

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DARREL D. LEE, BUSINESS MANAGER FOR
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA - LOCAL NO. 140,

Complainant,

vs.

DEL KRAUS, INC.,

Respondent.

Case I
No. 23428 Ce-1792
Decision No. 16520-A

Appearances:

Darrel D. Lee, Business Manager, for Complainant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

Darrel D. Lee, Business Manager for Laborers' International Union of North America, Local No. 140, herein referred to as Complainant, having filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, herein referred to as the Commission, alleging that Del Kraus, Inc., herein referred to as Respondent, had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Michael F. Rothstein, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held on May 24, 1979, in La Crosse, Wisconsin, and a transcript of said hearing having been prepared and been made available to the parties; and the Examiner, having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant, Darrel D. Lee, is the Business Manager for Laborers' International Union of North America, Local No. 140, and that Local No. 140 is a labor organization with its office located at La Crosse, Wisconsin 54601.

2. That Respondent, Del Kraus, Inc., is a corporation engaged in the business of masonry and concrete work in the state of Wisconsin, with its principal office located at Route 3, Box 167, La Crosse, Wisconsin 54601; that at all relevant times Del Kraus acted as President of Respondent Corporation; that Respondent is a member of the La Crosse Construction Employer's Association, Inc., hereinafter referred to as the "Association"; that said Association and Complainant Local No. 140, are parties to a collective bargaining agreement; that Respondent also had a separate collective bargaining agreement with Complainant Local No. 140; and that included in the terms and conditions of the collective bargaining agreements between Complainant and Respondent and Association are provisions relating to the submission of disputes to arbitration.

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3. That on August 21, 1978, Complainant Darrel D. Lee did file with the Wisconsin Employment Relations Commission a complaint alleging that the Respondent refused to comply with the grievance and arbitration provisions of the collective bargaining agreements then in effect between Local No. 140 and Respondent Corporation; that, pursuant to the prayer in the complaint, the undersigned Hearing Examiner issued Notice of Hearing, scheduling said hearing for October 16, 1978 at La Crosse, Wisconsin.

4. That Complainant Darrel D. Lee, Respondent Del Kraus in his capacity as President of Del Kraus, Inc., and the undersigned Hearing Examiner met pursuant to the Notice of Hearing on October 16, 1978, at La Crosse, Wisconsin; that at said hearing the Complainant and Respondent agreed to waive their contractual rights under the existing collective bargaining agreements that were then in effect, and entered into a Stipulation. 1/

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STIPULATION

Pursuant to Notice of Hearing in the above-entitled matter, the Examiner met on October 16, 1978 at La Crosse, Wisconsin. By consent of the parties and with the approval of the Hearing Examiner, a pre-hearing conference was held at that time. As a result of the pre-hearing conference, the following Stipulation was entered into by the parties and approved by the undersigned Hearing Examiner;

- (1) That the Respondent shall forthwith send to the Complainant the sum of \$225, said sum representing the amount of dues check-off, provided for in the collective bargaining agreement.
- (2) That the Respondent shall make payments to the Complainant or shall present evidence that he has made payment to the Complainant, of those sums provided for in the collective bargaining agreement covering payments to the Health and Welfare Pension Funds of the Wisconsin Laborers; said sum shall be for the period from June 27, 1977 through June 27, 1978.
- (3) That the Respondent shall provide to the Complainant evidence of the hourly rates of pay and the number of hours worked for the one year period from June 27, 1977 through June 27, 1978 for all employees covered by the collective bargaining agreement employed by Respondent.
- (4) That the Respondent shall comply with all monetary provisions of the collective bargaining agreement from the period of June 1, 1978 through October 16, 1978 (the date of the pre-hearing conference in the above-entitled matter.)
- (5) That, upon complying with the provisions of paragraphs (1) through (4), the Complainant will move the Commission to dismiss the complaint previously filed in this matter alleging violations by the Respondent of 111.06(2)c of the Wisconsin Employment Peace Act.
[continued]

5. That in April of 1979 the undersigned Hearing Examiner was advised by a representative of the Complainant that the terms and conditions of the Stipulation had not been complied with and that a hearing was required to achieve a resolution of the dispute in issue; and that the undersigned Hearing Examiner scheduled the matter for hearing on May 24, 1979 at La Crosse, at which time formal proceedings were held.

6. That at the hearing on May 24, 1979, the Complainant appeared in person by Darrel D. Lee; that no one appeared for the Respondent even though Notice of Hearing had been sent to the Respondent; 2/ and that the Complainant testified that the Respondent had failed to comply with paragraphs 2, 3, 4, and 7 of Stipulation, but had complied with paragraph 1 of the Stipulation.

Upon the basis of the above and foregoing the Examiner makes and issues the following:

1/ [continued]

- (6) That failure of Respondent to comply with the provisions of this stipulation shall result in the Hearing Examiner setting this matter for formal hearing; the Hearing Examiner shall retain jurisdiction over the above-entitled matter until (a) compliance with the Stipulation has been fully made, or (b) a full hearing is held in the matter and a final decision is issued.
- (7) That all provisions of this stipulation shall occur within two (2) weeks of the signing of this stipulation.

Darrel D. Lee, Business Manager
and Complainant

(Date)

Leonard R. Chojnacki, Attorney
for Complainant

(Date)

Del Kraus, Owner and Manager of
Respondent, Del Kraus, Inc.

(Date)

Approved by _____
Michael F. Rothstein, Examiner

(Date)

- 2/ A Notice of Hearing was sent by certified mail, receipt of which is evidenced by return receipt for registered, insured and certified mail contained in the file and made a part of the record at the time of hearing.

CONCLUSIONS OF LAW

1. That the Stipulation entered into by and between the Complainant and Respondent on October 16, 1978 at La Crosse, Wisconsin is a binding agreement between the Complainant and Respondent affecting wages, hours and conditions of employment.

2. That Respondent, by his failure to comply with the terms of the Stipulation entered into on October 16, 1978, has violated Section 111.06(1)(f) of the Wisconsin Employment Peace Act by violating the terms of said Stipulation. 3/

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

ORDER

1. That the Respondent comply with the terms and conditions of the Stipulation entered into by Respondent on October 16, 1978; and more specifically, that Respondent comply with paragraphs 2, 3, and 4 of said Stipulation.

2. That the Respondent, within 20 days from the date hereof, notify the Wisconsin Employment Relations Commission in writing as to the steps that it has taken to comply with this Order.

Dated at Madison, Wisconsin this 4th day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Michael F. Rothstein
Michael F. Rothstein, Examiner

3/ Section 111.06(1)(f) provides as follows: "it shall be an unfair practice for an employer individually or in concert with others: ... (f) to violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award)."

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The original complaint filed in this matter alleged that the Respondent Del Kraus, Inc. had committed the unfair labor practice of violating the terms of a collective bargaining agreement by refusing to proceed to Arbitration. At the hearing on October 16, 1978, the parties mutually agreed that they would prefer to enter a Stipulation covering the issues which the Complainant would have raised had the Respondent agreed to arbitrate the matter. The parties entered a Stipulation providing for the payment of sums of money by the Respondent to the Complainant Union for dues check-off and health and welfare pension funds, disclosure of the hourly rates of pay and the number of hours worked for all employees covered by the collective bargaining agreement and employed by the Respondent, and further providing that Respondent would continue to comply with all monetary provisions of the collective bargaining agreement then in effect from the period of June 1, 1978 through October 16, 1978 (the date of the stipulation). The parties further agreed that by entering the Stipulation the original complaint would be dismissed if the terms of the Stipulation were carried out by the Respondent; and that if the Respondent failed to comply with the provisions of the Stipulation, the Hearing Examiner would schedule a formal hearing in the matter and issue a final decision.


Having been advised by the Complainant that the Respondent had failed to comply with the Stipulation, the undersigned Hearing Examiner scheduled a formal hearing. The Respondent was duly served with Notice of Hearing but failed to appear at the time of the hearing. No representative of the Respondent was present at the time of the hearing. The Complainant gave testimony at the hearing that the Respondent had, in effect, complied with the dues check-off provision of the Stipulation, but the Complainant further testified that the Respondent had failed to comply with all other terms of the Stipulation.

Since the Complainant and Respondent waived their mutual rights under the collective bargaining agreement to proceed to arbitration and entered a separate agreement which affected the wages, hours and working conditions of employees of the Respondent, the Examiner has concluded that Respondent's failure to comply with the Stipulation is a violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. The parties, upon entering the Stipulation, intended that the Stipulation would have the same effect as the original labor agreement which specified wages, hours and working conditions of employees of the Respondent as well as other members of the Complainant Union. The only testimony in the record is that of the Complainant stating that the Respondent did comply with the dues check-off provision of the Stipulation, but failed to comply with the other terms of the Stipulation. Based upon that testimony, the Hearing Examiner has concluded that the Respondent has violated the terms of a "collective bargaining agreement". as that term is used in Section 111.06(1)(f) of the Wisconsin Statutes (1975).

Dated at Madison, Wisconsin this 4th day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Michael F. Rothstein, Examiner