

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROOFERS LOCAL #6, PHILIP SCHULTZ,
BUSINESS AGENT,

Complainant,

vs.

WEATHERCRAFT, INC.

Respondent.

Case II
No. 26261 Ce-1868
Decision No. 17872-A

Appearances:

Mr. Philip Schultz, Business Agent, United Union of Roofers,
Waterproofers & Allied Workers, Local #6, 212 South First
Street, Rockford, Illinois 61104, on behalf of the Union.
No Appearance on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practice was filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission appointed Stephen Pieroni to act as Examiner in the matter. Hearing on the matter was originally scheduled for July 1, 1980 in Madison, Wisconsin at which time the Complainant-Union appeared by Mr. Schultz, but the Respondent-Employer failed to appear. At that time there was no record that the Employer was served with Notice of the hearing by certified mail. Therefore hearing on the matter was rescheduled for July 22, 1980 at Windsor, Wisconsin. The Union appeared by Mr. Schultz. Respondent-Employer failed to appear. The Employer was served with Notice of said hearing by certified mail.

Having considered the evidence and arguments submitted at hearing by the Complainant and being fully advised in the premises as the proceeding would permit, the matter having been duly noticed for hearing with opportunity afforded to Respondent to present evidence and make argument, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union is a labor organization which at all times material hereto represented a bargaining unit of certain classifications of employees in the employ of the Employer, Weathercraft, Inc. William Knight and Terry Kolthoff were members of the bargaining unit represented by the Union. Philip Schultz is the Business Representative for the Union.

2. The Employer operates a roofing company. Its principal office is located at 6778 Depot Road, Windsor, Wisconsin. Mr. Mark Jiran is the president of the company.

3. That at all times material hereto, the Union and the Employer have been parties to a collective bargaining agreement which provided for inter alia, wage payments, penalty payments, car payments and final and binding arbitration of unresolved disputes by a Joint Arbitration Board.

4. The Union filed a grievance on the behalf of employes Terry Kolthoff, William Knight and Pat Hanford regarding wage payments, penalty payments and car payments allegedly owed by the Employer.

5. Said grievance on behalf of the employes was processed to arbitration provided by the collective bargaining agreement and said Joint Arbitration Board on May 7, 1980 ruled as follows:

- 1) William Knight is owed \$16.00 in wages.
- 2) William Knight is owed \$40.00 in car expenses.
- 3) William Knight and Terry Kolthoff are both due 26 hours in penalty pay each. (Wm. Knight - $26 \times 10.01 = \$260.26$)
(Terry Kolthoff - $26 \times 13.35 = \$347.10$)
Penalty pay is not hours worked and no deductions shall be taken.
- 4) All payments are to be made by cashiers or certified check and forwarded to Roofers Local #6, 212 South First St., Rockford, Il. 61104, for disbursement, no later than seven days after the mailing of this letter. (Exhibit 2)

Said Award was sent to Weathercraft, Inc. at Box 377, Windsor, Wisconsin and same was claimed by Mr. Mark Jiran as evidenced by certified mail.

6. On July 22, 1980 at 1:00 p.m. these matters came to be heard before the Examiner. The Union appeared by Mr. Philip Schultz. The Employer did not appear. The Employer was served Notice of said hearing by certified mail. Prior to the hearing the Examiner attempted, without success, to contact the Employer by telephone. The hearing was held, testimony was adduced and exhibits were introduced relative to the complained of matters.

7. The Employer has failed and refused to comply with the terms of the Arbitration Award set forth in paragraph 5 above.

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

CONCLUSION OF LAW

1. The Employer, by its failure to comply with the terms of the Award rendered by the Joint Arbitration Board, dated May 7, 1980, has violated the terms of the parties collective bargaining agreement which provides for final and binding arbitration and thereby violated Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act. 1/

1/ Sec. 111.06(1)(f) provides:

It shall be an unfair labor 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).

ORDER

IT IS ORDERED that Weathercraft, Inc., its successors and assigns shall immediately:

1. Cease and desist from refusing to comply with the terms of the Award rendered by the Joint Arbitration Board, dated May 7, 1980.
2. Take the following affirmative action which the Commission finds will effectuate the policies of the Act:
 - a) Immediately make payment by certified check to the order of William Knight in the amount of \$316.26 and mail same to Roofers Local #6, 212 South First Street, Rockford, Illinois 61104, as the remitting agent for payment of wages, car expenses and penalty pay as required by said Arbitration Award.
 - b) Immediately make payment by certified check to the order of Terry Kolthoff in the amount of \$347.10 and mail same to Roofers Local #6, 212 South First Street, Rockford, Illinois 61104, as the remitting agent for payment of penalty pay as required by said Arbitration Award.
 - c) Notify the Wisconsin Employment Relations Commission, in writing, within 20 days following the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 7th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Stephen Pieroni
Stephen Pieroni, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The complaint filed herein charged that the Employer failed to comply with an Arbitration Award as required by the parties' collective bargaining agreement and thereby violated Sec. 111.06(1)(f) Wis. Stats.

The record establishes that hearing on the matter was originally scheduled for July 1, 1980 in Madison, Wisconsin. The Union appeared by Mr. Philip Schultz. The Employer failed to appear. The record indicates that a copy of the Notice of Hearing was sent to the Employer but same was not sent by certified mail. Without proof of service of process on the Employer, the Examiner rescheduled the matter for hearing on July 22, 1980 in Windsor, Wisconsin. Notice of said hearing was sent by certified mail to the Employer at its mailing address (P.O. Box 377, Windsor, Wisconsin 53598) and to the address of its president, Mr. Mark Jiran, at 6778 Depot Road, Windsor, Wisconsin 53598. Receipt of said certified mail was signed by Mr. Jiran in both instances. On July 22, 1980 the Union appeared by Mr. Schultz. The Employer failed to appear at the hearing.

The evidence of record also establishes that the Employer received notice of the arbitration hearing but failed to appear at that hearing as well. Mr. Schultz made a record for the Joint Arbitration Board. On the basis of the record the Joint Arbitration Board rendered an Award and notified the Employer of its decision on May 7, 1980. (see Findings of Fact 5 and Exhibit 2)

On the basis of the record, it is evident that the Employer has failed and refused to comply with the terms of the Arbitration Award dated May 7, 1980 as required by the parties' collective bargaining agreement. (Exhibit 1, Article X, Sec. 3; Article XI, Sec. 1 and 2; Article XIII, Sec. 2 and 3) Therefore the Examiner finds that the Employer violated the collective bargaining agreement and thereby Sec. 111.06(1)(f) Wis. Stats. As a remedy therefor, Weathercraft, Inc., its successors and assigns must comply with the terms specified in the foregoing Order.

Dated at Madison, Wisconsin this 7th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Pieroni
Stephen Pieroni, Examiner