

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS GENERAL LOCAL UNION NO. 200
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF AMERICA,

Complainant,

vs.

NU-WAY AUTO ELECTRIC CO., INC.

and

MILWAUKEE TRUCK CENTER, INC.,

Respondents.

Case II

No. 1975b Ce-164b

Decision No. 14097-D

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
MODIFYING EXAMINER'S CONCLUSIONS OF LAW
AND REVERSING EXAMINER'S ORDER

Examiner Stanley H. Michelstetter II having, on May 4, 1976, issued Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above entitled matter; and the Wisconsin Employment Relations Commission having, pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, on its own motion, reviewed the Examiner's decision; and the Commission being satisfied that the Findings of Fact issued by the Examiner should be affirmed, that the Examiner's Conclusions of Law be modified, and that the Examiner's Order be reversed;

NOW, THEREFORE, it is

ORDERED

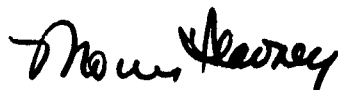
1. That the Examiner's Findings of Fact be, and the same hereby are, affirmed.
2. That the Conclusions of Law of the Examiner be modified so as to delete Paragraph 3 therefrom.
3. That the Order of the Examiner be reversed and now reads as follows:

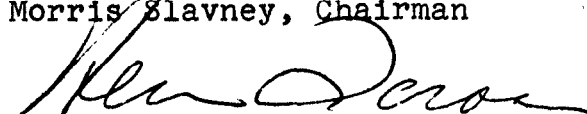
"IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed."

Given under our hands and seal at the
City of Madison, Wisconsin, this 19th
day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

No. 14097-D

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
MODIFYING EXAMINER'S CONCLUSIONS OF LAW
AND REVERSING EXAMINER'S ORDER

We have affirmed the Examiner's Findings of Fact, and we have adopted his Conclusions of Law, Paragraphs 1 and 2, to the effect that neither Respondent Nu-Way Auto Electric Co., Inc. nor Milwaukee Truck Center, Inc. had agreed to be bound by the decision of the Wisconsin Joint Area Grievance Committee concerning vacation pay alleged to be due and owing to a former employee, Carl Six, of Milwaukee Truck Center, Inc. The Union and Milwaukee Truck Center, Inc. were parties to a collective bargaining agreement. The arbitration provision therein did not provide that arbitration of grievances arising under said collective bargaining agreement would be before the Wisconsin Joint Area Grievance Committee. The contractual arbitration procedure provided that the parties should make an attempt to agree on a neutral arbitrator, and if unsuccessful in that regard, either party could request the Federal Mediation and Conciliation Service to furnish a panel from which the parties could select an impartial arbitrator.

Rather than utilizing the contractual arbitration procedure, after the Union had made demands that Milwaukee Truck Center, Inc. pay Six three weeks' vacation pay, the Union submitted the grievance to the Wisconsin Joint Area Grievance Committee, which Committee apparently assumed that it had jurisdiction to dispose of the grievance. Since said Committee did not have jurisdiction with respect to the grievance involved, its "default" award is considered null and void. The Examiner did not give effect to the award, and in that regard, found that the refusal of Milwaukee Truck Center, Inc. to comply with said award did not constitute an unfair labor practice within the meaning of the provisions of the Wisconsin Employment Peace Act. However, the Examiner concluded that he would exercise the Commission's jurisdiction and determine the grievance on the merits. It should be noted that the complaint sought enforcement of the arbitration award, and nowhere in the complaint was there an allegation that any of the named Respondents had completely disregarded the contractual arbitration procedure. A copy of the complaint was served upon the Respondents. No representative of any of the Respondents appeared at the hearing before the Examiner. No representative of any of the Respondents was aware of any issue except that of the refusal to comply with the award issued by the Wisconsin Joint Area Grievance Committee.

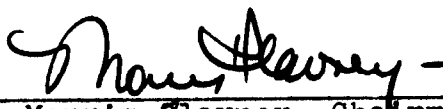
The Examiner justified taking jurisdiction to determine the grievance on the merits on the basis that "neither party has requested deferral to arbitration . . ." Such a conclusion is erroneous. The collective bargaining agreement, on which the Union premised its complaint, contained a provision for final and binding arbitration of grievances. There was no need of a request for deferral to arbitration, since the parties had previously established a final and binding arbitration procedure for the final resolution of grievances. Furthermore, the complaint itself sought enforcement of the award issued by the Wisconsin Joint Area Grievance Committee.

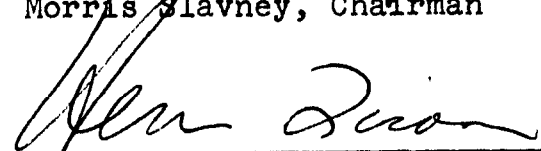
The complaint alleged that the Respondents had not complied with said award by failing to pay a former employee, Six, three weeks' vacation pay. During the course of the hearing, after the evidence indicated that Milwaukee Truck Center, Inc. also had failed to make payments to the pension fund on behalf of Six for the three-week period involved, the Examiner, in his Order, required the Employer not only to pay the vacation pay due and owing Six, but also to pay the amount of \$12.00 to the pension fund. Since the complaint, which was served on the Respondents, did not contain an allegation with regard to the failure to pay to the pension fund, we conclude that the Respondents were deprived of due process with respect to the delinquency in pension fund payments.

Since the Examiner did not have jurisdiction to determine the merits of the grievance, we have deleted his Conclusion of Law wherein he concluded that Respondent Milwaukee Truck Center, Inc. had violated the collective bargaining agreement with respect to the failure to pay former employee Six vacation pay in violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. ^{1/} It, therefore, follows that the Order issued by the Examiner requiring said Respondent to pay such vacation pay and to make the pension fund payment is in error, and as a result, we have dismissed the complaint filed herein.

Dated at Madison, Wisconsin, this ~~19th~~ day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

^{1/} While the Examiner made no Conclusion of Law with reference to the failure to make payments to the pension fund, in his Order the Examiner required Milwaukee Truck Center, Inc. to make such payment.