

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Complainant,

vs.

Respondent.

Case II

No. 18157 Ce-1553

Decision No. 12900-E

The Wisconsin Employment Relations Commission, heretofore and on March 5, 1975, having issued an Order affirming Findings of Fact, Conclusion of Law and Order previously issued by Examiner George R. Fleischli in the above-entitled matter, wherein said Examiner concluded that the above-named Employer had committed an unfair labor practice by discharging Gordon Zeien on February 18, 1974, and wherein said Examiner ordered the above-named Employer to offer Zeien reinstatement to his previous position, or a substantially identical position, without loss of seniority or other benefits, and to make him whole by paying him a sum of money equal to that which he would have earned if he had not been so discharged, less any amount of money he earned or received by Zeien during the period of his discharge that he would otherwise not have earned or received; and a dispute having arisen concerning the amount of back wages due and owing Zeien; and the Commission having, on September 30, 1975, conducted a hearing in the matter at Superior, Wisconsin, Marvin L. Schurke, Hearing Officer, being present, to take evidence concerning the amount of back wages due and owing Zeien; and the Commission having considered the evidence and arguments, and being fully advised in the premises, makes and files the following supplemental findings of fact, conclusion of law and order.

1. That the Findings of Fact, Conclusion of Law and Order issued by Examiner George R. Fleischli on February 11, 1975 were delivered in the due course of the mails by Certified Mail and were received by the Respondent and by the Attorney for the Respondent on February 12, 1975; that, on February 27, 1975, the Respondent offered Zeien reinstatement to his employment with the Respondent effective on March 3, 1975 at 6:00 a.m.; that, on February 27, 1975, the Respondent directed correspondence to the Wisconsin Employment Relations Commission notifying the Commission of the aforesaid offer of reinstatement and of the intention of the Respondent to meet with Gordon Zeien during the week of March 3, 1975 to discuss the backpay issue; and that Zeien accepted such offered reinstatement and returned to work at the Respondent's plant on March 3, 1975.

2. That the sum of money equal to that which Zeien would have earned during the period commencing on February 18, 1974 and continuing through and including March 2, 1975 is established by the stipulation of the parties as \$10,738.10, including all overtime, bonuses and attendance premiums.

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3. That, during the period of his discharge, Zeien applied for and received unemployment compensation in the amount of \$2,886.00 from the Wisconsin Department of Industry, Labor and Human Relations.

4. That, during the period of his discharge, Gordon Zeien applied for financial assistance and received food stamps having a purchasing value of \$1,161.00 in excess of the amount paid therefor by Zeien to the Washburn County, Wisconsin, Department of Social Services.

5. That, prior to his discharge, Zeien followed a practice whereby he took vacation time off during hunting season; and that, during the period of Zeien's discharge, the Respondent maintained a bonus system which provided a benefit of \$279.00 to employees who worked during the hunting season in which Zeien would usually and customarily have taken his vacation and therefore would have not worked.

6. That, during the period of his discharge, Zeien became self-employed in the business of hunting and trapping; that during said period of his discharge Zeien received a gross income of \$573.65 in excess of the sum which he had received from coon pelt sales during the previous year when he was regularly employed by the Respondent; that Zeien had incurred expenses in connection with the business of hunting and trapping which exceeded his gross income from such business and resulted in a net loss; that, during the period of his discharge, Zeien had no other employment; and that Zeien had no net earnings to be offset from the make whole remedy set forth in the Commission's Order of March 5, 1975.

7. That custom and practice in the administration of remedial orders of the Wisconsin Employment Relations Commission permits the Respondent to make appropriate withholding amounts for social security tax and for state and Federal income taxes and to remit same to the appropriate agencies.

8. That the Respondent has, because of a good faith disagreement as to the amounts thereof, failed to comply with the portion of the Order issued by the Examiner, and affirmed by the Commission, which requires that the Respondent make the Complainant whole for financial losses suffered by reason of the unlawful discharge of the Complainant; and that the Respondent has, in all other respects, complied with such Orders.

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

SUPPLEMENTAL ORDER

IT IS ORDERED THAT the Respondent, Link Brothers Packing, a division of Link Brothers, Inc., shall immediately take the following affirmative action which the Commission finds will effectuate the policies of the Wisconsin Employment Peace Act:

1. Reimburse the Wisconsin Department of Industry, Labor and Human Relations in the amount of \$2,886.00 for amounts paid as unemployment compensation to Gordon Zeien.
2. Reimburse the Washburn County, Wisconsin, Department of Social Services in the amount of \$1,161.00 for the excess purchasing value of food stamps received by Gordon Zeien during the period of and because of his unlawful discharge.
3. Pay to Gordon Zeien the sum of \$6,412.10, less social security tax, federal withholding tax and Wisconsin withholding tax,

for the period from February 18, 1974 through and including March 2, 1975, and remit such taxes to the appropriate agencies.

4. Notify the Wisconsin Employment Relations Commission within twenty (20) days from the date hereof as to the steps it has taken to comply herewith.

Given under our hands and seal at the
City of Madison, Wisconsin this 26th
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

MEMORANDUM ACCOMPANYING SUPPLEMENTAL
FINDINGS OF FACT AND SUPPLEMENTAL ORDER

Pursuant to an order issued by the Commission on September 8, 1975, a hearing was held at Superior, Wisconsin, on September 30, 1975 to take evidence concerning the backpay amount due under a remedial order previously issued by the Commission. The parties stipulated to the amounts involved on a number of items and adduced evidence concerning other claimed benefits or offsets, with the following results:

"Wages, overtime, bonuses and attendance premiums for the period 2/18/74 to 3/2/75:	\$10,738.10"
Offsets	
Unemployment compensation	\$2,886.00
Excess purchasing value of food stamps received	\$1,161.00
Hunting season bonuses	\$ 279.00
	<hr/>
	\$4,326.00 (\$4,326.00)
	<hr/>
	\$6,412.10

The evidence established that Zeien received gross income of \$628.65 from the sale of pelts, which was up from \$55.00, when his hunting activities had been merely supplemental to his employment with the Respondent, for a net increase of \$573.65. Against this gross income, Zeien gave uncontroverted testimony that he drove 3,500 miles in the course of his hunting business. At 15¢ per mile rates currently permitted by federal income tax regulations without itemization, an expense of \$525.00 has been allowed. Other hunting expenses included hip boots, carbide for lamps and food and supplies for hunting dogs. Even with a pro-ration of the dog maintenance expenses to the three and one half month hunting season alone, the record shows Zeien having expenses for hunting greater than his gross income, so that no offset for other earnings has been made.

The evidence establishes that the Respondent maintains a unilaterally adopted and administered attendance and production bonus system which is applied at certain times of the year. The evidence also establishes that Zeien was in the habit of taking his vacation during the hunting season, which was also a bonus period. Finally, the evidence stablishes that Zeien's absence during the hunting season in 1975 would have resulted in a loss to him of \$279.00 in bonuses. The Commission concludes that it is appropriate to assume that Zeien would have continued his practice of taking vacation during the hunting season, and that this bonus amount should be deducted from the gross wage and bonus amount for the period involved.

The Commission has disallowed offsets claimed by the Respondent for travel, clothing and equipment expenses which would have been incurred by Zeien had he worked during the period of his discharge. It is the opinion of the Commission that all such offsets invade the liberty of the employe to determine his place of residence and the way in which he chooses


to spend his income. The failure of Zeien to expend sums from his income for such purposes should not result in a financial benefit or relief to the Respondent, yet such would be the practical result of the reduction of the backpay remedy sought here by the Respondent.

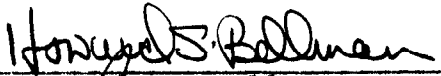
It has long been the policy of the Commission to avoid either punitive remedies against parties found in violation of the statutes administered by the Commission or unjust enrichment of prevailing complainants through remedial orders of the Commission. It is, instead, the object of such a remedy to put the employee back in the position he would have been in had he not been unlawfully discharged. Zeien has received financial benefits through the unemployment compensation program and through the food stamp program. The Commission has consistently ordered the offset of unemployment compensation amounts from backpay orders and the repayment of such amounts to the Wisconsin Department of Industry, Labor and Human Relations, and the same philosophy is followed in ordering Zeien's benefit from the food stamp program to be repaid to the remitting agency by the Respondent, whose violation of the Act placed Zeien in a position of need for such benefits.


The Commission continued its usual and customary practice in the calculation of amounts due under its remedial orders of including the calculation and withholding of taxes such as would be withheld from wages paid in the normal course of the employment relationship.

Dated at Madison, Wisconsin this 26th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner