

"ARTICLE III
WAGES

. . .

<u>Effective Date</u>	<u>Hourly Rate</u> <u>Carpenter*</u>	<u>Hourly Rate</u> <u>Foreman</u>	<u>H&W</u>	<u>Pension*</u>
October 1, 1970	6.23	6.78	.15	.10

. . .

ARTICLE IV
HEALTH AND WELFARE

Section 1. During the life of this Agreement, each Employer covered by this Agreement shall pay the sum of fifteen cents (15¢) for each hour worked by all employees covered by this Agreement to the Wisconsin River Valley District Council Health Fund. Payment to such Health Fund must be made at the end of each quarter, but not later than the fifteenth (15th) day of the following month.

. . .

ARTICLE V
PENSION PLAN

Section 1. During the life of this Agreement, each Employer covered by this Agreement shall pay the sum of ten cents (10¢) per hour for each hour worked by all employees covered by this Agreement to the Trustees of the Wisconsin River Valley District Council Pension Trust. These payments shall be made not later than the fifteenth (15th) day of each month following the quarter for which payment is being made.

. . .

ARTICLE XVI
DURATION OF AGREEMENT

This Agreement shall continue in full force and effect from April 1, 1969, to April 1, 1971, and continue in full force and effect from year to year thereafter, and shall be subject to amendment or termination by either party only if either party notifies the other party in writing of their desire to amend or terminate the same sixty (60) days prior to April 1, 1971, or sixty (60) days prior to April 1 of any subsequent year. Since it is the intention of the parties to settle and determine subjects of collective bargaining between them, it is expressly agreed that there shall be no reopening of this Agreement for any matter pertaining to rates of pay, wages, or hours of work during the term of this Agreement. The Agreement may be reopened on matters pertaining to other contract terms and conditions of employment upon mutual consent of the Wisconsin River Valley Constructors Association and the Wisconsin River Valley District Council of Carpenters."

4. That in the Spring of 1971 the Complainant, and the employes of the Respondent, engaged in a strike without giving the Respondent at least 60 days' notice prior to April 1, 1971 that the Complainant desired to terminate the 1969-1971 collective bargaining agreement, and further,

without serving a 30-day notice of such intent upon the Federal Mediation and Conciliation Service, as required by Section 8(d) of the Labor Management Relations Act.

5. That on February 16, 1972, Complainant and Respondent entered into a collective bargaining agreement, effective from October 18, 1971 to at least June 1, 1972; that said agreement contained a provision which permitted either party to terminate same by serving at least a 60-day notice prior to June 1, 1972 upon the other party of an intent to terminate said agreement; and that said agreement also contained among its terms, the following with respect to hourly wage rates, health and welfare fund and pension fund payments to be made by the Respondent:

	<u>"Rate</u>	<u>Health & Welfare</u>	<u>Pension</u>
Effective Date 8/9/71	\$6.33	.25	.30
1/1/72	\$6.33	.25	.35

. . .

The foreman shall be paid 55¢ over the established Journeyman hourly wage."

6. That also on February 16, 1972, the Respondent filed a charge with the Region 31 of the National Labor Relations Board, wherein it alleged that the Complainant committed unfair labor practices as follows:

"Since on or about February 14, 1972, the above-named labor organization(s), by their officers, agents, allies, employees and representatives, have restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act by threatening disciplinary action if they work for Napiwocki Construction, Inc. during an unlawful strike; and being the representative of its employees, has failed and refused to bargain collectively with Napiwocki Construction, Inc.

By these acts, and by other acts and conduct, the above-named labor organizations have violated both Section 8(b)(1)(A) and 8(b)(3) of the Act."

7. That on March 21, 1972, the Respondent sent the following notice to the Complainant:

"Please find enclosed our official notice to TERMINATE the current agreement with the Wisconsin District Council of Carpenters, which expires on June 1st, 1972."

8. That at least from June, 1972, to the date of the hearing herein, Respondent paid its employes and foreman at the hourly rates of \$6.00 and \$6.50; and that further the Respondent ceased paying contributions to the Health and Welfare Fund as well as to the Pension Fund.

9. That on November 27, 1972 the Complainant and the Regional Director of the Region 31 of the National Labor Relations Board executed a Settlement Agreement with respect to the unfair labor practice charge filed on February 16, 1972 by the Respondent, as noted in paragraph six, supra; and that pursuant thereto, the Complainant, on January 3, 1973 executed a notice as follows:

WE WILL rescind and abrogate the collective-bargaining agreement which we required NAPIWOCKI CONSTRUCTION, INC. to enter into on February 15, 1972.

WE WILL NOT refuse to bargain collectively with NAPIWOCKI CONSTRUCTION, INC. concerning the termination or modification of any collective-bargaining contract between our Union and the Company by failing, before striking, to (1) serve 60 days' written notice of our intention to modify or terminate such collective-bargaining contract pursuant to Section 8(d)(1) of the Act; (2) offer to meet and confer with the Company for the purpose of negotiating a new or modified contract pursuant to Section 8(d)(2) of the Act; (3) give notice to the existence of any dispute between our Union and the Company to the Federal and State Mediation Services pursuant to Section 8(d)(3) of the Act; and (4) continue in full force and effect with resorting to strike all the terms and conditions of any existing contract pursuant to Section 8(d)(4) of the Act; provided, however, that no such notices under Section 8(d)(3) shall be required if an agreement is reached within 30 days following service of a notice of proposed termination and modification.

WE WILL NOT engage in, or induce employees of NAPIWOCKI CONSTRUCTION, INC., to engage in, a strike against said Company for the purpose of modifying or terminating a collective bargaining contract, without first having complied with the requirement of Section 8(d) of the Act."

10. That for all intents and purposes that portion of the Settlement Agreement, as it related to the Complainant's obligation to rescind and abrogate the collective bargaining agreement executed on February 16, 1972 (noted as February 15, 1972 in the Settlement Agreement), required the Complainant to perform an impossible act, since both parties treated said agreement as having been properly terminated by the Respondent as of June 1, 1972; that nothing in said Settlement Agreement required the parties to reinstate the terms of the 1969-1971 collective bargaining agreement, since it did not exist at least from February 16, 1972 through June 1, 1972; and that further no collective bargaining agreement existed between the parties from at least June 1, 1972 through the date of the hearing herein.

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

MODIFIED CONCLUSIONS OF LAW

1. That since the Respondent Napiwocki Construction, Inc., is subject to the jurisdiction of the National Labor Relations Board with respect to allegations that the Respondent committed unfair labor practices by interfering with, restraining, and coercing employes, as well as discriminating against employes, and with respect to failing to bargain in good faith with Complainant, Wisconsin River Valley District Council of Carpenters, the Wisconsin Employment Relations Commission has no jurisdiction to consider and determine such allegations.

2. That since no collective bargaining agreement existed between the Complainant and Respondent during the year immediately preceding the filing of the complaint herein, the Respondent was, and is, under no obligation to pay its employes any contractual wage rates or to make any contributions, on behalf of its employes to the Wisconsin River Valley District Council Health Fund, or to the Trustees of the Wisconsin River Valley District Council Pension Trusts, and therefore the Respondent

did not commit and is not committing any unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

NOW, THEREFORE, it is

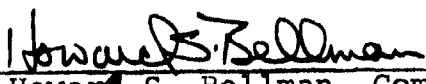
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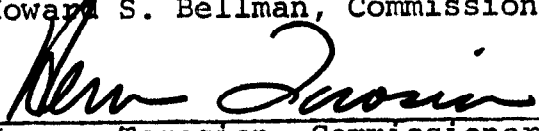
That the complaint filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 30th
day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER REVISING EXAMINER'S FINDINGS OF FACT,
MODIFYING CONCLUSIONS OF LAW AND AFFIRMING ORDER

THE EXAMINER'S DECISION:

The Examiner dismissed the complaint filed herein on his conclusion that no collective bargaining agreement was in effect between the parties after June 1, 1972, as evidenced by the timely notice of the Employer terminating the February 16, 1972 agreement, and as further evidenced by the negotiations thereafter between the parties in efforts to reach an accord on a new agreement.

THE PETITION FOR REVIEW:

The Union argues, in effect, that the record does not support a finding that the parties were engaged in negotiations toward a new agreement between March 24, 1972 and January 3, 1973, the date on which the Union executed the Notice pursuant to the NLRB Settlement Agreement. The Union contends that negotiations for a new agreement did not commence until April 4, 1973.

The Union claims that the Settlement Agreement provided that "all the terms and conditions of any existing contract" was to be in full force and effect, and that since neither party properly terminated the 1969-1971 collective bargaining agreement, the Employer was obligated to comply with the terms thereof, and that the Employer's failure to pay the wage rates therein, as well as the failure to make payments to the various funds, constituted an unfair labor practice in violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

DISCUSSION:

We agree with the Union that the record does not support a finding that the parties entered into negotiations pursuant to the termination notice filed by the Employer in March, 1972, terminating the February 16, 1972 agreement. The record indicates that negotiations were actually commenced in April, 1973, a fact not dispositive of the issues herein. We, therefore, have revised the Examiner's Findings of Fact in that regard.

As indicated in paragraph ten of the Revised Findings of Fact, there existed no collective bargaining agreement in effect, either on November 27, 1972, the date upon which the NLRB Settlement Agreement was approved, or on January 3, 1973 the date on which the Union executed the Notice, pursuant to the Settlement Agreement. It is clear from the record that the collective bargaining agreement executed on February 16, 1972 continued through June 1, 1972, and was properly terminated by the Employer, by his notice of March 21, 1972, and therefore at the time of the Notice there existed no agreement which could be rescinded or abrogated. Further neither the Settlement Agreement nor the Notice required the Union (or the Employer) to revive the 1969-1971 agreement. Therefore, we do not agree with the Union that the portion of the Notice requiring the Union to "continue in full force and effect without resorting to strike all the terms and conditions of any existing contract . . ." revived the 1969-1971 collective bargaining agreement. After June 1, 1972, there existed no contractual obligation upon the Employer to pay employes

any set wage rate or to make any payments to the various funds involved.
We have therefore affirmed the Order of the Examiner.

Dated at Madison, Wisconsin this 30th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner