that all of Respondents' unlawful conduct was remote in time, from three to seven months from the date of the filing of Ingle's election petition. In this regard, the Commission notes that Respondents assumed the responsibilities of the previous owner as to the collective bargaining agreement with Complainant in late February 1973 and, in fact, executed a collective bargaining agreement on April 6, 1973. For said reasons, the Commission is not convinced that Respondents' illegal acts of interference precludes a fair and untainted election from being conducted. The Commission therefore, has today directed an election as petitioned for by Beverly Ingle. 2/

Dated at Madison, Wisconsin this 14th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner