

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON INDEPENDENT WORKERS UNION,

Complainant,

vs.

W. C. L. INC.,

Respondent.

Case II

No. 15868 Ce-1438

Decision No. 11163-A

Appearances:

Aberg, Bell, Blake & Metzner, Attorneys at Law, by Mr. Roger L. Gierhart, appearing on behalf of the Respondent.

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. David Loeffler, appearing on behalf of the Complainant.

FINDINGS OF FACT, CONCLUSION 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 authorized Howard S. Bellman, a member of the Commission's staff, to act as an Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and a hearing on such complaint having been held at Madison, Wisconsin, on December 14, 1972, 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, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Madison Independent Workers Union, referred to herein as the Complainant, is a labor organization having offices at 306 North Brook Street, Madison, Wisconsin.

2. That W. C. L., Inc., referred to herein as the Respondent, is a Wisconsin corporation which formerly operated a business known as Lum's Restaurant, in Madison, Wisconsin; and that W. Carl Laughnan has, at all times material herein, been its President, and agent.

3. That on June 20, 1972, the Complainant and the Respondent entered into an agreement whereby they settled a pending unfair labor practice proceeding before the Wisconsin Employment Relations Commission, wherein Complainant agreed to the dismissal of its complaint in said proceeding and the Respondent agreed, inter alia, to pay to John Fowee the amount of \$375.00, and to Robert Rohrer the amount of \$132.91; that Respondent paid to said Fowee the sum of \$257.30, which reflected certain proper deductions from the aforesaid \$375.00, and the deduction of \$20.00, which was withheld because of an alleged debt owed by Fowee

to Respondent; that Respondent paid nothing to the aforesaid Rohrer pursuant to said settlement agreement on the basis of an alleged debt of \$140.00 owed by Rohrer to Respondent.

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

CONCLUSION OF LAW

That the aforesaid settlement agreement entered by the Respondent and the Complainant on June 20, 1972 constitutes a collective bargaining agreement within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act; and that by not paying the agreed upon amounts to John Fowee and Robert Rohrer, the Respondent committed, and is committing, an unfair labor practice within the meaning of said Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that the Respondent, W. C. L., Inc., take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:

- (a) Immediately pay to John Fowee, pursuant to the terms of the aforesaid settlement agreement, the amount of \$20.00.
- (b) Immediately pay to Robert Rohrer, pursuant to the terms of the aforesaid settlement agreement, the amount of \$132.91, less proper deductions required by statutes.
- (c) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of this Order as to what steps the Respondent has taken to comply herewith.

Dated at Madison, Wisconsin, this 22nd day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The instant parties were also parties to a previous case (Lum's Restaurant, Dec. No. 10908) before the undersigned Examiner, which, after several days of hearing, was dismissed on the basis of a settlement agreement entered on the record on June 20, 1971. Such settlement agreements constitute collective bargaining agreements covered by Section 111.06(1)(f) of the Act. (Packerland Packing Company, Inc., Dec. No. 7414-C).

On July 13, 1972 the Complainant filed a new complaint alleging that said settlement agreement had not been complied with by the Respondent, in several particulars. After several postponements granted to both parties, a hearing was held on December 14, 1972. Counsel for the Complainant failed to appear at such hearing, but stipulated with Counsel for the Respondent, on the telephone, respecting presentation of the case. Included among said stipulations were several amendments of the complaint. (It was also understood that, following issuance of the hearing transcript, Complainant would file written agreement. However, it failed to do so, although Respondent submitted a brief on January 19, 1973.)

In fact, the only issues presently raised by the Complaint are whether the Employer has committed unfair labor practices within the meaning of Sec. 111.06(1)(f) by failing to comply with those provisions of the aforesaid settlement agreement which require the payment of specified sums to former employes Fowee and Rohrer.

The Complainant does not take issue with the amount deducted from the sum transmitted to Fowee for the usual legal payroll deductions, but with \$20.00 deducted on the basis of two checks which Fowee cashed for one Timothy M. Carlson while Fowee was an employee, which were subsequently not honored for lack of funds. The Respondent adduced evidence that cashing checks was a violation of a company policy, which policy was known to Fowee.

Rohrer, on the other hand, has been paid nothing pursuant to the settlement by the Respondent. This, on the basis of an alleged shortage from the Respondent's cash of \$140.00, which is a greater amount than that which the settlement requires.

It is noted that both alleged instances of misconduct predated the settlement agreement. The Respondent urges that these deductions are proper set-offs under Sec. 895.07, Wis. Stats., and thus do not constitute violations of the agreement.

However, the Examiner has concluded that whether or not the aforesaid alleged "debts" of Fowee and Rohrer to the Respondent are actionable in an appropriate proceeding, or may constitute proper set-offs before another forum, they do not constitute matters which this Commission may consider as affecting the duty to comply with the clear terms of an enforceable labor agreement. This Commission has no jurisdiction to determine the charge that Rohrer improperly took cash from the Respondent, nor may it decide to sustain the Respondent's action against Fowee which is in the nature of a debt recovery. The Commission's jurisdiction is limited to interpretation and administration

of certain statutes, in this case the Wisconsin Employment Peace Act, and the alleged set-offs are not based upon such statute.

Dated at Madison, Wisconsin, this 22nd day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner