

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILLIAM FORREST, BUSINESS MANAGER,
UNITED BROTHERHOOD OF CARPENTERS &
JOINERS OF AMERICA, LOCAL 836,

Complainant,

vs.

BAILEY CONSTRUCTION COMPANY,

Respondent.

Case V
No. 27228 Ce-1888
Decision No. 18371-A

Appearances:

Mr. William Forrest, Business Manager, United Brotherhood of
Carpenters & Joiners of America, Local 836, 215 Dodge
Street, Janesville, Wisconsin, appearing on behalf of
the Complainant.

Respondent did not appear in person or otherwise. 1/

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The above-named Complainant having filed a complaint with the Wisconsin Employment Relations Commission on December 19, 1980, alleging that the above-named Respondent had committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed David E. Shaw, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats.; and hearing on said complaint having been held in Milwaukee, Wisconsin on January 27, 1981 before the Examiner; and the Examiner having considered the evidence and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the United Brotherhood of Carpenters and Joiners of America, Local 836, hereinafter referred to as the Complainant, is a labor organization having its offices at 215 Dodge Street, Janesville, Wisconsin. At all times material herein William Forrest has been the Business Manager of the Complainant.

1/ As noted above, Respondent did not appear in person or otherwise at the hearing. Notice of Hearing on Complaint was sent to Respondent's last known mailing address by certified mail on January 6, 1981, but was returned unclaimed. Notice of Hearing was then sent to Respondent by regular mail on January 14, 1981. No Answer was filed by Respondent. On the day of the hearing, January 27, 1981, the Examiner attempted to contact the Respondent by telephone, but was only able to speak to an answering service. The Examiner left word with the answering service that he would delay the hearing by one-half hour for the Respondent's appearance and then would proceed with the hearing. The hearing was then held without the Respondent present. After the close of the hearing the Examiner, by certified letter dated January 30, 1981, notified Respondent that a hearing had been held and accorded Respondent the opportunity to receive a copy of the transcript and to file a brief. This letter was returned unclaimed. A similar letter was sent to Respondent by regular mail on March 13, 1981, giving Respondent until March 20, 1981, to contact the Examiner to show cause why the record should not be closed in the matter. Respondent did not reply, and the record was closed.

2. That Bailey Construction Company, hereinafter referred to as the Respondent, is an employer having its offices at 2857 Bartells Drive, Beloit, Wisconsin.

3. That by the Letter of Assent dated April 11, 1979, Respondent agreed to be bound by the terms of the Collective Bargaining Agreement negotiated between Complainant and the Southern Wisconsin Association of Contractors and Lakeland Contractors Association of Wisconsin; and that said Collective Bargaining Agreement is effective from June 1, 1979 until May 31, 1983, and sets forth the terms and conditions of employment for certain employees of the Respondent when performing work within the jurisdiction of the Complainant.

4. That the Collective Bargaining Agreement to which Complainant and Respondent are parties has at all times material hereto been in effect; and that said agreement contains the following relevant provisions:

Area Covered by Agreement

The Working Rules herein contained are applicable in their entirety within the jurisdiction of Local Union 836 Janesville, Wisconsin, and includes all of the counties of Green, Rock, Walworth and that portion of Jefferson County lying south of I-94 and that portion of Racine County lying west of Highway 75.

Article I

Duration of Agreement

Section 1.1 This Agreement shall be binding upon the parties, their successors and assigns, and shall become effective as of 1 June 1979 and shall continue in full force and effect until 31 May 1983 and from year to year thereafter, unless terminated by written notice given by either party to the other not less than (90) days prior to such expiration date, or anniversary thereof except that either party may upon written notice at least ninety (90) days prior to 1 June 1981, open this Agreement for negotiating a change in hourly wage rates for the duration of this Agreement.

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Article III

Grievances and Arbitration

Section 3.1 All grievances arising under this contract shall first be submitted to an authorized representative of the union who in turn shall immediately present the same to the representative of the contractor, both of whom shall attempt to dispose of the grievance within twenty-four (24) hours from the time of occurrence. If they are unable to dispose of such grievance within that period of time, then the grievance shall be referred to the Arbitration Committee, hereinafter described.

Section 3.2 An Arbitration Committee, composed of two (2) representatives of the Contractor and two (2) representatives of the Union, shall consider all grievances referred to them and if they are unable to agree within forty-eight (48) hours after the grievances are referred to them, they shall select an Arbitrator within two (2) days. In the event the parties are unable to agree upon an Arbitrator within two (2) days, they in that event shall request the Wisconsin Employment Relations Commission to appoint a staff Arbitrator immediately.

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Section 3.5 The Trustees and/or administrators of the fringe benefit funds and plans, health and welfare, pension, vacation plan, apprenticeship and training (to which payments are required to be made by employers under this Agreement) may for the purpose of collecting any payments required to be made to such funds and plans, including damages and costs, and for the purpose of enforcing rules of the Trustees and/or administrators concerning the inspection and audit of payroll records, seek any appropriate legal, equitable and administrative relief, and they shall not be required to invoke or resort to this grievance or arbitration procedure.

Article IV

Wage Rates

Section 4.1 Hourly Wage Rates: The minimum hourly wage rates (plus fringe benefit fund contributions*) shall be as follows:

1 June 1979

	Base Wage	H & W	Pension	A & T	Vacation**	Working** Assessment
Carpenter	11.70	+.60	+.60	+.10	-.80	-.15
Sub-Foreman	12.30	+.60	+.60	+.10	-.80	-.15
Foreman	12.70	+.60	+.60	+.10	-.80	-.15
Pile Driver	11.85	+.60	+.60	+.10	-.80	-.15
Leadsman	11.95	+.60	+.60	+.10	-.80	-.15
Foreman	12.95	+.60	+.60	+.10	-.80	-.15
Millwright	12.27	+.60	+.60	+.10	-.80	-.15
Foreman	13.27	+.60	+.60	+.10	-.80	-.15

1 January 1980

	Base Wage	H & W	Pension	A & T	Vacation**	Working** Assessment
Carpenter	11.83	+.60	+.70	+.12	-.85	-.18
Sub-Foreman	12.43	+.60	+.70	+.12	-.85	-.18
Foreman	12.83	+.60	+.70	+.12	-.85	-.18
Pile Driver	11.98	+.60	+.70	+.12	-.85	-.18
Leadman	12.08	+.60	+.70	+.12	-.85	-.18
Foreman	13.08	+.60	+.70	+.12	-.85	-.18
Millwright	12.40	+.60	+.70	+.12	-.85	-.18
Foreman	13.40	+.60	+.70	+.12	-.85	-.18

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*Note

Fringe benefits and deductions payable on all hours worked. Fringe benefits are defined as: Health and Welfare, Pension, and Apprenticeship and Training.

**Note

The Vacation Plan and Working Assessment is included in gross wages as this is tax deductible. Health and Welfare, Pension and Apprenticeship and Training Funds are Fringe Benefits, thus they are not tax deductible. Any part of wage scales needed for existing fringe benefits or plans can be used when members vote on same and Local gives thirty (30) days notice to Contractors.

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Article V

Working Assessment

Effective 1 June 1979, upon receipt of any Employee's written authorization, which shall be irrevocable for not more than one (1) year or on the termination date of this Agreement, whichever occurs sooner, the Employer shall deduct from such Employee's wages working assessments in the amount listed in Article IV (Wage Rates) per hour certified in writing to the Employer by the Union and shall remit same together with a list of names of Employees from whom pay deductions were made, to the Financial Secretary, Carpenters Local 836, 215 Dodge Street, Janesville, Wisconsin 53545.

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Article VII

Health and Welfare and Pension

Section 7.1 Health and Welfare: During the life of this Agreement, each employer covered thereby shall pay the sum listed in Article IV (Wage Rates) per hour for each paid hour to all employees covered by this Agreement to the Wisconsin State Carpenters Welfare Fund, P. O. Box 4002, Eau Claire, Wisconsin 54701. These payments shall be made not later than the 15th day of each month following the month for which payment is being made.

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Section 7.5 Pension: During the life of this Agreement, each employer covered thereby shall pay the sum listed in Article IV (Wage Rates) per hour for each hour paid to all employees covered by this Agreement to the Wisconsin State Carpenters Pension Fund, P. O. Box 4002, Eau Claire, Wisconsin 54701. These payments shall be made not later than the 15th day of each month following the month for which payment is being made.

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Article VIII

Vacation Plan

The Employer agrees to withhold from the wages of the employee, after all legal deductions such as Social Security, taxes, etc., have been made, the amount listed in Article IV (Wage Rates) per man hour worked for the Vacation Savings Plan. Said monies to be submitted to the Blackhawk Credit Union, P. O. Box 1366, Janesville, Wisconsin 53545, monthly on the remittance forms furnished and to be submitted at the same time as Health and Welfare, Pension, Training Fund and Working Assessment with a copy of said remittance form to be mailed directly to the Union, 215 Dodge Street, Janesville, Wisconsin 53545.

Article IX

Apprenticeship & Training Fund

Section 9.1 During the life of this agreement each Employer covered by this agreement shall pay the sum listed in Article IV (Wage Rates) for each hour worked by all employees covered by this agreement to the

Southern Wisconsin Apprenticeship and Journeyman Training Fund, First National Bank, Janesville, Wisconsin 53545. Payment to such training fund must be made not later than the 15th day of each month following the month for which payment is being made.

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5. That one Richard Norman had performed thirty (30) hours of work, during the period July 1, 1979 through February 29, 1980, which work was covered by the collective bargaining agreement, for the Respondent in Beloit, Wisconsin, which city is within the geographic jurisdiction of Complainant; and that Respondent failed to make the required payments to the Wisconsin State Carpenters' Welfare Fund, Wisconsin State Carpenters' Pension Fund, Carpenters Local No. 836 Education Fund, Carpenters Local No. 836 Vacation Fund and the Carpenters Local No. 836 Working Assessment based upon Norman's thirty (30) hours of work.

6. That by letter dated March 28, 1980, the Wisconsin State Carpenters' Welfare Fund notified the Respondent that it had failed to make the required contributions to the appropriate funds and to Complainant, Carpenters Local No. 836, based upon Norman's thirty (30) hours of work for Respondent, and required the Respondent to make the necessary payments within fourteen days from the date of the letter.

7. That Complainant, by a certified letter from William Forrest dated December 10, 1980, filed a grievance with Respondent alleging that Respondent was in violation of the Collective Bargaining Agreement by its failure to pay the required amounts to the appropriate funds as specified in the Agreement, and gave Respondent twenty-four hours to respond to Complainant's allegations; and that Respondent acknowledged receipt of said letter on December 11, 1980 and that Respondent has refused to respond to Complainant's grievance; and that thereby Complainant has attempted to exhaust the grievance and arbitration procedures under the Agreement.

8. That on December 19, 1980 Complainant filed the instant complaint with the Commission alleging that Respondent had violated the aforesaid Agreement by refusing to comply with Articles IV, V, VII, VIII and IX of the Agreement, and that said refusal constituted an unfair labor practice under Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

9. That Respondent has failed to make the payments to the welfare, pension, vacation and education funds, as well as the payment for the working assessment, and therefore, has breached the terms of the Collective Bargaining Agreement.

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

CONCLUSIONS OF LAW

1. That Respondent and Complainant are parties to a valid collective bargaining agreement within the meaning of the Wisconsin Employment Peace Act.

2. That by breaching the collective bargaining agreement in failing to make the payments required by Articles IV, V, VII, VIII and IX of the Agreement, Respondent has committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Respondent, Bailey Construction Company, its officers and agents shall immediately:

1. Cease and desist from refusing to comply with the terms of the Collective Bargaining Agreement between Respondent and Complainant, including Articles IV, V, VII, VIII and IX.

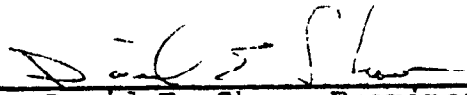
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:

- a. Immediately comply with the terms contained in the aforesaid Agreement by paying to the appropriate funds the amounts required by Articles IV, V, VII, VIII and IX based upon Richard Norman's thirty (30) hours of work for Respondent.
- b. Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 22nd day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


David E. Shaw, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The record establishes that Respondent was party to a valid collective bargaining agreement with the Complainant, and that the Agreement contained certain provisions, specifically Articles IV, V, VII, VIII and IX. Those provisions require Respondent to submit payments for the welfare, pension, vacation and education funds, as well as the working assessment, at a specified rate based on the number of hours an employe performs work for the Respondent that is covered by the Agreement, and which is performed within the geographical jurisdiction of Complainant. The record further establishes that Richard Norman performed thirty (30) hours of work for the Respondent which was covered by the Agreement, and that Respondent has refused to make the required payments to the appropriate funds, and has refused to respond to the grievance filed by Complainant. Accordingly, the undersigned finds that Respondent has breached the requirements of the Collective Bargaining Agreement and that such action constitutes an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Dated at Madison, Wisconsin this 22nd day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



David E. Shaw, Examiner