



BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 16513-E

NOW, THEREFORE, it is

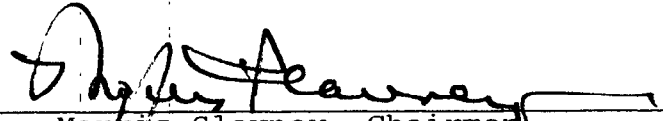
ORDERED


That the Examiner's Findings of Fact, Conclusions of Law and Order and his Supplemental Findings of Fact, Supplemental Conclusions of Law and Order, as well as the memoranda of the Examiner accompanying both decisions be, and the same hereby are, affirmed, and that therefore the Employer is hereby ordered to notify the Commission and the Union in writing within ten (10) days of the date of this order as to what steps it has taken to comply with the Examiner's order dated April 3, 1980.

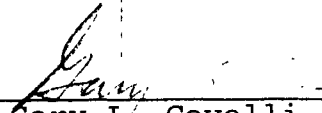
Given under our hands and seal at the
City of Madison, Wisconsin, this 8th
day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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

In its complaint initiating the instant proceeding the Union alleged that the Employer committed unfair labor practices in violation of Secs. 111.06(1)(f) and (g) of the Wisconsin Employment Peace Act (WEPA) by refusing to comply with an agreement to accept a decision of the Labor Management Committee, a tribunal established in a collective bargaining agreement in existence between the Union and the Employer, wherein said Committee found that the Employer had violated a collective bargaining agreement between it and the Union by failing to pay the proper wage rate to an employee of the Employer, and further, by not paying into certain funds as required in said collective bargaining agreement. The Union requested that the Commission find that the Employer committed said unfair labor practices and order the Employer to comply with the decision of the Labor Management Committee, and further that the Employer be ordered to cease and desist therefrom.

In its answer the Employer raised certain affirmative defenses, in effect contending that at the times material herein the Employer was not a party to any collective bargaining agreement with the Union, and that therefore it was not subject to the jurisdiction of the Labor Management Committee, or to any provision of the collective bargaining agreement claimed to be in effect by the Union. The Employer further alleged that even if an agreement were found to be in effect that the Employer was unlawfully coerced into becoming a party to said agreement, and, further, that in any event the Employer was subject to the jurisdiction of the National Labor Relations Board and not to the jurisdiction of the Wisconsin Employment Relations Commission.

Following hearing conducted in the matter, Examiner Stuart S. Mukamal, on May 16, 1979, issued Findings of Fact, Conclusions of Law and Order in the matter, wherein he concluded that the proceeding was properly within the jurisdiction of the Wisconsin Employment Relations Commission, and that the Employer was a party to a valid collective bargaining agreement with the Union, and therefore bound by its terms. The Examiner, however, concluded that the decision rendered by the Labor Management Committee was null and void since said Committee had denied due process to the Employer during the conduct of the proceeding before it, by denying the Employer the right to be present in the hearing room while testimony was being elicited from the employee on whose behalf the grievance involved had been filed. In his Order the Examiner set aside the decision of said Committee, and ordered that it be resubmitted to the Committee, and that the Committee provide the Employer an opportunity to present evidence, to examine witnesses and to make relevant argument relating to the grievance.

On May 22, 1979 the Union, by letter, advised the Examiner that it would resubmit the grievance involved to the Labor Management Committee in accordance with the Examiner's Order. On May 23 the Examiner received a copy of a letter, over the signature of Employer's Counsel,

to the effect that the Employer intended to file exceptions to the Examiner's decision with the Commission and that therefore, in the opinion of said Counsel, the hearing before the Committee was not appropriate at that time. On June 5, 1979 the Employer filed its petition requesting the Commission to review the Examiner's decision, contending that the Examiner erred in certain Findings of Fact and Conclusions of Law. The petition was accompanied by a detailed brief urging the Commission to dismiss the Union's complaint in its entirety.

In response to Employer Counsel's letter above noted, Counsel for the Union on May 23 directed a letter to Employer's Counsel, wherein the former indicated, among other things, that he deemed the Examiner's decision not to be an appealable decision because of the fact that the Examiner had ordered that the grievance involved be reheard by the Labor Management Committee.

On June 8, 1979 the Union filed a motion with the Commission requesting that the Employer's petition for review be dismissed, contending that the Examiner's decision was not a final decision, and therefore not appealable. The Commission did not rule on the petition for review.

On November 13, 1979 the Union filed an amended complaint alleging that the Labor Management Committee conducted a hearing on the grievance involved on June 15, 1979, that said Committee issued its decision in the matter on July 6, 1979 and that the Employer had failed and refused to comply with said decision, thereby committing unfair labor practices in violation of WEPA. The Employer filed an answer to said amended complaint, wherein it reaffirmed the defenses which had been alleged in its original answer, and further, the Employer denied the Commission of any unfair labor practice.

Pursuant to notice, the Examiner conducted further hearing in the matter on January 3, 1980, and following the receipt of briefs from the parties, the Examiner on April 3, 1980 issued his Supplemental Findings of Fact, Supplemental Conclusions of Law and Order, wherein he concluded that the Employer had committed unfair labor practices in failing to comply with the decision of the Labor Management Committee, which it issued following its hearing on June 15, 1979. The Examiner ordered the Employer to comply therewith by paying the employee involved a sum certain as back wages due and owing said employee, and further, to make certain payments to the Milwaukee Electrical Construction Industry Board due and owing by the Employer for fringe benefit contributions. The Examiner did not order that the Employer pay any interest on the sums involved, nor did he require the Employer to post any notices on his premises with regard to the unfair labor practices found to have been committed by the Employer.

On April 22, 1980 the Union filed exceptions to the Examiner's supplemental decision, primarily relating to the fact that the Examiner did not require the Employer to post notices and further that he did not assess interest against the Employer with respect to the sums found due and owing by the Labor Management Committee in its decision with regard to the grievance involved. Further, on April 23, 1980, the Employer filed a petition requesting the Commission to review the Examiner's original and supplemental decisions. Both parties also filed supporting briefs.

Basically the Employer contends that the Commission should reverse the Examiner on the following grounds:

1. The Employer is engaged in interstate commerce and therefore the Commission has no jurisdiction to apply the provisions of WEPA in the instant matter.
2. The Employer was coerced in signing the collective bargaining agreement alleged to be in existence herein, and in any event the Employer had revoked said agreement, and therefore was not bound thereby.
3. The decision of the Labor Management Committee was not a final and binding award, and further, said Committee was not a neutral body.

The Union would have the Commission require the posting of notices, and that interest be assessed against the Employer, at least since the date of the issuance of the decision of the Labor Management Committee.

We have reviewed the entire record, the various briefs of Counsel filed with the Examiner prior to the issuance of his decisions, and also the briefs filed by the parties with respect to their petitions filed with the Commission. The Examiner's decisions reflect a thorough and complete consideration of the facts involved, as well as applicable statutory and case law pertinent to the disposition of the issues. We adopt his Findings of Fact, Conclusions of Law and Order, as well as his Supplemental Findings of Fact, Supplemental Conclusions of Law and Order, and the rationale reflected in the Memoranda accompanying both decisions. All the significant arguments raised by the parties in requesting Commission review were raised by the parties in their briefs to the Examiner. We adopt his rationale in responding to said arguments, and we therefore affirm his decisions in their entirety.

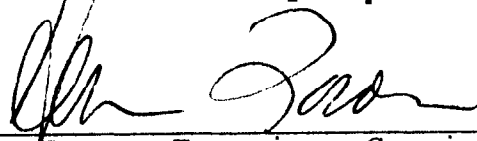
Dated at Madison, Wisconsin, this 8th day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



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