

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 557, UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA, AFL-CIO

Complainant,

vs.

MODERN PLUMBING, HEATING AND
SUPPLY COMPANY,

Respondent.

Case I
No. 14431 Ce-1340
Decision No. 10171-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy,
appearing on behalf of the Complainant.

Mr. Joseph Pichette, President, appearing on behalf of the Respondent.

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 the Commission having appointed George R. Fleischli, a member of the Commission's staff, to act as Examiner and 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 at Marinette, Wisconsin, on March 23, 1971, 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 Local 557, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, hereinafter referred to as the Complainant is a labor organization having its principal office at 318 South Third Avenue, Wausau, Wisconsin.

2. That Modern Plumbing, Heating and Supply Company, hereinafter referred to as the Respondent, is an employer within the meaning of Section 111.02(2) of the Wisconsin Statutes having its principal place of business at 2202 Hall Avenue, Marinette, Wisconsin.

3. That Stanley Grzadzielewski is the Complainant's Business Manager and authorized representative for purposes of collective bargaining; that Joseph Pichette is the owner and chief executive officer of the Respondent.

4. That on April 2, 1970, Grzadzielewski, having learned that the Respondent was the successful bidder on the plumbing and heating work associated with the construction of a grade school near Boulder Junction, Wisconsin, wrote the Respondent a letter which reads as follows:

"Dear Sirs:

The Grade School in the town of Presque Isle, Vilas County is in the jurisdictional area of Local 557, Wausau Wisconsin.

Enclosed is a copy of our Agreement, if you have any questions feel free to call me. Telephone Number 414-842-3012."

5. That along with his letter of April 2, 1970, Grzadzielewski enclosed a copy of the Complainant's then current collective bargaining agreement with certain plumbing and heating contractors doing work in Marathon, Langlade, Lincoln, Oneida, Vilas and Forest Counties; that among its various provisions said collective bargaining agreement, which was in effect at all times material herein contained the following provisions:

"AGREEMENT

This Agreement made and entered into this 10th day of June, 1969 by and between the undersigned Plumbing and Heating Contractors and Local #557, Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, in the jurisdictional area of the counties of Marathon, Langlade, Lincoln, Oneida, Vilas, and Forest."

"WITNESSETH

. . .

Employer: Whenever the term 'Employer' is used in this Agreement, it is intended to mean, and shall refer to, the individual Plumbing and Heating Contractors signatory to this Agreement."

. . .

"RECOGNITION CLAUSE

The Employer hereby recognized Local #557 as the exclusive bargaining representative for all of its employees in the job classifications covered by this Agreement.

The Employer agrees not to enter into any agreement with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this agreement. Any such agreement shall be null and void."

"ARTICLE I--UNION SECURITY

. . .

Section 3. No member of Local #557 shall be allowed to work for any Employer unless he has signed the Agreement.

Section 4. No Employee shall contract to do work or hold himself out for hire, except to a contractor who has signed an agreement with the Local.

Section 5. The Employer agrees that prior to hiring any Employees, the Union will be given first opportunity to dispatch applicants for employment on all classifications covered by this Agreement, but the Employer shall not be required to hire those referred by the Union."

. . .

"ARTICLE VI
GRIEVANCE COMMITTEE

Section 1. The grievance committee consisting of three contractors chosen by the contractors, and three journeymen chosen by Local #557 shall be appointed, and they shall have the power to settle grievances. If the committee cannot adjust and dispose of matter, and all negotiations are at a stand still, then and in that event, the Wisconsin Employment Relations Board shall, at the request of either party, appoint an arbitrator from its staff to make a final and binding determination of the dispute, including all issues with respect to the arbitration, thereof.

No strike or lockout shall be ordered in any shop or on any job by any representative of the employer or by any representative of the Union until the dispute shall first have been submitted to the Joint Arbitration Board of adjustment or arbitration. If the Joint Arbitration Board does not meet within such 24 hours, there may be a cessation of work until it meets. All controversies over wage rates shall, however, not be subject to arbitration."

. . .

"ARTICLE VII
WAGES AND BENEFITS

Section 1. The Wages are to be \$5.76 per hour for Journeymen Plumbers and Steamfitters, June 10, 1969 to December 31, 1969. \$6.11 from January 1, 1970 to May 31, 1970. \$6.61 from June 1, 1970 to December 31, 1970. \$7.01 from January 1, 1971 to May 31, 1971.

Date	Hourly Rate	Welfare	Vacation	Industry Fund	Holidays
6-10-69	\$5.76	20¢	20¢	0	6 paid
8- 1-69	\$5.76	20¢	20¢	8¢	6 paid
1- 1-70	\$6.11	20¢	20¢	8¢	6 paid
6- 1-70	\$6.61	20¢	20¢	8¢	6 paid
1- 1-71	\$7.01	20¢	20¢	8¢	6 paid

Section 2. Paid Holidays are: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. All Holidays are to be paid irregardless of which day it falls on.

Section 3. Health and Welfare. The Employer agrees to contribute every month, not later than the 10th of the following month, hereinafter called the 'Due Date' the above sum per hour for each hour worked by all employees covered by this agreement to a Welfare Fund to be known as the Plumbers and Steamfitters Local #557 Welfare Fund. All Welfare contributions shall be computed at the above rate per hour on actual hours worked without regard to whether the employee was working on straight time or overtime. Trustees shall consist of two (2) Journeymen Plumbers or Steamfitters from Local #557 and two (2) Employers to be appointed by the Contractors.

Any Employer who fails to make such payments within six (6) weeks after having been notified in writing of his failure to make the required payment shall be fined not more than Two-hundred Dollars (\$200.00). When an account is delinquent, the Employer is obligated for all claims that arise during the delinquent period which is thirty (30) days following the end of a contribution period. If legal action is taken to recover the amount due the trust fund, the delinquent Employer shall also be required to pay all court costs, including reasonable legal fees. Employers who are not headquartered in this jurisdiction may be required to furnish a bond to insure payment of contributions. This shall be up to the discretion of the trustees.

Section 4. Vacation: The Employer agrees to contribute each month the above sum, 20¢ June 10, 1969, for each hour worked by all members covered by this agreement. This section is governed by Section 3 of this Article.

Section 5. Effective August 1, 1969, there shall be established between Employers and Employees an Industry Advancement Fund. Contributions to the Industry Advancement Fund by all Employers shall be at the rate of eight cents (.08¢) per hour for each straight time hour worked.

Industry Advancement Fund shall be administered by three Trustees composed of Contractors only. Said funds to be used solely for the promotion of the Industry. Collections of same to be governed by Section 3, Article VII of agreement."

6. That the Respondent did not respond to Grzadzielewski's letter of April 2, 1970, but when the Respondent began work on the grade school project near Boulder Junction, an agent of the Respondent called Grzadzielewski and asked him to refer a plumber and a fitter for work on said project; that Grzadzielewski referred two craftsmen, Eugene Derk and Joseph Ilg, to work on the Respondent's Boulder Junction project; that on at least two other occasions during 1970 an agent of the Respondent called the Complainant and requested the referral of additional craftsmen; that during the months of May 1970, through February 1971, the Respondent employed craftsmen named Bernard Haring, Joseph Mohner, Don Mitchell, Bradley Tress, Gary Albright, Bernard Rekowski and Charles Schultz in addition to said Derk and Ilg for various periods of time for a total of 4071 man hours and paid them the contractual wage rates and made appropriate contributions on their behalf to the Welfare Fund, Vacation Fund, and Industry Promotion Fund referred to in Article VII of the collective bargaining agreement set out above; that most of the work performed by said employees was on the grade school project near Boulder Junction but that some of said employees worked for the Respondent at the Minocqua High School project where the Respondent had a contract to perform certain work including work normally performed by plumbers and fitters.

7. That on or about December 22, 1970, two craftsmen advised Grzadzielewski that the Respondent was using workers in his employ who were not referred to the job by the Complainant labor organization to perform plumbing work on the Minocqua project; that on December 23, 1970, Grzadzielewski visited the Minocqua project and observed two men in the Respondent's employ by the name of Smith and Seeley; that said Smith, who is a licensed plumber, was cutting threads which is work normally performed by a plumber; that Smith and Seeley told Grzadzielewski that they had performed certain plumbing work on the Minocqua High School project for the Respondent.

8. That on at least three occasions during December 1970 and January 1971, Grzadzielewski called the Respondent's office in Marinette, Wisconsin, for the purpose of discussing alleged violations of the collective bargaining agreement with Pichette; that Grzadzielewski was advised that Pichette was out of the office on all three occasions; that Grzadzielewski sent the Respondent a letter by registered mail on December 28, 1970, which reads as follows:

"Modern Plbg, Htg., & Supply Co.
2202 Hall Avenue
Marinette, Wisconsin

Dear Sirs:

Thursday morning, December 23, I found two of your employees, Frank Smith and Donald Seeley working on the Plumbing of the Hot water Heater and Storage Tank at the Minocqua High School. These two men are Sheetmetal men.

This is a violation of our working Agreement and I will have to take it to our Grievance Committee if we cannot come up with a settlement for the hours of labor these two men did.

You laid off two of our men Wednesday, Charles Schultz and Bernard Rekowski. Your men worked December 23 and 24. I believe it's only fair you pay my men the sixteen (16) hours of wages and benefits each, that the Sheetmetal men did. Christmas is a paid Holiday too, so I think I'm being more than fair with the problem. Send the checks to me by the 6th of January 1971, (your girl said you would be out of town for ten days so am giving you ample time) or I will take the matter before our Grievance Committee for a settlement of this grievance."

9. That the letter sent to the Respondent by Grzadzielewski on December 28, 1970, was refused by someone acting on behalf of the Respondent on December 30, 1970, and returned to Grzadzielewski; that Grzadzielewski put said letter in another envelope addressed to the Respondent and placed it in regular mail channels; that said letter was not thereafter returned to Grzadzielewski.

10. That Grzadzielewski requested a hearing before the Grievance Committee established pursuant to Article VI of the collective bargaining agreement set out above and was granted a hearing on January 15, 1971; that on or about January 11, 1971, Grzadzielewski sent Respondent a telegram advising the Respondent of the time and place of the hearing before the Grievance Committee; that Pichette sent the Complainant a telegram on January 11, 1971, which was received by Grzadzielewski on January 12, 1971, which reads as follows:

"LOCAL 557 PLUMBERS AND FITTERS, ATTN STAN GRZADZIELEWSKI
WAUSAU LABOR TEMPLE 317 SOUTH 3 AVE WAUSAU WIS.

MODERN PLUMBING AND HEATING DID NOT DO THE PIPING AT
MINOCQUA HIGH SCHOOL JOB. STOP BADGERING, INTIMIDATING
AND BLACKMAILING US=
MODERN PLUMBING HEATING AND SUPPLY CO= JOE PICHETTE
PRESIDENT="

11. That the Respondent failed and refused to participate in the hearing before the Grievance Committee which was held on January 15, 1971; that Pichette advised the Grievance Committee of his efforts to notify the Respondent about the alleged contract violations and the time and place of the hearing before the Grievance Committee; that Grzadzielewski presented the Grievance Committee with a copy of the telegram he received from Pichette on January 12, 1971, and a written summary of his position on the grievance which read as follows:

"January 15, 1971

Grievance against Modern Plumbing & Heating, Marinette, Wis. for sending in Sheetmetal men to Minocqua High School on a Plumbing Job.

Modern Plumbing has a Grade School Job at Pres-Isle, near Manitowish Waters, Wisconsin. At the Time of this violation of the working Agreement they had three (3) Plumbers and one (1) Pipefitter working on the Grade School Job. They also had a Job at the Minocqua High School converting the Boulders (sic) from Oil to Gas, and a new Hot Water Heater and Storage Tank.

I went up to Minocqua Thursday December 24, 1970, in the morning. One of our members went along, John Eschenbach. Drove up to the back of the school, there were two trucks, a two ton, and a pick-up truck with Modern's name and address on them. We found two men hooking up the Hotwater Heater and Storage Tank. I ask one of them who he was working for and he said Modern, ask him for identification and he showed me his drivers License, Sheetmetal Card and a Wisconsin Plumbing License. His name was Frank Smith, 2205 18th St., Menominee, Michigan, other man showed me his Sheetmetal Card, he was Donald Seeley, Apprentice from Modern, and belong to Local 94, Menominee, Michigan as did Smith. I ask them how much work they had and when they had started. They said they started December 23 and would be finished that day, December 24, 1970.

Modern Plumbing laid off two of our Plumbers on the Grade School Job, December 23, 1970, so I called Modern Plumbing December 28 (didnot get to talk to the President, Joe Pichette) and wastold Mr. Pichette was out of town for ten days, told the office girl what I wanted, two days pay for two men for the work the Sheetmetal men had done. She said when he called in she would tell him about the situation and have him call me. I wrote a letter explaining the situation, same as I told the Office girl over the telephone I certified the letter and they refused it, so sent it back by regular mail and as far as I know they received it. I waited till January 8, 1971, called but Mr. Pichette was out, told to call back next morning at 9:30, he would be in, called next day told he was out of town for three days, talked to Geo Beilke, set up meeting for our grievance and sent Telegram to Modern monday afternoon, Jan 11, 1971 telling Modern of date and time of Grievance Meeting, received reply immediately.

Stan Grzadzielewski
Bus. Mgr., Local 557"

12. That the Grievance Committee, after considering the written summary and verbal explanation presented to them by Grzadzielewski, entered a decision upholding the Complainant's grievance which is reflected in the minutes and reads as follows:

"January 15, 1971

Grievance Committee Meeting:

Grievance of Local 557 of laying off of Charles Schultz and Bernard Rekowski, employee's of Modern Plumbing, Heating, and Supply Company, 2202 Hall Avenue, Marinette, Wisconsin.

Meeting was called to order at 5:15 P.M. and members present were.

Mr. George Beilke, Jr.	Contractors
Mr. John JoJado	Contractors
Mr. Walter Baumgardt	Contractors
Mr. Arnold Timpson	Local 557
Mr. Joe Voight	Local 557
Mr. Fred Krienke	Local 557

Also present were Stanley Grzadzielewski, Business Agent for Local 557, and John Eschenbach, member of Local 557.

After a discussion of the facts, presented by the Business Agent Mr. Grzadzielewski it was decided by the grievance committee that Modern Plumbing, Heating and Supply Company was in violation of the Contract, and that the Union be authorized to collect all wages and benefits the men laid off were deprived of. The two employees were Charles Schultz and Bernard Rekowski.

Respectively submitted,

Joe Voight /s/
Acting Secretary"

13. That Grzadzielewski sent a letter by registered mail to Pichette on January 18, 1971, enclosing a copy of the minutes of the Grievance Committee, and indicating the amount of wages and fringe benefits that the Complainant contends are due and owing to the two employees who lost work according to the decision of the Grievance Committee; that said letter was either refused by Pichette or someone acting on behalf of Pichette or left uncalled for at the post office by Pichette; that there has not been any verbal or written communication between the Complainant and Respondent or their agents since Grzadzielewski's registered letter of January 18, 1971, was returned to him unopened and prior to the filing of the complaint herein on February 11, 1971; that on February 17, 1971, the Respondent was given notice of the hearing on the instant complaint and provided a copy of said complaint which had a copy of the written summary presented to the Grievance Committee by Grzadzielewski and the minutes of the Grievance Committee attached thereto and made a part thereof; that since receiving a copy of the decision of the Grievance Committee, the Respondent has refused and continues to refuse to comply with the decision of the Grievance Committee.

Upon the basis of the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSIONS OF LAW

1. That Modern Plumbing, Heating and Supply Company did not enter into a collective bargaining agreement with Local 557, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and did not agree to be bound by the

decisions of the Grievance Committee established by Article VII of the collective bargaining agreement entered into by Local 557, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and certain plumbing and heating contractors doing work in Marathon, Langlade, Lincoln, Oneida, Vilas and Forest Counties.

2. That the January 15, 1971, decision of the Grievance Committee established by Article VII of the collective bargaining agreement entered into by Local 557, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and certain plumbing and heating contractors doing work in Marathon, Langlade, Lincoln, Oneida, Vilas and Forest Counties, purporting to find that Modern Plumbing, Heating and Supply Company has breached said agreement and authorizing Local 557, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada to collect back wages and benefits on behalf of Charles Schultz and Bernard Rekowski was a nullity and in no way binding on Modern Plumbing, Heating and Supply Company.

3. That Modern Plumbing, Heating and Supply Company, by its failure and refusal to comply with said decision of the Grievance Committee, has not violated and is not violating the terms of a collective bargaining agreement (including an agreement to accept an arbitration award) and has not refused and is not refusing to accept as conclusive the determination of a tribunal having jurisdiction over a controversy as to employment relations, and has not committed and is not committing an unfair labor practice within the meaning of Section 111.06(1)(f) and Section 111.06(1)(g) of the Wisconsin Statutes; that Modern Plumbing, Heating and Supply Company, by its failure and refusal to participate in the hearing before the Grievance Committee and by its failure and refusal to abide by the decision of said committee has not refused and is not refusing to bargain collectively with Local 557, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and has not committed and is not committing an unfair labor practice within the meaning of Section 111.06(1)(a) and Section 111.06(1)(d) of the Wisconsin Statutes.

Upon the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes the following

ORDER

That the complaint filed in this matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 27th day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 557, UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA, AFL-CIO

Complainant,

vs.

MODERN PLUMBING, HEATING AND
SUPPLY COMPANY,

Respondent.

Case I
No. 14431 Ce-1340
Decision No. 10171-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint the Complainant alleges that the Respondent is a party to a collective bargaining agreement which provides for binding resolution of grievances by a Grievance Committee and that the Respondent has refused to abide by a decision of said Grievance Committee in violation of Sections 111.06(1)(a), (d), (f) and (g) of the Wisconsin Statutes. The Respondent did not enter a formal answer, however, it responded by letter received February 22, 1971, wherein the Respondent denied that it had entered into a collective bargaining agreement with the Complainant and asserted certain defenses on the merits of the grievance referred to in the complaint.

At the hearing the Complainant's proof established that the Complainant had provided the Respondent with a copy of the labor agreement it had negotiated with certain plumbing and heating contractors covering that portion of the state wherein the Respondent was performing certain plumbing work on two different contracts. Although the Respondent never replied to the Complainant's letter of transmittal the Respondent did engage in certain conduct in apparent compliance with certain provisions of the agreement. After abiding by those provisions for several months, the Respondent refused to abide by Article VII of the agreement by refusing to participate in the grievance procedure established under that provision of the agreement, and refusing to abide by a decision of the Grievance Committee.

POSITION OF THE COMPLAINANT:

The Complainant contends that the Respondent is bound by all of the provisions of the labor agreement existing between it and certain contractors within the Complainant's jurisdictional area. Although the Complainant admits that the collective bargaining agreement proffered on April 2, 1970, was never signed by anyone acting on behalf of the Respondent, it argues that the conduct of the Respondent should be taken as a constructive acceptance of all of the provisions of the agreement. Because an employer is obligated under the provisions of Article 8(a)(5) and Article 8(d) of the National Labor Relations Act and comparable provisions of the Wisconsin Employment Peace Act, to sign any labor agreement to which it has verbally agreed, the Complainant argues that the mere failure of the Respondent to sign the agreement does not preclude an action

to enforce the agreement.^{1/} The Complainant argues that when this Commission enforces a collective bargaining agreement, it is bound to apply rules consistent with federal labor law insofar as the Union or the Employer is within commerce within the meaning of Section 301 of the National Labor Relations Act as amended.

The Complainant contends that the Respondent has violated Section 111.06(1)(f) and 111.06(1)(g) of the Wisconsin Employment Peace Act by its refusal to accept the award of the Grievance Committee without regard to the question of whether or not the Respondent has violated the contract in any other respect. Consequently the Complainant argues that the question of whether or not the decision of the Grievance Committee was correct, based on the merits of any arguments the Respondent might have presented to the Grievance Committee had the Respondent chosen to participate in the hearing that was afforded the Respondent, is no longer an issue.

POSITION OF THE RESPONDENT:

The Respondent contends that there is no collective bargaining agreement existing between it and the Complainant and cites several provisions of the agreement, namely the second paragraph of the provision entitled "Witnesseeth", and Section 3 and 4 of the Union Security provision, in support of its argument. According to the Respondent those provisions clearly indicate that the collective bargaining agreement by its own terms requires that it be signed before it is binding on either party.

At the hearing the Respondent offered to prove that the Complainant breached the agreement, if one ever existed, by improperly removing a man from the job.^{2/} The Respondent also offered to prove that the decision entered against it by the Grievance Committee on January 15, 1971, was in error because the Respondent did not perform the work which was the subject matter of that grievance.

DISCUSSION:

The Complainant is correct in its assertion that this Commission is obligated to apply rules which are consistent with federal law when sitting as a Section 301 tribunal for the purpose of enforcing collective bargaining agreements between employers and unions who are engaged in interstate commerce.^{3/} Both the federal law interpreting the National Labor Relations Act, as amended, and the Wisconsin

1/ The Complainant cites the following cases in support of this argument: Roadway Express, Inc. vs. Teamsters Local 249, 330 F. 2d 9, 56 LRRM 2085 (3rd Cir. 1964); C. D. Perry & Sons vs. Robliotto, 240 NYS 2d 331, 53 LRRM 2745 (NY Sup. Ct. 1963, Aff'd 260 NYS 2d 158, 59 LRRM 2445) (NY Sup. Ct. App. Div. 1965); Retail Department Store Employees, Local 1207 vs. Sears-Robuck and Company, Inc., 47 LRRM 2354 (D. C. Wash. 1960); and Hamilton Foundry Co. vs. Foundry Workers, 193 F. 2d 209, 29 LRRM 2223 (6th Cir. 1951).

2/ This offer of proof was apparently based on the mistaken notion that such a breach, if one occurred, would provide the Respondent with a right to rescind the agreement. The Respondent's remedy for such a breach would be through the Grievance Committee or pursuant to Section 301 of the National Labor Relations Act as amended.

3/ Seaman-Andwall Corporation, (5910) 1/62; Tecumseh Products Company v WERB, 23 Wis. 2d 118 (1964); and American Motors Corporation v WERB, 32 Wis. 2d 237 (1966).

law interpreting the Wisconsin Employment Peace Act are in accord, that collective bargaining agreements do not need to be in writing in order to be enforceable.^{4/}

Even though collective bargaining agreements are not required by law to be in writing they usually are and they frequently provide that they must be signed before they become effective. Where the intention of the parties to enter into an agreement, effective immediately, is clear the failure to reduce the agreement to writing and sign it will not preclude a finding that an enforceable agreement exists, even if the parties contemplate that the agreement will be reduced to writing in the future. The question is essentially one of intention as was clearly indicated by the Court in the Hamilton case cited by the Complainant.^{5/}

Here the Complainant contends that the Respondent not only manifested an intent to enter into a collective bargaining agreement but also manifested an intent to dispense with the requirement contained in the agreement proffered, that it be signed. The threshold question that must be answered is whether or not the Respondent manifested an intent to enter into an agreement; if it did the Complainant is probably correct in its assertion that both parties manifested an intent to disregard the requirement that the agreement be signed.

It appears that at no time did the Complainant actually offer to enter into a collective bargaining agreement with the Respondent. Grzadzielewski's letter of April 2, 1970, merely informed the Respondent of the fact that the Boulder Junction job was within the jurisdictional area covered by the Complainant and provided the Respondent with a copy of the current collective bargaining agreement covering that area. Grzadzielewski made no other effort to communicate with the Respondent regarding the agreement per se.

While it is true that collective bargaining agreements are substantially different from other contracts and are interpreted according to rules that are somewhat different than the rules which apply to ordinary contracts, their special status does not dispense with the requirement that their existence should be established by clear and convincing evidence.^{6/} The total lack of evidence of an unequivocal offer to enter into a collective bargaining agreement tends to invalidate the Complainant's argument that the Respondent's conduct should be interpreted as a constructive acceptance.

Assuming arguendo that Grzadzielewski's letter of April 2, 1970, can be interpreted as an offer to enter into a collective bargaining agreement, the Respondent's subsequent conduct was not an unambiguous acceptance of that offer. A realistic appraisal of the industry in which the Respondent competes must recognize the fact that there are employers who feel compelled to meet the area wage standards even though they are not required to do so under a collective bargaining agreement. Similarly, employers in the construction industry who

^{4/} Elm Tree Baking Company, (6383) 6/63; Whitefish Bay Cleaners and Tailors, Inc., (5852) 10/61; Tacoma Printing Pressmens Union No. 44 (Valley Publishing Company), 131 NLRB 1090, 48 LRRM 1187 (1960).

^{5/} Hamilton Foundry Co. v. Foundry Workers, 193 F. 2d 209, 29 LRRM 2223, at 2227 (6th Cir. 1951).

^{6/} Pierce Manufacturing, Inc., (9549-A) 3/71.

bid on a project outside of their normal area of operation usually call upon the local unions representing skilled workers as the only reliable source of the skilled labor it needs to complete the project. Because of this latter fact the local union is in a good position to insist that the outside employer abide by the area wage standards or even enter into a collective bargaining agreement. But if the union fails to insist, it stretches the law of contracts to the breaking point to say that the employer has agreed to abide by the entire collective bargaining agreement merely because he was provided with a copy and paid the area wage standards.7/

Viewing the Respondent's conduct as an effort to buy labor peace while operating outside its usual territory is more consistent with the wording of Grzadzielewski's letter than the interpretation urged by the Complainant. When the Respondent was advised that it was working on a project in the Complainant's territory and provided with a copy of the agreement that contained the area standard, the Respondent chose to rely on the Complainant as a source of skilled labor and pay that standard rather than attempt to do without the Complainant as a source of skilled labor and submit to the pressure that the Complainant could legally bring to bear if it failed to meet the area standard.

Pichette's explanation of the Respondent's conduct succinctly describes what happened:

"Now, I can explain that in much fewer words. We've got a contract for the school up there. We hired plumbers and the steam fitters. Can you tell us where we would get plumbers and steam fitters unless we go to you? We're strapped--not by your contract but by the fact that you have the men and there are no other men to hire. This is absolutely right. No one can do a job unless he hires Union help in Union territory. But, it don't mean that he signed a contract. Furthermore, you must be aware that that contract was never signed and I never got a letter from them asking why I don't sign and return the contract. I, in all probability, would have answered it by saying send me the contract. But I say it's his negligence and no one else. Thank you."8/

The cases relied on by the Complainant all involve situations where there was an existing collective bargaining relationship and there was substantial evidence of negotiations before the parties entered into the oral agreement. Here there was no existing collective bargaining relationship and there is no evidence of negotiations. Without evidence that there was an existing collective bargaining relationship between the Complainant and the Respondent or that there was some evidence that they engaged in negotiations, those cases would seem to be of little persuasive value.

7/ The fact that the Respondent contributed a portion of the employees' wages to three separate funds is not any more significant as evidence of intent to accept the entire document than the payment of the area standard since such contributions are considered to be made in lieu of wages.

8/ Transcript at page 26.

The Respondent did not enter into a collective bargaining agreement with the Complainant and therefore the Respondent's refusal to abide by the decision of the Grievance Committee was not in violation of Section 111.06(1)(f) or Section 111.06(1)(g) of the Wisconsin Statutes. The Respondent did not violate Section 111.06(1)(a) and (d) of the Wisconsin Statutes by its refusal to participate in the grievance procedure since the Respondent was under no contractual obligation to do so and the Complainant does not represent the Respondent's employees. The collective bargaining agreement does contain a recognition clause but the Complainant cannot rely on that clause to establish a collective bargaining relationship since the Respondent never agreed to adhere to the agreement.

Because the Complainant failed to establish that the Respondent agreed to abide by the terms of the collective bargaining agreement it is unnecessary to decide whether or not the Respondent is foreclosed from the possibility of presenting evidence on the merits of the grievance because of its failure to avail itself of the opportunity to be heard before the Grievance Committee.

For the above and foregoing reasons the Examiner finds that the Complainant has failed to establish that the Respondent has violated any of the provisions of the Wisconsin Employment Peace Act as alleged and has accordingly dismissed the complaint.

Dated at Madison, Wisconsin, this 27th day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner