

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----

RETAIL STORE EMPLOYEES UNION LOCAL 444,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case II
	:	No. 21724 Ce-1735
RADIANT CARPET CLEANERS, INC.,	:	Decision No. 15584-B
	:	
Respondent.	:	
	:	

-----

Appearances:

Schneidman & Myers, by Ms. Rose Marie Baron and Mr. Howard N. Myers, for the Complainant.  
Mr. Alan S. Brostoff, Attorney at Law, for the Respondent.<sup>1/</sup>

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Retail Store Employees Union Local 444, herein referred to as Complainant, having filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, herein Commission, alleging that Radiant Carpet Cleaners, Inc., herein referred to as Respondent, had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Amedeo Greco, a member of its staff, as Examiner; and the Commission, by Order dated June 22, 1977, having substituted Stanley H. Michelstetter II, a member of its staff, as Examiner 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 hearing on said complaint having been held commencing July 14, 1977,<sup>2/</sup> and ending September 21, at the close of which hearing the parties having been granted an opportunity to file briefs with respect to the matter; and Complainant having filed its brief on May 15, 1978 and Respondent having not filed a brief; and the examiner having considered the evidence and arguments of counsel makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant, Retail Store Employees Union Local 444, is a labor organization with its principal offices at 4850 West Fond du Lac Avenue, Milwaukee, Wisconsin.

<sup>1/</sup> Mr. Brostoff entered the matter after the first day of hearing.

<sup>2/</sup> Unless otherwise noted, all dates herein are in 1977.

2. That Respondent, Radiant Carpet Cleaners, Inc., is an employer over which the National Labor Relations Board would not assert jurisdiction pursuant to its self-imposed standards therefor; that Respondent operates a carpet cleaning business with offices located at 11935 West Blue Mound Road, Milwaukee, Wisconsin; that at all relevant times James Hlavachek and Jerry Vines were agents of Respondent.

3. That on May 25, Respondent maintained a carpet cleaning department consisting of a total of five regular employees in the separate classifications of driver and helper, Ken Cieslewicz, Randy Scharhag, Gary Couillard, Ron Pollich and Guy Dean Larscheidt; that at all relevant times Respondent's field supervisor, Jerry Vines, had the authority in Respondent's interest to effectively recommend the discipline or discharge of carpet cleaning department employees and only such employees; that carpet cleaning department employees performed functions distinct from those of Respondent's other employees in locations distinct from that of its other employees, under supervision distinct from that of its other employees and under wages, hours and working conditions different from that of its other employees; that Respondent has never recognized Complainant as the representative of any of its employees for the purposes of collective bargaining.

4. That in May, but prior to May 25, Scharhag, Cieslewicz, Couillard and Larscheidt each executed cards authorizing Complainant to represent them for the purposes of collective bargaining; that on May 26, Hlavachek learned the contents of a letter addressed to him by Complainant in which it demanded that Respondent recognize it as the exclusive collective bargaining representative of, in essence, its drivers and helpers; that thereafter, but prior to the facts stated in Findings of Fact 6, 7, 8, 9 and 10, Respondent learned that said four employees had executed said authorization cards and that Pollich had at one time made a statement to the effect Respondent's employees ought to organize a union.

5. That thereafter, Respondent, by its agent Hlavachek, adopted a plan by which it intended to identify all possible union adherents and (directly or constructively) discharge or lay off such employees for the purposes of discouraging their membership in, and activity on behalf of, Complainant and that of its other employees.

6. That thereafter, Respondent, by its agent Hlavachek, discharged or permanently laid off Randy Scharhag, on May 26 or 27 effective on May 27, solely for the purpose of discouraging his membership in, and activity on behalf of, Complainant and that of its other employees.

7. That on May 27, Respondent discharged Gary Couillard predominantly for the purpose of discouraging his membership in, and activity

on behalf of, Complainant and that of its other employes; that on the same day Respondent effectively informed, inter alia, employes Pollich and Larscheidt of the plan mentioned in Finding of Fact 5, above.

8. That on May 31, Respondent temporarily laid off Ken Cieslewicz for the purpose of causing him to quit; that when said tactic failed, it discharged him on June 17; that all of the foregoing conduct was solely for the purpose of discouraging his membership in, and activity on behalf of, Complainant and that of its other employes.

9. That on or about June 1, Guy Dean Larscheidt quit his employment with Respondent because he correctly anticipated that Respondent imminently intended to either lay him off or discharge him for the purpose of discouraging his membership in, and activity on behalf of, Complainant and that of its other employes.

10. That on June 8, Respondent commenced a program of rescheduling Ron Pollich's assigned work hours for the purpose of causing him to quit; that when he did not do so it discharged him on June 11, for the purpose of discouraging his membership in, and activity on behalf of, Complainant and that of its other employes.

11. That by the aforementioned conduct Respondent has undermined the majority status of Complainant as collective bargaining representative of employes in its carpet cleaning department and impeded the holding of elections for the purpose of determining appropriate bargaining unit and for the purpose of determining collective bargaining representative.

On the basis of the above and foregoing findings of fact, the examiner makes and issues the following

#### CONCLUSIONS OF LAW

1. That from May 25, Complainant Retail Store Employees Union Local 444 represented a majority of the employes in the collective bargaining unit consisting of all regular full-time and part-time drivers and helpers employed by Radiant Carpet Cleaners, Inc., excluding supervisory, managerial, confidential, office clerical and phone sales employes, which collective bargaining unit is appropriate within the meaning of Section 111.05 of the Wisconsin Employment Peace Act.

2. That Respondent by having discharged its employes, Gary Couillard, Ken Cieslewicz, Randy Scharhag, Guy Dean Larscheidt and Ron Pollich, for the purpose of discouraging their membership in, and activity on behalf of, Complainant and that of its other employes, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 111.06(1)(c)1 and, derivatively, Section 111.06(1)(a), both of the Wisconsin Employment Peace Act.

On the basis of the above and foregoing findings of fact and conclusions of law, the examiner makes and issues the following

ORDER

IT IS ORDERED that Radiant Carpet Cleaners, Inc. shall immediately:

1. Cease and desist from discouraging its employees' membership in, and activity on behalf of, Complainant, Retail Store Employees Union Local 444, or any other labor organization by discriminatorily discharging or laying off any of its employees or otherwise discriminating against any employee in regard to his or her hire or tenure of employment, or in regard to any other term or condition of employment.

2. Take the following affirmative action which the examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:

- (a) Offer each of Ken Cieslewicz, Randy Scharhag, Ron Pollich, Guy Dean Larscheidt and Gary Couillard reinstatement to the position each formerly held without loss in seniority.
- (b) Make each of Ken Cieslewicz, Randy Scharhag, Ron Pollich, Guy Dean Larscheidt and Gary Couillard whole for all wages and benefits he would have received had he not been discharged, less any amounts he received in unemployment compensation not repaid, and less any amounts which he otherwise earned in the period since his discharge.
- (c) Notify, by mail, Complainant that it is ready and willing to meet with Complainant as the exclusive representative of all regular full-time and regular part-time drivers and helpers employed by Radiant Carpet Cleaners, Inc., excluding supervisory, managerial, confidential, office clerical and phone sales employees; to bargain collectively in good faith; and embody any understanding reached in a signed agreement.
- (d) Notify all of its employees by posting in conspicuous places on its premises, where notices to all of its employees are usually posted, a copy of the notice attached hereto and marked "Appendix A." Such copy shall be signed by James Hlavachek and shall be posted immediately upon receipt of a copy of this order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by Respondent to insure that said notice is not altered, defaced or covered by other material.

(e) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of this order of the steps which it has taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 7th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
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 our employes that:

1. We will offer each of Ken Cieslewicz, Randy Scharhag, Ron Pollich, Guy Dean Larscheidt and Gary Couillard reinstatement to the position each formerly held without loss in seniority and make each whole for all wages and benefits which he may have suffered by reason of our discriminatory discharge of him.
2. We will not discourage membership of our employes in Retail Store Employees Union Local 444 or any other labor organization, either by discriminatorily discharging them or otherwise discriminating against any employe in regard to his or her hire or tenure of employment, or in regard to any other term or condition of employment.
3. We will not in any other manner interfere with, restrain or coerce our employes in the exercise of their right to self-organize, to form labor organizations, and to join or assist Retail Store Employees Union Local 444 or any other labor organization.
4. We will notify, by mail, Retail Store Employees Union Local 444 that we are ready and willing to meet with it as the exclusive representative of all regular full-time and part-time drivers and helpers employed by Radiant Carpet Cleaners, Inc., and we will bargain collectively in good faith with it with regard to wages, hours and conditions of employment of said employes, and if an understanding is reached, we will embody such an understanding in a signed agreement.

All of our employes are free to become, remain, or refrain from becoming, members of Retail Store Employees Union Local 444 or any other labor organization.

RADIANT CARPET CLEANERS, INC.

By \_\_\_\_\_  
James Hlavachek

Dated \_\_\_\_\_

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE ABOVE AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

At approximately noon on May 26, Schiebe received Complainant's letter demanding recognition and read the contents of same to Hlavachek over the telephone. By June 17, Respondent no longer employed any of the five unit employes. Complainant alleges Respondent discriminatorily (directly or constructively) discharged or laid off all of such employes.<sup>3/</sup> It seeks a remedy of reinstatement with full back pay and interest, and an order directing Respondent to bargain with it. Respondent denies Complainant's allegation and alleges Larscheidt and Cieslewicz quit, Scharhag and Couillard were discharged for cause, and Pollich was laid off while unable to perform his work.

Discussion

There is substantial material conflict between Hlavachek's testimony about the May 26 and 27 conversations and Schiebe's, Pollich's and Larscheidt's testimony about the same events. Hlavachek denied many of the important aspects of the conversations. In addition, he testified that at those times he held the belief unionization would not matter to him, or might even help him in his efforts to have his wife accept the business as part of their divorce settlement. He was unable to explain the reason he believed it would help him.

By contrast, Schiebe testified that after he had read the letter demanding recognition to Hlavachek on May 26,<sup>4/</sup> he had a (further or different) conversation with Hlavachek in which he told Schiebe it would cost him and the employes more money to go union and that he felt the employes had improperly gone behind his back. Schiebe also admitted Hlavachek had indicated to him he was going to fight the union. This and other testimony Schiebe (and Pollich and Larscheidt) gave is irreconcilable with Hlavachek's testimony about his own state of mind. While Schiebe's testimony was characterized by his substan-

---

<sup>3/</sup> Complainant also first asserted claims of independent acts of interference in its brief. I find these allegations were inadequately litigated and, therefore, they are not decided. The amended complaint also alleged unlawful refusal to bargain, but this issue was not discussed in Complainant's brief. It is, therefore, not discussed herein.

<sup>4/</sup> Immediately after Schiebe read the letter demanding recognition to Hlavachek, he identified Pollich by name to him as having said the employes ought to form a union.

tial reluctance to testify against his employer's interests,<sup>5/</sup> I conclude he was generally truthful in the testimony he gave. On the basis of the above and foregoing and the record as a whole, I discredit Hlavachek's testimony where it conflicts with any given by Schiebe, Pollich or Larscheidt.<sup>6/</sup>

On the basis of the credited version of the facts, Hlavachek stated in a conversation with Pollich after work on May 26 that he knew Couillard, Larscheidt and Scharhag had each signed authorization cards. Pollich confirmed each had signed, and identified Cieslewicz as the fourth signer.

Of the conversations occurring on May 26 and 27, one other is of great importance, one occurring on May 27 at about 3:00 p.m. between Hlavachek and Pollich during parts of which Larscheidt was present, and parts of which were overheard by Schiebe. During this conversation Hlavachek told Pollich he felt the employes had gone behind his back in trying to organize a union and, by anecdote, intentionally implied to Larscheidt and Pollich, and they properly inferred, he intended to fight Complainant's organizing effort. During this conversation he also intentionally implied to Larscheidt and Pollich, and they properly inferred, his real motivation in discharging Couillard was his union activities. He also told them, in effect, three more employes were going to be discharged, in a context by which he intentionally implied, and they properly inferred, that his motivation therefor was based on their union activities.

On the basis of the credited versions of the conversations of May 26 and 27, I conclude that after learning of the letter demanding recognition, Hlavachek adopted a plan to (constructively or directly) discharge or lay off those persons who had attempted to organize with, or aid, Complainant. Thereafter he communicated this plan to Larscheidt and Pollich in the above-discussed May 27 conversation. Taken with the timing of the terminations, the lack of contemporaneous precipitating circumstances other than union activities, the credited versions of the facts and the record as a whole, I conclude Respondent's, at least, primary motivation for the terminations of Cieslewicz, Pollich, Couillard

---

<sup>5/</sup> Note, for example, Schiebe's testimony in the first volume of the transcript of proceedings at pages 29, 30, 53, 54, 62, 67, 68 and 70.

<sup>6/</sup> I find Schiebe and Larscheidt sufficiently corroborated Pollich's version of the conversations on May 26 and 27 to make his testimony with respect thereto credible in its entirety.



and Scharhag<sup>7/</sup> was each such employe's union activities.

Larscheidt admittedly quit after he learned the other signers, Scharhag, Couillard and Cieslewicz,<sup>8/</sup> had been discharged. On the basis of the above-mentioned May 27 conversation, the discharges and the record as a whole, I conclude Larscheidt properly inferred his unlawfully motivated discharge was imminent. I, therefore, conclude Respondent constructively discharged him for his union activities.

Remedy

With respect to the requested bargaining order, I conclude Respondent's discharge of the entire bargaining unit clearly undermined Complainant's majority status. That Respondent's actions will continue to chill employe rights is, in part, demonstrated by Schiebe's effort to testify truthfully in the presence of his employer. Taken with the size of the employer and the likelihood at least two of the discriminatees will not return, it is highly unlikely that the Commission could run a fair unit determination or representation election in this unit.<sup>9/</sup> I conclude that the requested remedy, with the exception of interest, will effectuate the purposes of the Act.<sup>10/</sup>

Dated at Milwaukee, Wisconsin, this 7th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter  
Stanley H. Michelstetter II  
Examiner

---

7/ I find Scharhag was directly discharged and did not quit.

8/ At this time Larscheidt properly recognized Cieslewicz's temporary layoff meant imminent termination for Cieslewicz.

9/ WERC v. City of Evansville, 69 Wis.2d 140, @ p. 164 (1974); N.L.R.B. v. Gissel Packing Co., 395 U.S. 575, 71 L.R.R.M. 1474 (1974); Steel-Fab, Inc., 212 N.L.R.B. No. 25, 86 L.R.R.M. 1474 (1974); Hot Coffee Service, (7566) 4/66.

10/ I have restated the unit without substantive change to conform to Commission policy.