#### STATE OF WISCONSIN

## BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING

ENGINEERS LOCAL UNION NO. 139,

Complainant,

VS.

: : Case I

No. 17511 Ce-1524

Decision No. 12390-A

EDWARD RYAN, INC.,

Respondent.

Appearances:

Mr. Russell Retzack, Financial Secretary, appearing on behalf of International Union of Operating Engineers Local Union No. 139.

Respondent did not appear at the hearing.

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission, herein Commission, in the above-entitled matter; and the Commission having appointed Amedeo Greco, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.70(d) of the Wisconsin Employment Peace Act; and, pursuant to notice, a hearing on said complaint having been held at Milwaukee, Wisconsin, on February 14, 1974, before the Examiner; and the Examiner having considered the evidence, makes and issues 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 or Union, is a labor organization having its principal office at 7283 West Appleton Avenue, Milwaukee, Wisconsin, 53216.
- 2. That Edward Ryan, Inc. herein Respondent, is an employer whose office is at 1101 East Fairmount Avenue, Milwaukee, Wisconsin; and that all times hereto, Respondent has been engaged in the construction industry.
- 3. That on or about August 27, 1973 Respondent and the Union executed a collective bargaining agreement effective from June 1, 1973 to May 31, 1976, herein the Agreement, setting forth the wages, hours and conditions of employment of certain of Respondent's employes; and that the Agreement in pertinent part contained an arbitration procedure which provided, in Section 9.1 inter alia:

"All grievances, disputes or complaints of violations of any provisions of this Agreement shall be submitted to final and binding arbitration by an arbitrator appointed by the Wisconsin Employment Relations Commission. . . . Written notice by registered return receipt letter of a demand for arbitration shall be given to the Contractor and Association or as applicable to the Union at its Milwaukee headquarters. The Contractor and Association as the case may be shall agree in writing within seven (7) calendar days to arbitrate the dispute."

- 4. That by registered letter dated November 10, 1973, the Union filed a grievance with Respondent concerning certain subcontracting work, at which time the Union advised that it was requesting arbitration of the dispute in the event that Respondent did not want to settle the matter; that Respondent acknowledged receipt of said registered letter on November 13, 1973; and that Respondent thereafter refused to respond to said letter.
- 5. That the Union thereafter mailed another registered letter to Respondent on November 19, 1973, in which the Union referred to its earlier November 10, 1973 communication, and reiterated that it wanted to meet with Respondent to discuss the grievance it had filed; that Respondent acknowledged receipt of said registered letter on November 20, 1973; and that Respondent thereafter refused to respond to said letter.
- 6. That the Union filed the instant complaint on or about January 4, 1974 alleging that Respondent had refused to comply with the contractual provisions of the aforesaid Agreement, by failing to proceed to arbitration and that said refusal constituted an unfair labor practice under Section 111.06(1)(f) of the Wisconsin Employment Peace Act.
- 7. That Respondent has refused to proceed to arbitration and that therefore it had breached the terms of the Agreement.

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

#### CONCLUSIONS OF LAW

- 1. That Respondent and the Union have agreed to a valid contract within the meaning of the Wisconsin Employment Peace Act.
- 2. That by failing and refusing to proceed to arbitration, as required in Article 9 of the Agreement, Respondent has committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

### ORDER

IT IS ORDERED that Respondent, Edward Ryan, Inc. its officers and agents shall immediately:

(1) Cease and desist from:

Refusing to comply with the terms of the collective bargaining agreement Respondent signed with the Union,

including the arbitration provision contained in Article 9 of the Agreement.

- (2) Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
  - (a) Immediately comply with all of the terms contained in the aforesaid collective bargaining agreement, including the contractual arbitration provision.
  - (b) Immediately proceed to arbitration.
  - (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order, as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 25th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Amedeo Greco, Examiner

# MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

As noted above, Respondent did not appear at the hearing. The Examiner attempted to telephone Respondent on the day of the hearing, but received no answer. Respondent had earlier been advised of the hearing by means of a certified letter dated January 10, 1974, receipt of which Respondent acknowledged. Following the close of the hearing, the Examiner by letter dated March 29, 1974 accorded Respondent an opportunity to receive a copy of the transcript and to file a brief. Respondent did not reply.

With reference to the substantive issues herein, the record establishes that Respondent executed a valid collective bargaining agreement with Respondent, that the agreement contained an arbitration clause, that the Union requested arbitration of a dispute, and that Respondent thereafter refused to proceed to arbitration, as it was required to do under Article 9 of the contract. Accordingly, the undersigned finds that Respondent has breached the contractual arbitration requirement and that such action constitutes an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Dated at Madison, Wisconsin, this 25th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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edeo Greco, Examiner