

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS & HELPERS UNION LOCAL
NO. 662, AFFILIATED WITH THE INTER-
NATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA,

Complainant,

vs.

WONDERLAND FOODS, INC.,

Respondent.

Case III
No. 14547 Ce-1350
Decision No. 10256-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy,
appearing on behalf of the Complainant.
No appearance 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 Herman Torosian, 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 on April 5, 1971, said Examiner having issued notice of hearing in the matter setting hearing for May 6, 1971, and the Commission having caused a copy of the aforesaid complaint and notice to be mailed by certified mail, with return receipt to the Commission evidencing the signature of Mary Fisher, Tailor Company, as of April 7, 1971; and the Examiner having conducted hearing in the matter on May 6, 1971, at the Elmwood Village Hall, Elmwood, Wisconsin; and at the outset of the hearing the Examiner having determined that no appearance was registered on behalf of the Respondent-Employer; and the Examiner having considered the evidence and arguments submitted at the hearing by the Complainant and being as fully advised in the premises as the proceeding would permit, the matter having been duly noticed for hearing with opportunity afforded to Respondent to present evidence and make argument, the Examiner makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That General Drivers & Helpers Union Local No. 662, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Complainant, is a labor organization having its principal office at 119 West Madison Street, Eau Claire, Wisconsin.
2. That Wonderland Foods, Inc., hereinafter referred to as the Respondent, is a corporation with a place of business in Elmwood, Wisconsin, and also with a second place of business in Bettendorf, Iowa.
3. That the Complainant and Respondent have been parties to collective bargaining agreements since at least the agreement effective November 1, 1967, through October 1968, covering wages, hours and working conditions of its employees including the following provisions material herein:

No. 10256-A

"ARTICLE 3

RECOGNITION, UNION SHOP AND CHECKOFF

. . .

Section 3. The Employer agrees to deduct from the pay of all employees covered by this Agreement, the dues, initiation fees, and/or uniform assessments of the Union, having jurisdiction over such employees, and agrees to remit to said Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required."

. . .

"ARTICLE 24

HEALTH AND WELFARE

The Employer agrees to contribute to the 'General Drivers and Helpers Union, Local #662, Blue Cross Blue Shield Insurance Program,' the sum of \$21.15 per month for each employee covered by this Agreement who has been on the payroll thirty days or more. Effective June 1, 1968, the monthly contribution shall be increased to \$25 per month."

. . .

"ARTICLE 34

PENSION

Effective June 1, 1967, the Employer shall contribute to the Central States Southeast and Southwest Areas Pension Fund the sum of \$2 per week for each employee covered by this Agreement who has been on the payroll thirty days or more. Effective June 1, 1968, the weekly contribution shall be increased to \$6 per week. Effective March 1, 1969, the weekly contribution shall be increased to \$7 per week. Effective December 1, 1969, the weekly contribution shall be increased to \$8 per week."

4. That a supplemental agreement was made and entered into by the parties effective November 1, 1968, through April 30, 1969, amending certain provisions of the collective bargaining agreement.

5. That the Union filed a complaint with the Wisconsin Employment Relations Commission in May 1969, alleging that the Respondent violated Section 111.06(1)(a)(d) and (f) of the Wisconsin Statutes by refusing to meet and negotiate a new collective bargaining agreement, and by failing to make pension and health and welfare contributions on behalf of its employees as required by the parties' collective bargaining agreement; that hearing in said matter was scheduled for June 10, 1969; that prior to said hearing on June 10, 1969, the parties entered into a supplemental agreement effective May 1, 1969, settling the dispute giving rise to the above mentioned complaint and modifying certain terms of the prior collective bargaining agreement including modification of Article 24, Health and Welfare, to the extent that the Employer's contribution for each employee was increased to \$28.50 per month effective June 1, 1969; and that on the basis of said supplemental agreement the above mentioned complaint filed with the Commission was dismissed by the Examiner by Order dated June 24, 1969.^{1/}

^{1/} Wonderland Foods, Inc., Decision No. 9030-A, 6/69.

6. That a new collective bargaining agreement was entered into and signed by Respondent and Complainant on July 1, 1970, effective June 1, 1970, and with a termination date of May 31, 1971; that said agreement, among other things, modified Article 34, by increasing the Employer's pension contributions to \$10 per week per man to the Central States Pension Program and Article 24 by increasing the Employer's health and welfare contributions to Blue Cross Blue Shield to \$32.50 per month per man.

7. That on January 20, 1971, Francis Murtha, Executive Secretary of Central States Southeast and Southwest Areas Pension Fund, sent a current status report covering the pension account of Wonderland Foods, Inc., to Alfred G. Goldberg, Attorney for said pension fund, with copies to Local Union No. 662 and Wonderland Foods, Inc.; that said status report indicates that Respondent, Wonderland Foods, Inc., was delinquent as of January 13, 1971, in the amount of \$2550 based on reports dating back to September 1970; and that based on said status report a letter dated January 22, 1971, was sent to Wonderland Foods, Inc., over the signature of Alfred Goldberg, with copies to Francis J. Murtha and Local Union No. 662, advising Respondent that the undersigned had been retained by the Central States Health and Welfare and Pension Funds as attorney and that some affirmative response concerning Respondent's pension fund delinquency in the amount of \$2550 was required from the Company in order to delay legal proceedings.

8. That on February 9, 1971, a letter was sent by Robert W. Gotzman, Business Agent, General Drivers & Helpers Union Local No. 662, by certified mail to John P. Tailor, General Manager of Wonderland Foods, Inc., on February 11, 1971, with return receipt to Local Union No. 662 evidencing receipt of said letter on behalf of John Tailor by Mary Fisher, Tailor Company; and that in said letter Respondent was advised that the last health and welfare contribution by the Respondent was made in August, 1970, for the month of May, 1970, and a request was made to Respondent to pay the required premium in full through the month of January, 1971.

9. That over the signature of Alfred G. Goldberg, a letter was sent to Wonderland Foods, Inc., with copies to Francis Murtha and Local Union No. 662, on February 23, 1971, wherein Goldberg stated that he had received no response to his letter of January 22, 1971, and that he would have to report Respondent's pension fund delinquency to the trustees of the fund, but that he would take no action for two weeks to afford Respondent the opportunity to present a formula for the payment of Respondent's delinquency.

10. That on February 24, 1971, a letter was sent by Attorney Alan M. Levy to John Tailor, with copies to Robert Gotzman, advising Tailor that the law firm of Goldberg, Previant & Uelmen of which Levy is a member had been retained by Teamsters Local No. 662 to represent it; that in said letter Respondent was advised that it was delinquent in pension payments in the amount of \$2550, delinquent in health and welfare contributions since May of 1970 in the amount of \$3468 plus an additional \$540 for loss of time, and that there was \$616 worth of Union dues which had been deducted from employees paychecks by Respondent but not forwarded to the Union; and that in said letter a demand was made upon Respondent to pay said delinquencies no later than March 8, 1971, or else the Union would take whatever formal steps necessary to collect the monies.

11. That in regard to all of the correspondence stated above Respondent, except for one payment for delinquent dues, at no time material herein, in any way, responded to said letters.

12. That Respondent Wonderland Foods, Inc., has failed and refused to make contributions to the Central States Southeast and Southwest Areas Pension Fund in the amount of, as of February 1, 1971, \$3300; that during the period from February 1, 1971, through at least May 6, 1971, the date of the hearing, the Respondent has failed and refused to make contributions to said pension fund on behalf of its employees.

13. That Respondent has failed and refused since May 1970, through at least May 6, 1971, to make contributions on behalf of its employees to the Blue Cross Blue Shield Insurance Program as required by Article 24, Health and Welfare above, including premium contributions for loss of time insurance; that said arrearage as of April 30, 1971, totaled \$4535 plus an additional delinquent amount of \$554.40 for loss of time insurance premiums.

14. That Respondent has failed and refused since approximately August 1970, through at least May 6, 1971, to remit to Complainant certain Union dues which it is obligated to remit under Article 3, Section 3, above, and that the total amount of such arrearage in dues remissions as of May 6, 1971, was \$616.

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

CONCLUSIONS OF LAW

1. That Respondent, Wonderland Foods, Inc., by failing to remit certain Union dues, make certain payments to the Blue Cross Blue Shield Insurance Program, including payment for loss of time insurance, and make certain contributions to the Central States Southeast and Southwest Areas Pension Fund, described above, has violated the terms of a collective bargaining agreement and committed unfair labor practices within the meaning of Section 111.06(1)(f) of the Wisconsin Statutes.

2. That Respondent, Wonderland Foods, Inc., by failing to make the required contributions to the Central States Southeast and Southwest Areas Pension Fund within six weeks after such payments became due and payable and after receiving notice in writing of its failure to do so violated Section 103.86 of the Wisconsin Statutes; that in violating said statute Respondent, Wonderland Foods, Inc., committed a misdemeanor in connection with a controversy as to employment relations thereby committing an unfair labor practice within the meaning of Section 111.06(1)(1) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that Respondent, Wonderland Foods, Inc., shall immediately:

1. Cease and desist from violating the terms of a collective bargaining agreement in violation of Section 111.06(1)(f), Wisconsin Statutes, and from violating the following provisions of the collective bargaining agreement which was in effect between it and General Drivers & Helpers Union Local No. 662, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America:

- (a) Article 3, Section 3 which requires it to deduct Union dues from the wages of its employees and remit same to the Union.
- (b) Article 24, which requires it to provide health insurance benefits to its employees through the Blue Cross Blue Shield Insurance Program.
- (c) Article 34, which requires it to contribute \$10 per week effective July 1, 1970, on behalf of each of its employees to the Central States Southeast and Southwest Areas Pension Fund.

2. Cease and desist from violating Section 103.86 of the Wisconsin Statutes by failing to make contributions to the Central States Southeast and Southwest Areas Pension Fund after timely notice in writing of its failure to do so.

3. Take the following affirmative action which the Examiner finds will effectuate the policies of the Act:

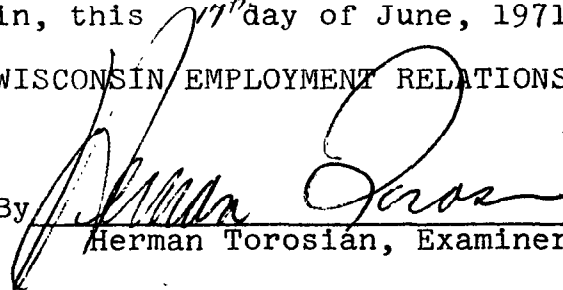
- (a) Immediately make payment by certified check to the order of Central States Southeast and Southwest Areas Pension Fund and mail same to General Drivers and Helpers Union Local No. 662, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America at 119 West Madison Street, Eau Claire, Wisconsin, as the remitting agent, all amounts due and owing under said agreement up to the date of this Order including the sum of \$3300 that was due and owing as of February 1, 1971.
- (b) Immediately make payment by certified check payable to Blue Cross Blue Shield and mail same to General Drivers and Helpers Union Local No. 662, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America at 119 West Madison Street, Eau Claire, Wisconsin, as remitting agent, for all amounts due and owing under said agreement up to the date of this Order, including the sum of \$4535 and \$554.40 for loss of time insurance that was due and owing as of April 30, 1971, or, if no such coverage was provided during any period prior to the date of this Order make such payment in the amount of such delinquency for all such coverage actually provided and pay to any of its employees the amount of any actual surgical-medical expenses incurred that would have otherwise been paid by Blue Cross Blue Shield if said employees had been covered during such period.
- (c) Immediately make payment by certified check payable to the order of General Drivers and Helpers Union Local No. 662, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America at 119 West Madison Street, Eau Claire, Wisconsin, for all delinquent remissions of dues deductions due and owing under said agreement up to the date of this Order, including the sum of \$616 that was due and owing as of February 15, 1971.

- (d) Notify the Wisconsin Employment Relations Commission within twenty (20) days after receipt of a copy of this Order of the steps it has taken to comply therewith.

Dated at Madison, Wisconsin, this 17th day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Pet.
GENERAL DRIVERS & HELPERS UNION LOCAL
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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant filed a complaint of unfair labor practices on April 1, 1971, alleging therein that the Respondent had violated certain terms of an existing collective bargaining agreement by failing and refusing to make monthly contributions required by Article 24, Health and Welfare Insurance, and by failing and refusing to make weekly contributions required by Article 34, Pension, covering employees in the bargaining unit, thereby committing a violation of Section 111.06(1)(f) of the Employment Peace Act. Complainant also contends that it has repeatedly attempted to collect delinquent funds from the Respondent but has been unable to gain any sort of response from the Respondent. In addition, the Complainant alleges that the Respondent, by its acts, engaged in conduct in violation of Section 103.86 of the Wisconsin Statutes, which constitutes an unfair labor practice within the meaning of Section 111.06(1)(1).

Upon receipt on April 1, 1970, of Complainant's complaint, a copy of said complaint and a notice of hearing scheduling said matter for hearing on May 6, 1971, was sent by certified mail by the Commission on April 5, 1971, to both of Respondent's business locations. Return receipt was received by the Commission indicating said complaint and notice of hearing was received by Respondent at both locations on April 7, 1971. By said notice of hearing Respondent was notified of its right to appear in person or otherwise and give testimony on the day of the scheduled hearing. Respondent was further notified that it could make answer to such complaint by filing an answer with the Examiner on or before April 29, 1971. The Examiner received no answer nor any communication from Respondent at any time prior to the scheduled hearing. Respondent made no appearance at the hearing scheduled and conducted on May 6, 1971.

The uncontroverted evidence establishes the fact that the Respondent has not made any of the required contributions to the Central States Southeast and Southwest Areas Pension Fund since at least the beginning of September 1970, and that the amount of the arrearage was \$3300 as of February 1, 1971. The uncontroverted evidence also establishes the fact that the last health and welfare contribution by the Respondent on behalf of its employees was made in August 1970, for the month of May 1970, and that as of April 30, 1971, the Respondent was delinquent in the amount of \$4535 plus an additional delinquent amount of \$554.40 for loss of time insurance premiums which equals a total delinquency and premium due and payable

of \$5089.40. In addition, the Respondent has failed to remit to the Union dues check off by the Respondent dating back to at least September 1970, in an amount of \$616 as of May 6, 1971, the date of the hearing.

GENERAL With regard to the Complainant's contention that Respondent has committed a misdemeanor in connection with a labor controversy in violating Section 103.86 of the Wisconsin Statutes^{2/} and has therefore committed an unfair labor practice within the meaning of Section 111.06(1)(1), the evidence clearly establishes that the Respondent was given written notice as to the amount due and owing, and that Respondent failed to make such payments within six weeks after said notice in writing as required by Section 103.86.

It is noted by the Examiner that the current labor agreement provides a method for the final disposition of grievances involving alleged violations of the agreement. It is well established, now, that ordinarily the Commission will not assert its jurisdiction to consider alleged violations of labor agreements under Section 111.06(1)(f) where the parties have such a provision in the agreement. Here, however, not only did the Respondent fail to raise any objection to the Complainant's failure to exhaust the contractual procedure but the Respondent at no time material herein communicated with the Union or appeared at the hearing conducted on May 6, 1971, to deny violating the collective bargaining agreement as alleged by the Complainant. It is apparent by its conduct the Respondent at all times material herein has completely ignored the collective bargaining agreement and its contractual obligations therein. Under the circumstances of the instant case the Commission will assert its jurisdiction and order Respondent, Wonderland Foods, Inc., to pay what it so obviously owes rather than require the Complainant to do a useless and futile thing by exhausting its contractual grievance procedure.^{3/}

The Examiner has therefore concluded that the Respondent's conduct, described in the attached Findings of Fact, constitutes an unfair labor practice within the meaning of Section 111.06(1)(f) and 111.06(1)(1) of the Wisconsin Employment Peace Act and has ordered the Respondent to cease and desist from engaging in the prohibited conduct and to take appropriate affirmative action to remedy such violations.

Dated at Madison, Wisconsin, this ^{17th} day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner

- 2/ "103.86 Employe welfare funds: default in payments. (1) Any employer who promises in writing to make payments to an employe welfare fund, either by contract with an individual employe, by a collective bargaining agreement or by agreement with such employe welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of his failure to make the required payments, shall be fined not more than \$200.
- (2) This section shall not apply where the failure to make payments is prevented by act of God, proceedings in bankruptcy, orders or process of any court of competent jurisdiction, or circumstances over which the employer has no control."
- 3/ Bi State Trucking Corp. and Thompson Concrete Products Co., Inc., Decision No. 9924-A, 2/71.