

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TILE, MARBLE & TERRAZZO FINISHERS
AND SHOPMEN UNION, LOCAL NO. 47,

Complainant,

vs.

DICKOW & CYZAK TILE COMPANY, INC.,

Respondent.

Case I
No. 24307 Ce-1817
Decision No. 16927-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Matthew R. Robbins, Esq., for the Complainant.
Mr. Chester Dickow, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matters; and the Commission having appointed James D. Lynch, a member of the Commission's staff to act as Examiner; and a hearing on said complaint having been held at Kenosha, Wisconsin on May 2, 1979; and the parties having waived their right to make closing statements or to file written briefs; and the Examiner having considered the evidence, arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Tile, Marble and Terrazzo Finishers and Shopmen Union, Local No. 47, hereinafter referred to as the Complainant, is a labor organization with offices located at 6667 North 89th Street, Milwaukee, Wisconsin; that James Judziewicz is the Business Representative for Local 47.

2. That Dickow and Cyzak Tile Company, hereinafter referred to as the Respondent, is engaged in the construction business and has its offices at 6403 75th Street, Kenosha, Wisconsin; that Chester Dickow is an officer and agent of the corporation.

3. That for the period of 1970-1978, the Respondent has been a signatory to the independent tile contractors' agreement with Local No. 47, Tile, Marble & Terrazzo Finishers and Shopmen's Union.

4. That on July 7, 1978, Judziewicz on behalf of Local No. 47, sent a letter to Dickow detailing the terms of the 1978-1980 independent tile contractors' agreement; that following receipt of said letter, Dickow began making payment of wages and fringe benefits as required by the 1978-1980 independent tile contractors' agreement; that by said conduct, Respondent agreed to be bound by the terms of the independent tile contractors agreement.

5. That in early October 1978, Judziewicz met with Dickow and presented him with two copies of the current agreement; that at that time Dickow told Judziewicz that he would look the contract over and send back a signed copy to Judziewicz after he had done so.

No. 16927-A

6. That early November 1978, Judziewicz had a phone conversation with Dickow which he inquired regarding the whereabouts of the agreement which Dickow had earlier agreed to send to him; that Dickow told Judziewicz "Jim, I have been so busy. I will sign it and send it right back to you."

7. That thereafter in early December, 1978, Dickow notified Judziewicz that he would not sign the 1978-1980 independent tile contractors' agreement; that Dickow continues to refuse to sign said agreement.

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

CONCLUSION OF LAW

That Dickow and Cyzak Tile Company, Inc., by failing and refusing to execute the written collective bargaining agreement covering its employees for the period from June 1, 1978-May 30, 1978, which written agreement reflected terms orally agreed upon by representatives of Dickow and Cyzak Tile Company and Local No. 47, Tile, Marble and Terrazzo Finishers and Shopmen's Union, has refused, and continues to refuse, to bargain in good faith with Tile, Marble and Terrazzo Finishers and Shopmen's Union, Local No. 47, and in that regard Dickow and Cyzak Tile Company, Incorporated has committed, and continues to commit, an unfair labor practice within the meaning of Section 111.06(1)(d), and (a) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Dickow and Cyzak Tile Company, Inc., its officers and agents, shall:

1. Immediately cease and desist from:

(a) Refusing to execute the collective bargaining agreement agreed to by it and Tile, Marble and Terrazzo Finishers and Shopmen's Union, Local No. 47 in October, 1978.

2. Immediately take the following affirmative action which will effectuate the policies of the Wisconsin Employment Peace Act:

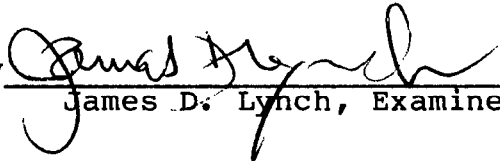
(a) Immediately execute the collective bargaining agreement reached between it and Tile, Marble and Terrazzo Finishers and Shopmen's Union, Local No. 47 and upon such execution forward a signed copy thereof to said labor organization, and immediately comply to the terms of said agreement, retroactive to June 1, 1978.

(b) Notify its employees by posting in conspicuous places on its premises, where notices to all its employees are usually posted a copy of the notice attached hereto "Appendix A". Such copy shall be signed by Chester Dickow and shall be posted immediately upon receipt of a copy of this Order, and shall remain posted for a period of thirty (30) days thereafter. Reasonable steps shall be taken by Respondent, Dickow and Cyzak Tile Company, Inc., to insure that said notice is not altered, defaced or covered by other material.

(c) Notify the Examiner, in writing, within twenty (20) days after the receipt of this Order what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 20th day of July, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
James D. Lynch, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employees that:

We will immediately execute the collective bargaining agreement reached between us and Tile, Marble and Terrazzo Finishers and Shopmen's Union, Local No. 47 and forward a signed copy thereof to said labor organization, and immediately comply with the terms of said Agreement retroactive to June 1, 1978.

Dated this day of , 1979.

By _____

Chester Dickow
Dickow & Cyzak Tile Co., Inc.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSION OF LAW AND ORDER

PLEADINGS:

The complaint filed herein by Complainant, Tile, Marble and Terrazzo Finishers and Shopmen's Union, Local No. 47, alleges that Respondent refused and continues to refuse to execute a collective bargaining agreement between it and Respondent in October, 1978.

Respondent filed no written answer to the complaint, and at hearing did not deny its allegations. Rather, Respondent argued adherence to the terms of the contract would place it in a non-competitive market position, and, thus, it should be excused from signing said agreement.

DISCUSSION:

The facts are as follows. Dickow & Cyzak is a tile setting construction company which specializes in remodeling bathrooms. It employs various individuals in the classifications of Tile layer and tile finisher to perform this work. Individuals occupying the classification of tile finishers are represented by Local No. 47, Tile, Marble and Terrazzo Finishers and Shopmen's Union. Dickow and Cyzak has been a signatory to four successive collective bargaining agreements known as the independent tile contractors' agreement, with Local No. 47, for the period of 1970-1978.

Complainant's uncontradicted testimony establishes that Respondent, by its officer and agent Chester Dickow, orally agreed to the terms of the independent tile contractors' agreement in a conversation with Jim Judziewicz in a conversation in October, 1978. At that meeting, Judziewicz tendered to Dickow two copies of the agreement to sign. Dickow requested time to peruse the agreement and promised to return a signed copy to Judziewicz shortly thereafter. In a telephone conversation in November, 1978, he again reiterated his intention to sign the agreement. Thereafter, in December, 1978, Dickow advised Judziewicz that he did not intend to sign the agreement. For the period from July 7, 1978 through the time which Dickow disavowed the agreement, Employer made all wage and fringe benefits in accordance with the terms of the collective bargaining agreement.

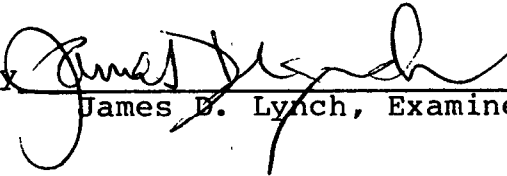
As noted above Respondent does not deny these facts. Rather, Respondent argues that so far as the contract does not provide for a wage differential in the amount of \$1.00 an hour between tile layers and finishers, the contract has a deleterious financial impact which places the Employer in a non-competitive market position when bidding on jobs.

Respondent's economic argument, however, does not provide a legal defense. This proceeding is not concerned with the wisdom of the economic bargain once struck between the parties to a contract. It is rather concerned with the question of whether the parties reached agreement on the terms of the contract which Respondent thereafter refuses to execute. The duty to bargain imposed by Section 111.06(1)(d) imposes a legal duty to execute in writing a collective bargaining agreement once its terms have been agreed upon. On the basis of the uncontradicted evidence, the Examiner hereby finds that Dickow and Cyzak Tile

Company, Inc., agreed to the terms of the 1978-1980 independent tile contractors' agreement and is bound thereby. Having found that a binding contract exists, Respondent is hereby ordered to execute same.

Dated at Madison, Wisconsin this 20th day of July, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
James E. Lynch, Examiner