

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

Case I
No. 26599 Ce-1876
Decision No. 17980-A

Thomas W. Ryan, 1904 Circlewood Drive, Racine, Wisconsin 53403,
appearing as Respondent.

3. Respondent had executed a collective bargaining agreement with the Road Sprinkler Fitters Local Union No. 669, of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada - a labor organization with its offices at 45 Kensico Drive, P. O. Box 719, Mount Kisco, New York 10549 - which agreement was effective at all times relevant to the instant proceeding as well as at all times relevant to the grievance arbitration proceeding set forth in Finding of Fact No. 5 below and which agreement by its terms, provided at Article 3, "Recognition":

"The National Automatic Sprinkler and Fire Control Association, Inc. for and on behalf of its contractor members that have given written authorization and all other employing contractors becoming signatory hereto, recognized the Union as the sole and exclusive bargaining representative for all Journeymen Sprinkler Fitters and Apprentices in the employ of said Employers, who are engaged in all work as set forth in Article 18 of this Agreement with respect to wages, hours and other conditions of employment."

4. Complainant, is an employee within the definition of "all Journeymen Sprinkler Fitters and Apprentices in the employ of said Employers" as set forth in Finding of Fact No. 3, above, and is therefore entitled to the benefits provided by the collective bargaining agreement at issue here.

5. Said collective bargaining agreement provides for grievance arbitration as follows:

ARTICLE 25

Grievance Procedure and Arbitration:

. . .

All disputes and grievances relative to the interpretation or application of this Agreement, shall be processed in the following manner:

Step 1 - The employee or Union representative in the employee's behalf shall within fifteen (15) working days of the occurrence of the grievance or dispute, discuss with the Employer's representative the employee's grievance or dispute.

If the grievance or dispute is not settled to the satisfaction of the employee,

Step 2 - The employee must, within the twenty (20) working days of the occurrence of the alleged grievance or dispute, reduce this grievance to writing, setting forth the date, time and place, section of the Agreement and relief sought with which the grievance or dispute is concerned and submit by certified mail, one (1) copy each to the Business Manager of the Local Union, the Employer and the President of National Automatic Sprinkler and Fire Control Association, Inc. (45 Kensico Drive, P. O. Box 719, Mount Kisco, New York 10549) for discussion and possible resolution.

Step 3 - If within thirty (30) working days after referral to Step 2, the Union and Employer cannot resolve the alleged grievance or dispute, then the matter shall be referred to an Impartial Arbitrator.

If the Union and the Employer are unable to agree upon an Impartial Arbitrator within a period of ten (10) working days, then either may request the Federal Mediation and Conciliation Service to submit a list of seven (7) names. After receipt of the names of seven (7) Arbitrators, the Union and the Employer shall meet and alternate in striking

three (3) names from the list, with the first strike decided by a toss of a coin.

The remaining name after the Union and the Employer have struck three (3) names from the list shall be the Impartial Arbitrator. The decision of the Impartial Arbitrator shall be final and binding on the parties to Arbitration. The duties of the Arbitrator shall be limited to the interpretation and application of the Agreement, and the Arbitrator shall have no powers to change or amend the Collective Bargaining Agreement.

The parties to Arbitration shall bear the expense of its witnesses and legal fees. The fees and expenses of the Arbitrator shall be paid by the loser.

The National Automatic Sprinkler and Fire Control Association, Inc. shall have the right to participate as an intervenor in any and all disputes arising under this Article.

. . .

6. Pursuant to Article 25, of the collective bargaining agreement, Complainant initiated a grievance which was duly processed to arbitration. The parties selected Arbitrator Reynolds C. Seitz to resolve the grievance. Arbitrator Seitz issued the following Decision and Award on October 18, 1979:

In the Matter of Arbitration)	
Between)	
RYAN MECHANICAL, INC.)	FMCS 79K/07058
and)	<u>GR. 601-10-78</u>
ROAD SPRINKLER FITTERS)	
LOCAL UNION NO. 669, U.A.)	

Introduction

A hearing was held before the undersigned at the Holiday Inn, Racine, Wisconsin on October 5, 1979. No certified reporter was present. The arbitrator took his own notes.

Appearances to Present the Case

For the Union --- Eugene J. Rice
Business Agent

For the Company - Tom Ryan

Pertinent Contract Provisions

Article 7 - Wage Rates

Wages shall be paid on or before 4:30 P.M. each Friday, including all wages due up to and including the previous Friday.

An employee who doesn't receive his pay check at the time set forth in this Article shall be entitled to eight (8) hours pay.

It is further understood that the employee then has the responsibility to notify the Employer concerning the late pay check and subsequent to notification, the employee shall be entitled to eight (8) hours pay for each twenty-four (24) hour period, until he receives his pay check.

Article 25 - Grievance Procedure and Arbitration

The fees and expenses of the Arbitrator shall be paid by the loser.

Background and Positions of the Parties

The Grievant in this case is Alexander Grubor, an employee of the Company at the time the grievance was filed. He complained that he did not get a pay check until October 16, 1978 which was 21 days after it was due. Relying upon the section of Article 7 quoted above the Grievant asks for 168 hours pay at his per hour rate. (Which at the hearing was estimated to be a rate of \$9.47 per hour.)

The Grievant asserted that when he did not get his check on the day he was due to receive it, he immediately phoned the Company and left his name and address with its answering service. He stated he repeated his calls at least three times a week for one and one half weeks -- each time leaving his name and telephone number. Finally the Grievant contacted the Union Representative.

The Grievant testified that at the time his telephone number and address was in the telephone book under the same address listed for his mother and father.

The only person present at the hearing connected with the Company was Tom Ryan. He testified the check was not sent out because the Grievant did not have his address on file and that he had tried a number of times to call the telephone number listed for the mother of the Grievant but received no answer. Tom Ryan could not explain why the address was not on a Federal Income Tax W-2 Form and when on the day of the hearing he called his wife who had Company records he was told no W-2 Form was in the file. Ryan asserted that he finally got the address from the Union Representative.

In response to Ryan's claim that he called the phone listed for Ryan's mother the Grievant asserted that it was unbelievable that his mother would not have been at home but if she has not been his father would have certainly been present because his parents worked opposite shifts.

Discussion and Opinion

This is a case in which the arbitrator found the Grievant to be a very credible witness. He believes his name and address was in the telephone book. Furthermore, he believes that the Grievant did call the Company answering service and left his name and address with such service.

In view of the fact that Tom Ryan had to be called on the day of the hearing and reminded that all parties were waiting

for him, the arbitrator feels that Ryan may simply not be too organized when it comes to keeping track of all office matters. It was apparent Ryan had no office staff and that it was necessary to devote his major energies to operations in the field. At any rate the arbitrator is convinced that the delay in getting the check to the Grievant was not because the address was not readily available.

The Award

The Grievant is entitled to the extra payment as spelled out in that part of Article 7 set forth above. Unless the Company is able to establish that there was an error in the figures submitted at the hearing, the Grievant is to be paid for 168 hours at his hourly rate of \$9.47 per hour.

DATE October 18, 1979

SIGNED /s/
Reynolds C. Seitz
Impartial Arbitrator
1103 West Wisconsin Avenue
Milwaukee, WI 53233

7. Roy W. Pantell, Business Manager, Local Union 669, sent the following correspondence to Mr. Thomas W. Ryan, President of Respondent on November 8, 1979:

November 8, 1979

Mr. Thomas W. Ryan, President
Ryan Mechanical Contractors, Inc.
1904 Circlewood Drive
Racine, Wisconsin 53402

Re: Grievance #601-10-79
Alexander Grubor vs.
Ryan Mechanical

Dear Mr. Ryan:

Per Arbitrator Seitz's award dated October 18, 1979, your company is to pay the grievant 168 hours at his hourly rate of \$9.47 per hour.

Please send check for that amount to this office, made out to Alexander Grubor and we will forward same to Mr. Grubor.

Thank you for your cooperation concerning this matter.

Yours truly,

Roy W. Pantell
Business Manager
Local Union 669

RWP:mer

cc: Eugene J. Rice

Eugene J. Rice, Business Agent, District 15, Local Union 669, sent the following correspondence to Ryan on December 21, 1979:

December 21, 1979

Ryan Mechanical Contractors, Inc.
1904 Circlewood Drive
Racine, Wisconsin 53402

Re: Alexander Grubor grievance

Dear Mr. Ryan:

The above mentioned grievance has come to arbitration and an award has been prescribed by the arbitrator (copy enclosed). Payment by your firm is long overdue. Please remit to this office payment in full payable to Alexander Grubor on or before January 1, 1980.

In the unlikely event that your payment does not arrive by January 1, 1980, we will withdraw all 669 members from your employ and advertise to the public your refusal to abide by the arbitrators decision, as per Article 25 of our current collective bargaining agreement.

If you have any questions, please feel free to call me at 715/823-2372.

Very truly yours,

/s/
Eugene J. Rice
Business Agent, District 15
Local Union 669

EJR:mg
Enclosure
cc: Roy Pantell
Alexander Grubor

8. At no time subsequent to the issuance of the above Award has Respondent submitted to Complainant the sum set forth in said Award, nor has Complainant established that a sum other than that set forth in said Award was the proper rate of pay.

Based on the above and foregoing Findings of Fact, the Examiner makes and enters the following

CONCLUSION OF LAW

Respondent, Ryan Mechanical, Inc., by failing and refusing to make the payment to Complainant of \$9.47 per hour for 168 hours and by failing and refusing to establish that an error was made in the computation of said hourly rate as required in the Award of Reynolds C. Seitz issued on October 18, 1979, has continued and continues to commit, an unfair labor practice within the meaning of Section 111.06(1)(g) of the Wisconsin Employment Peace Act,

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

ORDER

IT IS ORDERED that the Respondent, Ryan Mechanical, Inc., its officers and agents shall immediately:

1. Cease and desist from failing and refusing to comply with the Award issued by Arbitrator Reynolds C. Seitz on October 18, 1979, with respect to wages due and owing Alexander Grubor.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act.:
 - (a) Immediately pay Alexander Grubor \$9.47 per hour for 168 hours.
 - (b) Notify the Wisconsin Employment Relations Commission in writing, within 10 days of the receipt of a copy of this Order, as to what steps it has taken to comply herewith.

Dated at Milwaukee, Wisconsin this 4th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Timothy E. Hawks
Timothy E. Hawks, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant alleges that Respondent has failed to comply with an arbitration award and has therefore committed an unfair labor practice as defined by Section 111.06(1)(g) of the Wisconsin Employment Peace Act. This section provides:

"It shall be an unfair labor practice for an employer individually or in concert with others: . . . To refuse or fail to recognize or accept as conclusive of any issue in controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer accepted."

It is an unfair labor practice as defined above to refuse to comply with arbitration award. 1/ The award in the instant case provided that:

"Unless the Company is able to establish that there was an error in the figures submitted at the hearing, the Grievant is to be paid for 168 hours at his hourly rate of \$9.47 per hour."

Although Arbitrator Seitz, provided in his award that Respondent could compute the wage earned by Complainant and pay said amount rather than \$9.47 per hour, Respondent failed to submit any sum to Complainant. At the time of the hearing when the Examiner asked Thomas Ryan, 2/ President of Respondent, what was the proper hourly wage, Ryan responded:

THE EXAMINER: . . . Do you have any further testimony or argument you'd like to make in this proceeding?

MR. RYAN: Yeah, the amount they are asking for here.

THE EXAMINER: And your argument, sir?

MR. RYAN: What they are asking for is not correct.

THE EXAMINER: And how is it in error?

MR. RYAN: They have some down to nine something an hour, which he never earned while he was employed by me.

1/ Giraffe Electric, Inc. (16513 A-E) 12/80; Bi State Trucking Corp. (9924-A) 2/71; General Drivers Local No. 89 v. Riss & Co., 372 US 517.

2/ Ryan failed to promptly appear before Arbitrator Seitz, who thereupon called him to require his presence. Similarly, after repeated and ultimately successful efforts to serve Respondent with the instant complaint and Notice of Hearing, he failed to appear promptly at the scheduled hearing, at which time the undersigned contacted Ryan to require his presence and postponed the hearing four hours so as to allow his attendance.

THE EXAMINER: What was the amount that he should have earned in your opinion?

MR. RYAN: The amount -- I was paying them eight dollars seventy cents an hour, whatever. I don't have a calculator here.

THE EXAMINER: Mr. Ryan, did you make that argument before the grievance arbitrator, Mr. Seitz?

MR. RYAN: They didn't know what they earned at the meeting. I didn't know either. I have no records with me. They assumed it was about nine dollars and forty-two cents an hour, or whatever they have written down there.

THE EXAMINER: Did you make an argument before Mr. Seitz that was incorrect?

MR. RYAN: I didn't have time to do anything at that meeting.

THE EXAMINER: Okay. Do you have any further argument, Mr. Ryan?

MR. RYAN: No, I guess not.

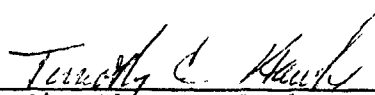
Representatives of the Complainant corresponded with Ryan in November and December of 1979, to request that he submit the sum owed to Complainant. Ryan made no response. Arbitrator Seitz imposed a burden upon Ryan "to establish that there was an error in the figures submitted at the hearing". Over a year elapsed from the date of the Award to the date of the hearing before the undersigned. At no time did Ryan attempt to establish by an objective means that Complainant's hourly rates were less than that which Arbitrator Seitz set in his award. He made no reference to the contractually established wage. He made no effort to offer evidence of hours worked or of wages actually paid. Other than the unsupported allegation set out in the transcript testimony above there is no reason to discredit Arbitrator Seitz's conclusion that the appropriate hourly rate of the Complainant was \$9.47.

Since the Respondent has failed to establish an error in the rate established by Arbitrator Seitz, at any time during the last year or at the hearing before the undersigned it is proper to enforce the Award issued by the Arbitrator at the rate he set therein.

Dated at Milwaukee, Wisconsin this 4th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Timothy E. Hawks, Examiner