

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 383,	:	
	:	
Complainant,	:	Case I
	:	No. 16273 Ce-1454
vs.	:	Decision No. 11462-A
	:	
MADISON COMMERCIAL & INDUSTRIAL CORP.,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Robert C. Kelly, Attorney at Law, and Mr. Homer W. Ingram,  
Business Representative, appearing on behalf of the Complainant.  
Respondent did not appear in person or otherwise.

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 appointed Herman Torosian, a member of its staff, to act as an Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.06 (5) of the Wisconsin Employment Peace Act, and hearing on said complaint having been held at Madison, Wisconsin, on January 3 and February 26, 1973, before the Examiner, and the Examiner having considered the evidence and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 383, hereinafter referred to as the Complainant, is a labor organization having its offices at 1602 South Park Street, Madison, Wisconsin.

2. That Madison Commercial & Industrial Corp., hereinafter referred to as the Respondent, is an employer engaged in the building and construction business with offices at 2401 Dahle Street, Madison, Wisconsin.

3. That the Complainant and Respondent are parties to a collective bargaining agreement, effective April 1, 1970 through March 31, 1973, covering the wages, hours and working conditions of certain employes employed by the Respondent.

4. That said collective bargaining agreement, in pertinent part, contains the following provisions:

"HEALTH AND WELFARE PLAN

Section 7. Effective April 1, 1970 each Employer shall pay into the Welfare Fund by the 10th day of the succeeding month on all employees covered by this Agreement to the Iron Workers Tri-State Welfare Fund, 173 West Madison Street, Chicago, Illinois, the sum of 25¢ per hour.

. . .

PENSION PLAN

Section 8.

. . .

Effective October 1, 1971, each Employer shall pay into the Pension Plan by the 10th day of the succeeding month on all employees covered by this Agreement to the Iron Workers Mid-America Pension Plan, 173 West Madison Street, Chicago, Illinois, the sum of 25¢ per hour.

. . .

VACATION PLAN

Section 9. Effective October 1, 1970 the Employer agrees to withhold from the wages of the employee after all legal deductions, such as Social Security tax, etc., have been made and to pay to the Iron Workers Local 383 Vacation Fund, 1602 South Park Street, Madison, Wisconsin 53715, by the 10th of the succeeding month, the amount of 25¢ per man, per hour worked, calculated to the nearest hour worked for each employee covered by this Agreement, leaving the amount deposited in the Fund the exact amount which will be returned upon request by the member, according to the rules adopted by the Trustees of said Fund.

. . .

APPRENTICE and RETRAINING FUND

Section 10. Effective April 1, 1971, in addition to the per hour wage rates, the Employer shall contribute two and one-half cents (2 1/2¢) per hour for each actual hour worked by each employee covered by this Agreement to the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383, of Madison, Wisconsin. The primary purposes of the Fund shall include apprenticeship training, advanced craft training, advanced training and retraining and education of journeymen, safety education, first aid education, public relationships and market development and other educational and informational betterment of such employees and the common good of the Construction Industry.

Effective October 1, 1971, the Employer shall contribute an additional one-half cent (1/2¢) to the above fund, making a total contribution of three (3) cents per hour for each actual hour worked.

. . .

## SETTLEMENT OF DISPUTES

Section 41. Any dispute as to the proper interpretation of this Agreement shall be handled in the first instance by a representative of the Union and the Employer, and if they fail to reach a settlement within five (5) days, it shall be referred to a Board of Arbitration composed of one (1) person appointed by each party, the two (2) so appointed to select a third member. In the event that the two (2) so-appointed arbitrators are unable within two (2) days to agree upon the third arbitrator, they shall jointly request the Federal Mediation and Conciliation Services to furnish a panel of five (5) names from which the third member shall be selected. The decision of the Board of Arbitration shall be handed down within two (2) days after the selection of the third member and the decision of the Board of Arbitration shall be final and binding upon both parties.

The Board of Arbitration shall have jurisdiction over all questions involving the interpretation and application of any section of this Agreement. It shall not, however, be empowered to handle negotiations for a new Agreement, changes in the wage scale, or jurisdictional disputes.

Each party shall individually pay the expenses of the arbitrator it appoints and the two parties shall jointly share the expense of the third arbitrator."

5. That the Respondent failed to make contributions on behalf of its employes to the Iron Workers Tri-State Welfare Fund covering the period November 1, 1972 through January 31, 1973.

6. That Respondent failed to make contributions on behalf of its employes to the Iron Workers Mid-America Pension Plan covering the period June 1, 1972 through January 31, 1973.

7. That the Respondent failed to make contributions on behalf of its employes, to the Iron Workers Local 383 Vacation Fund covering the period November 1, 1972 through January 31, 1973.

8. That the Employer failed to make contributions on behalf of its employes, to the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383, Madison Wisconsin covering the period November 1, 1972 through January 31, 1973.

9. That Complainant, by its Business Representative, Homer Ingram, sometime prior to filing the instant complaint, filed a written grievance over Respondent's failure to make contributions required by Sections 8, 9 and 10 of the collective bargaining agreement and requested Respondent to proceed to arbitration over said dispute but that Respondent failed to respond to complainant's requests.

10. That, on January 3, 1973 during the hearing held in the instant matter, the parties stipulated to the following in an attempt to settle the matter in dispute:

"1. Madison Commercial & Industrial Corp., hereinafter the employer, agrees to pay over to Homer Ingram, Financial Secretary and Treasurer of Local Union 383 and on behalf of the named Funds the following checks:

A check payable to Iron Workers Mid-America Pension Fund in the amount of \$425.31.

A check payable to Iron Workers Local 383 Vacation Fund in the amount of \$850.62.

A check payable to the Apprenticeship and Journeyman Retraining Fund of Iron Workers Local 383 of Madison, Wisconsin in the amount of \$102.08.

2. The employer agrees within five days hereof to furnish to Local Union 383 or its authorized representative employer reports as furnished by the Tri-State---the Iron Workers Tri-State Welfare Plan showing all hours worked by its employes represented by the union for the months of November and December, 1972 and at the same time to pay over to the union or its authorized representative checks covering required contributions to the four funds herein mentioned for such hours worked during those months.

3. The employer agrees to make available to Local 383 or its authorized representative within five days hereof payroll records for all its employes represented by Local 383 who were employed by the employer during the months of June through December, 1972 and to adjust any discrepancies between the hours shown on such payroll records and the hours shown on employer---on said employer reports as filed with the Tri-State Welfare Plan or as furnished to the union for the months June through December, 1972.

4. The employer agrees in the future to pay on a timely basis all contributions on behalf of its employes represented by Local 383 to the:

A. Iron Workers Tri-State Welfare Plan; Mid-America Pension Plan; Iron Workers Local 383 Vacation Fund of Iron Workers Local 383 of Madison, Wisconsin, all as required by sections 7, 8, 9 and 10, respectively, of the collective bargaining agreement presently in effect between said Local 383 and said employer.

5. The parties agree that the Commission may adjourn this matter until February 1st, 1973 to provide time in which to enable the employer to comply with the terms and conditions of this stipulation and the collective bargaining agreement in effect between the parties. In the event the employer has so complied with such stipulation and said agreement on or before February 1st, the matter will be dismissed on motion of Local 383."

11. That pursuant to said stipulation Respondent gave Complainant the abovementioned three checks; that the check payable to the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383 in the amount of \$102.08 was cleared by Respondent's bank and received by Complainant; that the check payable to Iron Workers Local 383 Vacation Fund in the amount of \$850.62 was not paid by Respondent's bank but that Respondent later paid said amount, as stipulated, to Complainant in cash; and that the

check payable to Iron Workers Pension Fund in the amount of \$425.31 did not clear Respondent's bank and Complainant has not received said amount as stipulated by the parties.

12. That further, Respondent did not comply with stipulations 2, 3 and 4 as outlined above in Findings of Fact No. 10.

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

CONCLUSION OF LAW

That Madison Commercial & Industrial Corp., in violating the collective bargaining agreement existing between it and International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 383, by failing to make the required payments to the Iron Workers Tri-State Welfare Fund, the Iron Workers Mid-America Pension Plan, the Iron Workers Local 383 Vacation Fund and the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383 of Madison, Wisconsin, has committed, and is committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, it is

ORDERED

That, Madison Commercial & Industrial Corp., its officers and agents, shall immediately:

1. Cease and desist from violating Sections 7, 8, 9 and 10 of the collective bargaining agreement in existence between Madison Commercial & Industrial Corp. and International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 383, by failing to make payment to the Iron Workers Tri-State Welfare Fund, the Iron Workers Mid-America Pension Plan, the Iron Workers Local 383 Vacation Fund, and the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383 of Madison, Wisconsin.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Act:

(a) Immediately pay to the Iron Workers Tri-State Welfare Fund all amounts due and owing up to the date of this Order.

(b) Immediately pay to the Iron Workers Mid-America Pension Fund all amounts due and owing up to the date of this Order, including the sum of \$425.31 which was the payment due and owing as of November 1, 1972.

(c) Immediately pay to Iron Workers Local 383 Vacation Fund all amounts due and owing up to the date of this Order.

(d) Immediately pay to the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383, Madison, Wisconsin, all amounts due and owing up to the date of this Order.

(e) 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 8<sup>th</sup> day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian  
Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

Complainant filed a complaint of unfair labor practices on December 1, 1972, alleging therein that the Respondent had violated certain terms of an existing collective bargaining agreement, covering employees in the bargaining unit, by failing and refusing to make monthly contributions required by Section 8, Pension Plan; Section 9, Vacation Fund; and Section 10, Apprentice and Journeyman Retraining Fund, thereby committing a violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. Complainant also contends that it, by its Business Representative, Homer Ingram, filed a written grievance concerning said delinquencies and requested the Employer to submit same to arbitration pursuant to Section 41 of the collective bargaining agreement, but that the Respondent at no time responded to said request.

The instant complaint was set for hearing for January 3, 1973. During the course of said hearing the parties reached an agreement whereby Respondent gave Complainant a check payable to Iron Workers Mid-America Pension Plan in the amount of \$425.31; a check payable to Iron Workers Local 383 Vacation Fund in the amount of \$850.62; and a check payable to the Apprentice & Journeyman Retraining Fund of Iron Workers Local 383, Madison, Wisconsin in the amount of 102.08. Said amounts were the amounts claimed by Complainant in its complaint as due and owing pursuant to the collective bargaining agreement. Respondent further agreed to provide certain information in regard to the above mentioned funds to Complainant; to pay over to the Union or its authorized representative checks to the Welfare Fund, the Pension Fund, the Vacation Fund and the Apprentice and Journeyman Retraining Fund for the months November and December; and to continue contributing to said four funds on a timely basis pursuant to Sections 7, 8, 9 and 10 of the collective bargaining agreement. Said matter was then adjourned pending notice by Complainant that Respondent had complied with the terms and conditions of the stipulation.

Respondent's check payable to the Apprentice & Journeyman Retraining Fund cleared Respondent's bank and was received by the Complainant. Respondent's check payable to the Vacation Fund did not clear Respondent's bank, but Respondent paid said amount, \$850.62, to Complainant in cash. Respondent's check payable to Iron Workers Mid-America Pension Fund in the amount of \$425.31 did not clear and was returned to the Complainant with the notation it was being returned due to insufficient funds and that said check should not be presented again. Respondent also failed to provide certain information pertaining to said funds and also failed to continue contributing to the Welfare Fund, Pension Fund, Vacation Fund and the Apprentice and Journeyman Retraining Fund as stipulated.

The instant matter, pursuant to a request by Complainant, was again set for hearing for February 26, 1973, by notice dated February 3, 1973. Said notice was properly served upon the parties. At the hearing Complainant was allowed to amend his complaint to allege a violation of Section 7, Welfare Fund, of the collective Bargaining Agreement by Respondent's failure to contribute to the Welfare Fund on behalf of its employees for the period covering November 1 through January 31. Said amendment reflects, in part, the parties January 3, 1973 settlement agreement wherein Respondent agreed to pay all amounts due and owing to the Welfare Fund.

The uncontroverted evidence establishes that in regard to the above mentioned violations Complainant prior to filing the instant complaint filed a written grievance concerning the matter and requested same be submitted to arbitration as required by the collective bargaining agreement. Respondent, at no time responded to said request. It is well established that ordinarily the Commission will not assert its jurisdiction to consider alleged violations of labor agreements under Section 111.06(1)(f) where the parties have such a provision in the agreement. Here, however, the Respondent failed to respond to any of Complainant's requests to proceed to arbitration. Once a complaint was filed and the matter was set for hearing, Respondent appeared and entered into a settlement agreement. Respondent, however, did not comply with all of the terms of said agreement, and the matter was again set for hearing for February 26, 1973. Respondent failed to appear at said hearing.

Under the circumstances of the instant case where it would be futile to order the parties to arbitration, the Commission will assert its jurisdiction and order Respondent, Madison Commercial & Industrial Corp., to pay what it obviously owes rather than require the Complainant to do a useless and futile thing by exhausting its grievance procedure. 1/

Further, the evidence establishes the fact that Respondent has not made any of the contributions to the Iron Workers Mid-America Pension Fund since June 1, 1972 and that the amount of the arrearage was \$450.31 as of November 1, 1972. The uncontroverted evidence also establishes the fact that Respondent has failed to make any contribution to the Welfare Fund, the Vacation Fund and the Apprentice and Journeyman Fund since November 1, 1972.

The Examiner has, therefore, concluded that the Respondent's conduct, described in the attached Findings of Fact, constitutes an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act, and has ordered the Respondent to cease and desist from engaging in the prohibited conduct and to take appropriate affirmative action to remedy such violation.

With regard to Complainant's contention that Respondent has committed a misdemeanor in connection with a labor controversy in violating Section 103.86 of the Wisconsin Statutes 2/ and has,

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1/ Bi State Trucking Corp. and Thompson Concrete Products Co., Inc., Dec. No. 9924-A, 2/71; Wonderland Foods, Inc., Dec. No. 10256-A, 6/71.

2/ "103.86 Employee welfare funds: default in payments. (1) Any employer who promises in writing to make payments to an employee welfare fund, either by contract with an individual employe, by a collective bargaining agreement or by agreement with such employe welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of his failure to make the required payments, shall be fined no more than \$200.

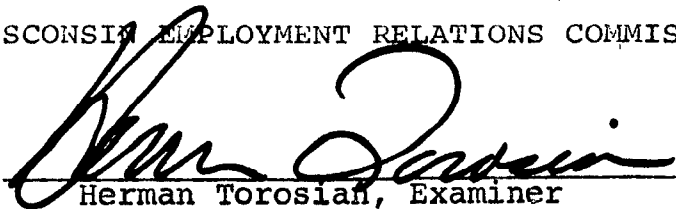
(2) This section shall not apply where the failure to make payments is prevented by act of God, proceedings in bankruptcy, orders or process of any court of competent jurisdiction, or circumstances over which the employer has no control."

therefore, committed an unfair labor practice within the meaning of Section 111.06(1)(1), the evidence does not establish that the Respondent was given written notice as to the amount due and owing to the Welfare Fund as required by Section 103.86 and, therefore, the Examiner has not found a violation in regard thereto.

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY



Herman Torosian, Examiner