

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 10876-A

4. That on approximately November 29, 1971, a grievance arose involving an employe of Respondent, Willie D. Ellis, who was in the collective bargaining unit represented by the Complainant and covered by the aforementioned collective bargaining agreement, in which grievance it was alleged that the Respondent had failed to comply with Article XI, Section 11.17(c) "call-in and reporting pay", of the aforesaid collective bargaining agreement.

5. That on approximately January 10, 1972 the Complainant transmitted to the Respondent the aforesaid grievance, in written form, and requested a meeting with regard to the resolution of said grievance at a specified time and place; that Complainant also stated in writing to the Respondent "If you are unwilling to remedy this situation or are unwilling to meet with us to discuss this problem, please submit a written statement of your willingness to arbitrate this issue"; and that the Respondent has failed to reply in any way to said grievance nor has it filed an Answer or appeared at the hearing in the instant proceeding.

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

CONCLUSION OF LAW

That the Respondent by failing to reply to the grievance in this matter, and by failing to participate in any manner in the instant proceeding, has refused to proceed to arbitration with respect to the aforesaid grievance, thus violating the arbitration provisions of the aforesaid collective bargaining agreement existing between it and the Complainant and, therefore, in that regard, Respondent committed, and is committing, an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that P & J Contracting Co., Inc., its officers and agents shall immediately:

- 1) Cease and desist from refusing to submit the aforesaid grievance of Willie D. Ellis, and the issues concerning same, to arbitration.
- 2) Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
 - a) Comply with the arbitration provisions of the collective bargaining agreement existing between it and the Complainant with respect to the aforesaid grievance of Willie D. Ellis, and all issues concerning same.
 - b) Notify the Complainant that it will proceed to arbitration on said grievance, and all issues concerning same.

- c) Participate in the arbitration proceeding before the Arbitrator selected pursuant to the provisions of the aforesaid collective bargaining agreement on the said grievance and all issues concerning same.
- d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the receipt of a copy of this Order as to what action it has taken to comply herewith.

Dated at Madison, Wisconsin, this 6th day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The instant complaint was filed on March 20, 1972. Essentially, it alleges that the Respondent violated its collective bargaining agreement with the Complainant, and therefore violated the Wisconsin Employment Peace Act, by refusing to proceed to the arbitration of a certain grievance.

A Notice of Hearing was issued by the Examiner on March 21, 1972 specifying a date for hearing and that a Answer to said complaint "may" be filed on or before March 29, 1972. The hearing was subsequently postponed to May 25, 1972. The initial Notice of Hearing and the Notice of Postponement were transmitted to the Respondent by certified mail and regular mail, respectively. The Respondent filed no Answer nor did it appear at the hearing. In fact, the Examiner has been provided with no response by the Respondent to the complaint herein although it is clear from certified mail receipts that the complaint and the transcript of the hearing were received by the Respondent. 1/

At the hearing it was established that an employe of the Respondent who was a member of the bargaining unit represented by the Complainant filed a grievance alleging a violation of the reporting-pay provision of the parties' collective bargaining agreement. On January 10, 1972 that grievance was mailed to the Respondent by the Union and a United State Post Office receipt indicates that it was received. With said grievance the following letter of transmittal was also mailed:

"Enclosed is a formal grievance filed this date against your firm. We wish to meet with you in our office at 10:00 A.M., on Tuesday, January 18, 1972, to discuss the resolution of this grievance.

If you are unwilling to remedy this situation or are unwilling to meet with us to discuss this problem, please submit a written statement of your willingness to arbitrate this issue.

If you fail to respond to this grievance, we will feel it necessary to take other legal action."

It is the conclusion of the Examiner that the Respondent has exhibited an attitude in this matter which would make it patently

1/ At the close of the hearing the Examiner provided a one week period subsequent to the receipt of the transcript to afford the Respondent another opportunity to state its position. This was stated in the transcript.

over-technical to require the Union to have made a formal request that the parties submit the aforesaid grievance to arbitration. It seems apparent that such a request would have met with simple silence, as did the grievance and the complaint herein. It is the Examiner's decision that the entirety of the Respondent's conduct with regard to the grievance, including its conduct in this proceeding, is a sufficient basis for an inference that the Respondent recognized the Complainant's desire to go to arbitration and refused to comply therewith.

Dated at Madison, Wisconsin, this 6th day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner