

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL 122, HOTEL, MOTEL, RESTAURANT  
EMPLOYEES AND BARTENDERS UNION,  
AFL-CIO,

Complainant,

vs.

SPENCER FRANK FOOD SERVICE, INC.,

Respondent.  
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Case II  
No. 16708 Ce-1483  
Decision No. 11774-B

EXAMINER'S ORDER MODIFYING FINDINGS OF FACT,  
CONCLUSIONS 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 Marshall L. Gratz, 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 Sec. 111.07(5) of the Wisconsin Employment Peace Act, and the Examiner having issued Findings of Fact, Conclusions of Law and Order in the matter on April 5, 1974, and the Examiner, on his own motion, having reconsidered the record evidence and being fully advised in the premises, and being satisfied that certain Modifications of his April 5, 1974 Findings of Fact, Conclusions of Law and Order in the above-noted case should be made;

NOW, THEREFORE, it is

ORDERED

- A. That FINDING OF FACT 10 shall be, and hereby is, modified so that the following appears at the end thereof:

"; and that by so doing, Harley Frank orally agreed, on behalf of Respondent, to the terms contained in said copies except as to the initial effective date and the name of the Health and Welfare insurance carrier(s)."

- B. That the following shall be, and hereby is, inserted as FINDING OF FACT 10A:

"That the aforesaid retyped agreement contains a union

security provision which reads as follows:

'ARTICLE III - UNION SECURITY

Section 1. It is understood and agreed that as a condition of continued employment, all persons employed by the Company in the bargaining unit which is the subject of this Agreement shall become members of the Union on the thirty-first (31st) day following the beginning of their employment or the thirty-first (31st) day following the signing of this agreement, whichever is the later; that the continued employment by the Company in said unit shall be conditioned upon the payment of the periodic dues of the Union. The failure of any employee to become a member of the Union not later than the thirty-first (31st) day of employment, or the thirty-first (31st) day after the signing of this agreement, whichever shall be later, shall obligate the Company, upon written notice from the Union to such effect and to the further effect that Union membership was available to such person on the same basis as to other members, to forthwith discharge such person. Further, the failure of an employee to maintain his membership in good standing by his failure to pay the periodic dues of the Union shall, upon written notice to the Company by the Union to such effect, obligate the Company to discharge such person.

. . .';

and that the Commission's records, of which the Examiner hereby takes Official Notice on his own motion, indicate that there has not been conducted; heretofore, a Referendum in which at least a majority of the employees employed by Respondent at the Milwaukee Board of School Directors Administration Building Cafeteria have voted affirmatively, by secret ballot, in favor of an All-Union Agreement."

- C. That the following shall be, and hereby is, substituted for ORDER paragraph 3(b):

"Comply with the terms and conditions set forth in said written agreement (except that the union security provision in Article III, Section 1 shall not be implemented until such time as a majority of the employees in the bargaining unit recognized in said agreement shall have affirmatively voted, by secret ballot, in favor of an All-Union Agreement in a Referendum conducted by the Wisconsin Employment Relations Commission); such compliance including the making whole of employees for the benefits due them under said agreement for the period from and after March 26, 1973."

- D. That the following shall be, and hereby is, added to MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at the end of the subsection entitled "Allegation of Refusal to Execute and Comply with Oral Agreement":

"As is noted in Finding of Fact 10A, the terms to which Respondent has been found to have orally agreed on March 22, 1973 and which Respondent has been ordered herein to execute include an All-Union Agreement as to which there has been no Referendum conducted by the Commission. 1/ For that reason, that portion of the Order wherein Respondent has been ordered to comply with the Agreement has been drafted so as to relieve Respondent of any duty to comply with the aforesaid All-Union Agreement until such time as the required number of bargaining unit employees vote affirmatively in a Referendum conducted by the Commission. The entire Agreement has not been voided on account of the aforesaid invalid union security provision, however, since to do so would permit Respondent to benefit from its own illegal Act, 2/ to wit, agreeing to an unconditional and unauthorized (and therefore invalid) union security provision."

- E. That the following shall be, and hereby is, added as the final sentence of the MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER:

"For similar reasons, Complainant's allegation that Respondent engaged in bargaining sessions with an admitted intent to delay agreement is rejected as a basis for additional relief as well."

Dated at Milwaukee, Wisconsin, this 11th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz  
Marshall L. Gratz  
Examiner

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1/ There is no evidence, however, that either party has sought to implement said provision.

2/ See Norm's I.G.A., Dec. No. 7399 (12/65) (Dictum) at 15.