

Bluemound Road, Milwaukee, Wisconsin; and that at all times material hereto, Fred Hammer has been a bargaining representative of Complainant.

2. That A C Trucking Co., Inc., referred to herein as Respondent, is an employer maintaining an office at 5519 West Hayes Avenue, Milwaukee, Wisconsin.

3. That on August 15, 1971 a collective bargaining agreement, referred to herein as the Agreement, was executed by and between representatives of Complainant and Attorney Carl F. Schetter, representing the Southeastern Wisconsin Truckers Association; that said Agreement provided for wages retroactive to June 1, 1971 and further contained a multi-step grievance procedure governing disputes concerning compliance with any Agreement provision, which grievance procedure culminated in final and binding arbitration.

4. That the negotiations leading up to the Agreement took place during 1971; that during the course of said negotiations, Complainant's representatives requested from Attorney Schetter copies of the powers of attorney indicating the employers on whose behalf he and said Southeastern Wisconsin Truckers Association were bargaining; that, thereafter, Schetter sent to Complainant, and Complainant filed in the customary course of its business, a photocopied document (appended hereto as Appendix A) along with other photocopied documents identical to Appendix A as to printed and typewritten portions but purporting to be executed on behalf of various other employers; and that said other employers have complied with the provisions of the Agreement.

5. That on or about December 26, 1972, Complainant sent to Respondent an envelope by certified mail; that said envelope contained a grievance filed on behalf of all employes alleging Respondent's failure for a period of seven months to comply with the wage provisions of the Agreement; and that Respondent refused to accept mail delivery of said envelope and its contents and that same were returned unopened to Complainant.

6. That subsequent to December 26, 1972, Complainant's Business Representative Fred Hammer called Respondent's place of business and spoke with Gordon DeRosso; that DeRosso referred Hammer to Respondent's attorney, without naming said attorney; that DeRosso told Hammer that he would have Respondent's attorney return Hammer's call; and that Hammer has never received such call from such attorney.

7. That a man, purported to be Gordon DeRosso, was present throughout the hearing of the instant matter; but that such man was

not called as a witness during said hearing.

8. That Gordon DeRosso was President of Respondent on April 12, 1973; but that Complainant has not shown by a clear and satisfactory preponderance of the evidence that Gordon DeRosso held that position as of July 28, 1971 or that he signed the original of Appendix A hereof.

9. That Complainant has not shown by a clear and satisfactory preponderance of the evidence that the original of Appendix A hereof was executed by an agent authorized by Respondent to do so.

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

CONCLUSIONS OF LAW

1. That since Complainant has not shown by a clear and satisfactory preponderance of the evidence that the original of Appendix A was executed by an agent authorized by Respondent to do so, therefore Complainant has not shown by a clear and satisfactory preponderance of the evidence that Complainant and Respondent were or are party to the collective bargaining agreement entered into on August 15, 1971 between Attorney Carl F. Schetter on behalf of the Southeastern Wisconsin Truckers Association and Complainant or to any other collective bargaining agreement.

2. That, therefore, Complainant has not shown by a clear and satisfactory preponderance of the evidence that said Respondent committed unfair labor practices in violation of Secs. 111.06(1)(a), (d) or (f) of the Wisconsin Statutes by refusing to accept correspondence from Complainant concerning the processing of grievances pursuant to a collective bargaining agreement entered into between said Complainant and Attorney Carl F. Schetter on behalf of the Southeastern Wisconsin Truckers Association on August 15, 1971 or by otherwise refusing to recognize, honor or comply with the terms of such collective bargaining Agreement.

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

ORDER

IT IS ORDERED that the Complaint in the above-entitled matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 26th day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

POWER OF ATTORNEY AUTHORIZING
SOUTHEASTERN WISCONSIN TRUCKERS ASSOCIATION and CARL F. SCHETTER
TO HANDLE LABOR NEGOTIATIONS

KNOW ALL MEN BY THESE PRESENTS that the undersigned does hereby appoint the Southeastern Wisconsin Truckers Association represented by its attorney, Carl F. Schetter, as my attorney, for me and in my name to handle labor negotiations with Teamsters Local Unions No. 200, 43 and 95 relative to the terms of the collective bargaining agreement between said Unions and the undersigned, said agreement called the Truck Drivers Building Trades Labor Agreement and these negotiations will deal with possible changes or revisions in the economic terms and provisions of said agreement for the period ending May 31, 1974.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 28th day of July, 1971.

A. C. Trucking Co. Inc.
Name

5519 W. Hayes St.
Address

West Allis Wis 53219
City

Hendon DeKasa
Authorizing Signature

EDS.

- F. SCHETTER
ORNEY AT LAW
PLANKINTON AVE.
SUITE 935
WISCONSIN, WIS. 53203
PHONE 276-0600

EX. 1-205-5-17-73

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THE PLEADINGS

Complainant in its Complaint alleged that Respondent employs truck drivers represented by Complainant. Complainant further alleged:

"3. Since on or about June 1, 1971, Complainant and Respondent have been party to a collective bargaining agreement covering Respondent's truck driver employees represented by Complainant; said collective bargaining agreement shall remain in full force and effect until May 31, 1974.

4. On or about November 26, 1972, employee Aubrey Lither filed a grievance alleging a violation of the aforementioned collective bargaining agreement.

5. Since on or about November 26, 1972, Complainant has been attempting to process the aforementioned grievance pursuant to the grievance and arbitration provisions of the parties' aforementioned collective bargaining agreement.

6. Since on or about November 26, 1972, Respondent has refused to accept correspondence from Complainant, refused to participate in the grievance and arbitration procedures set forth in the parties' collective bargaining agreement, and refused to honor the aforementioned grievance.

7. Since on or about April 21, 1972, Respondent has refused to recognize, honor, or comply with the terms of the parties' collective bargaining agreement, including payment of wages (as set forth in the aforementioned grievance) and compliance with the grievance and arbitration process.

8. By these and other acts, Respondent has engaged in conduct violative of Sections 111.06 (1) (a), (d), and (f) of the Wisconsin Statutes.

WHEREFORE, Complainant requests that this Commission order that Respondent:

1. Recognize and comply with the Parties' collective bargaining agreement.
2. Compensate employee Aubrey Lither for all economic claims made in his grievance of November 26, 1972.
3. Compensate all other employees for all wage claims due to Respondent's failure to comply with the Parties' collective bargaining agreement.
4. Effectuate such other and further relief as this Commission may deem necessary or appropriate."

On April 16, 1973, Respondent filed an Answer verified on its behalf by Gordon DeRosso. In said verification ^{1/} dated April 12, 1973, DeRosso deposed and said ". . . that he is the President of [Respondent]".

In its Answer, Respondent denied that it employs truck drivers represented by the Complainant and denied the allegations of Paragraphs 3, 4, 5, 6 and 8 of the Complaint. The Answer admits the allegations of Paragraph 7 of the Complaint except that it denies that it has refused to comply with any grievance or arbitration procedures since it has never been asked to comply with same.

SUMMARY OF THE PROCEEDING

In his opening statement at the hearing, Complainant's Counsel asserted that in the process of negotiations of a multi-employer agreement between Complainant and the Southeastern Wisconsin Construction Materials Association, Inc., Complainant ". . . was given a Power of Attorney from A C Trucking, indicating . . . [that Respondent] . . . authorized that multi-employer representative to handle their labor negotiations for this contract. Now, . . . copies of the grievances were sent to the Company and returned to the Union in envelopes marked 'Refused by Addressee'; and so we filed the Complaint, claiming the Employer has repudiated the Contract and refused to process the grievance as required by the Contract."

Respondent's Counsel's opening remarks consisted simply of the following: "Other than disagreeing with Complainant's theory and conclusion, I will reserve any comments I have prior to putting in my case."

Thereupon, the Union called Business Representative Fred Hammer. Hammer testified that in 1971, Complainant engaged in negotiations with both the Southeastern Wisconsin Truckers Association and the Southeastern Wisconsin Construction Materials Association, Inc.; that during said 1971 negotiations Complainant requested from the representatives of said employer associations, copies of the powers of attorney indicating the employers on whose behalf they were bargaining; that Carl Schetter was the bargaining spokesman for the Southeastern Wisconsin Truckers Association; that Schetter sent a document

^{1/} Attached hereto as Appendix B, p. 16 below.

(marked Exhibit 1) ^{2/} to Complainant; and that Schetter had given Complainant copies of other powers of attorney identical in form to Exhibit 1 but which purported to have been executed on behalf of other employers.

Thereupon, Complainant's Counsel offered Exhibit 1 into evidence. Respondent stipulated to the admission of the printed and typed portions of the document but objected, in essence, that the handwritten portions of said document ought not be admitted since Complainant had not established either that the handwriting on the "Authorizing Signature" line was the signature of Gordon DeRosso or that the document was executed by a person with the authority to do so in view of the questions raised by the handwritten initials appearing below the "Authorizing Signature" line. There followed this colloquy:

"MR. LEVY: --Are you denying that could be his [DeRosso's] signature?"

MR. VERGERONT: Yes, I am.

MR. LEVY: Who is 'AJS'?

MR. VERGERONT: That comes up at a later time. You are supposed to prove it is binding."

Following that discussion, the Examiner admitted the document but, essentially, reserved judgment with respect to Respondent's objections to the materiality of the handwritten portions thereof.

Thereupon, Hammer identified Exhibit 2 as a copy of a collective bargaining agreement the original of which was executed by and between Complainant and Carl Schetter (on behalf of the Southeastern Wisconsin Truckers Association) on August 15, 1971 effective retroactive to June 1, 1971. That document was admitted into evidence subject to Respondent's objections as stated with respect to Exhibit 1.

Hammer testified further that Complainant and Respondent had had no collective bargaining relationship, by way of bargaining, representation election or otherwise prior to Respondent's alleged execution and delivery to Schetter of Exhibit 1.

Hammer's testimony and Exhibits 3 and 4 also showed that on or about December 26, 1972 Complainant had sent by certified mail, return receipt requested, to Respondent (C/o Mr. Gordon DeRosso) a

^{2/} A copy of Exhibit 1 is appended hereto as Appendix A at p. 4 above.

written grievance--asserting that the men had not been paid union scale for seven months and requesting that they be paid "for all lost wages-- and that Respondent refused to accept same. Hammer further testified that in his one or two telephone calls to Gordon DeRosso subsequent to December 26, 1972, DeRosso said he would have his attorney get in touch with Hammer but that Hammer never heard from such attorney.

At the conclusion of Hammer's testimony on direct and cross-examination, the Union rested its case. Thereupon, the Employer also rested without presenting a case-in-chief.

The transcript of the proceeding was mailed to the parties on May 23, 1973. The parties filed written briefs, and the Employer filed a reply brief which was received by the Examiner on June 19, 1973.

POSITIONS OF THE PARTIES

The sole issue in dispute herein is whether Respondent is legally bound by Exhibit 1 to the collective bargaining agreement reached between Schetter and Complainant.

The Union argues that Respondent is so bound; that Exhibit 1 is admissible by reason of the business record exception (Sec. 889.25, Wis. Stats.) or the admission against interest exception to the hearsay rule; that pursuant to Sec. 891.25, Wis. Stats., it must be presumed that Exhibit 1 was signed by Gordon DeRosso since Exhibit 1 is a written instrument which constitutes the "subject of the . . . proceeding" and which purports to have been signed by Gordon DeRosso, who is President of Respondent, in view of the fact that the genuineness of that purported signature was not denied by the oath or affidavit of Gordon DeRosso or by a pleading duly verified; that the Examiner should reasonably infer that Gordon DeRosso executed Exhibit 1 on behalf of Respondent from Respondent's failure to call DeRosso--a material witness within its control--to deny that he did so (citing Wisconsin Jury Instructions--Civil 410) and from the fact that all other powers of attorney purportedly signed by employers have resulted in compliance by such employers with the collective bargaining agreement reached between Schetter and Complainant.

Respondent contends that Complainant has not sustained its burden of proving that Respondent is bound by Exhibit 1; that Sec. 891.25 does not raise a presumption that the instant signature is genuine because that section applies only to documents and signatures alleged in pre-hearing pleadings (citing In re Estate of Dick, 204 Wis. 89 [1931]);

therefore, the common-law rule applies (citing Art. VII, Sec. 19, Wis. Const.) requiring that Complainant authenticate the authorship of Exhibit 1 in order to establish an adequate foundation for its admission; that Complainant has failed to show that Gordon DeRosso signed Exhibit 1 because DeRosso's signature on the Verification of Answer obviously differs from the handwriting on Exhibit 1 and because Complainant did not call DeRosso adversely to resolve the questions raised by the handwritten initials appearing below his name on Exhibit 1; that Complainant failed to show that Exhibit 1 was signed by a person authorized by Respondent to do so because the handwritten initials appearing below the "Authorizing Signature" line, when interpreted in the context of well-established business customs, indicate that someone other than Gordon DeRosso wrote DeRosso's name on that line and left his own initials to evidence that fact and because Complainant has not established that the person to whom those initials are attributable had authority to bind Respondent; that the handwritten portions of Exhibit 1 have not been objected to on the grounds of hearsay (since they are evidence of an out-of-court act rather than of an out-of-court statement) and therefore Complainant's citation of exceptions to the hearsay rule is inapposite; that no inference may be drawn from Respondent's failure to call DeRosso as a witness since Respondent is under no obligation to produce any evidence until Complainant has presented a prima facie case in support of the allegations in its Complaint; and that for the foregoing reasons the Examiner should dismiss the Complaint.

APPLICABLE RULES OF EVIDENCE

Section 111.07(3) of the Wisconsin Employment Peace Act provides that unfair labor practice complaint proceedings ". . . shall be governed by the rules of evidence prevailing in courts of equity and the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence." Moreover, since the Commission is an (administrative) "agency" within the meaning of the Wisconsin Administrative Procedure Act (WAPA), its evidentiary determinations in contested cases are also governed by the standards set forth in Sec. 227.10 of that Act. ^{3/} Thus, the Commission is not bound by common-law or statutory rules of

^{3/} See, Secs. 227.01(1) and .031 of WAPA.

evidence. ^{4/} Instead, it ". . . shall admit all testimony having reasonable probative value but shall exclude immaterial, irrelevant or unduly repetitious testimony." It shall give effect to the rules of privilege recognized by law, but the "[b]asic principles of relevancy, materiality and probative force as recognized in equitable proceedings shall govern the proof of all questions of fact." ^{5/} While the Commission is free to draw reasonable inferences from the facts presented at the hearing, ^{6/} it may not speculate or make inference on inference in an attempt to find a violation when the most it can say is that a violation may have occurred. ^{7/}

DISCUSSION OF MERITS

It is clear that if Respondent is bound by Exhibit 1, then the Complainant will prevail. Thus, the issue to be determined herein is whether Complainant has met its burden of proving by a clear and satisfactory preponderance of the evidence that Exhibit 1 was executed by an agent of Respondent authorized to do so.

As to that issue, Complainant's case-in-chief establishes that Complainant received from Carl Schetter a written instrument purporting

^{4/} Section 227.10(1) of WAPA; Dairy Employees Independent Union v. WERB [Blochowiak Dairy Co.], 262 Wis. 280 (1952). Respondent's citation of Art. VII, Sec. 19 of the State Constitution to the contrary is inappropriate. That section reads as follows:

"The testimony in causes of equity shall be taken in like manner as in causes at law, and the office of master in chancery is hereby prohibited."

Both on its face and as interpreted, that section deals solely with the nature of the forum in which testimony in causes in equity might be statutorily required to be taken. See, e.g., Brown v. Runals, 14 Wis. 693, 698-700 (1861); Oatman v. Bond, 15 Wis. 20 (1862). Therefore the section has no bearing upon choice of appropriate standards for evidentiary admissibility and/or weight.

^{5/} Section 227.10(1) of WAPA.

^{6/} Retail Clerks' Union, Local No. 1403 AFL v. WERB, 242 Wis. 21 (1942); also see, Sage Nursing Home, Dec. No. 6129 (11/69).

^{7/} Pearce L. Roberts et al., Dec. No. 3978 (5/55); also see, St. Joseph's Hospital, 264 Wis. 396 (1953).

to have been signed by an authorized agent of Respondent (viz., "Authorizing Signature"); that Complainant received that document, Exhibit 1, apparently pursuant to its request that Schetter send it the powers of attorney of employers on whose behalf he was bargaining; and that other employers named in powers of attorney similarly sent to Complainant have complied with the Agreement reached between Schetter and Complainant.

Since there is no evidence that Respondent granted to anyone the express (actual) authority to execute Exhibit 1 on its behalf, and since Respondent has in no way been shown to have ratified such execution on its behalf, Complainant is limited to a theory that the signator of Exhibit 1 was clothed with the apparent authority to do so.

The mere fact that Exhibit 1 purports to have been executed by an authorized agent of Respondent does not establish that the person who filled in the "Authorizing Signature" line had the apparent authority to do so because such claim on the part of the agent in no way implies knowledge thereof or acquiescence therein by Respondent. ^{8/} While Schetter's sending of Exhibit 1 to Complainant in the context of Complainant's request amounts to an out-of-forum "assertion" by Schetter, an attorney, that Exhibit 1 is a power of attorney executed by an authorized agent on behalf of Respondent, such "assertion" is due little weight since Schetter was not present at the hearing and did not testify concerning the factual bases for his conclusion.

Nevertheless, Complainant could establish that whoever executed Exhibit 1 had apparent authority to do so arising out of his or her corporate office in Respondent. The only person shown by the record to have held corporate office in Respondent at any time is Gordon DeRosso. Thus, it is necessary to Complainant's case that it prove that Gordon

^{8/} See, Mattice v. Equitable Life Assurance Society, 270 Wis. 504, 515 (1955) ("The apparent authority for which the principal may be liable must be traceable to him, and cannot be established by the acts and conduct of the agent. The principal is only liable for that appearance of authority caused by himself. 'If the words or conduct of the agent are relied upon, it must be shown that the principal had knowledge or acquiesced in them.'")

DeRosso signed Exhibit 1. ^{9/} The Examiner concludes that Complainant has failed to do so by a clear and satisfactory preponderance of the evidence for the following reasons.

In the everyday affairs of business and social life, if a written instrument purports to be signed by a given person, it is assumed, if no question of authenticity is raised, that the writing is what it purports to be--that is, the writing of said person. But Complainant cannot rely upon that ordinarily reasonable presumption herein for two reasons. First, it is by no means clear that Exhibit 1 purports to have been signed by Gordon DeRosso; the handwritten initials appearing below his handwritten name at least raise a question as to whether another person signed DeRosso's name on his behalf. Second, a question concerning the authenticity of the handwriting on Exhibit 1 as that of Gordon DeRosso was raised by Respondent during the hearing in such a fashion that it cannot be said that Respondent could well have been justified in believing that such matter was not in issue.

Complainant asserts, however, that Respondent's and DeRosso's failure to deny specifically under oath that the handwritten "Gordon DeRosso" on Exhibit 1 is the signature of Gordon DeRosso raises an un rebuttable presumption that it is DeRosso's genuine signature. In this regard, Complainant relies upon Sec. 891.25, Wis. Stats, which provides, in pertinent part, as follows:

"Presumptions as to signatures. When any written instrument constitutes the subject of the action or proceeding or when the signing of such instrument is put in issue and the instrument purports to have been signed, the instrument itself is proof that it was signed until denied by the oath or affidavit of the person by whom it purports to have been signed or by a pleading duly verified. . . ."

That section is a statutory rule of evidence which is not binding upon the Commission. ^{10/} Even if it were, it would not establish that Gordon DeRosso signed Exhibit 1 for two reasons. First, Sec. 891.25 applies only to written instruments whose existence and signing have

^{9/} The record does not clearly establish that Gordon DeRosso held corporate office in Respondent as of the date Exhibit 1 purports to have been executed, July 28, 1971. DeRosso's Verification of Answer, stating that he is President of Respondent, was sworn to on April 12, 1973. Hammer's testimony concerning phone conversations suggests that DeRosso held a position of responsibility in Respondent sometime after the November 26, 1972 mailing of the grievance form. That evidence is not sufficient to prove that DeRosso was Respondent's President as of July 28, 1971.

^{10/} See notes 3 and 4 above and text accompanying.

been specifically pleaded, ^{11/} and Complainant did not specifically plead Exhibit 1 or its signing. And second, even if Sec. 891.25 were applicable to Exhibit 1, it would require that the Examiner presume only that Exhibit 1 was signed by the person by whom it purports to have been signed. As noted above, Exhibit 1 does not unambiguously purport to have been signed by Gordon DeRosso and might well have been signed by the unidentified person whose initials appear below the "Authorizing Signature" line.

Thus, the Examiner is not bound to, and does not, presume that Gordon DeRosso signed Exhibit 1. Instead, the question of whether he did so sign is treated as a disputed issue of fact to be resolved on

^{11/} The evil that Sec. 891.25 and its predecessors, Sec. 328.25 (1963), Sec. 328.25 (1925) and Sec. 1492 (1898) were intended to remedy arose out of strict application of the common-law rule requiring affirmative proof of the authenticity of signatures on written instruments. It was costly and inconvenient for parties to come to trial prepared to affirmatively prove the authenticity of the signatures on the written instruments they intended to introduce, and though very few were ever challenged at trial, a party had to be so prepared for such an objection at trial. See generally, 9 Wigmore on Evidence, Sec. 2596 (1940).

In response to that evil, the Legislature enacted Sec. 891.25 and its predecessors which make the document itself proof of the genuineness of signatures appearing thereon unless either the purported signator or the opposing party files an affidavit or verified pleading (respectively) denying under oath the genuineness of the signature in question. But since the legislative purpose was to relieve the introducing party of the burdensome and costly pre-trial preparations, the purpose of the legislation would not extend to written instruments that are not set forth or at least mentioned in pre-trial pleadings. (It may be noted that it was and is the generally followed civil practice in Wisconsin to specifically allege, in pre-trial pleadings, written instruments upon which an action or proceeding is based. See, 1 Callahan's Wis. Civ. Practice Forms, Secs. 28.01, 28.04 [1970].)

Moreover, prior to 1943, Sec. 328.25 seemed to apply, by its terms, to "Every written instrument . . .". The section was amended so as to limit its scope of applicability to the present language in order to conform with a Supreme Court Order (240 Wis. vii [1943]) amending the corresponding rule of civil procedure. That amendment was intended to codify limiting interpretations of Sec. 328.25 (1937) handed down by the Court in Nielson v. Schuckman, 53 Wis. 638 (1881) and In re Estate of Dick, 204 Wis. 89 (1931). Comment of Advisory Committee (1943 Court Order), Sec. 891.25, Wis. Stats. Ann. (19__). A reading of the Dick case (204 Wis. at 91-93) and of Smith v. Ehnert, 47 Wis. 479, 480, 481 (1879) on which the Dick Court relied, clearly reveals that the term ". . . put in issue . . ." means "put in issue by the pleadings" and that written instruments which constitute ". . . the subject of the action or proceeding . . ." include only such instruments as were

(continued on page 14)

the basis of the evidence in the record with Complainant bearing the burden of proof with respect thereto.

A comparison of the handwriting on Exhibit 1 with the signature of Gordon DeRosso on the Verification of Answer 12/ does not satisfy the Examiner that both documents were executed by the same person. The fact that Exhibit 1 is a photocopy makes any analysis of the handwriting thereon more difficult and less reliable.

Assuming arguendo (without deciding on) the validity of Complainant's argument that Exhibit 1 is admissible as a business record under Sec. 889.25, Wis. Stats., that statute, even if applicable to the instant case, 13/ leaves the determination of the weight to be given such document to the trier of fact. The fact that Schetter sent Exhibit 1 to Complainant apparently pursuant to Complainant's request and in the same manner as other, honored powers of attorneys is, if at all, only obliquely probative as to the identity of the signator thereof.

Therefore, the Examiner concludes that Complainant's case-in-chief does not establish prima facie (i.e., clear and satisfactory) proof that Exhibit 1 was signed by Gordon DeRosso or that Exhibit 1 was executed by an agent authorized by Respondent to do so.

Absent a presentation of such prima facie proof by Complainant, Respondent was under no obligation to present a case-in-chief. Therefore, the Examiner does not draw any inference from Respondent's failure to call Gordon DeRosso as a witness.

For all of the foregoing reasons, the Examiner concludes that Complainant has failed to prove by a clear and satisfactory preponderance

(11/ continued from page 14)
specifically pleaded in the pre-trial complaint or counterclaim.

Thus, that section does not apply to purported signatures on written instruments which are testimonially introduced rather than specifically pleaded. See, In re Estate of Dick, 204 Wis. 89, 92 (1931); 9 Wigmore on Evidence, Sec. 2596 (1940) (characterizes statutes including Sec. 328.25, Wis. Stats. [1937] as ". . . adapted especially to documents named in the pleadings as a foundation or defense . . .".)

12/ With respect to the propriety of such a handwriting comparison by a trier of fact, cf. In re Estate of Dick 204 Wis. 89, 90 (1931) (dictum) (Court assumes such comparison would have been proper.)

13/ The Commission and the Examiner are not bound by such statutory rules of evidence. See notes 3 and 4 above and text accompanying.

of the evidence that Respondent was bound to Exhibit 1 or that Respondent was party to a collective bargaining agreement with Complainant. Therefore, Complainant has not proven that Respondent committed an unfair labor practice and the instant Complaint is dismissed for that reason.

Dated at Milwaukee, Wisconsin, this 26th day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)

VERIFICATION

GORDON DeROSSO, being first duly sworn, does depose and say that he is the President of A-C Trucking Company, Inc., the Employer-Respondent in the above-entitled matter; that he makes this verification for and on its behalf being duly authorized so to do; that he has read the above and foregoing Answer and knows the contents thereof; and that the same are true to the best of his knowledge except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true and correct.

Gordon DeRosso
Gordon DeRosso

Subscribed and sworn to before me
this 12th day of April, 1973.

Robert Lipinski
Notary Public, Milwaukee County, Wis.
My Commission expires: 6-2-74