

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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UNITED SLATE, TILE & COMPOSITION	:	
ROOFERS, DAMP & WATERPROOF WORKERS'	:	
ASSOCIATION, LOCAL NO. 6, AFL-CIO	:	
	:	Case I
Complainant,	:	No. 22863 Ce-1773
	:	Decision No. 16308-A
vs.	:	
	:	
JOHNSON ROOFING & INSULATION COMPANY	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Philip Schultz, Business Agent, appearing on behalf of the Complainant Union.  
Mr. James Johnson, Owner of Johnson Roofing & Insulation Company, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association, Local No. 6, AFL-CIO, hereinafter the Complainant, having on April 5, 1978 filed a complaint of unfair labor practices against Johnson Roofing and Insulation Company, hereinafter Respondent; the Wisconsin Employment Relations Commission, hereinafter the Commission, appointed Sherwood Malamud, a member of the Commission's staff, to make and issue Findings of Fact, Conclusions of Law and Orders pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act; hearing in the matter was held on May 12, 1978 in the Rock County Administration Building in Beloit, Wisconsin; the parties presented evidence and argument at the hearing; and the Examiner being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association, Local No. 6, Complainant herein, is a labor organization, and it maintains its offices at 212 South First Street, Rockford, Illinois. Philip Schultz is Complainant's business representative.
2. Johnson Roofing and Insulation Company maintains its offices in Beloit, Wisconsin. It is a contractor which is engaged in the repair of roofs and installation of insulation in buildings in the Beloit area. James Johnson is the owner of the Respondent company, and he performs the Journeyman work on Respondent's jobs.
3. Johnson, acting on behalf of Respondent, executed a collective bargaining agreement with Complainant which agreement is in effect from June 1, 1976 through May 31, 1978 which contains the following provisions pertinent hereto:

"AGREEMENT

ARTICLE I

This Agreement is made and entered into by and between parties specified herein, is established by mutual consent of both parties, and sets forth specific rules and regulations to govern employment, wage scales and working conditions of journeyman roofers, apprentices, helpers, working foremen and all employees engaged in the application and the installation of materials described in Article II.

ARTICLE II

Section 1. The terms of this Agreement are hereby recognized and accepted as binding on both parties hereto, and shall apply in the manner and under conditions specified herein to the application and installation of any and all types of Asphalt Shingles; all cementing; laying of felt or paper; and all forms and kinds of plastic, slate, slag, gravel, asphalt, prepared paper and composition roofing; and all compressed paper, chemically prepared paper and burlap when used for roofing or damp and waterproof purposes; all damp courses, sheeting or coating on all foundation work; all tarred floors; all laying of tile or brick when laid in pitch, tar, asphalt mastic, marmolite, or any form of bitumen; and all other work in connection with or incidental thereto, all precast cement slabs when used for roof decks. The Employer agrees to give preference in hiring those apprentices, helpers and those skilled journeymen who have previously worked at the trade for Employers in this area.

. . .

ARTICLE III

. . .

Section 2. All present employees who are or become members of the Union shall remain members in good standing as a condition of their employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing in the Union as a condition of their employment, within eight (8) days following the beginning of their employment, or the effective date of this Agreement, whichever is the later. Membership in good standing in the Union shall consist solely of payment or tender of the initiation fee and monthly dues uniformly required as a condition of acquiring or retaining membership in the Union.

Section 3. All members that do not have their monthly dues paid for the current month, by the first day of said month, will not be considered as being in good standing, unless they are sick, injured or there is a lack of work. The union will indemnify and save harmless the Employer against any liability imposed by a court or administrative order, arising out of the enforcement of this section.

. . .

ARTICLE VII

The Employer shall carry workmen's compensation insurance with a company authorized to do business in this state; social security and such other protection as may be required by the

state of Illinois and the state of Wisconsin; and shall give satisfactory proof if requested to do so. Employers shall also make contributions to the Unemployment Compensation Commission to the respective states, as may be required by law and in this connection it is specifically agreed that Employer files a weekly report of low-wage earning with the Unemployment Commission.

. . .

#### ARTICLE XII

##### HEALTH AND WELFARE FUND

The Employer agrees to contribute to the Construction Industry Welfare Fund the sum of forty cents (40¢) per man per hour worked elevated to the nearest hour worked, for the Employee covered by this Agreement.

. . .

#### ARTICLE XIII

Section 1. For the purpose of arbitration between the two organizations named in this Agreement, in order that the provisions as specified in this Agreement shall be adhered to by all parties bound by this Agreement including jurisdictional problems, a Joint Board shall be formed consisting of three (3) members of the Roofers' Contractors and three (3) members of the Roofers' Local #6. Each organization may name one (1) alternate for this Board, if a regular member is not able to attend.

Section 2. All parties bound by this Agreement are subject to and agree to be bound by the decisions of the Board.

Section 3. In the event a violation of this Agreement by a contractor signatory hereto who is not a member of the Roofing Contractors, then said violation shall be referred to the Joint Board and the Joint Board shall then conduct a hearing on the alleged violation allowing the alleged violator an opportunity to be heard and if found guilty of the violation by simple majority, then the Joint Board shall recommend remedies for correction of said violation.

Section 4. In the event of a violation of this Agreement by a Roofing Contractor member, then said violation shall be referred to the Joint Board and the Joint Board shall conduct a hearing on the alleged violation allowing the alleged violator an opportunity to be heard and if found guilty of the alleged violation by simple majority, then shall be reported to the Executive Board of Roofers' Local #6 for action."

4. Respondent failed to prove by a clear and satisfactory preponderance of the evidence that James Johnson, the owner of Respondent was subjected to illegal duress or coercion by Complainant to induce his execution of the 1976 - 1978 collective bargaining agreement.

5. On March 2, 1978, Schultz addressed the following letter to Johnson, which in material part states as follows:

"This is to inform you that Johnson Roofing and Insulation Company is hereby being charged with breach of contract with Roofers' Local #6. You have failed to: 1) remit the applicants' money (for initiation fee), withheld from their payroll checks; 2) to remit money to Construction Industry Funds; 3) to deposit a bond for insuring such payments; and 4) deposit a certificate of workmens' compensation insurance with Roofers' Local #6. Therefore, you are to appear before the Joint Arbitration Board at 7:00 P.M., March 9, 1978, at the Labor Temple, 212 South First Street, Rockford, Illinois. At such time, you will be entitled to a fair hearing on these charges."

Each of the four charges stated above states a claim which on its face is covered by the collective bargaining agreement.

6. At Johnson's request said hearing was postponed to March 16, 1978. However, Johnson failed to appear at the March 16, 1978 hearing, and he continues to refuse to appear before the Joint Arbitration Board established under the above agreement.

Based upon the above Findings of Fact, the Examiner issues the following

#### CONCLUSIONS OF LAW

1. Respondent's employes are engaged primarily in the building and construction industry and therefore said agreement is governed by Section 111.06(1)(c)2 of the Wisconsin Employment Peace Act.

2. That each of the four charges contained in Schultz's letter to Johnson dated March 2, 1978, states a claim which on its face is governed by the 1976 - 1978 collective bargaining agreement; accordingly, Johnson Roofing and Insulation Company, by its refusal to appear before and process said charges through the Joint Arbitration Board, is violating and continues to violate the agreement in effect between Complainant and Respondent. As a result thereof, Respondent is violating and continues to violate Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner issues the following

#### ORDER

IT IS ORDERED that Johnson Roofing Company, its officers, agents, and assigns:

1. Cease and desist from refusing to process the four charges stated in the March 2, 1978 letter related above;

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

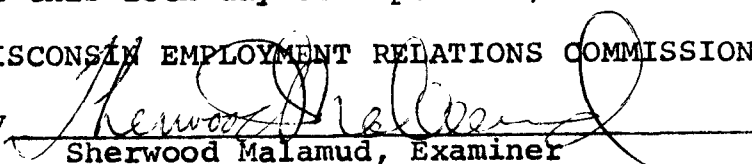
a. Upon request, Respondent shall appear before and participate in a hearing before the contractually established Joint Arbitration Board on the four charges stated in the March 2, 1978 letter related above;

b. Notify the Commission within twenty (20) days of the date of this order as to the action it has taken to comply herewith.

Dated at Madison, Wisconsin this 13th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Introduction and Positions of the Parties:

Complainant alleges that Respondent refuses to submit a grievance to the Joint Arbitration Board established under the 1976 - 1978 collective bargaining agreement. Complainant seeks an order from the Commission directing Respondent to appear and participate in proceedings before the Joint Arbitration Board.

Respondent states that it has a transient work force. Employees are told that they are to join the Union, but none have indicated any inclination to join Complainant and few remain with the Employer for any extended period of time. Respondent asserts that he pays union scale and he complies with other provisions of the agreement, but that with regard to some terms of the agreement he cannot comply; specifically, those which require him to collect the initiation fee and contribute to the various industry funds.

Discussion:

The Wisconsin Employment Peace Act at Section 111.06(1)(f) makes it an unfair labor practice for an employer to violate the terms of a collective bargaining agreement. In this case, Complainant alleges that Respondent violated Article XIII, the arbitration provision, of the 1976 - 1978 agreement.

The sole question before the Examiner is whether the four issues stated in the March 2, 1978 grievance letter from Schultz to Johnson, each states a claim which on its face is covered by the collective bargaining agreement. 1/ The Examiner has no authority to decide substantive issues raised by the grievance. In light of the above legal principle, the Examiner now turns to a discussion of the facts presented in this case. Johnson, who appeared on behalf of Respondent, admitted that he executed the collective bargaining agreement. Respondent did not take issue with the fact that the March 2, 1978 grievance raises matters covered by the agreement, which issues under Article XIII are to be resolved through arbitration before the Joint Board.

Respondent's assertion of its inability to comply with all the financial obligations of the agreement goes to the merits of the dispute and is not properly before the Examiner. The consideration of that defense is for the Joint Arbitration Board.

Respondent presented two arguments aimed at the validity of the agreement. First, it argues that there was no vote authorizing the Union to represent Respondent's employees, and that Johnson signed the agreement under duress and in the face of a picket line.

Respondent's testimony with regard to the picketing and the circumstances under which the agreement was executed contain internal inconsistencies. 2/ Furthermore, Schultz denied that there was any picketing or that Respondent was subjected to any illegal coercion to induce his execution of the agreement. Accordingly, the Examiner gave no credence to this defense.

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1/ Edward Hines Lumber Company, (5854-A) 1/62; Handcraft Company, Inc., (13510-B) 1/76.

2/ Compare Johnson's testimony at p. 5 with his testimony on p. 8 of the transcript.

Respondent appears to have raised the issue that no referendum or election was conducted pursuant to Section 111.06(1)(c)1 wherein employees of Respondent vote in favor of an "all-union agreement" <sup>3/</sup> with the result that the Union shop provision contained in the agreement is invalid and the agreement void. Assuming, arguendo, that to be the intent of Respondent's argument, Section 111.06(1)(c)2 permits employers and labor organizations to execute and enforce all union agreements without a referendum where the employer is ". . . engaged primarily in the building and construction industry where the employees of such employer in a collective bargaining unit usually perform their duties on building and construction sites. . ." Section 111.06(1)(c)2. Respondent is engaged in the building and construction industry and the employees in this unit which is subject to this proceeding are engaged in building and construction work.

Accordingly, the Examiner concluded that no referendum was necessary to validate the union security provision contained in the 1976 - 1978 agreement and consequently, said agreement was not voided by the absence of a referendum or an election conducted by the Commission or an election conducted by the National Labor Relations Board. <sup>4/</sup>

Based upon the above analysis, the Examiner ordered Respondent, upon the request of Complainant, to appear before and participate in proceedings before the Joint Arbitration Board.

Dated at Madison, Wisconsin this 13th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Sherwood Malamud, Examiner

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- <sup>3/</sup> "The term 'all-union agreement' shall mean an agreement an employer and the representative of his employees in a collective bargaining unit whereby all or any of the employees in such unit are required to be members of a single labor organization." Section 111.02(9).
- <sup>4/</sup> By executing the agreement, the Respondent voluntarily recognized Complainant as the exclusive collective bargaining representative of Respondent's employees.