

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 12478

Respondent was liable for \$8,000 in back wages; that Respondent countered that it did not breach the agreement, and that it did not owe any back pay; that the hearing opened and testimony was taken with respect to the grievances; that during the course of the hearing, the Union and Respondent, outside the presence of the Arbitrator, agreed to settle their dispute; and that the arbitration hearing then closed because of said settlement.

6. That the February 15, 1973 settlement agreement, signed by Mr. George Brown for the Union and Mr. Frank G. Taff for Respondent, provided:

- (1) That Edward Wagner will be paid \$736.56 for back pay for the period of October 6, 1972 to October 23, 1972 as settlement of Article 10, Section 10.5 violation of the above parties collective bargaining agreement.
- (2) That Edward Wagner will be paid \$281.13 as shortages of monies due and owing as wages for the period of July 25, 1972 to October 6, 1972: settlement of the Article 17, Section 17.1 violation of contract.
- (3) That Terry Houlihan will be paid \$1,273.24 in settlement of the violation of Article 10 Section 10.5 of the contract.
- (4) The checks will be sent to George Brown on or before but no later than April 16, 1973; 423 King Street, LaCrosse, Wisconsin, 54601.
- (5) The union at this time is withdrawing the above two (2) grievances on a non-precedent basis, upon the parties understanding that the employer will comply with the terms of the "Building and Heavy Construction Agreement."

7. That Respondent admittedly has refused to abide with the terms of the settlement agreement it entered into on February 15, 1973.

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

CONCLUSIONS OF LAW

1. That the agreement executed by Frank G. Taff, on behalf of F. Taff Company, Inc., and by George Brown on behalf of International Union of Operating Engineers, Local Union No. 139, on February 15, 1973 constitutes a collective bargaining agreement within the meaning of the Wisconsin Employment Peace Act.

2. That, by failing and refusing to abide with the terms of said settlement agreement, F. Taff Company, Inc. has committed, and is committing, an unfair labor practice 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 Conclusion of Law, the Commission makes the following

ORDER

IT IS ORDERED that Respondent, F. Taff Company, Inc., their officers and agents, shall immediately:

1. Cease and desist from:

Refusing to abide by the terms of the settlement agreement which Respondent and the Union executed on February 15, 1973.

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

- (a) Immediately comply with the terms of the February 15, 1973 settlement agreement by paying to the employees involved the sum of money specified therein.
- (b) Notify all employees, by posting in conspicuous places in its offices where employees are employed, copies of the notice attached hereto and marked "Appendix A" which notice shall be signed by Respondent, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.
- (c) Notify the Wisconsin Employment Relations Commission, in writing, within fourteen (14) days following the date of this Order, as to what steps have been taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Appendix "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employees that:

1. WE WILL comply with the terms of a settlement agreement reached with the International Union of Operating Engineers Local Union No. 139 on February 15, 1973 and we will pay to the employees involved the sums of money specified therein.

2. WE WILL NOT in any other or related matter interfere with the rights of our employees, pursuant to the provisions of the Wisconsin Employment Peace Act.

By F. Taff Company, Inc.

Dated this _____ day of February, 1974.

This notice must remain posted for thirty (30) days from the date hereof and must not be altered, defaced or covered by any material.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

At the hearing herein, Respondent's President, Frank G. Taff, admitted that he had entered into a settlement agreement with the Union on February 15, 1973, under which Respondent would pay approximately \$2,221 to the employees, through the Union in full settlement of the grievances the Union had filed with Respondent on or about October 26, 1972. Such an agreement constitutes a collective bargaining agreement within the meaning of the Wisconsin Employment Peace Act. ^{1/} Taff further conceded that he had not complied with the terms of that agreement. Explaining the basis of this admitted non-compliance, Taff alleged that the settlement was unfair because he was purportedly "pressured" into signing the settlement by the Arbitrator at the February 15, 1973 arbitration hearing.

Upon further questioning, however, Taff was unable to recount the exact nature of the alleged "pressure". Thus, for example, Taff admitted that he could not "recall word for word" what the Arbitrator had said at the outset of the hearing, and that "maybe I missed interpreting it also". Similarly, when specifically asked concerning an alleged statement made by the Arbitrator, Taff again stated "that thing is vague to me now. It's been a long time".

It is also significant that Taff admitted at the instant unfair labor practice hearing that the Arbitrator specifically stated at the outset of the arbitration hearing that the Union could lose its case and that he, the Arbitrator, recommended that both parties settle the matter. Taff went on to add that he knew that the Arbitrator "certainly should put forth to both parties to try to settle it without going through the arbitration". Taff further acknowledged that he could have rejected any proposed settlement, and moreover, he conceded that he and the Union worked out the settlement terms in private, outside the presence of the Arbitrator.

Further, although Taff initially stated that he had not complied with the settlement because of the purported "pressure", upon further questioning Taff later added another reason to explain his non-compliance, the fact that he lacked sufficient funds to comply with the monetary terms of the settlement. Similarly, when Taff was asked why he waited approximately six months before claiming that he was pressured, Taff replied that "I wanted as much time as I could possibly get" to avoid complying with the settlement agreement. Taff's concern with avoiding payment for as long as possible is also reflected by the fact that when he spoke to the Union's attorney by telephone on or about July 23, 1973, Taff admittedly told the attorney "I need additional time to make payment". Taff conceded that he did not then raise any defense as to why he was not legally bound to the terms of the settlement.

Additionally, it is also noteworthy that Union representative George Brown, who was present at the February 15, 1973 arbitration hearing, and who, the record shows, had attended many such hearings in his official capacity, flatly denied that the Arbitrator had in any way pressured either of the two parties.

^{1/} Stolper Industries, Inc. (8157) 8/67.

In light of the above, the Commission finds no merit in Respondent's claim that it is not legally bound to the terms of the February 15, 1973, settlement agreement because of purported pressure exerted by the Arbitrator on Respondent. Thus, the Commission particularly notes that (1) Taff's testimony on this point was at times admittedly vague on certain key items; (2) Taff acknowledged that the Arbitrator suggested to the Respondent and the Union at the outset of the hearing that both parties explore a settlement because there was a chance either party might lose, and that he, Taff, recognized that the Arbitrator "certainly should put forth to both parties to try to settle it without going to arbitration"; (3) Taff conceded that he could have rejected any settlement offers; (4) Taff stated that the ultimate settlement was reached outside the presence of the Arbitrator who did not in any way suggest any of its terms; (5) Taff waited approximately six months before raising his belated claim of undue pressure; (6) Taff's non-compliance is based partly on a consideration unrelated to the pressure allegation, i.e., the fact that he supposedly lacks sufficient resources to comply with its terms; and (7) Taff's claim of impropriety by the Arbitrator was not supported by any other witness and, indeed, was flatly contradicted by Brown, who participated at the arbitration hearing.

It may well be, as noted in the post-hearing written statement filed by Respondent's attorney, that this case "was Mr. Taff's first and only exposure to the technicalities of an arbitration hearing, [and] settlement agreements. . . ." As further noted in the post-hearing statement such inexperience, coupled with Respondent's own choice not to have an attorney represent him at the arbitration hearing, could well have led Taff to "not fully understand the requirements of the hearing. . . ." Although these factors may serve to explain the basis for Respondent's actions, they are not, standing alone, sufficient to overcome the prima facie validity of the settlement agreement which Taff signed.

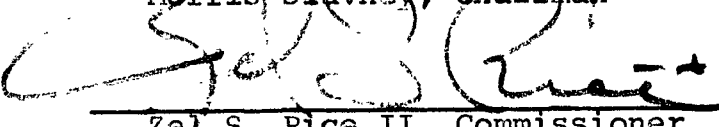
Accordingly, the Commission finds that Respondent's refusal to abide by the terms of the February 15, 1973 settlement agreement constitutes an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Dated at Madison, Wisconsin, this 13th day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner