STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS & DAIRY EMPLOYEES UNION LOCAL NO. 563.

Complainant,

Case XIV

No. 13589 Ce-1294 Decision No. 9549-C

VS.

PIERCE MANUFACTURING INC.,

Respondent.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Examiner John T. Coughlin having on March 12, 1971, issued his Findings of Fact, Conclusion of Law and Order in the above entitled matter, wherein said Examiner concluded that the above named Respondent had not committed any unfair labor practices within the meaning of the Wisconsin Employment Peace Act, and wherein the Examiner dismissed the complaint; and thereafter the above named Complainant having timely filed exceptions to the Examiner's decision and briefs in support thereof; and the Respondent having filed a brief in opposition to said exceptions; and the Commission having reviewed the entire record, the Findings of Fact, Conclusion of Law and Order issued by the Examiner as well as the exceptions and the briefs filed in support and opposition thereto, and being satisfied that the Findings of Fact, Conclusion of Law and Order issued by the Examiner should be affirmed;

NOW, THEREFORE, it is

ORDERED

That pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusion of Law and Order issued in the above entitled matter as its Findings of Fact, Conclusion of Law and Order.

Ву

Given under our hands and seal at the City of Madison, Wisconsin, this Joth day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Rice II, Commission

Jos. B. Kerkman, Commissioner

No. 9549-C

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS & DAIRY EMPLOYEES UNION LOCAL NO. 563,

Complainant,

vs.

Case XIV No. 13589 Ce-1294 Decision No. 9549-C

PIERCE MANUFACTURING INC.,

Respondent.

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In this proceeding the Union alleged that the Employer had violated an existing collective bargaining agreement between the Union and the Employer by disciplining an employe in violation of the agreement. After hearing and a review of the briefs filed in the matter, the Examiner found that no collective bargaining agreement existed between the parties at the time of the incident involved, and that therefore no unfair labor practice was committed, and thereupon dismissed the complaint. The Union filed exceptions to the Examiner's decision contending that the Examiner erred in his conclusion that no collective bargaining agreement existed and his resultant conclusion that no unfair labor practice was committed with regard to the discipline of the employe involved.

After a review of the entire record, the pleadings and briefs filed in the matter, the Commission has determined to affirm the conclusion of the Examiner that no collective bargaining agreement was in existence between the parties at the time of the alleged violation of such an agreement.

In partial support of his decision the Examiner relied on a statement contained in the Restatement of Contracts section 58 at page 65 to the effect that "acceptance must be unequivocal in order to create a contract," and further "an offeror is entitled to know in clear terms whether the offeree accepts his proposal. It is not enough that the words of a reply justify a probable inference of assent." We agree with the contention contained in the Union's brief in support of its exceptions that reliance upon the Restatement of Contracts is particularly hazardous in dealing with labor relations, and in making a determination whether a contract exists all the facts material to said issue must be examined in light of the collective bargaining relationship.

However, it is to be noted that the collective bargaining agreement, which the Union contends was extended, contained the following provision with regard to its extension:

". . . If the parties do not reach an agreement with respect to such proposed changes, or a new Agreement, in the event termination notice has been given prior to said expiration date, then this Agreement shall terminate on its expiration date. The parties may, however, by mutual consent, extend this Agreement for a specific period of time to allow further negotiations."

The facts relied upon by the Union in an attempt to establish that a collective bargaining agreement was in existence at the time of its alleged violation related to a conversation had between the Complainant's secretary-treasurer and comptroller of the Respondent, which conversation is reflected on pages 7 and 8 of the Examiner's Memorandum. Nowhere in the record are there any facts to establish that the agreement was extended, if at all, "for a specific period of time . . ." Under such circumstances the Commission is satisfied that the collective bargaining agreement did not extend beyond its original expiration date, despite the continuance of certain conditions of employment established in the agreement involved.

Dated at Madison, Wisconsin, this 30th day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

II,

Chair

Kerkman, Commissioner

Commissioner

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