

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL UNION NO. 364 OF SHEET METAL :
WORKERS' INTERNATIONAL ASSOCIATION, :

Complainant, :

vs. :

SCHIELD & ZILLMAN, :

Respondent. :

Case I
No. 15106 Ce-1382
Decision No. 10680-B

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, for the Complainant.

Crooks, Low and Earl, by Mr. James E. Low, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local Union No. 364 of Sheet Metal Workers' International Association, hereinafter referred to as the Complainant, having on November 30, 1971, filed a complaint of unfair labor practice with the Wisconsin Employment Relations Commission alleging that Schield & Zillman, hereinafter referred to as the Respondent, had committed unfair labor practices within the meaning of Section 111.06(1)(f) of the Employment Peace Act by violating the terms of an existing collective bargaining agreement between Complainant and Respondent; and the Commission having appointed Robert M. McCormick as Hearing Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter pursuant to Section 111.07(5) of the Wisconsin Statutes, and on January 10, 1972, the Examiner having conducted initial hearing in the matter at the Marathon County Courthouse, Wausau, Wisconsin, in the course of which Respondent and Complainant entered into a stipulation, which by its terms would cause hearing in the matter to be adjourned indefinitely pending Respondent's paying monthly installments of monies, in the total amount of \$2180.78, between February, 1972 and July 1, 1972, to various funds administered by the Complainant and/or trustees appointed by Union-Employer representatives in the Sheet Metal Industry, as set forth in the labor agreement covering certain benefits, plus \$100 in attorney's fees for Complainant's costs as provided by the labor agreement, and with the further understanding that upon Respondent's having completed payment of the stipulated amount, that the complaint should be dismissed; and that after a period of four months following said stipulation, on May 2, 1972, the Complainant having filed a motion with the Examiner requesting reopening of hearing to take further evidence and requesting that Conclusions of Law and Order be issued on grounds that Respondent allegedly failed to perform the stipulation and continued to remain delinquent in making certain contractually required payments to several funds; and on May 25, 1972, the Examiner having conducted subsequent hearing in the matter at Marathon County Courthouse at Wausau, Wisconsin in the course of which Respondent stipulated with Complainant, that the Examiner make Findings of Fact, Conclusions of Law and Order so as to find that Respondent's delinquency in payments to several funds was violative of the existing collective agreement; and the parties having requested the Examiner to determine the specific amount of attorney's fees which the Respondent should be required to pay under the collective bargaining

agreement; and the Examiner having considered the evidence, stipulations and argument submitted at hearings 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 Complainant Union, Local Union No. 364 of Sheet Metal Workers' International Association, is a labor organization having its principal offices at 318 South Third Avenue, Wausau, Wisconsin.

2. That Respondent-Employer, Schield & Zillman, is a heating and air conditioning contractor in the Central Wisconsin area and has its offices at 1115 N. Depot Street, Schofield, Wisconsin.

3. That Respondent was a signator of, and a party to, a collective bargaining agreement negotiated by Central Wisconsin area Sheet Metal and Air Conditioning Contractors Association, and the Complainant, which was effective from June 1, 1971 at least up to May 31, 1972, and in effect for all times material herein; that pursuant to the terms of said agreement, the Respondent was obliged to make certain monthly payments to separate and contractually established Funds or Accounts based upon a 6% per cent of gross pay calculation, a 25¢ per hour calculation, a 15¢ per hour calculation and a 10¢ per hour calculation, for its employees employed in the bargaining unit to be paid to the employee's Vacation Account, to the Sheet Metal Workers Local 364 Health and Welfare Insurance Trust Fund, to the Sheet Metal Workers National Pension Fund, and to the Union Business Administrative Fund, respectively; that as of initial hearing in the matter on January 10, 1972, the Respondent stipulated that it was delinquent in making payments to the aforesaid funds in the total amount of \$2,180.78 for the period March 1, 1971 through November 30, 1971, and in addition thereto Respondent agreed to pay \$100.00 in attorney's fees under the terms of Addendum VIII of the agreement; that Respondent continues to be delinquent in making payments pursuant to the stipulation of January 10, 1972, in the amount of \$1611.16 for the period of May 1 through November 30, 1971; that Respondent accepted the jurisdiction of the Wisconsin Employment Relations Commission to determine the delinquencies owing within the meaning of Article VIII of the collective bargaining agreement; Respondent has further failed to make payments to aforesaid funds for the month of March, 1972 in the amount of \$242.18 and the month of April, 1972 in the amount of \$145.00 and that the Respondent's total delinquency for payments otherwise due and owing to the four funds as prescribed in Addendums V, VI, VII and XVI of the collective bargaining agreement, is in the amount of \$1998.34 for the payments period May, 1971 through April, 1972; that Respondent made sufficient payment to the four (4) Funds for the months of December, 1971 and January and February, 1972.

4. That in addition to the Respondent's acknowledged obligation to pay \$100 in attorney's fees to Complainant's counsel of record as of January 12, 1972, pursuant to provisions of Addendum VIII of the agreement, the Respondent is obligated to pay Complainant's legal costs pursuant to Addendum VIII of the agreement for actual expenses incurred in its subsequent proceeding before this Commission in pursuit of its action under Sections 111.06(1)(f) and 111.07 of the Wisconsin Statutes. That the Examiner, in considering the complexity of Complainant's action to secure Findings of Fact, Conclusion of Law and Order from this Commission under Section 111.07, Wis. Stats. on the basis of an admitted contractual violation according to uncontested facts, in considering the limitations of time and travel involved for Complainant's Counsel, as a member of a Milwaukee firm specializing in

labor relations law, who upon acceptance of the particular employment for a hearing in Wausau on May 25, 1972, was precluded from securing other employment on said date, and in considering the fee customarily charged in the locality for daily court appearance in trial weighed in light of a two-hour hearing with stipulated facts, finds that \$300, with no additional allowance for transportation, is a reasonable and sufficient allowance to the Complainant for attorney's fees and constitutes "all actual fees and costs incurred" within the meaning of Addendum VIII of the labor agreement.

5. That Respondent has failed to make required payments to the four (4) Funds prescribed in Addendums V, VI, VII and XVI of the labor agreement in the accumulated amount of \$1998.34, for the period of time beginning May 1, 1971 and ending April 30, 1972; and that Respondent has further failed to pay to Complainant its legal costs incurred in the collection of said delinquent payments within the meaning of Addendum VIII of the agreement, for the costs of separate counsel in the amounts of \$100 and \$300 respectively, for their services on January 10 and May 25, 1972.

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

CONCLUSIONS OF LAW

1. That Schield & Zillman and the Complainant Union, accepted the jurisdiction of the Wisconsin Employment Relations Commission to determine the question on the merits as to the Respondent's having violated its existing collective bargaining agreement, as an action in conformity with Addendum VIII-Delinquencies under the labor agreement; and that the Examiner, for the Wisconsin Employment Relations Commission, has jurisdiction to determine the question as to whether the Respondent Employer violated Section 111.06(1)(f) of the Employment Peace Act.

2. That Schield & Zillman has violated and continues to violate the terms of the collective bargaining agreement existing between it and Local Union No. 364 of Sheet Metal Workers' International Association in the following respects:

(a) by failing and refusing from at least May, 1971 to April 30, 1972, to make payments of monies: to the Vacation Accounts of its employes, to Sheet Metal Workers' Local 364 Health and Welfare Insurance Trust Fund, to the Sheet Metal Workers National Pension Fund and to the Union Business Administrative Fund, in the amount of \$1998.34.

(b) by failing and refusing from at least January 1, 1972 to May 25, 1972, to pay Local 364 Sheet Metal Workers' International Association for the costs of collection incurred by Complainant in legal fees for appearance and service of separate counsel on January 10, and May 25, 1972.

and by said failure to comply with Addendums V, VI, VII, VIII and XVI of said collective bargaining agreement as set forth above, Schield & Zillman has committed and is committing an unfair labor practice within the meaning of Section 111.06(1)(f) 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 Schield & Zillman shall immediately:

1. Cease and desist from violating the provisions of the collective bargaining agreement in effect between it and Local Union No. 364 of Sheet Metal Workers' International Association, namely Addendum V, which requires employer contributions to Vacation Accounts of employees, Addendum VI containing a Health and Welfare Fund requiring contributions for employees covered by the agreement, Addendum VII, containing a Pension Fund requiring contributions for employees and Addendum XVI requiring contributions to a Union Business Administrative Fund.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the act:

(a) Immediately make payments by certified check to the order of Local Union No. 364 of Sheet Metal Workers' International Association for the delinquent payments accumulated since May 1, 1971 through April 30, 1972, covering the four (4) aforementioned Funds in the amount of \$1998.34.

(b) Immediately make payment by certified check to the order of Local Union No. 364 of Sheet Metal Workers' International Association (unless complete payment has already been made) in the amount of \$100.00 for the cost of attorney's fees incurred by Complainant-Union on January 10, 1972 in collecting the delinquent payments to the aforementioned Funds.

(c) Immediately make payment by certified check to the order of Local Union No. 364 of Sheet Metal Workers' International Association in the amount of \$300.00 for its attorney's fees incurred on May 25, 1972, in collecting the delinquent payments to the aforesaid Funds, which sum has been determined to be due and owing as "actual fees and costs incurred" within the meaning of Addendum VIII of the collective bargaining agreement.

(d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps it has taken to comply therewith.

Dated at Madison, Wisconsin, this 15th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Initial hearing on Complainant's complaint of unfair labor practice held on January 10, 1972 resulted in a stipulation calling for monthly installments to be paid by Respondent to liquidate the \$2180.78 in delinquent payments, which the Respondent acknowledged were owed under the contract. Respondent having been able only to partially perform the stipulation, Complainant requested the Examiner to reopen hearing and make a record on the merits of the controversy and to determine the total delinquencies under the contract.

Though the agreement contains a rather cumbersome procedure for the final resolution of unresolved disputes, the parties were willing to proceed under Addendum VIII of their agreement, in a Section 111.06 (1)(f) action to secure a decision on the merits.

The facts being stipulated, the only remaining question was for the Examiner to determine just what were the "actual fees and costs" incurred in addition to the amount of delinquencies which have occurred prior to its collection" within the meaning of Addendum VIII of the agreement.

There was no specific request for interest on the delinquencies as otherwise prescribed in said Addendum. The parties took great pains to stipulate to an absolute sum of monies as the Respondent's obligation, so that the Examiner has not applied said interest provision from the contract.

On the question of Attorney's fees for appearance and services of counsel, the Examiner has weighed those factors set forth in Findings of Fact #4, and has treated the hours of travel, the two hours of hearing, and the possible one hour plus preparation time and mileage as being equivalent to a court appearance of one (1) day at trial. The "State Bar of Wisconsin Fee Guide" (July 1972 Revision) has been substantially relied upon, the undersigned having given consideration to the factors set forth in the Guide, DR-2-106, (page VI) in interpreting the term "actual costs incurred" in Addendum VIII of the agreement, factors which the courts do apply on occasion.

Dated at Madison, Wisconsin, this 15th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner