

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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INTERNATIONAL UNION OF OPERATING		:	
ENGINEERS LOCAL UNION NO. 139,		:	
	Complainant,	:	Case II
		:	No. 16770 Ce-1485
		:	Decision No. 11846-A
	vs.	:	
FUGARINO EXCAVATING,		:	
	Respondent.	:	
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Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas P. Krukowski, and Mr. Edward Engelhardt, Business Representative, appearing on behalf of Complainant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission on May 7, 1973 and the Commission having authorized Stanley H. Michelstetter II, a member of the Commission's staff, to act as an examiner and to make and issue findings of fact, conclusions of law and order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and notice of hearing on such complaint having been mailed to the parties May 15, 1973 setting May 30, 1973 as the date of hearing and Room 560 of the State Office Building, 819 North Sixth Street, Milwaukee, Wisconsin as the place of hearing; and hearing having been held before the Examiner on such date and at such place whereat Complainant failed to appear; and the Examiner having considered the evidence, arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That International Union of Operating Engineers Local Union No. 139, herein referred to as Complainant is a labor organization with offices located at 7261 West Appleton Avenue, Milwaukee, Wisconsin.

2. That Respondent, Fugarino Excavating, herein referred to as Respondent, is an employer with offices located at 3350 East Bottsford, Cudahy, Wisconsin.

3. That at all times material herein the Respondent has recognized the Complainant as the exclusive bargaining representative of certain of its employes; that in said relationship the Complainant and Respondent have been, at all times material herein, parties to a collective bargaining agreement covering the wages, hours and conditions of employment of such employes which agreement was in effect at all relevant times.

4. That during the term of such agreement, a dispute arose between the parties thereto as to the meaning and/or application thereof.

5. That Complainant, naming Respondent herein as Respondent therein filed a complaint December 27, 1972 with the Wisconsin Employment Relations Commission concerning the dispute cited in the paragraph numbered 4 above.

6. That on January 2, 1973, the Wisconsin Employment Relations Commission appointed Stanley H. Michelstetter II as Hearing Examiner to conduct a hearing on said complaint.

7. That on January 23, 1973, prior to commencement of hearing on said complaint, Respondent appeared and the parties stipulated that the matter in dispute had been resolved and that Respondent further executed the following agreement in settlement of said dispute:

"It has been agreed by and between Operating Engineers Local #139 by Edward W. Engelhardt, Business Representative for said union, and Sebastiano Fugino (sic), as sole proprietor of Fugarino Excavating, that the grievance filed on Aug. 15, 1972 be settled in the following manner; That the employer will pay the first qualified engineer on the referral list for one full wk, which is 5 full days of pay at 8 hours ea day at \$8.27 (Eight dollars and 27/100) per hr. and fringe benefits in the amount of \$.75 per hr. for a total of \$9.02 pr hr. or \$72.16 per day The total amt of payment will be \$360.80 (Three-hundred sixty & 80/100 dollars) That payment will be made in the following manner; first payment to be made on Feb. 21, 1973 in the amount of \$180.40 and a second payment to be made on or before March 23, 1973 in the amount of \$180.40."

8. That at all times material hereto Respondent has failed to pay any amount of money whatsoever in accordance with the aforementioned agreement.

9. That Notice of Hearing in the instant Complaint was mailed to Respondent at his address May 15, 1973 by certified mail (receipt number 696069) and that receipt number 696069 was returned in due course of the mails signed by Marie Fugarino.

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

CONCLUSIONS OF LAW

1. That the parties' settlement agreement constitutes a collective bargaining agreement.

2. That Respondent by refusing to pay the agreed-upon amounts in accordance with the parties' settlement agreement, has violated and continues to violate a collective bargaining agreement 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, the Examiner makes the following

ORDER

IT IS ORDERED that Respondent, Fugarino Excavating, take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:

(a) Immediately pay to the person certified by Complainant, International Union of Operating Engineers Local Union No. 139, as the first qualified engineer on the referral list the sum of \$360.80;

(b) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of this Order as to what steps the Respondent has taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 13th day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

FUGARINO EXCAVATING, Case II Decision No. 11846-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Respondent failed to appear at hearing in this matter. The Examiner allowed Complainant to present its case and notified Respondent by certified letter that the hearing had been held and giving him ten days from the date thereof to seek to present evidence. Respondent also failed to answer that letter. On the basis of the evidence presented, it is clear that Respondent entered into a settlement agreement, thus resolving a dispute between the parties. ^{1/} Respondent has willfully failed to pay the sums due and owing provided in such agreement. Such agreement is a collective bargaining agreement ^{2/} and the violation of such constitutes a violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Dated at Milwaukee, Wisconsin, this 13th day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

^{1/} International Union of Operating Engineers, Local 139 v. Fugarino Excavating (11508-A) 1/73.

^{2/} W.C.L. Inc. (11163-A) 1/73.