



Step 3. By conference between an official or officials of the Union and the Personnel Manager or a representative of the Company designated by the Personnel Manager.

Step 4. In the event that the last step fails to settle the complaint, it shall be referred to the Board of Arbitration.

### Section 2.

The Board of Arbitration shall consist of one (1) person appointed by the representative of the Union and one (1) person appointed by the Employer. Said two (2) persons shall within two (2) days after disagreement request the Federal Mediation and Conciliation Service to submit a panel of arbitrators, and the said two (2) persons shall choose a third arbitrator from this panel. The decision of the majority of the Board of Arbitration shall be final and binding on the Employer, the Union and the aggrieved employee. The expenses of the third arbitrator shall be paid for jointly.

### Section 3.

The Arbitrator shall have authority and jurisdiction to determine the propriety of the interpretation and/or application of the Agreement reflecting the grievance in question, but he shall not have the power to alter or modify the terms of the Agreement.

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## ARTICLE 14 - PENSION

The Employer agrees to make a contribution of fourteen cents (.14¢) per hour on all straight time hours worked by employees covered by this Agreement to the Milwaukee Area Retail Food Clerks Pension Fund. The contribution shall also be made on hours which employees receive holiday and vacation pay and hours worked on Sunday except that no contribution shall be made on hours in excess of eight (8) hours per day or forty (40) hours per week. Such Fund is a jointly administered Pension Trust Fund to be jointly administered in accordance with existing law and in accordance with the Pension Plan and Trust Agreement existing between the parties. Said contributions shall be for the sole purpose of providing pensions for eligible employees as defined in such Pension Plan.

Effective August 1, 1975, the Employer's contribution will be increased to sixteen cents (16¢) per hour.

## ARTICLE 15 - COLLECTION OF DELINQUENT CONTRIBUTIONS

Any Employer who is thirty (30) days delinquent under Article 13 or Article 14 above in the payment of any or all of the contributions required of it by this contract shall pay, as liquidated damages a sum of twenty dollars (\$20.00), or ten percent (10%) of the amount delinquent, whichever is greater. Such damages shall be computed monthly and on a separate basis for the Health and Welfare Fund and the Pension Fund. The amount of liquidation damages shall be added to the cumulative total of delinquent contributions and shall be included in the computation of damages.

In addition to the foregoing, an Employer delinquent thirty (30) days or more shall be liable for the payment of any benefits paid or otherwise payable to an employee or his dependents from the Health and Welfare Trust Fund as a result of any claim incurred during the period of delinquency. Said liability shall not be waived by payment

of the amount delinquent, including the liquidation damages, or by payment of the claim by the Health and Welafre Trust Fund.

The above paragraphs shall not be applicable when, in the judgment of the Trustees, the delinquency results from a clerical error or a bona fide difference or dispute."

4. That for the months of July, August, September, October, November, and December, 1974, and January and February, 1975, the Respondent failed to make contributions to the Pension Fund required by the above-quoted Article 14; that Respondent failed to make contributions to the Fund for February, March and June, 1974; that Respondent has not made said payments to the Pension Fund for financial reasons; that Respondent has been delinquent in making said contributions for a period exceeding thirty (30) days for all of the aforesaid months except February 1975; and that Respondent had not made any damage payments to the Fund on account of the aforesaid delinquencies as provided for in the above-quoted Article 15.

5. That the Respondent's failure to contribute to the Fund for the months of July, August, September, October, November, and December, 1974, and January and February, 1975, constitutes a violation of its collective bargaining agreement with Complainant; and that the Respondent's failure to remit to the Fund those damages resulting from being delinquent in making the aforesaid monthly contributions constitutes a violation of its contract with the Complainant.

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

#### CONCLUSIONS OF LAW

1. That the Respondent, by failing to make said required monthly contributions to the Pension Fund, has violated the terms of the collective bargaining agreement and committed unfair labor practices within the meaning of Section 111.06(1)(f) of the Wisconsin Statutes.

2. That the Respondent, by failing to remit those damages resulting from being delinquent in making monthly contributions to the Pension Fund, has violated the terms of the collective bargaining agreement and committed unfair labor practices within the meaning of Section 111.06(1)(f) of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes the following

#### ORDERS


IT IS ORDERED that Respondent Mike's Super Valu shall immediately:

1. Cease and desist from violating the terms of Articles 14 and 15 of the collective bargaining agreement between it and Retail Clerks Union Local No. 1401, in violation of Section 111.06(1)(f), Wisconsin Statutes.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Act:
  - a) Immediately pay to the Milwaukee Area Retail Food Clerks Pension Fund the sum of \$729.70 for the months of February, March, June, July, August, September, October, November and December, 1974 and January and February, 1975.
  - b) Immediately pay to the Milwaukee Area Retail Food Clerks Pension Fund all damages due on account of Responent's failure to make the aforesaid monthly contributions.

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

Dated at Madison, Wisconsin this *29th* day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDERS

The complaint herein was filed on February 21, 1975. It asserts that the Respondent violated its collective bargaining agreement with the Complainant by failing and refusing to make contributions on behalf of its employes to the Milwaukee Area Food Clerks Pension Fund, thereby violating Section 111.06(1)(f) of Employment Peace Act. The Complainant also contends that the Respondent, by its acts violated Section 103.86, Wisconsin Statutes and thereby committed an unfair labor practice within the meaning of 111.06(1)(1) of the Employment Peace Act.

On February 26, 1975, a copy of the complaint and notice of hearing scheduling said matter for hearing on March 25, 1975, was sent certified mail to the Respondent. Return receipt was received by the Examiner indicating said complaint and notice of hearing were received by the Respondent on February 27, 1975. By said notice of hearing, Respondent was notified of its rights to appear in person or otherwise and give testimony and also, that it could answer the complaint by filing an answer with the Examiner on or before March 18, 1975. No answer or other communication was received by the Examiner prior to the scheduled hearing. Initially, Respondent did not appear at the hearing and after awaiting his appearance for a period of time, the Examiner contacted Respondent by telephone. As a result of the aforesaid telephone conversation and concurrence by Complainant, the hearing was recessed to Respondent's principal place of business.

The current labor agreement provides a method for the final resolution of disputes involving alleged violations of the agreement. Ordinarily, the Commission will not assert its jurisdiction to consider alleged violations of the labor agreement under Section 111.06(1)(f) of the Employment Peace Act where the parties have such a provision in their contract. In the instant proceeding, the Respondent raised no objection to the Commission asserting its jurisdiction. In fact, the Respondent stipulated to his liability for all the monthly contributions sought by the Complainant as well as to a determination by the undersigned respecting any liability for damages called for by the contract on account of the delinquent contributions. Under the circumstances, the Commission will assert its jurisdiction and order the Respondent to pay what it owes. 1/

On the issue of the extent of damages owed Complainant, the Complainant adduced no evidence of the Respondent's liability for damages prior to June 30, 1974. The only labor contract in evidence herein was effective June 30, 1974. Furthermore, the stipulation entered into at hearing contains no admission of liability for damages. Thus, the absence of any evidence establishing the Respondent's liability for damages prior to June 30, 1974, precludes such a finding.

Based on the Respondent's admission that he had not made monthly contributions to the Fund for February, March, June, July, August, September, October, November and December, 1974, and January and February, 1975, said payments were and are delinquent. All of the aforesaid payments were delinquent for more than thirty (30) days at the time of hearing with the exception of the contributions owing for February, 1975. Therefore, consistent with Article 15 of the labor agreement, the Respondent is

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1/ Fiore Coal and Oil Co. (3234) 8/52; Pinno Plumbing and Heating (7989) 4/67; Bi-State Trucking Corp. (9924) 8/71.

herein ordered to pay the Fund the appropriate damages calculated pursuant to the provisions of Article XV for being delinquent in making monthly contributions to said Fund. Although the Respondent is not liable for any damages preceding June 30, 1974, damages are owing to Complainant for the Respondent's continued delinquency for February, March and June, 1974 payable in July, 1974. Thus, Respondent's liability to the Fund for June, 1974, payable in July, 1974, is the amount of monthly contributions owing for February, March, and June, 1974, 2/ plus \$20.00 in damages. 3/

In determining Respondent's liability for succeeding months, the balance owing from the prior month should be carried forward and 4/ 10% of said amount or \$20, whichever is greater, in addition to the monthly contribution, should be added thereto e.g.

June Balance	\$215.58	(includes February, March, June + \$20)
Damages	21.56	
July Contribution	63.56	
	<u>\$300.70</u>	Payable in August, 1974
July balance	\$300.70	
Damages	30.07	
August Contribution	63.70	
	<u>\$394.47</u>	Payable in September, 1974

Complainant also contends in its complaint that Respondent's failure to make the required monthly contributions to the Fund constitutes a violation of Section 103.86 Wisconsin Statutes which is a misdemeanor, and, therefore, is an unfair labor practice within the meaning of Section 111.06(1)(1) of the Wisconsin Peace Act. Section 103.86 Wisconsin Statutes, provides:

"103.86 Employee welfare funds; default in payments.  
 (1) Any employer who promises in writing to make payments to an employee welfare fund, either by contract with an individual employee, by a collective bargaining agreement or by agreement with such employee welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of his failure to make the required payments, shall be fined not more than \$200."

The Complainant did not adduce any evidence at the hearing to establish that the Respondent had been notified in writing of his failure to make the payments claimed due and owing by the Complainants. In the absence of such a showing, no violation of Section 103.86 Wisconsin Statutes

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2/ The amount is \$215.58 and the Respondent stipulated to his liability for said monthly contributions.


3/ February and March, 1974 contributions had been delinquent for 30 days.

4/ The prior monthly balance being July, 1974 (payable in August).

was established and for that reason there can be no finding that an unfair labor practice was committed. 5/

Dated at Madison, Wisconsin this *29th* day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner

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5/ Modern Home Decorators, Inc. (Decision No. 6316) 4/63.