

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK GUSTAVE LASS,	:	
	:	
Complainant,	:	Case I
	:	No. 26447 Ce-1871
vs.	:	Decision No. 17951-A
	:	
DENNIS MITCHELL AND MITCHELL	:	
WELL COMPANY,	:	
	:	
Respondents.	:	
	:	

Appearances:

Mr. Patrick F. Brown, 241 Wisconsin Avenue, P. O. Box 676, Waukesha, Wisconsin 53186, appearing on behalf of the Complainant.
 Cook & Hickey, by Mr. David H. Hickey, 1220 South Grand Avenue, P. O. Box 1405, Waukesha, Wisconsin 53187, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Mark Gustave Lass, hereinafter Complainant, on June 26, 1980, filed with the Wisconsin Employment Relations Commission, a complaint of unfair labor practices against Dennis Mitchell and Mitchell Well Company, hereinafter referred to as Respondents. Pursuant to Section 111.07 of the Wisconsin Employment Peace Act (WEPA) the Commission on July 17, 1980 appointed Timothy E. Hawks, a member of its staff, to conduct a hearing and make and issue Findings of Fact, Conclusion of Law and Order. The hearing was held on October 13, 1980. The parties submitted evidence, testimony and argument at the time of the hearing. They did not submit post-hearing briefs. A transcript of the hearing was prepared and filed with the Commission on October 23, 1980. The Examiner having fully considered the evidence and arguments and being fully advised in the matter, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Mark Gustave Lass, Complainant, is an employe with his residential address at 400 Delafield Street, Apartment 2-B, Waukesha, Wisconsin 53187.
2. Respondent, Dennis Dean Mitchell is the sole owner of Respondent Mitchell Well Company which is an employer with its business address at 18330 West Burleigh Street, Brookfield, Wisconsin 53005.
3. Complainant has alleged that Respondents discharged him from their employment due to his attempts to join a union. Complainant also alleges that Respondents prevented him from joining a union.
4. Respondent Company is a general non-retail employer with more than \$50,000 received annually by way of direct and indirect inflow of income during the calendar year 1979.
5. Complainant, on October 11, 1979 filed with the National Labor Relations Board a form entitled, "Charge Against Employer". Mr. George Squillocate, Regional Director of the Board, assigned a staff attorney to investigate the matter and so notified Respondent by correspondence dated October 11, 1979.

6. Mr. Squillacote, on October 31, 1979, corresponded with Complainant and stated that the investigation established that further proceedings were not warranted. In particular, Squillacote set out the basis for his determination:

"[I]t appears you were permanently laid off because the Employer secured an employee better able to perform the job. The investigation revealed that since, at least March or April 1979, the Employer had sought to replace you with a more experienced employee. While you were issued a permit by Operating Engineers Union Local No. 139 on July 6, 1979, it appears that the Employer was without knowledge of that fact. Moreover, the evidence reveals that the employee who replaced you has become a union member and did so well in advance of your charge. I am, therefore, refusing to issue a complaint in this matter."

7. Complainant filed a "Notice of Appeal" with the General Counsel of the Board on November 10, 1979. The Board by Mary M. Shanklin, Acting Director, Office of Appeals, corresponded with Complainant on December 12, 1979 and confirmed the earlier decision of Squillacote not to proceed further in the matter.

Based upon the above Findings of Fact the undersigned makes the following

CONCLUSION OF LAW

The Wisconsin Employment Relations Commission lacks jurisdiction to determine the merits of the allegation of Mark Gustave Lass that Dennis Mitchell and Mitchell Well Company committed an unfair labor practice as defined by Section 111.06(1)(a) and 111.06(1)(c) Wisconsin Employment Peace Act since such allegations, if proven, would also constitute a violation of Section 8(a)(1) and 8(a)(3) of the National Labor Relations Act, as amended.

Based upon the above Findings of Fact and Conclusions of Law, the undersigned makes and files the following

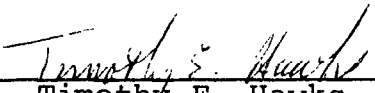
ORDER

The complaint filed by Mark Gustave Lass shall be and the same hereby, is dismissed.

Dated at Milwaukee, Wisconsin this 23rd day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Timothy E. Hawks, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant alleges that Respondents have committed unfair labor practices as defined by Section 111.07(1) and (3) of the Wisconsin Employment Peace Act. The alleged conduct of the Respondents if proven would also establish the commission of an unfair labor practice as defined by Section 8(a)(1) and (3) of the National Labor Relations Act. It has long been held that where an act may constitute a violation of both statutes and if the National Labor Relations Board has jurisdiction of matters then the jurisdiction of this agency is preempted. 1/

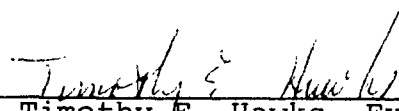
Complainant has already brought this matter before the National Labor Relations Board. Whereupon that agency dutifully investigated the matter and made a determination that cause did not exist on the merits of Complainant's case to pursue the matter. Complainant appealed the decision of the Regional Director which appeal was rejected by the Acting Director of Appeals of the Board's Washington, D.C. office. The Board having reviewed the matter and having assumed jurisdiction it is proper to deny extension of this agency's jurisdiction. Additionally, Respondent established at the time of the hearing that its income was in excess of the National Labor Relations Board's minimum jurisdictional standards for general non-retail business.

For the reasons set out above the complaint in this matter was dismissed.

Dated at Milwaukee, Wisconsin this 23rd day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Timothy E. Hawks, Examiner

1/ San Diego Building Trades Council v. Gorman 359 US 236 (1959);
S & O, Inc., d/b/a Paul's IGA Foodliner (10762-A) 9/72.