

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS & HELPERS :
LOCAL NO. 43, :
 :
Complainant, : Case II
 : No. 16028 Ce-1443
vs. : Decision No. 11335-B
 :
OBENAUF - GENEVA SERVICE, INC., :
 :
Respondent. :
 :

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, for the Union.
Obenauf - Geneva Service, Inc., by Mr. John Obenauf, Vice President, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission on September 19, 1972 and the Commission having appointed John T. Coughlin Examiner on October 2, 1972; hearing was originally scheduled for October 27, 1972 and postponed to November 10, 1972 and postponed further to December 8, 1972. At the commencement of the hearing on December 8, 1972 the parties entered into negotiations at which time upon agreement of the parties, the hearing was postponed indefinitely. Upon request of Complainant hearing was reset for March 8, 1973 and postponed to March 22, 1973, at which time hearing was held before the Examiner. A transcript was mailed to the parties on April 24, 1973. During the course of the hearing Respondent had indicated his desire to file a brief within two weeks after receipt of the transcript. On or before April 30, 1973 the Examiner, John T. Coughlin terminated his employment with the Commission. On May 8, 1973 the Commission set aside its Order appointing John T. Coughlin Examiner and transferred the proceeding to the Commission. Respondent did not file a brief. The Commission having considered the evidence, 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 Teamsters, Chauffeurs and Helpers Local #43, referred to herein as Complainant, is a labor organization which maintains its office at 1624 Yout Street, Racine, Wisconsin.
2. That Obenauf - Geneva Service, Inc., referred to herein as the Respondent, is a Wisconsin corporation engaged in the business of collecting and disposing of garbage and waste materials and has its principal place of business at 910 Madison Street, P. O. Box 269, Lake Geneva, Walworth County, Wisconsin.
3. That at all times material herein Lester Ludwig was President, and John Obenauf was Vice President, of the Respondent.

4. That on August 9, 1972, at an election and referendum hearing before the Wisconsin Employment Relations Commission, Lester Ludwig, on behalf of the Respondent, voluntarily recognized Complainant as the bargaining representative for all full time and regular seasonal employees of the Respondent, excluding executives, supervisors and office clericals.

5. That on September 8, 1972 the Wisconsin Employment Relations Commission conducted a referendum among the employees in the aforementioned unit and on September 26, 1972 the Commission certified the favorable vote of the members of the bargaining unit towards an all union agreement. 1/

6. That on December 8, 1972, at the initial hearing on the complaint filed in the instant matter, the parties agreed to enter into negotiations for a contract, and postponed any further hearing pending the outcome of negotiations; that on December 27, 1972 a second negotiations session was held, and that the Respondent was represented by Lester Ludwig and John Obenauf at both meetings and Complainant was represented by its business agents.

7. That during the course of the two meetings, both parties had initialed and approved various provisions of a collective bargaining agreement; that said agreement was to be effective as of January 1, 1973, however the contract was to be formally executed some time after January 1, 1973 in order to allow sufficient time for typing a "clean" agreement; and that on December 27, 1972, at the conclusion of the second negotiation session between the parties, the parties had entered into a binding collective bargaining agreement.

8. That on February 2, 1973 at a meeting between Eugene Pierce, Business Agent and Charles Schwanke, Business Agent of Complainant and John Obenauf, Vice President of Respondent, Obenuaf refused to execute the "clean copy" of the contract which was negotiated on December 8 and 27 of 1972.

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

CONCLUSION OF LAW

That Respondent's failure to execute the collective bargaining agreement in its written and final form constitutes an unfair labor practice in violation of Sections 111.06(1)(a) and (d) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that Complainant:

1/ Obenauf - Geneva Service, Inc., Case I, No. 15885, E-2752, R-5364
The Commission has taken judicial notice of the record of the prior proceeding and certification pertaining to the parties herein.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint filed in this matter alleges at paragraph 5 that Respondent on September 7, 1972 advised Complainant that it would not "negotiate with Complainant relative to wages, hours and conditions of employment". After a number of postponements, Complainant and Respondent entered into negotiations at the hearing rescheduled for December 8, 1972. Respondent's refusal to execute the collective bargaining agreement changed the character of the violation of the Peace Act. The allegation that the Employer refused to bargain in good faith when he refused to execute the collective bargaining agreement is now the gravamen of this complaint.

It has long been the policy of the Commission that oral agreements between parties are effective collective bargaining agreements. 2/ In Kaufman's Lunch Co., supra, an early case before the WERB, an employer failed to sign and execute a collective bargaining agreement which had been reduced to writing. In its Findings of Fact, the Board determined that a collective bargaining agreement had been reached, was in existence, and it would be given legal effect.

Inherent in the employer's prohibited practice expressed in 111.06(1)(d) of the Peace Act, "to refuse to bargain collectively with the representative of a majority of his employees. . ." is the affirmative duty of the Employer to negotiate with the representative of his employees in good faith. 3/

The question now remaining for the Commission is to determine whether the refusal to sign a collective bargaining agreement constitutes a failure to bargain in good faith. In construing the duty to bargain under the Wagner Act, 4/ the National Labor Relations Board and the Supreme Court of the United States were confronted with the same question early in the development of the federal body of labor law. In 1941 the Supreme Court was called upon to decide this very issue in the landmark case of H.J. Heinz vs. NLRB, 311 U.S. 514, 7 LRRM 291 (1941). The Court stated that historically, parties to a complicated and multifaceted agreement normally reduce that agreement to writing and sign the written document. Mr. Justice Stone evaluated the employer's rights vis-a-vis the statutory mandate to bargain in good faith as follows: "The freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached to its expression, in a signed contract, the absence of which as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. A business man who entered into negotiations with another for an agreement having numerous provisions, with the reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith."

2/ Kaufman Lunch Co., No. 1632-A, May 1948, (Aff. Milwaukee Co. Cir. Ct. July 1948); Elm Tree Baking Co. 6383, June 1963.

3/ Landwehr & Hackel, 4812, July 1958, (Aff. Outagamie Co. Cir. Ct. September 1958); L. H. Basten, 5633, November 1960; Charles Johnson, 7396, December 1965.

4/ 49 Stat. 449

H. J. Heinz vs. NLRB, supra, at p. 297. A refusal to sign an agreement which has been reduced to writing indicates that the party so refusing did not bargain in good faith.

Dated at Madison, Wisconsin, this 6th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris S. Slawson, Chairman


Del S. Rice II, Commissioner