STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PLUMBERS AND STEAMFITTERS LOCAL 31, Complainant, vs. CARGILL HEATING AND AIR CONDITIONING COMPANY, INC., Respondent.	Case I No. 15009 Ce-1374 Decision No. 11319

Appearances:
Chojnacki and Chojnacki, Attorneys at Law, by Mr. Leonard R. Chojnacki, appearing on behalf of the Complainant.
Steele, Smyth, Klos & Flynn, Attorneys at Law, by Mr. John E. Flynn, appearing on behalf of the Respondent.

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 a hearing on said complaint having been conducted at LaCrosse, Wisconsin, on December 13, 1971, and January 17, 1972, by Commissioner Zel S. Rice II; and the Commission having considered the evidence and arguments of Counsel, 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 Plumbers and Steamfitters Local 31, hereinafter referred to as the Complainant, is a labor organization having its offices at 423 King Street, LaCrosse, Wisconsin.

2. That Cargill Heating and Air Conditioning Company, Inc., hereinafter referred to as the Respondent, has its principal place of business at 403 North Front Street, LaCrosse, Wisconsin, where it is engaged in the heating and air conditioning and water treatment business; that the Respondent was incorporated under the laws of the State of Wisconsin on May 14, 1971, and that Earl Galstad, a resident of LaCrosse, Wisconsin, is its President and principal stockholder.

3. That from June 1, 1970, to May 14, 1971, Earl Galstad operated the business of the Respondent as a sole proprietor, having on the former date purchased certain assets and certain equipment from the estate of E. N. Weisenbecker, who operated a heating, air conditioning and fuel oil distribution business at the same location as a corporation known as Cargill Heating and Air Conditioning, Inc., hereinafter referred to as Cargill; and that Weisenbecker was the President, Director, Manager and sole stockholder of Cargill.

4. That on April 1, 1965, the Complainant and the LaCrosse Plumbing and Heating Contractors Association, hereinafter referred to as the Association, consisting of various employers in the LaCrosse area

who were engaged in the plumbing and heating business, executed a collective bargaining agreement, effective from April 1, 1965, through March 31, 1968, which agreement contained among its provisions, a provision providing for employer contributions on behalf of each of their employes to the Complainant's Welfare Fund, as well as a provision providing final and binding arbitration by a designee of the Wisconsin Employment Relations Commission with respect to grievances not resolved in the grievance procedure.

5. That Cargill, at no time material herein, was a member of the Association; that, however, on June 1, 1967, Weisenbecker, on behalf of Cargill, executed a Letter of Assent, wherein Cargill agreed to comply with the terms and conditions of employment contained in the collective bargaining agreement in effect between the Complainant and the Association, commencing April 1, 1965, through March 31, 1968; and that said Letter of Assent remained "in effect until the contract anniversary date unless terminated by written notice to the parties to the aforementioned agreement sixty days prior to the notification date provided therein".

6. That on January 19, 1968, the Complainant, by letter, advised Cargill that it desired to negotiate changes and revisions in the aforementioned collective bargaining agreement, and further therein, requested an initial meeting on February 12, 1968, for said purpose; that neither Weisenbecker, or any person representing Cargill, responded to said letter or ever met with the representative of the Complainant with respect thereto; that on April 1, 1968, Complainant and the Association entered into a collective bargaining agreement covering the wages, hours and working conditions of employes of the employers who were members of said Association; that said agreement contained provisions providing for welfare contributions to be made by employers to the Complainant's Welfare Fund, as well as a provision for final and binding arbitration similar to that contained in the 1965-1968 agreement; that Cargill was not a member of the Association at any time between April 1, 1968, and April 30, 1971; and that at no time neither Weisenbecker nor any other agent of Cargill executed a letter of intent to be bound by the collective bargaining agreement executed by the Complainant and the Association for the period effective April 1, 1968, through April 30, 1971.

7. That, from at least June 1968, through May 1970, Elmer Groth and Clarence Stockmeyer were employes of Cargill and members of the Complainant Union; that Cargill paid welfare contributions to the Complainant's Welfare Fund on behalf of Groth from June 1968, through March 1970, and on behalf of Stockmeyer from June 1968, through May 1970; that after June 1, 1970, and prior to October 15, 1970, a dispute arose between the Complainant and Respondent with respect to whether the Respondent was bound by the terms of the collective bargaining agreement then in effect between the Complainant and the Association, which dispute primarily involved the failure of the Respondent to make contributions to the Complainant's Welfare Fund; that the Respondent denied that it was a party to any collective bargaining agreement with the Complainant, and therefore, had no obligation to make such contributions; that thereupon and prior to October 19, 1971, the date on which the complaint was filed herein with the Wisconsin Employment Relations Commission, the Complainant requested that the Respondent proceed to arbitration in the matter; and that, however, at all times material herein, the Respondent has refused, and continues to refuse, to proceed to arbitration as requested by the Complainant; that since April 1, 1968, and thereafter, neither Cargill Heating and Air Conditioning, Inc. nor Earl Galstad, as the sole proprietor and as a successor to Cargill Heating and Air Conditioning, Inc., nor Respondent

Cargill Heating and Air Conditioning Company, Inc., have ever been a party or parties to any collective bargaining agreement with the Complainant, Plumbers and Steamfitters Local 31.

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

CONCLUSION OF LAW

That, since at all times material herein, neither Earl Galstad, as the sole proprietor and as the successor to Cargill Heating and Air Conditioning, Inc., nor Cargill Heating and Air Conditioning Company, Inc. have, singly or jointly, been a party to any collective bargaining agreement with the Plumbers and Steamfitters Local 31, the Respondent, Cargill Heating and Air Conditioning Company, Inc. is not contractually obligated to proceed to arbitration on any dispute with Complainant, Plumbers and Steamfitters Local 31 on any dispute arising over the wages, hours and conditions of employment of its employes, including the dispute as to whether the Respondent, Cargill Heating and Air Conditioning Company, Inc., is obligated to make welfare contributions to the Welfare Fund of the Complainant, Plumbers and Steamfitters Local 31, and that therefore, the Respondent, Cargill Heating and Air Conditioning Company, Inc., has not committed any unfair labor practices within the meaning of Section 111.06(1)(f), or any other provision of the Wisconsin Employment Peace Act.

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

ORDER

It is ordered that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

FACTS

The facts material to the disposition as to whether the Employer violated an alleged collective bargaining agreement existing between it and the Union by refusing to proceed to arbitration regarding the Employer's failure to make contributions, on behalf of two employes, to the Union's Welfare Fund are set forth in the Findings of Fact.

DISCUSSION

The Commission concludes that Galstad, as a sole proprietor succeeded to the business formerly operated by Cargill Heating and Air Conditioning, Inc., when it purchased the assets of the estate of its former President, on June 1, 1970.

The former corporation, while not a member of the LaCrosse Plumbers and Heating Contractors Association, did on June 1, 1967, execute a Letter of Assent, thus agreeing to be bound by the terms of the collective bargaining agreement in effect between the Union and the Association from April 1, 1965, through March 31, 1968. On April 1, 1968, the Union and the Association executed a new collective bargaining agreement effective from April 1, 1968, through April 30, 1971. The former corporation was not a member of the Association during this period, nor did any agent of the former corporation execute any Letter of Assent binding the former corporation to the terms of said collective bargaining agreement. However, said former corporation, at least from June 1968, made welfare contributions to the Union's Welfare Fund on behalf of two employes. Contributions for employe Elmer Groth continued through March of 1970, while contributions for Clarence Stockmeyer continued through May of 1970. Contributions to such Welfare Fund had ceased to be made by the former corporation prior to the successorship by Galstad on June 1, 1970. Galstad, as sole proprietor, or as President of the Respondent Corporation, made no contributions to the Welfare Fund.

The Commission has considered the effect of the continuation of the payments to the Welfare Fund by the former corporation at such time as the former corporation had no collective bargaining agreement with the Union. We conclude that such payments were voluntarily made and that such payments did not constitute or establish a contractual relationship between the Union and the former corporation in the form of a collective bargaining agreement that existed between the Union and the Association during the period in which such payments were made.1/ Since the former corporation, at the time of the sale of its business to Galstad, was not a party to any collective bargaining agreement with the Union, Galstad, neither as a sole proprietor, nor as a corporation (the Respondent Corporation) were, or are, parties to

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1/ Tiran Industrial Towels (7438) 1/66.

any collective bargaining agreement with the Union, and therefore, the Respondent Corporation cannot be deemed to have violated any provision of any collective bargaining agreement with the Union, and we have, therefore, dismissed the complaint.2/

Dated at Madison, Wisconsin, this 27th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

2/ During the course of the hearing on December 13, 1971, one of the witnesses, Elmer Groth, gave direct testimony on behalf of the Complainant. While he was testifying, Groth suffered a heart attack, and it was necessary to adjourn the hearing. By the time the hearing was rescheduled on January 17, 1972, Groth had died, and the cross-examination could not be continued. The Complainant contends that that part of Groth's testimony on which the Respondent's attorney had cross-examined Groth should be considered while the Respondent takes the position that since the cross-examination had not been completed, none of Groth's testimony should be considered by the Commission in reaching its decision. The Commission has not found it necessary to consider Groth's testimony in reaching its decision. None of the facts to which Groth testified were pertinent to the decision reached by the Commission. Therefore, we see no need to rule on whether all or any part of Groth's testimony should be admitted.