STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MEAT & ALLIED FOOD WORKERS, LOCAL 248, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, Complainant, vs. REIMER SAUSAGE COMPANY, Respondent.	Case V No. 15522 Ce-1422 Decision No. 10965-A

Appearances:
Mr. H. L. Kastrul, Attorney at Law, appearing on behalf of the Complainant.
Mr. Clifford H. Berger, President, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Meat & Allied Food Workers, Local 248, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, having on March 28, 1972 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Reimer Sausage Company had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Marvin L. Schurke, a member of its 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 Oshkosh, Wisconsin, on June 8, 1972; and the Examiner having considered the evidence, 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 Meat & Allied Food Workers, Local 248, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, referred to herein as the Complainant, is a labor organization having its principal offices at 3510 West St. Paul Avenue, Milwaukee, Wisconsin; and that, at all times material herein, Richard Greenlaw and Mathew Pinter have been officers or agents of the Complainant.

2. That Reimer Sausage Company, referred to herein as the Respondent, is an employer engaged in a business affecting interstate commerce within the meaning of the Labor Management Relations Act, as amended; and that the Respondent has its principal offices and plant at 656 North Main Street, Oshkosh, Wisconsin.

3. That the Respondent historically recognized the Complainant as the exclusive collective bargaining representative of certain employes of the Respondent; that Complainant and Respondent were parties to a collective bargaining agreement entered into on June 19, 1968 which

contained the following provisions material herein:

"ARTICLE I

RECOGNITION:

Section 1. The Company recognizes the above named Union as the sole and exclusive bargaining agency for all employees coming under their jurisdiction.

. . .

ARTICLE IV

WAGES:

Section 1. Wages and job classifications shall be set forth in Appendix "A" of this Agreement.

. . .

ARTICLE VIII

INSURANCE:

Section 1. The Employer shall furnish a Group Health & Welfare program for the term of the Agreement. Basic benefits of the program are outlined in Appendix "B" attached hereto.

Section 2. (a) Effective May 1, 1968, employees with dependents enrolled in the program shall contribute not more than $12.00 per month toward the cost of the program.

(b) Effective May 1, 1968, employees without dependents shall contribute not more than fifty percent (50%) per month toward the cost of employee only coverage.

Section 3. (a) Effective May 1, 1969, employees with dependents enrolled in the program shall contribute not more than $8.00 per month toward the cost of the program.

(b) Effective May 1, 1969, employees without dependents shall contribute not more than thirty percent (30%) per month toward the cost of employee only coverage.

Section 4. (a) Effective May 1, 1970, employees with dependents enrolled in the program shall contribute not more than $4.00 per month toward the cost of the program.

(b) Effective May 1, 1970, employees without dependents shall contribute not more than fifteen percent (15%) per month toward the cost of employee only coverage.

ARTICLE IX

PENSION PLAN:

Section 1. (a) The international Union with which this Local Union is affiliated has, by agreement with Employers created and established a Pension Fund designated as the Amalgamated Meat Cutters and Butcher Workmen's Union and Industry Pension Fund (hereinafter referred to as the "Pension Fund").

(b) Effective May 1, 1970, each Employer member of the Association shall contribute to the Pension Fund the amount of $17.30 per month for each regular, full-time employee. A regular, full-time employee for this purpose shall be defined as one who is regularly scheduled to work more than twenty (20) hours per week.

Section 2. (a) For an eligible employee whose employment commences after May 1, 1970, contributions shall commence with the 1st day of the month following thirty (30) days of employment. The obligation to pay contributions to the Pension Fund shall in no way affect any other rights granted to the Employer under this Collective Bargaining Agreement with respect to the right of said Employer to discharge the employee. In the case of employees who quit, are discharged for just cause, or are absent from work for any reason, Employers shall not be obligated to make Pension contributions to the Pension Fund for or beyond the month in which such quit, discharge or absence occurs. Contributions, however, will commence immediately for the month in which any such employee returns to work.

(b) The payments shall be used by the Pension Fund to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Pension Fund as determined by the Trustees of said Pension Fund.

(c) The Employer hereby agrees to become a party to the Agreement and Declaration of Trust establishing the said Amalgamated Meat Cutters and Butcher Workmen's Union and Industry Pension Fund and agrees to be bound by all terms and provisions of said Agreement, a copy of which shall be provided to all Employers and employees; provided, however, that the Employer's obligation to make contributions to the Pension Fund shall be determined solely under the Collective Bargaining Agreement between the Employer and the Union. The Employer, by the execution of this Collective Bargaining Agreement, approves and ratifies the appointment of Employer Trustees hertofore made or hereafter made pursuant to the terms of the said Agreement and Declaration of Trust.

It is understood and agreed that the Pension plan referred to herein shall be such as will qualify and continue to remain so qualified for approval by the Internal Revenue Service of the United States

Treasury Department so as to allow the Employer an income tax deduction for the contributions paid hereunder.

(d) In the event an Employer shall become delinquent in or fail to make the payment of contributions as required herein, such delinquency-or failure shall not be subject to arbitration and the Local Union may consider such delinquency or failure as an immediate breach of this Collective Bargaining Agreement. Any question of whether an Employer is obligated under the Collective Bargaining Agreement to make a contribution for one or more employees shall be subject to the grievance and arbitration procedure under the Collective Bargaining Agreement between the Employer and the Union.

ARTICLE X

GRIEVANCE AND ARBITRATION PROCEDURE:

Section 1. (a) An employee or the Union may file a grievance on any subject relating to the application or interpretation of this Agreement.

(b) For the purpose of expediting the adjustment of the grievances that may arise under this Agreement, the following procedure is established:

Section 2. All grievances shall be presented and answered in writing, by both parties. Whenever possible, in presenting the grievance, the aggrieved shall indicate by Section that portion or portions of the Agreement purportedly violated. The time stated in Steps 1 and 2 shall not include any time on Saturday, Sunday or a holiday.

Step 1. Each employee shall have the option of presenting a grievance directly to the Department Head or through his Department Steward to the Superintendent. If the grievance is not settled satisfactorily by either the Superintendent or the Department Head, the aggrieved employee then shall submit the grievance promptly in writing to his Superintendent directly or through his Department Steward. The Superintendent shall give his answer in writing within 24 hours in the presence of the Department Steward.

. . .

Step 5. If the grievance be not settled satisfactorily under Step 4, it may upon the written demand of either the Union or the Company be submitted to arbitration as provided for.

If neither the Union nor the Company makes a written demand for arbitration within ten (10) days from the date of final desagreement (sic) in the last step, the grievance shall be deemed waived; provided,

however, that this ten (10) day period may be extended by mutual consent in writing.

Section 3. (a) The findings of the arbitrator shall be final and binding on both parties. The arbitrator shall not have the power to add to or subtract from the provisions of this Agreement.

(b) In case the parties fail to agree on an arbitrator, they shall jointly request a panel of five (5) arbitrators from the Federal Mediation and Conciliation Service, one of whom shall be chosen by the parties to arbitrate the issue involved. The expense of the arbitrator shall be shared equally by the parties.

(c) So long as this Agreement remains in effect, the Company agrees there shall be no lock out on the part of the Company and the Union agrees that the Union and its members individually or collectively, will not cause, permit, engage or participate in, aid or assist any strike, or other interference of work or other operations of the Company unless the Company refuses to discuss or arbitrate any grievances. Any strike or stoppage of work by the Union or its members shall void the Agreement in its entirety.

. . .

ARTICLE XXIII

TERM:

This Agreement shall remain in full force and effect from May 1, 1968 until April 30, 1971 and remain in effect from year to year thereafter unless either party gives the other a written notice of termination at least sixty (60) days prior to the anniversary date of April 30.

. . ."

4. That on June 19, 1968 the Complainant and Respondent entered into an "Employer's Participation Agreement in the Amalgamated Meat Cutters and Butcher Workmen's Union and Industry Pension Fund", which agreement was to become effective on May 1, 1970 and to remain in effect during the term of any collective bargaining agreement between the Complainant and Respondent and during any extensions or renewals thereof and during any period the Respondent continued to make contributions pursuant to an agreement accepted by the trustees of said Pension Fund.

5. That on July 20, 1968 the Complainant and the Respondent entered into a "Participation Agreement in the Meat and Allied Food Workers Health and Welfare Fund" which agreement was to become effective on July 15, 1968 and to remain in effect so long as a collective bargaining agreement between the Complainant and the Respondent provided for contributions to said Fund.

6. That on July 23, 1968 the Complainant and the Respondent entered into a recognition agreement whereby the Respondent recognized the Complainant as the exclusive bargaining representative in a unit consisting of "all production and maintenance employees, including truck drivers, but excluding office clerical employees, salesmen, buyers, guards and supervisors as defined in the NLR Act"; that by such recognition agreement the bargaining unit represented by the Complainant was enlarged to include persons employed in the classifications of cooler clerk, delivery and service-sales; that on August 27, 1968 the Complainant and the Respondent entered into an "Addendum to Agreement" amending the parties' June 19, 1968 collective bargaining agreement and establishing wages, hours and conditions of employment for employes who were first included in the collective bargaining unit by the recognition agreement of July 23, 1968.

7. That on an unspecified date on or before March 24, 1971, the Complainant requested negotiations with the Respondent for the purpose of obtaining a new collective bargaining agreement to succeed the parties' June 19, 1968 agreement, as amended; that by such request for negotiations the Complainant sought from the Respondent a waiver of any failure on the part of the Complainant to give timely notice of termination, pursuant to Article XXIII of the parties' June 19, 1968 agreement; that on or before March 24, 1971, the Respondent acquiesced in the opening of negotiations between the Complainant and the Respondent for a new collective bargaining agreement; that by such acquiescence, the Respondent waived any right it may have had to assert Article XXIII of the parties' June 19, 1968 agreement as a bar to such negotiations; and that by such actions the Complainant and the Respondent effectively caused the termination of their June 19, 1968 collective bargaining agreement on April 30, 1971.

8. That on and after March 24, 1971 the Complainant and the Respondent met for the purpose of negotiating a new collective bargaining agreement; that the parties failed to reach agreement on a new collective bargaining agreement prior to April 30, 1971; that on or about June 16, 1971 and on or about September 1, 1971 the Complainant submitted contract drafts to the Respondent; that the Respondent refused to execute either such draft as a new collective bargaining agreement between the parties; that the Complainant filed charges with the National Labor Relations Board 1/ wherein it alleged that the Respondent herein had committed unfair labor practices by refusing to execute a collective bargaining agreement draft prepared by the Complainant; that, following investigation, the Director, Region 30, National Labor Relations Board, refused to issue a complaint on the basis of such charges; that the Complainant herein appealed the decision of the Regional Director to the Office of the General Counsel, National Labor Relations Board; and that by letter dated November 24, 1971, the Director, Office of Appeals, Office of the General Counsel, National Labor Relations Board denied such appeal, stating that the evidence was insufficient to sustain the burden of establishing that there had been a meeting of the minds between the Complainant herein and the Respondent herein on the terms of a new collective bargaining agreement.

9. That the Respondent failed or refused to make contributions to the Meat and Allied Food Workers Health and Welfare Fund for the

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1/ Reimer Sausage Company, 30-CA-1671

month of July, 1971; and that the Respondent has failed or refused to make any such contribtuions for any month subsequent to July, 1971.

10. That the Respondent failed or refused to make contributions to the Amalgamated Meat Cutters and Bucher Workmen's Union and Industry Pension Fund for the month of February, 1972; and that the Respondent has failed or refused to make any such contributions for any month subsequent to February, 1972.

11. That on March 2, 1972, the Complainant, by Pinter, directed a letter to the Respondent by certified mail; that, upon the presentation of such letter at the Respondent's office for delivery, the Respondent refused to accept delivery of such letter; that in such letter the Complainant stated its claim that the parties' June 19, 1968 collective bargaining agreement had continued in effect beyond its stated expiration date; that in such letter the Complainant claimed Pension Fund contribution delinquencies on the part of the Respondent; that by such letter the Complainant requested copies of or access to the Respondent's payroll records, for the purpose of determining whether any discrepancies existed between wages paid to employes and wage rates specified in the parties' June 19, 1968 collective bargaining agreement, as amended; that on March 6, 1972, the Complainant received the refused envelope containing its letter of March 2, 1972; and that on March 6, 1972, the Complainant sent a telegram to the Respondent, wherein it stated the contents of its March 2, 1972 letter to the Respondent.

12. That the Respondent, by its President, directed a letter under date of March 1, 1972 to the Complainant by certified mail; that such letter was presented at the Complainant's office for delivery on March 9, 1972, at which time the Complainant refused to accept delivery of such letter; that such letter purported to notify the Complainant of the termination of the collective bargaining agreement between the Complainant and the Respondent as of April 30, 1972; and that on March 13, 1972 the Respondent, by its President, sent a telegram to the Complainant, wherein it stated its purported notification of the termination of the collective bargaining agreement between the parties as of April 30, 1972.

13. That, in response to Respondent's telegram of March 13, 1972, the Complainant, by Pinter, sent a telegram to the Respondent on March 14, 1972, wherein it claimed that the Respondent's attempt to terminate the collective bargaining agreement was untimely and that the collective bargaining agreement entered into on June 19, 1968 remained in full force and effect.

14. That on March 14, 1972 the Complainant, by Pinter, directed a letter to the Respondent wherein it restated its claim that the June 19, 1968 collective bargaining agreement remained in effect, and further stated claims concerning default of payment of Health-Welfare contributions and Pension contributions on behalf of employes pursuant to such collective bargaining agreement.

15. That the Complainant filed certain wage discrepancy claims with the Examiner following hearing in the instant matter, pursuant to arrangements made during the course of such hearing; that the Respondent made no response to the wage discrepancy claims filed by the Complainant within the time provided for same or thereafter; and that certain of the wage discrepancy claims so filed concern wage payments made prior to March 28, 1971; that David Hogue was employed by the Respondent in

the classification of "Delivery" for a period commencing in January, 1971 and terminating in May, 1971; that during the period of his employment from March 28, 1971 through April 30, 1971, the appropriate wage rate for the delivery classification, pursuant to the Addendum entered into by the parties on August 27, 1968, was $2.92 per hour; that during such period the Respondent actually paid David Hogue at the rates of $1.85 per hour and $1.95 per hour, in violation of the collective bargaining agreement then existing between the parties; that no written grievances were filed or processed, pursuant to Article X of the parties' June 19, 1968 collective bargaining agreement, by or on behalf of any employe, but that the parties waived Article X of their June 19, 1968 agreement for the purpose of this proceeding.

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

CONCLUSIONS OF LAW

1. That the collective bargaining agreement between Complainant and the Respondent which was entered into on June 19, 1968 was terminated by the parties on April 30, 1971.

2. That the "Employer's Participation Agreement in the Amalgamated Meat Cutters & Butcher Workmen's Union and Industry Pension Fund" and the "Participation Agreement in the Meat and Allied Food Workers Health and Welfare Fund" entered into by the parties terminated on April 30, 1971 with the termination of the collective bargaining agreement between the parties.

3. That the Respondent, Reimer Sausage Company, by any failure or refusal to pay wage rates pursuant to Appendix A, by its failure or refusal to make health and welfare contributions pursuant to Article VIII, and by its failure or refusal to make pension plan contributions pursuant to Article IX of the parties' June 19, 1968 collective bargaining agreement, as amended, for any period on or after May 1, 1971 did not violate the terms of a collective bargaining agreement between the parties and has not committed and is not committing unfair labor practices within the meaning of Section 111.06(1)(f), Wisconsin Statutes.

4. That the complaint initiating the instant unfair labor practice proceeding before the Wisconsin Employment Relations Commission was not timely filed within the meaning of Section 111.07(14) of the Wisconsin Employment Peace Act, insofar as it alleges improper payments of wages to employes covered by the parties' June 19, 1968 collective bargaining agreement, as amended for periods on or before March 28, 1971.

5. That Reimer Sausage Company by its failure to pay David Hogue properly under the parties' June 19, 1968 collective bargaining agreement, as amended, for the period March 28, 1971 through April 30, 1971 violated the collective bargaining agreement then in effect between Reimer Sausage Company and Meat and Allied Food Workers, Local 248, Amalgamated Meat Cutters & Butcher Workmen of North America, AFl-CIO, and by such violation of the collective bargaining agreement has committed unfair labor practices within the meaning of Section 111.06 (1)(f), Wisconsin Statutes.

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

ORDER

1. That Reimer Sausage Company take the following affirmative action which will effectuate the policies of the Wisconsin Employment Peace Act:

a. Pay David Hogue such sum of money as is necessary to make him whole for the loss caused to him by the improper payment of wages to him during the period March 28, 1971 through April 30, 1971.

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

2. That the complaint of Meat and Allied Food Workers, Local 248, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, to the extent that it alleges violations of the collective bargaining agreement prior to March 28, 1971 or subsequent to April 30, 1971 be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 29th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

REIMER SAUSAGE COMPANY
Case V Decision No. 10965-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint filed on March 28, 1972 the Union alleged that the Company violated the collective bargaining agreement which became effective on May 1, 1968:

> "a. Since May 11, 1970, the Respondent failed to pay the wages to certain employees as set forth in Appendix "A" of such agreement and in the Addendum to Agreement, effective August 1, 1968, and which Agreement is still in effect.
>
> b. Unilaterally instituting a Health and Welfare program in July 1971, which had not been negotiated and agreed to.
>
> c. That since July 1, 1971, the Respondent has failed to furnish the Group Health and Welfare program as set forth in Article VIII Section 1., and Appendix "B" of the Collective Bargaining Agreement.
>
> d. That since May 11, 1970, the Respondent has failed to contribute to the Amalgamated Meat Cutters and Butcher Workmen's Union and Industry Pension Fund contributions for all of its employees pursuant to Article IX of the Collective Bargaining Agreement."

A copy of the collective bargaining agreement was attached to the complaint. By letter dated March 28, 1972 the Chairman of the Commission advised the Union of the Commission's policy against asserting jurisdiction to determine whether substantive provisions of an agreement have been violated where there exists a provision for final and binding arbitration, and suggested that the Union should proceed according to the arbitration provisions contained in the contract. The Union directed a letter to the Company by certified mail, in which it demanded processing of the grievances, but that letter was refused by the Company. On April 12 the Union wrote to the Commission advising that further attempts to process a grievance under the contract had been unsuccessful and requested that the Commission proceed with the complaint filed on March 28. Notice of hearing was issued on April 25, 1972 setting the matter for hearing on May 16, 1972 and setting May 8, 1972 as the date for filing of an answer. On May 8, 1972 the Respondent filed its answer wherein it alleged that it had not violated the collective bargaining agreement during the period May 1, 1968 through April 30, 1971, and alleged further that no contract had been in effect since May 1, 1971. Pursuant to a request by the Union, notice of hearing was issued on May 8, 1972 postponing hearing in the matter until June 8, 1972.

Hearing was held before the Examiner on June 8, 1972. During such hearing both parties stipulated to the admission of numerous articles of documentary evidence and made oral argument. Neither party presented any testimony on the matter and the parties waived filing of briefs. The pleadings and arguments frame a threshold issue concerning the existence of a collective bargaining agreement on and after May 1, 1971. The Company claims that no agreement was in effect, and on that basis has refused to process or arbitrate grievances. On April 24, 1972,

pursuant to a petition filed by an employe, the National Labor Relations Board conducted a representation election among employes of the Company in the bargaining unit specified in the July 23, 1968 recognition agreement between the parties, and on May 2, 1972 the acting Director, Region 30, National Labor Relations Board issued a "Certification of Results of Election" indicating that a majority of the valid ballots had not been cast for any labor organization appearing on the ballot and that no such organization is the exclusive representative of the employes in the unit involved within the meaning of Section 9A of the National Labor Relations Act, as amended. Under these circumstances, the parties stipulated to waive the grievance and arbitration provisions of the agreement and to submit all issues, both on existence of an agreement and on the merits of grievances, for determination in this proceeding. At the close of the hearing, the Company agreed to provide the Union with copies of certain payroll records for 1971 and 1972. The Union was given a one week period to file specific claims of wage payment violations of the contract. The Union was directed to furnish a copy of its claim to the Company, and the Company was given one week to make a response. The Examiner reserved the right to reopen the hearing in the event a factual issue was framed by the correspondence. On June 16, 1972 the Union timely filed wage claims concerning two employes, with a copy being sent to the Company. The Company made no response to the wage claims so filed.

EXISTENCE OF AGREEMENT AFTER APRIL 30, 1971

The Union makes the claim in this proceeding that it failed to give the Company timely notice of reopener in 1971. No documentary evidence or sworn testimony is in the record before the Examiner which would establish the date of the Union's attempt to reopen the contract. The evidence does indicate that the parties did in fact meet on March 24, 1971, along with representatives of two other Oshkosh sausage firms which negotiated separately for a pattern contract. The evidence also indicates that the Union was unsuccessful in obtaining successor contracts with the Respondent herein and one of the other firms, that the parties became involved in unfair labor practice proceedings before the National Labor Relations Board, and that the parties participated in mediation with a member of the Commission's staff. The first indication in this record of the Union's claim that the June 19, 1968 contract had not expired is found in the Union's letter to the Company of March 2, 1972. In this proceeding the Union would have the Examiner ignore eleven months of bargaining activity and litigation and permit the Union to now rely on its unsupported claim of failure to give timely notice of reopener in 1971.

The Union's claim must fail, on its face, because of the Union's failure to put the date of its claimed tardy reopener into evidence.

Assuming, arguendo, that the Union had shown that its reopener had been tardy, the Examiner would nevertheless find that the contract had been terminated on April 30, 1971. The language of Article XXIII of the June 19, 1968 agreement does not provide for a "reopener" without termination of the agreement. Unless notice of termination is given, the contract would continue for an additional year. Under such circumstances, the Examiner is satisfied that the Union's attempt, whether tardy or not, to "reopen" should be interpreted as an attempt to terminate the contract and prevent the operation of Article XXIII. There is no evidence whatever of any negotiations for, or meeting of the minds on, any extension of the June 19, 1968 agreement beyond April 30, 1971. The collective bargaining agreement is of the creation

of the parties and is subject to modification at any time by their mutual consent. Faced with the possibility of freezing wage rates and other conditions for an extra year beyond the normal expiration of a collective bargaining agreement, an employer who is asked to acquiesce in a tardy reopening of a contract is clearly in a position where refusal of such acquiescence could lead to economic advantage. For whatever reasons, the Company here did not choose to stand on the language of Article XXIII. The Company agreed with the Union to enter into negotiations in 1971, and that agreement of the parties superseded the automatic extension provisions of Article XXIII.

The Union wrote a letter to the Company one day after the theoretical 1972 reopening deadline had passed, and it was in that letter that the Union asserted, for the first time, that the June 19, 1968 contract had remained in effect for 1971 - 1972. The Company did not know the contents of that letter until March 6, 1972. The Examiner is persuaded that the Company's letter under date of March 1, 1972 was actually written in response to the Union's March 2, 1972 letter and March 6, 1972 telegram, and not on the date indicated. Support for this conclusion is found in the nine day lapse which would have occurred between issuance and receipt. The Company's letter tends to be an admission against interest in this proceeding, but is totally inconsistent with the Company's position both before and since its issuance. The Examiner is satisfied that it was, if anything, an attempt to "overkill" the collective bargaining agreement. The Union's assertion of March 2, 1972 has been shown to be incorrect. The Company's response to that assertion appears to constitute reliance by the Company on a false premise.

HEALTH-WELFARE CONTRIBUTIONS

The Union assails the Company's change in insurance plans in July, 1971 as a violation of the agreement. As previously determined, the collective bargaining agreement between the parties expired on April 30, 1971, and no successor agreement was negotiated. On the contrary, it is clear from the National Labor Relations Board's denial on appeal that the subject of choice of insurance plan had been one of the subjects on which the parties were at impasse. The Participation Agreement remained in effect only so long as the Company and the Union continued to be parties to a collective bargaining agreement which specified contributions to that plan. Since the underlying collective bargaining agreement had ceased to exist, it is clear that the Participation Agreement had also expired at the time the Company changed insurance plans and ceased to make contributions to the Union plan.

PENSION CONTRIBUTIONS

The Company continued to make pension contributions on behalf of certain of its employes for some period following the termination of the collective bargaining agreement. The termination language of the Participation Agreement entered into by the parties concerning the pension plan appears to contemplate such a situation. However, that Participation Agreement did not bind the Company to continue contributions where no collective bargaining agreement was in effect. No new collective bargaining agreement had been negotiated when the Company discontinued its pension contributions. The discontinuance of contributions had the effect of terminating a "period during which the Company continues to make contributions pursuant to an agreement accepted by the trustees of said Pension Fund", and thereby terminated

any continuing effect of the Participation Agreement concerning the Pension Fund.

IMPROPER PAYMENT OF WAGES

Section 111.07(14) of the Wisconsin Employment Peace Act sets a one year limitation on the filing of complaints alleging unfair labor practices. The complaint herein was filed on March 28, 1972 and the period over which the Examiner has jurisdiction therefore does not extend prior to March 28, 1971. Certain of the wage discrepancies raised by the Union concern the months of January, February and March of 1971, prior to March 28, 1971, and are dismissed as time barred.

The Union's wage discrepancy claims concern two employes, Norman Boese and David Hogue. The discrepancy claims concerning Boese commence with November 1971, the employe's starting date, and continue into 1972. It is clear that the entire period of this employe's employment occurred after the expiration of the June 19, 1968 collective bargaining agreement. David Hogue started work in January, 1971 and continued to work for the Company until approximately May 29, 1971. The Union claims wage payment violations concerning Hogue in the period after April 30, 1971, but it is clear that such claims concern a period during which no contract covered his employment.

The Company started David Hogue at a rate of $1.85 per hour. It is clear from copies of the payroll records provided by the Company that this employe worked a steady 40 hour schedule throughout his employment period. During the last week of March 1971 and the entire month of April 1971 Hogue worked 40 hours per week. He was paid at the rate of $1.85 per hour until the last week of April, at which time he was increased to $1.95 per hour. Careful examination of Exhibit A to the June 19, 1968 agreement shows no pay rate less than $2.25 per hour at the time the agreement was executed and no rate of less than $2.55 per hour at the time of Hogue's employment. The payroll records indicate that Hogue was employed in a "City Delivery and shop" classification. The Addendum to the June 19, 1968 agreement executed on August 27, 1968 provides for a pay rate of $2.92 per hour to be in effect for employes in the "Delivery" classification on and after November 1, 1970. It is clear that Hogue was underpaid under the provisions of the contract while employed within the "all production and maintenance employes including truck drivers . . ." bargaining unit covered by the June 19, 1968 agreement, as amended. The only period of Hogue's employment which is subject to remedy in this proceeding is the period which is both within the one year statute of limitations of the Wisconsin Employment Peace Act and within the effective period of the June 19, 1968 agreement, as amended. The Company has therefore been ordered to pay Hogue for the wage deficiencies which occurred during the period commencing on March 28, 1971 and ending on April 30, 1971.

Dated at Madison, Wisconsin, this 29th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner