

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TEAMSTERS, CHAUFFEURS & HELPERS UNION	:	
LOCAL NO. 43, AFFILIATED WITH THE	:	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	:	
CHAUFFEURS, WAREHOUSEMEN & HELPERS	:	
OF AMERICA,	:	
	:	Case I
Complainant,	:	No. 19753 Ce-1643
	:	Decision No. 14093-A
vs.	:	
UNION GROVE LUMBER & FUEL COMPANY,	:	
	:	
Respondent	:	
	:	

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Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy,  
for Complainant.  
Mr. Clifford Huck, representative, for Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Teamsters, Chauffeurs & Helpers Union Local No. 43, Affiliated With The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein referred to as Complainant, having on October 31, 1975 filed a complaint with the Wisconsin Employment Relations Commission alleging that Union Grove Lumber & Fuel Company, herein referred to as Respondent, has committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner, and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07 of the Wisconsin Employment Peace Act; and, pursuant to notice, hearing having been held on December 18, 1975 in Racine, Wisconsin before the Examiner; and the Examiner having considered the evidence and arguments of the parties and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant is a labor organization with offices at 1624 Yout Street, Racine, Wisconsin.
2. That Respondent is an employer within the meaning of the Wisconsin Employment Peace Act and the Labor Management Relations Act,

as amended, engaged in the retail sales of lumber; and that at all relevant times Respondent has employed five employees within the meaning of the Wisconsin Employment Peace Act.

3. That for at least the past twenty years Respondent has recognized Complainant as the exclusive collective bargaining representative of all of its employees.

4. That approximately twenty years ago Respondent negotiated a comprehensive collective bargaining agreement with Complainant through Complainant's representative Leo Lotharious during the course of which negotiations Lotharious agreed to amend a provision similar to that appearing in Article 2 of the parties' present agreement from Complainant's proposals with the effect that it permitted Respondent to inform his employees that they must pay dues in accordance with the then existing union security provision and to arrange to have his employees mail their own personal checks for their own dues to Complainant in advance of the three month period for which they were due; that after the expiration of the aforementioned agreement Respondent and Complainant subsequently executed comprehensive collective bargaining agreements with provisions substantively similar to that found in Article 2 of the parties' current comprehensive collective bargaining agreement; that at all relevant times Respondent has followed the practice permitted by the agreement executed approximately twenty years ago.

5. That Respondent and Complainant represented solely by Eugene Pierce negotiated, executed and are now party to a written comprehensive collective bargaining agreement for the period July 1, 1974 to June 30, 1977 which provides in relevant part:

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. . .

ARTICLE 2. CHECK OFF

On the last pay-day of each month, the employer agrees to deduct from the wages of each employee, covered by this Agreement, upon signed authorization therefore, such employee's union dues, initiation fees, monthly fees and uniform assessments, owing to the Union as a result of membership therein, and forward to the Secretary-Treasurer of said Union. Union shall give written notice to Employer of the amount of dues and assessments for each employee.

. . .

ARTICLE 27. ARBITRATION

Should any controversy arise between the parties hereto governing the interpretation of this Agreement, or any part thereof, which cannot be settled to the satisfaction of both parties, then such controversy shall be referred to a committee of three (3) for arbitration; one (1) to be selected by the Employer and one (1) to

be selected by the Union and the third to be selected by the first two (2). If the two members cannot agree upon a person to serve as a third member, such third member of the arbitaation [sic] committee shall be selected by the Wisconsin Employment Relations Commission, and shall be a resident of Racine or Kenosha County, Wisconsin, provided, however, that such arbitration committee shall be selected within one (1) week of the reference of such matter to arbitration and provided, however, that such matter is decided fifteen (15) days thereafter. During such time as the matter is pending, there shall be no strike or lockout. The decision of a majority of members of such arbitration committee shall be binding upon both parties to the dispute. The expense of the third member acting as arbitrator shall be divided equally between the Employer and the Union.

It is agreed that the Employer will notify the Union of all contemplated discharge of employees at least forty-eight (48) hours before the discharge occurs, provided, however, that discharge for proven dishonesty, intoxication or use of illegal drugs shall not require the forty-eight (48) hours' notice.

The Employer agrees that should the arbitration committee decide that a discharge or lay off is unjustifiable, the affected employee shall be reinstated with full back pay.

It is further agreed between the parties hereto that the matter of membership in the Union shall in no case be subject to arbitration.

#### ARTICLE 28. VIOLATION OF AGREEMENT

It is understood and agreed that in the event of any alleged violation of this contract there shall be no liability on the part of either party, its officers or agents, and the sole recourse and exclusive remedies shall be those which are specifically provided for in Article 27 of this Agreement.

. . .

"

6. That during the term of the agreement referred to in Finding of Fact 5 above all five of Respondent's employes presented him with individual orders to deduct from each of their wages their union dues, initiation fees, monthly fees and uniform assessments owed to the union as a result of membership therein; that however, Respondent failed, refused and neglected to deduct said amounts from said employes' wages and that each such employe continued to pay said amounts directly to Complainant; that thereafter, but during the summer of 1975, Complainant's agent Pierce met with Respondent's agent Huck during the course of which meeting Pierce requested that Respondent abide by the requirements of Article 2 of the parties' agreement; that Huck recited the circumstances cited in Finding of Fact 4 above and asserted that the past agreement and practice permitted it to not abide by the terms of Article 2 of the parties' agreement; that thereafter and on at least three occasions Complainant sent Respondent a letter demanding compliance with Article 2 of the parties' agreement, but that Respondent received said letters and failed to respond thereto; that at all

relevant times Respondent has failed, neglected and refused to deduct the aforementioned fees from the wages of its employees.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and files the following

CONCLUSIONS OF LAW

1. That Respondent Union Grove Lumber & Fuel Co. by having failed to deduct the union dues, initiation fees, monthly fees and uniform assessments owed to Complainant from the wages of its employees who were members of the instant bargaining unit and who had previously presented it with a signed, written authorization therefor in violation of Article 2 of a collective bargaining agreement in existence between said parties, committed and is committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

2. That since Respondent is an employer within the meaning of the Labor Management Relations Act, as amended, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission over Complainant's allegations that Respondent has committed violations of Sections 111.06(1)(a) and (d) of the Wisconsin Employment Peace Act.

That on the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and files the following

ORDER

IT IS ORDERED that Respondent Union Grove Lumber & Fuel Co. take the following affirmative action which the Examiner has determined will effectuate the policies of the Wisconsin Employment Peace Act:

1. Comply with the provisions of Article 2 of the parties' collective bargaining agreement.
2. Notify the Wisconsin Employment Relations Commission in writing, within ten (10) days following the date of this Order, as to what steps it has taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 29th day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Complainant filed the instant complaint alleging that Respondent and it were party to a collective bargaining agreement with the provisions cited in Finding of Fact 5 and that Complainant failed and refused to honor the check off provision (Article 2) and the arbitration provision (Article 27) in violation of Section 111.06(1)(a), (d) and (f). Respondent appeared and admitted all of the facts including the terms of the present written agreement, its failure to check off dues after receiving proper authorization therefor and its refusal to answer Complainant's letters concerning the check off provision. Respondent and Complainant stipulated that in the summer of 1975, Huck and Pierce had had a conversation in which Pierce had asked Huck to comply with the check off provision and Huck had stated his position. During the hearing, Huck agreed to comply with the grievance procedure in the future and on that basis Complainant withdrew its claim that Respondent had violated the arbitration provision of the agreement. Thereafter both parties argued the merits of the alleged violation of the check off provision and neither party requested that the matter be submitted to arbitration.

With respect to the merits, Respondent argued that approximately twenty years ago it negotiated an exemption from the check off provision Complainant normally negotiates with other employers. Respondent stated that for the past twenty years Respondent has always abided by that agreement without objection from the Complainant even though the parties subsequently executed agreements with the check off provisions identical to that appearing in Article 2 of the parties' agreement twenty years ago and that it has never taken any action to require Respondent to check off employe's dues.

DISCUSSION

Respondent admitted that it executed the instant agreement with full knowledge of the meaning of Article 2 and without any contrary express oral agreement. Although it is undisputed that twenty years ago the parties had an agreement that permitted Respondent to inform employes of their obligations under the union security agreement and to arrange for them to mail in their own dues, Respondent has not been able to establish the exact terms thereof, including the duration and provisions. Thus, it is unclear whether or not the parties executed a

check off provision in that agreement and, if so, what methods the parties selected to prevent employes from submitting dues deduction authorizations. The evidence of "past practice" is also unclear. <sup>1/</sup> The Examiner is satisfied by a clear and satisfactory preponderance of the evidence that Respondent agreed to Article 2, to check off unit employes' dues if presented with the specified signed authorizations. The most that can be said for Respondent's position is that it relied on Complainant's past record of not seeking authorizations from unit employes and of the employes' not submitting authorizations on their own. The evidence does not establish that the parties have an agreement presently in effect or practice which conflicts with the foregoing duty.

Dated at Milwaukee, Wisconsin, this 29th day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
Examiner

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<sup>1/</sup> The instant agreement does not require that any employe execute a dues deduction authorization. Cf. Labor Management Relations Act, as amended, Sections 8(a)(3) and 8(b)(2) and American Screw Co., 122 NLRB No. 74, 43 LRRM 1153 (1958). Huck's testimony did not establish any previous situation in which:

1. An employe submitted a dues deduction authorization.
2. Respondent refused to deduct dues pursuant to Article 2 after receiving such an authorization.
3. Complainant became aware of that refusal and failed to enforce Article 2 or a similar past provision.