

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LACROSSE TELEPHONE CORPORATION,	:	
and LYNN HACKETT,	:	
	:	
Complainants,	:	
	:	Case V
vs.	:	No. 18708 Cw-342
	:	Decision No. 13294-A
INTERNATIONAL BROTHERHOOD OF ELECTRICAL	:	
WORKERS, and LOCAL NO. 990 OF IBEW;	:	
DAVID L. JOHNSON, GARY BLANCHARD,	:	
and GOODWIN TORRENCE HASS,	:	
	:	
Respondents.	:	
	:	

Appearances:

Hale, Skemp, Hanson, Schnurrer & Skemp, Attorneys at Law, by Mr. Thomas S. Sleik, appearing on behalf of the Complainants.
 Chojnacki and Chojnacki, Attorneys at Law, by Mr. Leonard R. Chojnacki, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

LaCrosse Telephone Corporation and Lynn Hackett having, on January 13, 1975, filed a complaint with the Wisconsin Employment Relations Commission wherein they allege that International Brotherhood of Electrical Workers, and Local 990 of IBEW; David L. Johnson, Gary Blanchard and Goodwin Torrence Hass had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Marvin L. Schurke, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing having been held on August 18, 1975, before the Examiner; and the Examiner 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 LaCrosse Telephone Corporation, hereinafter referred to as Complainant Employer, is a Wisconsin corporation with principal offices in the City of LaCrosse, LaCrosse County, Wisconsin; that the Complainant Employer is a public utility organized pursuant to the laws of the State of Wisconsin and engaged generally in the operation of telephone communications; that the Complainant Employer is engaged in a business affecting interstate commerce within the meaning of the Labor Management Relations Act of 1947, as amended; and that the Complainant Employer maintains a facility in the City of LaCrosse, Wisconsin at a location known as 5th and Jay Streets.
2. That Lynn Hackett, hereinafter referred to as Complainant Hackett, is an individual residing at Stoddard, Wisconsin; and that, at all times pertinent hereto, Complainant Hackett was employed by Complainant Employer as a telephone operator.
3. That Local Union No. 990, International Brotherhood of Electrical Workers, AFL-CIO, hereinafter referred to as Respondent Union, is a labor

organization having offices at 423 Jay Street, LaCrosse, Wisconsin; and that, at all times pertinent hereto, Respondent Union was recognized by Complainant Employer as the exclusive collective bargaining representative of employes of Complainant Employer in its Plant, Traffic, Accounting and Commercial departments.

4. That David L. Johnson, hereinafter referred to as Respondent Johnson, is an individual residing at LaCrosse, Wisconsin; and that, at all times pertinent hereto, Respondent Johnson was an employe of Complainant Employer and a member of Respondent Union.

5. That Gary Blanchard, hereinafter referred to as Respondent Blanchard, is an individual residing at Onalaska, Wisconsin; and that, at all times pertinent hereto, Respondent Blanchard was an employe of Complainant Employer and a member of Respondent Union.

6. That Goodwin Torrence Hass, a/k/a Butch Hass, hereinafter referred to as Respondent Hass, is an individual residing at LaCrosse, Wisconsin; and that, at all times pertinent hereto, Respondent Hass was an employe of Complainant Employer and a member of Respondent Union.

7. That, commencing on November 14, 1974 and continuing until February 28, 1975, Respondent Union maintained a strike and picket lines against and at the premises of Complainant Employer; that Respondents Johnson, Blanchard and Hass participated in such strike and picketing; that Complainant Hackett refrained from engaging in such strike and picketing and continued working for Complainant Employer during the period of such strike and picketing.

8. That, on January 10, 1975, at or about 1:15 a.m., Respondents Johnson, Blanchard and Hass were maintaining a picket line on behalf of Respondent Union at the Complainant Employer's premises at 5th and Jay Streets; that, at such time, Complainant Hackett and another employe of Complainant Employer attempted to make egress from the premises of Complainant Employer and to enter an automobile waiting for them on the adjacent street; that individuals manning the picket line of Respondent Union, and particularly Respondents Johnson, Blanchard and Hass obstructed and interfered with the egress of Complainant Hackett from her place of employment by means of intimidation, force and coercion; and that, during the course of such altercation, Respondent Johnson committed a battery upon the person of Complainant Hackett.

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

CONCLUSIONS OF LAW

1. That Respondent Local Union No. 990, International Brotherhood of Electrical Workers, AFL-CIO, and Respondents David L. Johnson, Gary Blanchard and Goodwin Torrence Hass, by maintaining and manning a picket line obstructing and interfering with entrance to or egress from any place of employment, have engaged in unfair labor practices within the meaning of Section 111.06(2)(f), Wisconsin Statutes.

2. That the altercation involving Complainant Lynn Hackett and Respondent David L. Johnson which occurred on January 10, 1975 was directly in connection with a controversy as to employment relations; that the battery committed by Respondent Johnson on the person of Complainant Hackett was a battery within the meaning of Section 940.20, Wisconsin Statutes; and that, by the commission of a crime or misdemeanor in connection with a controversy as to employment relations, David L. Johnson has engaged in unfair labor practices within the meaning of Section 111.06(2)(j), Wisconsin Statutes.

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

ORDER


IT IS ORDERED that Local Union No. 990, International Brotherhood of Electrical Workers, AFL-CIO, its officers and agents, and David L. Johnson, Gary Blanchard and Goodwin Torrence Hass shall immediately:

1. Cease and desist from:
 - (a) Maintaining or manning picket lines obstructing or interfering with entrance to or egress from any place of employment or in any other manner to hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
 - (b) Committing any crime or misdemeanor in connection with any controversy as to employment relations.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
 - (a) Notify all employes, by posting on each of the Union bulletin boards provided for in Article XXX of the February 28, 1975 labor agreement between LaCrosse Telephone Corporation and Local Union No. 990, International Brotherhood of Electrical Workers, AFL-CIO, copies of the notice attached hereto and marked "Appendix A". "Appendix A" shall be signed by the President and Business Manager of said Local Union and shall be posted immediately upon receipt of a copy of this Order. Such notices shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondents to insure that such notices are not altered, defaced or covered by other material.
 - (b) Notify the Wisconsin Employment Relations Commission, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 27th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Marvin L. Schurke, Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of an Examiner appointed by the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify all employes of LaCrosse Telephone Corporation that:

Local Union No. 990, International Brotherhood of Electrical Workers, AFL-CIO, WILL NOT condone, promote or encourage any action by employes of LaCrosse Telephone Corporation to hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance, or the commission of any crime or misdemeanor in connection with any controversy as to employment relations.

LOCAL UNION NO. 990, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO

By _____
President

Business Manager

Dated this _____ day of _____, 1976.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) 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

PLEADINGS AND PRELIMINARY MOTIONS:

In the complaint filed on January 13, 1975, the Complainants allege that the Respondents violated Sections 111.06(2)(a) and (j) of the Wisconsin Employment Peace Act in connection with an incident occurring on January 10, 1975. The Complainants amended their complaint on January 22, 1975, deleting the reference to Section 111.06(2)(a) and substituting allegation of a violation of Section 111.06(2)(f), Wisconsin Statutes. The Respondents filed an answer on February 10, 1975 denying the material allegations of the complaint and denying any violation of the statute. The matter was scheduled to be heard on February 19, 1975. However, shortly prior to that date the parties requested indefinite postponement of the hearing pending the outcome of negotiations between them, and the hearing was postponed on that basis. The Complainants subsequently requested that the matter be brought on for hearing, and a hearing was held on August 18, 1975.

At the outset of the hearing, the Respondents moved, on three separate grounds, for the dismissal of the complaint. All of said motions were denied by the Examiner at that time, and those rulings are reaffirmed here for the reasons stated in the discussion which follows. After the disposition of the Respondents' preliminary motions, the parties proceeded to stipulate that the evidentiary record before the Examiner in this case should consist of certain documents, a partial transcript of testimony given in related proceedings in the Circuit Court for LaCrosse County being among those. Both parties then rested without calling any witnesses. The transcript of the hearing, which embodies the arguments of counsel, was delivered to the Examiner on September 17, 1975.

MOTIONS TO DISMISS:

Pre-emption by Circuit Court in Injunction Proceeding

It is established that the Respondent Union here commenced a strike against the LaCrosse Telephone Company on or about November 14, 1974. The individual Respondents participated in that strike, while the individual Complainant continued working for the Company during the strike. The incident complained of here occurred on January 10, 1975. Thereafter, the Company commenced an action against the Union in the Circuit Court for LaCrosse County, wherein the Company sought injunctive relief with respect to certain picket line activities, and the instant proceeding was commenced before the Commission. The strike continued beyond the original hearing date scheduled in the instant case, until resolved on February 28, 1975. In the meantime, the Circuit Court, the Honorable Peter G. Pappas presiding, issued a bench decision on February 17, 1975 granting an injunction prohibiting certain activities, and that injunction was embodied in a formal order dated February 18, 1975. The Respondents move to dismiss the proceedings before the Commission on the basis that the case is now moot and that the aforesaid injunction has the same effect as would a cease and desist order issued by the Commission in the instant case. It is pointed out that the Company and the Union are now parties to a collective bargaining agreement which has been put in evidence in the instant case, and that there is no longer a strike in existence. The Complainants opposed that motion, contending that the injunction issued by the Circuit Court was extremely narrow in its scope and that its effects did not survive the termination of the strike. Furthermore, it is pointed out that the orders of the Circuit Court lack the finding of an unfair labor practice which is sought by the Complainants here.

The parties have placed both a transcription of the bench decision of the Circuit Court and a copy of the formal order granting the injunction in evidence, and those documents have been examined for any indication that the issues litigated there were related to the issues joined in this case. It is well established that the Wisconsin Employment Relations Commission does not have exclusive jurisdiction to prevent unfair labor practices under the Wisconsin Employment Peace Act, and that such relief can be sought in the courts of the State. George La Duc, Racine Co. Cir. Ct., 7/47. Accordingly, it would be appropriate to grant the Respondents' motion for dismissal of the proceedings before the Commission if there was evidence that the Circuit Court has assumed jurisdiction over an alleged violation of Sections 111.06(2)(f) and (j), Wisconsin Statutes. Such evidence is, however, lacking in this record. Section 111.07(1), Wisconsin Statutes, specifically contemplates the separate pursuit of equitable relief in the courts while simultaneously pursuing relief from unfair labor practices before the Commission, and the documents in evidence here indicate this was just such a situation. There has been no prior disposition of the Complainants' allegations arising under Sections 111.06(2)(f) and (j), Wisconsin Statutes. The settlement of a new collective bargaining agreement does not automatically moot or excuse prior violations of the statute. Brillion Jt. School Dist. (11189-B) 1/76.

Pre-emption by Circuit Court in Civil Action

At some time on or prior to February 18, 1975, the individual Complainant herein commenced a civil action in the Circuit Court for LaCrosse County against the individual Respondents herein. The only evidence in the instant record concerning that civil action is a copy of correspondence directed by the Clerk of the Court to counsel for the Respondents, identifying the parties and informing as to the assigned case number. From the arguments of counsel, it appears that the civil action involves a claim by Hackett for damages resulting from alleged tortious conduct of the individual Respondents herein. There is no indication that either the Company or the Union are parties to that proceeding. Again, the Respondents move to dismiss the proceedings before the Commission because of what they contend to be parallel proceedings concerning the same facts in another forum. Again, the Complainants contend that different legal rights are being pursued in the civil action than are being pursued in the instant case.

This case arises in the private sector, and the employer is engaged in interstate commerce and is subject to the jurisdiction of the National Labor Relations Board. Certain of the provisions of the Wisconsin Employment Peace Act parallel provisions of the federal Labor Management Relations Act of 1947, as amended. Where activity is also regulated by the federal act and the volume of business of the employer involved meets the NLRB's jurisdictional standards, the Wisconsin Employment Relations Commission will not exercise its jurisdiction. Kiekhaefer Corp. (5381) 1/59. However, certain provisions of the Wisconsin Employment Peace Act, including Sections 111.06(2)(f) and (j), have no parallel in the federal Act, and those provisions of the Wisconsin law are regarded as an exercise of police power by the State through its courts or the Commission. Kohler Co., 351 U.S. 266 (1956). Examples are innumerable in which a given set of facts may give rise to both a tort claim and a violation of some police power regulation of the State, and the existence of one does not bar the pursuit of the other. Section 111.07(1) specifically contemplates the separate pursuit of legal relief, and the instant proceedings are not barred by any tort action which is or might be commenced between individual participants.

Jurisdiction to Find Crime or Misdemeanor

The complaint filed herein alleges, in part, that the individual Respondents "willfully and maliciously committed an assault and battery upon the person of the" individual Complainant, and that said conduct was contrary to the provisions of Section 940.20, Wisconsin Statutes, a portion of the Criminal Code. The partial transcript of testimony given in the Circuit Court and placed in evidence in this proceeding relates to an altercation on January 10, 1975 during which that alleged assault and battery is alleged to have occurred. The Respondents contend here that the Commission has no jurisdiction to determine whether a crime or misdemeanor has been committed and that such jurisdiction lies exclusively with the criminal courts. The Complainants contend that they do not seek a ruling on the criminal allegations here, but rather a determination under Section 111.06(2)(j) alone, and urge that the Commission and its Examiner have jurisdiction to make such a determination.

In North Shore Publishing Company (11310-A) 10/72, an Examiner appointed by the Commission in a case involving allegations of violation of Section 111.06(1)(1) of the Wisconsin Employment Peace Act denied the Respondent's motion to dismiss based on the concurrent pendency of criminal proceedings, but ordered that the proceedings before the Commission be held in abeyance pending the outcome of the criminal proceedings in the Court. That situation differs from that before the Examiner in the instant case, in that it was evident in North Shore that criminal proceedings were being actively pursued and there was an expectancy that a decision would be forthcoming from the criminal proceedings within a reasonable period of time, while there is no evidence of active prosecution of any of the Respondents here. The Examiner's retention of jurisdiction in North Shore inherently (and specifically) implies that the Commission would act to make the determination on the crime or misdemeanor allegation if the courts failed to act or if the action of the court was not to be forthcoming in a reasonable period of time. Similarly, in Layton School of Art (12231-B) 5/75, the Commission proceeded to make determinations as to the merits of allegations that a crime or misdemeanor had been committed in connection with a labor dispute in a situation where there was no indication that criminal prosecution had even been considered, let alone commenced. The legislature has enacted Sections 111.06(1)(1) and 111.06(2)(j) and has included them in the same statute with Section 111.07(1). The Examiner concludes that the Commission has jurisdiction to proceed in this case, in that no criminal penalty or imprisonment flows from Section 111.06(2)(j).

THE MERITS OF THE DISPUTE:

Background

On January 10, 1975, the Union was maintaining a picket line at the Company's premises at 5th and Jay Streets in LaCrosse, Wisconsin. The individual Respondents named herein were among those manning that picket line at that time. The Company had one or more security guards on duty manning a post at the entrance to the Company's building. A security guard who was on duty at that time testified that the individual Complainant herein, Hackett, and another employe of the Company, Haig, attempted to leave the Company's premises at or about 1:15 a.m. on that date to enter a car waiting for them on the adjacent street. Haig was able to reach and enter the car, but Hackett's access to the car was blocked by one of the individual Respondents, Johnson. A series of physical contacts between Hackett and the pickets was described by the security guard, including that Hackett was shoved around, that Hackett was shoved against the car, that punches were thrown, and that Hackett was pulled out of or away from the car by her hair. Acting apparently under orders as to his

function, the security guard did not leave his post to directly enter the altercation, but did call the police. Hackett was able to enter the car and leave the area before the police arrived.

Hackett's testimony indicates that she attempted to push aside Johnson as he blocked her access to the car, that the car door was repeatedly kicked shut as she tried to enter the car, that she was caught between the door of the car and the body of the car as Johnson and others pushed the door shut, that she was slapped, that her hair was pulled and that she was dragged out of the car. On the other hand, Hackett testified that she kicked and hit Johnson and pulled his hair during the altercation. Hackett testified that union pickets had physically attempted to stop her from entering or leaving the building on at least four occasions prior to January 10, 1975 and on "a couple" of minor occasions subsequent thereto. Hackett identified individual Respondents Hass and Blanchard as fellow participants with Johnson in the January 10, 1975 altercation, although it is apparent that Johnson was the primary participant.

Johnson admitted his presence at the time and place of the January 10, 1975 altercation. He further admitted that he called Hackett a "scab" and a "strike breaker" as she left the building and proceeded towards the car. His version differs from that of both Hackett and the security guard, in that he would place the first exchange of physical contacts as occurring after he had gone to the opposite side of the car to talk with the driver and returned to the door which Hackett was seeking to enter. Johnson also testified that it was Hackett who threw the first punches and kicks. He denied shutting the door on Hackett or pulling her hair. He further denied that he had been blocking the door of the car.

While the Examiner has not had an opportunity to observe any of these witnesses, it is concluded that the testimony of Johnson cannot entirely be credited. That testimony conflicts with that of both of the other witnesses, while the testimony of the other witnesses, a participant and an observer, is consistent on most points. Further, the Circuit Court, after hearing this evidence, concluded, as is recited in its bench decision, that there have been acts performed by members of the Union which warranted the granting of an injunction. Specifically enjoined by the Court was: ". . . interference with ingress or egress of any of the employes of the plaintiff (company) at their places of employment, and the scope of this ingress and egress will include the departure of the employes from their place of work to their respective automobiles . . ."

Violation of Section 111.06(2)(f)

Section 111.06(2)(f) of the Wisconsin Employment Peace Act provides that:

"(2) It shall be an unfair labor practice for an employe individually or in concert with others:

. . .

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

The right to strike does not include the right to commit assaults, destroy property or deprive other people of their right to earn a living in the place where they are employed. Allis-Chalmers Mfg. Co. 252 Wis. 43 (1947). Picketing which interferes with entrance or egress need not constitute "mass" picketing in order to constitute an unlawful act. Flambeau Plastics Corp. (7987) 4/67, aff., Mil. Co. Cir. Ct., 6/67. The Examiner finds that a violation has occurred in this case.

Violation of Section 111.06(2)(j)

Section 111.06(2)(j) of the Wisconsin Employment Peace Act provides that:

"(2) It shall be an unfair labor practice for an employe individually or in concert with others:

. . .

(j) To commit any crime or misdemeanor in connection with any controversy as to employment relations."

Does the evidence establish that the altercation which occurred at the Company's premises at or about 1:15 a.m. on January 10, 1975 was a controversy as to employment relations? The Union was on strike and was maintaining a picket line. The incident commenced with name calling which included the use of the terms "scab" and "strike breaker". The name calling alone, without mass picketing or violence, would likely not have constituted a violation of the law. See Flambeau Plastics, supra, but it clearly establishes the setting in which the subsequent violence occurred and establishes that the alleged battery occurred directly and intimately in connection with a controversy as to employment relations.

The Criminal Code of Wisconsin, at Section 940.20, Wisconsin Statutes, provides as follows:

"940.20 Battery. Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed may be fined not more than \$200 or imprisoned not more than six months or both."

The Examiner is persuaded that the evidence establishes that shoving, hair pulling, dragging and hitting of Hackett occurred during the January 10, 1975 altercation, both directly at the hands of employes manning the Union's picket lines and through the medium of the door of the car Hackett was attempting to enter. Such acts were clearly taken against Hackett without her consent, and were resisted by her. The Examiner is not persuaded that a defense of self-defense under Section 939.48, Wisconsin Statutes, would apply, as the individual Respondents herein were engaged in conduct which was itself unlawful and likely to provoke Hackett's actions. The more serious question is as to which, if any, of the individual Respondents does the evidence establish a violation. Only Johnson is identified in the testimony of the security guard as the employe who "reached in [to the car] and grabbed her by the hair more or less and pulled her physically out of the car." Hackett's testimony clearly established Johnson's role in the altercation. While she mentioned Hass and Blanchard by name, she was unsure as to which of them might have been the one who kicked the car door shut on her. Thus, while the evidence establishes that Hass and Blanchard were among a group of Union pickets who collectively interfered with Hackett's egress

from her place of employment, the evidence in this record does not support a conclusion that they, or either of them, committed a violation of Section 940.20, Wisconsin Statutes.

Dated at Madison, Wisconsin this 27th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner