

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**Respondent.**

No. 11950-A

Section 3. If within ten (10) working days after knowledge of the grievance, the same has not been resolved, it may be referred by either party to arbitration before a Commissioner of the Wisconsin Employment Relations Commission within ten (10) days thereafter or be barred.

Section 4. Where the Employer has a complaint or controversy hereunder, the designated representative of the Employer shall present same to the designated representative of the Union and if the same is not resolved within ten (10) working days, it may be referred to arbitration before a Commissioner of the Wisconsin Employment Relations Commission within ten (10) days thereafter or be barred.

Section 5. In the event the Wisconsin Employment Relations Commission finds it necessary to appoint an arbitrator not a member of the Commission, the parties shall equally share the expense of the arbitrator so appointed.

Section 6. The parties agree that the decision or award of any arbitrator shall be final and binding on each of the parties. The authority of such arbitrator shall be limited to determining questions arising under this Agreement. The arbitrator shall have no authority to change any of the terms of this Agreement, to change an existing wage rate or to establish a new wage rate. Each party shall bear the expense of preparing and presenting its own case. In the event an Employer fails to comply with an arbitrator's award rendered within his authority vested herein, the Union shall have the right to strike said employer only to enforce the award.

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#### ARTICLE XIII HEALTH AND WELFARE INSURANCE

Section 1. Effective June 1, 1971, the Employer shall contribute to a depository, designated by Local 695, Thirty-eight and 71/100 (\$38.71) Dollars per month for each employee covered by this Agreement who has been on the payroll for thirty (30) days or more for Health and Welfare coverage. Effective June 1, 1972, said contribution shall be increased to Forty-six and 50/100 (\$46.50) Dollars per month, and effective June 1, 1973, said contribution shall be increased to Sixty-three and 84/100 (\$63.84) Dollars per month. In the event plans are not in effect at the time of the increased contributions, the increases will be applied elsewhere on a consistent basis.

In the event the Trustees of the Wisconsin Area Health and Welfare Fund find it necessary to increase contributions referred to above, the Employer agrees it shall assume such additional increases, but in no event shall the total increased contributions exceed One (\$1.00) Dollar per month per employee during any year of this Agreement.

Section 2. By the execution of this Agreement the Employer binds himself and becomes party to the trust agreement establishing the Wisconsin Area Health and Welfare Fund and authorizes the Employer parties thereto to designate the Employer Trustees as provided under such Agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

Section 3. If an employee is laid off or is absent because of illness or off-the-job injury, the Employer shall make payments for the full month in which incident occurs and for one full month immediately following. If an employee is injured on the job, the Employer shall continue to pay the required contribution until the employee returns to work; however, such contributions shall not be paid for a period of more than six (6) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Health and Welfare Fund during the period of absence.

Section 4. It is agreed further that in the event the Employer becomes delinquent in his contribution that the Employer shall be liable for the total maximum benefits of the plan then in effect for each employee eligible to be covered under said plan.

Section 5. It is agreed that the Employer may place into effect or may substitute some other Health and Welfare plan for the one provided herein only if such other plan is equal to or superior to the plan provided for herein.

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#### ARTICLE XX PENSION

Section 1. Effective June 1, 1971, the Employer shall contribute to the Central States Southeast and Southwest Areas Pension Fund the sum of Six (\$6.00) Dollars per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more. Effective June 1, 1972, the contributions shall be increased to Eight (\$8.00) Dollars per week. Effective June 1, 1973, the contribution shall be increased to Ten (\$10.00) Dollars per week.

Section 2. This Fund shall be the Central States Southeast and Southwest Areas Pension Fund. There shall be no other pension fund under this contract for operations under this contract or for operations under the southeast and southwest areas contracts to which Employers who are party to this contract are also parties.

Section 3. By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties thereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such trustees within the scope of their authority.

Section 4. If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than six (6) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the pension fund during the period of absence.

Section 5. Contributions to the pension fund must be made for each week on each regular or extra employee, even though such employee may work only part-time under the provisions of this contract."

4. That acting pursuant to Article IV above, Arbitrator Robert E. Coulson, found that the Respondent had violated Article XIII and Article XX above and entered the following Award on March 12, 1973:

"AWARD

The Employer is to comply with the provisions of Article XIII and Article XX by paying the amount of money stipulated to by the parties as being owed and continue such payments on the periodic basis and in the amounts prescribed by the agreement."

5. That the amount of money stipulated to by the parties as being due and owing and referred to in Arbitrator Coulson's Award was \$1,332.00 as of February 7, 1973, the date of the Arbitration hearing; that since February 7, 1973 and continuing to date, the Respondent has failed and refused to comply with the terms of said Award and the total amount of money due and owing under that Award as of November 26, 1973, was \$3,142.40 including \$1,994.40 due and owing to the Trustees of the Wisconsin Area Health and Welfare Fund and \$1,148.00 due and owing to the Trustees of the Central States Southeast and Southwest Areas Pension Fund.

Based on the above and foregoing Findings of Fact, the Examiner makes and enters the following

CONCLUSION OF LAW

That the Respondent, by failing and refusing to comply with the Award of Arbitrator Robert E. Coulson, set out above, has violated and is violating its agreement to accept an Arbitration Award and has committed and is committing an unfair labor practice within the meaning of Section 111.06 (1)(f) of the Wisconsin Employment Peace Act and has failed and refused and is failing and refusing to recognize and accept as conclusive, the final determination of a tribunal having jurisdiction and has committed and is committing an unfair labor practice within the meaning of Section 111.06 (1)(g) of the Wisconsin Employment Peace Act.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and enters the following

ORDER

Advance Demolition, Inc., its officers and agents shall immediately:

1. Cease and desist from failing and refusing to comply with the Award of Arbitrator, Robert E. Coulson, set out above.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act.

- (a) Immediately pay to the Trustees of the Wisconsin Area Health and Welfare Fund all amounts due and owing pursuant to the Award of Arbitrator, Robert E. Coulson, including the sum of \$1,994.40 which was the sum due and owing as of November 26, 1973.
- (b) Immediately pay to the Trustees of the Central States Southeast and Southwest Areas Pension Fund all amounts due and owing pursuant to the Award of Arbitrator, Robert E. Coulson, including the sum of \$1,148.00 which was the sum due and owing as of November 26, 1973.

- (c) Notify the Wisconsin Employment Relations Commission in writing within Twenty (20) days from the date of this Order what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 3rd day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

The complaint herein was received by the Commission on June 6, 1973. Hearing on the complaint was originally set for July 24, 1973, with answer to be filed on July 17, 1973. The Respondent was served with a copy of the complaint by registered mail which was accepted by the Respondent on June 19, 1973. The Respondent did not file an answer and appeared at the hearing by its President, John W. Fiscus. Fiscus admitted that the Respondent was obligated to make the payments ordered by Arbitrator Coulson and entered into a proposed settlement arrangement with the Complainant that provided that this proceeding would be adjourned indefinitely while the parties established the exact amount of money due and owing and made arrangements for the payment of same. As part of the stipulation the Complainant reserved the right to resume this proceeding if the Respondent did not comply with terms of the proposed settlement arrangement.

The Respondent failed to comply with the proposed settlement arrangement and the Complainant asked that the matter be rescheduled for hearing. After several postponements, the last two of which were occasioned by the failure of the Respondent to appear or accept notice by mail, 1/ a hearing was held wherein it was established that the Respondent has failed and refused to comply with the Award of Arbitrator Coulson and that \$3,142.20 was due and owing as of the date of the hearing. Based on the record thus established, the Examiner has entered appropriate Findings and Order.

Dated at Madison, Wisconsin this 3rd day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner

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1/ Because the notice of the first such date was not served on the Respondent by registered mail the hearing was postponed at the Complainant's request so that the second notice could be served by registered mail. When the Respondent failed to claim that letter, a second postponement was granted to afford the Complainant an opportunity to obtain personal service of notice on the Respondent. The Respondent was served personally (as well as by registered mail) with notice of the hearing which was held on November 26, 1973. The Respondent did not appear on that date. After the hearing, the Respondent was advised by registered mail that the hearing had been held and that he could obtain a copy of the transcript by paying the statutory cost of same. The Respondent accepted that letter but failed to respond in any way.