

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL NO. 721 of the INTERNATIONAL :
ALLIANCE OF THEATRICAL STAGE EMPLOYEES :
and MOVING PICTURE MACHINE OPERATORS, :
AFL-CIO, :
Complainant, :
vs. :
KOHLBERG THEATRES, INC., :
Respondent. :

Case II
No. 17134 Ce-1510
Decision No. 12147-A

Appearances:

Mr. Joseph J. Shutkin, Attorney at Law, appearing on behalf
of Complainant.
Respondent did not appear in person or otherwise.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of unfair labor practice having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed Amadeo Greco, 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 Section 111.07(5) of the Wisconsin Employment Peace Act; and, pursuant to notice, a hearing on said complaint having been held at Milwaukee, Wisconsin, on January 15, 1974 before the Examiner; and the Examiner having considered the evidence and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Local No. 721 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, AFL-CIO, referred to herein as the Complainant, is a labor organization having its offices at P.O. Box 255, Lake Geneva, Wisconsin.
2. That Kohlberg Theatres, Inc., referred to herein as the Respondent, is an employer whose address is 203 North Wabash Avenue, Chicago, Illinois; and that at all times material herein Respondent has engaged in the operation of motion theaters, including the Lakes Drive In Theatre in Delavan, Wisconsin.
3. That at all times material hereto, Respondent and Complainant have been parties to a collective bargaining agreement, herein Agreement, which sets forth the wages, hours, and conditions of employment 1/ of certain of Respondent's employees employed at its Delavan, Wisconsin, facility.
4. That the Union filed the instant complaint on September 4, 1973, in which it alleged that Respondent had breached the terms of the Agreement by paying two (2) of its employees, Leo Longman and Paul

1/ It does not appear that the Agreement contained a grievance - arbitration clause.

Mueller, rates which were lower than those provided for in the Agreement.

5. That the evidence adduced at the hearing established that Respondent had breached the wage provisions of the Agreement and that Respondent subsequently made restitution to the above mentioned employes after the complaint had been filed. 2/

Upon the basis of the above Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. That the collective bargaining agreement executed by Respondent and the Union constitutes a collective bargaining agreement within the meaning of the Wisconsin Employment Peace Act.

2. That by failing to abide with the terms of that Agreement, Respondent, Kohlberg Theatres, Inc. has committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that Respondent, Kohlberg Theatres, Inc., its officers and agents, shall immediately:

1. Cease and desist from:

Failing to abide by the terms of the collective bargaining agreement it executed with Complainant, particularly Articles twelve (12) and fourteen (14) which set forth the contractual wage rates.

2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the Wisconsin Employment Peace Act:

(a) Immediately comply with the terms of the collective bargaining agreement, particularly the contractual wage rates.

(b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 7th day of March, 1974.

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By Amedeo Greco
Amedeo Greco, Examiner

2/ Because Respondent has made such restitution, the order herein does not require Respondent to make whole the affected employes.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Immediately prior to the opening of the instant hearing, the Examiner telephonically spoke to one of Respondent's representatives, Mr. John Bischoff, to advise that the hearing was scheduled for that day and asked whether Respondent would appear. Mr. Bischoff stated that Respondent would not appear. Accordingly, and in the absence of any request that the matter be delayed, and since Respondent had earlier been served with a copy of the complaint and notice of hearing, the hearing proceeded on an ex parte basis.

With reference to the specific complaint allegations, the record herein established that Respondent and the Complainant executed a collective bargaining agreement effective from March 14, 1973 to July 31, 1975; that during the course of said agreement, Respondent paid two of its employees at its Delavan, Wisconsin facility rates less than those specified in the agreement; that Respondent subsequently made those two employees whole after the instant complaint had been filed and that it appears that Complainant in the past has experienced difficulty with the Respondent with respect to prior contractual difficulties.

Accordingly, based upon the foregoing, the undersigned finds that the issue herein is not moot in light of the fact that the problem herein may be a continuing one, and further, that Respondent has violated Section 111.06(1)(f) of the Wisconsin Employment Peace Act in violating the contractual Agreement.

Dated at Madison, Wisconsin, this 7th day of March, 1974.

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By _____
Armando Cracco, Examiner