

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Complainant,

vs.

EQUIPMENT INSTALLERS, INC.

Respondent.  
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Case I  
No. 27229 Ce-1889  
Decision No. 18372-A

Appearances:

Mr. William Forrest, Business Manager, Carpenters Local 836,  
215 Dodge Street, Janesville, Wisconsin 53545, appearing on  
behalf of the Complainant.

Mr. John E. Schultz, President, Equipment Installers, Inc.,  
Route 2, Box 539, Wautoma, Wisconsin 54982, appearing on  
behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

United Brotherhood of Carpenters and Joiners of America, Local 836, having filed a complaint with the Wisconsin Employment Relations Commission on December 19, 1980, alleging that Equipment Installers, Inc., has 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 originally scheduled for January 28, 1981, but later postponed; and said hearing having been held in Milwaukee, Wisconsin on February 9, 1981 before the Examiner; and at said hearing Complainant having presented its case and rested; and thereafter Respondent having requested and been granted a continuance, over Complainant's objection, for the purpose of retaining legal counsel; and subsequent to being granted a continuance Respondent having notified the Examiner that it no longer desired a continuance nor to submit any evidence in support of its position; and the record in this matter having been closed on June 11, 1981; and the Examiner having considered the evidence and the oral arguments of the parties 1/ 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 Equipment Installers, Inc., hereinafter referred to as the Respondent, is an employer with its principal office at Wautoma, Wisconsin; that at all times material herein, John E. Schultz is, and has been, the President of Respondent.

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1/ The parties were given the opportunity to file post-hearing briefs, but chose not to do so.

2. That United Brotherhood of Carpenters and Joiners of America, Local 836, hereinafter referred to as the Complainant, is a labor organization with its principal office located at 215 Dodge Street, Beloit, Wisconsin; and that at all times material herein William Forrest has been the Complainant's Business Manager.

3. That Respondent is signatory to a contract with the International Union of the United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as the International, dated March 25, 1976, which contract in relevant part reads as follows:

#### AGREEMENT

AGREEMENT between EQUIPMENT INSTALLERS INC. herein referred to as the Company, and the United Brotherhood of Carpenters and Joiners of America.

The Company agrees to recognize the jurisdictional claims of the United Brotherhood of Carpenters and Joiners of America, to work the hours, pay the wages and fringe benefits and observe the lawful working conditions (including lawful union shop agreements) established or agreed upon by the United Brotherhood of Carpenters and Joiners of America and the recognized agency of the locality in which any work of the Company is being done, with respect to journeymen carpenters employed by the Company.

No change is to be made in the hours, wages and other conditions established or agreed upon in any locality.

The Company will not subcontract any work within the jurisdiction of the United Brotherhood of Carpenters and Joiners of America which is to be performed at the job site except to a contractor who holds an agreement with the United Brotherhood of Carpenters and Joiners of America or one of its subordinate bodies, or who agrees in writing, prior to or at the time of the execution of his subcontract, to be bound by the terms of this Agreement.

In consideration of the foregoing the United Brotherhood of Carpenters and Joiners of America agrees to furnish competent journeymen selected for reference to jobs upon a non-discriminatory basis, such furnishing to be made upon the request of the Company and with the Company retaining the right to reject or accept the applicants for employment.

The United Brotherhood of Carpenters and Joiners of America agrees that the District Councils or Local Unions having jurisdiction in the respective areas of the performance of work will maintain appropriate non-discriminatory facilities for the registration and referral of persons possessing the skills required for the performance of work by the Company. The Company agrees to use said facilities in filling job vacancies on all projects.

In the event that no such facilities are maintained or that the facility maintained is unable to fill requisitions for employees within a 48-hour period, the Company may employ applicants directly at the job site on a non-discriminatory basis. In such event the Company will notify the union of the names and classifications and the dates of such hirings.

There shall be no strike or lockout pending any dispute being investigated and all peaceable means taken to bring about a settlement.

The Company will post in places where notices to employees and applicants for employment are customarily posted all of the provisions relating to the above hiring arrangements.

4. That prior to the hearing in this matter Respondent made no attempt to disavow or terminate its contract with the International, nor did Respondent notify the International that it wished to terminate their contract.

5. That by the terms of its contract with the International Respondent was bound by the collective bargaining agreement between Complainant and the Southern Wisconsin Contractors Association and Lakeland Contractors Association when it performed work covered by that Agreement within the jurisdiction of Complainant; and that said Agreement is effective from June 1, 1979 until May 31, 1983.

6. That Complainant's 1979-1983 collective bargaining agreement contains the following relevant provisions:

### 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.

Section 3.3. It is understood that there shall be no stoppage of work during the period of arbitration and the decision of the Arbitrator shall be final and binding upon both parties. The Union and Contractor shall each contribute one-half (1/2) of the expense of the third (3rd) Arbitrator.

Section 3.4 In the event the arbitrator finds a violation of the Agreement he shall have the authority to award back pay to the aggrieved person or persons in addition to whatever other or further remedy may be appropriate. Provided, however, that in no event shall back pay be awarded for that period between the time of discovery of the violation and the time of occurrence. Time of discovery as herein used is defined as the date notice is given to the Employer or its authorized representative.

Section 3.5 The Trustees and/or administrators of the fringe benefits 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 Wages Rates

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

. . .

1 January 1980

	Base Wage	H&W	Pension	A&T	Vacation**	Working** Assessment
Carpenter	11.83	+.60	+.70	+.12	-.85	-.18
			. . .			
Carpenter	12.82	+.60	+.80	+.13	-.90	-.20
			. . .			

**\*Note**

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

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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 the names of Employees from whom pay deductions were made, to the Financial Secretary, Carpenters Local 836, 215 Dodge Street, Janesville, Wisconsin 53545.

Such written authorization may be revoked by the Employee by written notice by registered mail to the Employer and the Union received by each during the ten (10) day period prior to the end of any authorization year or the applicable collective agreement, which occurs sooner. In the absence of such revocation, sent and received in accordance with the foregoing, the authorization shall be renewed for additional one (1) year periods.

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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 Funds, 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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### Article XIV Assignments and Jurisdictional Disputes

Section 14.1 The employer agrees bargaining unit work shall consist of all work normally performed by carpenters, millwrights, pile drivers, as well as all other work within the jurisdictional claims of the Union as specified elsewhere in this Article and agrees to make assignments in accordance with international agreements, green book, and any and all decisions of record by the Joint Board, except that nothing contained in this Article shall supercede or make void any existing or future agreements between International Unions.

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Section 14.5 Carpenters: The term "Carpenters" and the term "Joiners" are synonymous and in either case shall mean one who performs the following work: The framing, erecting and pre-fabrication of roofs, partitions, floors and other parts of buildings of wood, metal, plastic, or other substitutes. The erection of Stran Steel Section or its equal. The building and setting of all forms and centers for brick and masonry. The fabrication and erection of all concrete forms and decking, and the dismantling of same (per International Agreement). The cutting and hanging of all false-work for fireproofing and slabs. Where power is used in the setting or dismantling of forms, all handling and signaling shall be done by carpenters. The setting of wood templates for anchor bolts for structural steelwork and for reinforcing concrete shall be done by carpenters.

metal and specially designed scaffolding. The building and construction of all hoists and derricks made of wood. The making of mortar boards, boxes and trestles; all shoring, razing, and moving of buildings. The cutting or framing of the openings for pipes, conduits, duct, etc., where they pass through floors, partitions, wall, roof, or fixtures composed in whole or in part of wood. The laying out, making and installing of all inserts and sleeves for pipes, ducts, etc., where carpenters' tools and knowledge are required. The making and installing of all wooden meter boards, crippling, and backing for fixtures. The welding of studs and other fastenings to receive material being applied by carpenters. The installation of all grounds, furring or stripping, ceilings and sidewalls, etc. The installation of all interior trim or finish of wood, aluminum kalamein, hollow or extruded metal, plastic, doors, transoms, threshold and windows. The setting of jambs, bucks, window frames of wood or metal where wood braces or wedges are used. The installation of all wood, metal or other substitutes of casings, moulding, chair rail, wainscoting, china closets, base or mop boards, wardrobes, metal partitions as per National Decisions or specific agreements, Etc. The complete laying out, fabrication and erection of stairs. The making and erection of all fixtures, cabinets, shelving, racks, louvres, etc. The mortising and application of all hardware in connection with our work. The assembling and setting of all seats in theatres, halls, churches, schools, auditoriums, grandstands, and other buildings. All bowling alley work. The manufacture, fabrication and installation of all screens, storm sash, storm doors, and garage doors, the installation of all weather-stripping, inside and outside blinds, the installation of wood, plastic, or metal awnings, door shelters, jalousies, etc., the installation of all material used in dry wall construction such as plasterboard, all types of asbestos boards, transite and other composition board. The application of all materials which serve as a base for acoustic tile, except plaster. All acoustical applications as per National Decisions, or specific agreements. The building of all barricades. The installation of rock, wool, cork and other insulation material used for sound or weather-proofing. The removal for caulking and replacing of staff bead and brick mold and all Oakum caulking, substitutes, etc., and all other caulking in connection with carpenter work. The installation of Chalk Boards as per National Decisions, and Local Agreements. The operations of all hand operated winches used to raise wooden structures. The erection of porcelain enameled panels and siding. The sharpening of all carpenter's hand or power tools. A carpenter shall not be required to furnish any power tools on any job. When work is exclusively carpenters' fork lift will be operated by a carpenter. All leveling, plumbing, spacing and shoring of prestress beams and all prestress concrete material of any kind, shall be under the jurisdiction of the carpenters, and the work enumerated in the booklet of jurisdiction claims compiled by the Executive Committee.

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7. That by letter dated November 14, 1980, Mr. Cline Cagle, Audit Supervisor for the Wisconsin State Carpenters' Welfare Fund, notified Respondent that it owed the various funds the following amounts:

Wisconsin State Carpenter (sic) Welfare Fund	\$3,751.05
Wisconsin State Carpenter (sic) Pension Fund	\$4,395.02
Greater Wisconsin Carpenter (sic) Vacation Fund	\$2,840.07
Greater Wisconsin Carpenter (sic) Education Fund	\$ 233.80
Carpenter Local #836 Vacation Fund	\$1,991.64
Carpenter Local #836 Dues Check Off	\$ 287.68
Carpenter Local #836 Education Fund	\$ 402.35

8. That Cagle's November 14, 1980 summary of the amounts allegedly owed by Respondent to the various funds included amounts allegedly owed by Respondent for work performed within the jurisdictions of the Madison and Fox River Valley locals of the United Brotherhood of Carpenters and Joiners of America or work performed by Respondent's employees during a period from October 1, 1978 to September 30, 1979. 2/

9. That Respondent's President, John Schultz, by letter dated November 18, 1980, responded to Cagle's November 14, 1980 letter by explaining why he felt Respondent did not owe the various funds for hours worked by certain individuals, including Scott Schultz, Michael Sroka, Richard Onsrud and Mack Blomstrom; and that Cagle responded to Schultz's November 18, 1980 letter by a letter dated November 20, 1980, in which Cagle acknowledged certain payments made by Respondent and renewed his demand that Respondent immediately pay the amounts allegedly still owed to the various funds.

10. That by certified letter dated December 10, 1980 and sent to Respondent's Brookfield, Wisconsin, address, Complainant's Business Manager, William Forrest, attempted to notify Respondent that it was allegedly in violation of specified provisions of Complainant's collective bargaining agreement, and that Respondent was to contact Forrest within twenty-four hours to attempt to dispose of this grievance or Complainant would "file for violation of Wisconsin State Statutes Chapter 111.06 (sic) (1)(f);" that said letter was received on December 11, 1980 by a secretary of School Interiors, Incorporated, the company owning the building in which Respondent maintains an office; that School Interiors, Incorporated periodically receives mail for Respondent and either forwards it to Schultz' home in Wautoma or Schultz picks it up when he is in Brookfield; that at no time material herein did Complainant request to proceed to arbitration on the dispute; and that Section 3.5 of Complainant's 1979-1983 collective bargaining agreement provides that the trustees or administrators of the Health and Welfare, Pension, Vacation and Apprenticeship and Training Funds are not required to resort to the grievance or arbitration procedure in order to collect payments owed to those funds.

11. That at no time has Respondent objected to the Commission's asserting its jurisdiction to hear and decide the instant complaint on the basis that Complainant has failed to exhaust the contractual grievance and arbitration procedures in its collective bargaining agreement.

12. That John Wald, Richard Onsrud and Mack Blomstrom performed work as "carpenters" in the employ of Respondent, within the meaning of Section 14.5 of Complainant's collective bargaining agreement; that such work was performed at the Milton High School in Milton, Wisconsin sometime during the period of August through December of 1980; and that Milton, Wisconsin is located in Rock County, and is therefore within Complainant's area of jurisdiction.

13. That Scott Schultz is the son of Respondent's president and is employed by Respondent in a non-carpenter capacity; that Michael Sroka was employed by Respondent as a truck driver and clean-up man; and that, based on the lack of evidence in the record to the contrary, neither Schultz or Sroka performed "carpenter" work, as it is defined in Section 14.5 of Complainant's collective bargaining agreement, within Complainant's jurisdiction during the period from August 1, 1980 through December 31, 1980, and therefore were not covered by Complainant's collective bargaining agreement during that period.

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2/ Union Exhibits 7C and 7D show that Cagle's November 14, 1980 letter also erroneously listed the alleged amount owed to Complainant for "Dues Check Off" as being owed to Complainant's "Education Fund" and vice versa.

14. That Respondent did not make the payments to Complainant for Complainant's health and welfare, pension, vacation and apprenticeship and training funds for those hours of work performed by Wald, Onsrud and Blomstrom while in Respondent's employ and within Complainant's jurisdiction during the period beginning August 1, 1980 through December 31, 1980; and that Respondent thereby has violated Articles IV, VII, VIII and IX of Complainant's 1979-1983 collective bargaining agreement.

15. That based on the total lack of any evidence in the record to the contrary, Respondent did not receive written authorization from Wald, Onsrud or Blomstrom to deduct and remit to Complainant the working assessment from their wages for those hours worked within Complainant's jurisdiction during the period from August 1, 1980 through December 31, 1980, as required by Article V of Complainant's 1979-1983 collective bargaining agreement; and that Respondent did not deduct and remit such working assessments to Complainant and had no contractual duty to do so.

16. That Respondent made the appropriate payments to Complainant for the various funds for those hours worked by R. Gallagher, Dan Voss and R. Weirick while in Respondent's employe and within Complainant's jurisdiction; and that Complainant agreed at the hearing that those payments are not at issue in this proceeding.

17. That neither the Madison Local or Fox River Valley Local of the United Brotherhood of Carpenters and Joiners of America are parties to this proceeding; that the Complaint in this proceeding does not allege any unfair labor practice involving those local unions; and that no evidence was presented in this proceeding as to the existence or terms of those local unions' collective bargaining agreements.

#### CONCLUSIONS OF LAW

1. That at all times material Respondent was a party to a contract with the International Union of the United Brotherhood of Carpenters and Joiners of America, and by the terms of that contract was bound by the terms of Complainant's 1979-1983 collective bargaining agreement when performing "carpenter" work within Complainant's jurisdiction.

2. That Respondent, by its failure or refusal to pay to Complainant, or the appropriate funds, the amounts based upon the hours worked by John Wald, Richard Onsrud and Mack Blomstrom while in the employ of Respondent and within Complainant's jurisdiction during the period beginning August 1, 1980 through December 31, 1980, as required by Articles IV, VII, VIII and IX of Complainant's 1979-1983 collective bargaining agreement, has violated the terms of that collective bargaining agreement, and thereby has committed unfair labor practices within the meaning of Section 111.06(1)(f), Wisconsin Statutes.

3. That Respondent, by its failure or refusal to deduct and remit to Complainant the working assessment from the wages of John Wald, Richard Onsrud and Mack Blomstrom for the work performed by those employes within Complainant's jurisdiction, without written authorization from those employes to do so, has not violated Article V of Complainant's 1979-1983 collective bargaining agreement, and has not committed unfair labor practices within the meaning of Section 111.06(1)(f), Wisconsin Statutes.

4. That Respondent, by its failure or refusal to make the payments or contributions to Complainant pursuant to Articles IV, V, VII, VIII and IX of Complainant's 1979-83 collective bargaining agreement for the work performed by Scott Schultz and Michael Sroka while in the employ of Respondent and within Complainant's geographic jurisdiction, has not violated the terms of the collective bargaining agreement, and has not committed unfair labor practices within the meaning of Section 111.06(1)(f), Wisconsin Statutes.



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

ORDER

IT IS ORDERED, that that section of the Complaint alleging a violation of Article V, Working Assessment, of complainant's collective bargaining agreement be, and the same hereby is, dismissed.


IT IS FURTHER ORDERED, that Respondent, Equipment Installers, Inc., its officers and agents shall immediately:

1. Cease and desist from refusing to comply with the terms of Complainant's collective bargaining agreement, including Articles IV, 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 of the aforesaid agreement by paying to the Complainant, or the appropriate funds, the amounts required by Articles IV, VII, VIII and IX of that agreement based upon the hours of work performed by John Wald, Richard Onsrud and Mack Blomstrom while in Respondent's employ and within Complainant's jurisdiction during the period beginning August 1, 1980 through December 31, 1980.
  - 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 7th day of August, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
David E. Shaw, Examiner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

The complaint alleges that:

"Equipment Installers, Inc. has failed to respond to certified mail requesting that the grievance procedure be followed thereby exhausting all remedial procedures except a WERC hearing."

It is not clear from the evidence adduced at the hearing that Respondent ever received Complainant's letter dated December 10, 1980 wherein Complainant's Business Manager, William Forrest, alleged that Respondent was in violation of Complainant's 1979-1983 collective bargaining agreement and requested that Respondent follow the grievance procedure in that agreement. Although that letter was received by the secretary of the company owning the building in which Respondent had its office, Respondent's President, John Schultz, testified that he could not remember whether he had received the letter.

Respondent has not, however, objected to the Commission's exercising its jurisdiction to hear and decide this matter on the basis that Complainant has failed to exhaust the contractual grievance and arbitration procedures. The Commission stated in its decision in Zapata Kitchens, Inc., 3/ that under those circumstances it is proper to assert the Commission's jurisdiction to determine whether a collective bargaining agreement has been violated. Moreover, Respondent has asserted that it is no longer bound by its contract with the International, and that therefore, it is not bound by Complainant's collective bargaining agreement.

On the basis of the above, the Examiner has concluded that it is proper in this instance to assert the Commission's jurisdiction to decide the matters in dispute.

Complainant alleges that Respondent committed an unfair labor practice by violating certain provisions of Complainant's collective bargaining agreement. In support of its allegations, Complainant contends that Respondent has, at all times material, been signatory to an agreement with the International Union, whereby Respondent has agreed to be bound by the wages, hours and conditions of employment established in Complainant's collective bargaining agreement when performing work that is within Complainant's jurisdiction.

Respondent took the position at hearing that, at all times material, it was not bound by its agreement with the International Union, since that agreement contains no expiration date, and therefore, is a contract for an indefinite duration.

Respondent's contention is without merit. The Examiner is not aware of any law, statutory or otherwise, which would require the conclusion that a private sector contract or labor agreement without an expiration date is not binding on the parties to that agreement.

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3/ (13229-B) 4/76. See also Bi-State Trucking Corp. (9924-A,B) 8/71 and Pet Milk Co. (6209) 1/63.

To the contrary, the federal courts have held that a labor agreement not containing an expiration date is enforceable, but is terminable at will upon reasonable notice to the other party. 4/ In fact, Section 8(d)(1) of the National Labor Relations Act 5/ specifically provides for the method by which such a labor agreement may be terminated.

More on point, a federal court held in a recent case that an international agreement very similar, if not identical, to the agreement in this case, was not a collective bargaining agreement, but "merely an agreement to abide by the terms of the collective bargaining agreements reached by other parties." 6/ The federal court held that as such, the agreement was unilaterally terminable at will upon reasonable notice to the other party. In that case the court found that the employer's consistent and express refusal to abide by the terms of the agreement constituted reasonable notice to the international union that the employer had terminated their agreement.

Unlike the employer in the above case, Respondent has not given the International Union any type of notice that it wished to terminate this agreement. To the contrary, Respondent has attempted to some degree to abide by the terms of that agreement by making payments to the fringe benefit funds of various Carpenters locals, including Complainant's. There is no evidence in the record that would indicate that Respondent ever took the position, prior to the hearing in this matter, that it no longer intended to be bound by its agreement with the International Union.

Based upon the lack of any notice by Respondent that it desired to terminate its agreement with the International Union, as well as Respondent's behavior in attempting to comply with the terms of that agreement, Respondent must be deemed to have remained a party to the International Agreement. Therefore, Respondent was, at all times material, bound by the terms of Complainant's 1979-1983 collective bargaining agreement with respect to carpenter work performed by employees of Respondent within Complainant's jurisdiction.

Complainant contends that Respondent violated certain provisions of Complainant's 1979-1983 collective bargaining agreement by refusing to make the appropriate payments to Complainant's health and welfare, pension, vacation and apprenticeship and training funds, as well as the working assessment, for those hours of work performed in the employ of Respondent within Complainant's geographic jurisdiction by John Wald, Richard Onsrud, Mack Blomstrom, Scott Schultz and Michael Sroka. 7/

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4/ Carpenters District Council v. Blake Construction Company, 99LRRM 3257 (1978); Boeing Airplane Co. v. Association of Machinists, 26 LRRM 2324 (1950), affirmed 188 F. 2d 356.

5/ 29 U.S.C. § 158 (d)(1).

6/ Carpenters District Council, supra.

7/ Complainant conceded at the hearing that Respondent had made the proper payments to the various fringe benefit funds for those hours of work performed by Gallagher, Voss and Wierick (Tr. p. 53). Part of those monies allegedly owed to the various fringe benefit funds includes payments for hours allegedly worked by Respondent's employees in the jurisdictions of the Fox River Valley and Madison Carpenters local unions. Since those local unions are not parties to this proceeding and the complaint does not allege any violations of those locals' collective bargaining agreements, those amounts are not considered to be a part of this proceeding.

Respondent argues in reply that it has made payments to the appropriate fringe benefit funds through the Milwaukee Local Union for those hours worked by Wald, and through the Madison Local Union for those hours worked by Onsrud and Blomstrom. 8/ Respondent also contends that Schultz and Sroka never performed any "carpenter" work within Complainant's jurisdiction.

In support of its allegations Complainant submitted "monthly remittance reports" that had been completed by an auditor from the Combined Crafts Statewide Audit Program and based on an audit performed by a field auditor for the Building Trades Pension Fund of Milwaukee. The field auditor had, in turn, based his audit of hours worked on the individual earnings records of Respondent's employees and federal forms 941, W-2 and W-3, as well as additional information from Respondent. The audit by the field auditor was then forwarded to the Combined Crafts Statewide Audit Program to determine the areas worked and the amounts owed to the various fringe benefit funds.

The testimony of both the field auditor, Frank Eva, and Complainant's Business Manager, William Forrest, indicates that the determinations made in the monthly remittance reports, relative to the number of hours worked within Complainant's jurisdiction by Wald, Onsrud, Blomstrom, Schultz and Sroka, are for the most part unreliable. Eva testified that he did not have Respondent's records showing the hours, earnings and areas where work was performed when he performed his audit. His testimony also indicates that the method by which the number of hours worked was computed was questionable. Forrest also testified that the manner in which the number of hours worked was determined was unreliable. Therefore, the Examiner is unable to reach any conclusion as to the number of hours of work performed within Complainant's jurisdiction by the individuals in question.

Complainant contends that all of the hours worked in a month by those individuals in question must be assumed to have been worked within Complainant's jurisdiction, absent Respondent's producing records to the contrary.

There is no basis for Complainant's contention. Furthermore, Complainant's contention disregards the fact that as the complaining party it has the burden in this case of proving by a "clear and satisfactory preponderance of the evidence" that Respondent violated Complainant's collective bargaining agreement. 9/ The Examiner is not permitted to speculate or make the assumption for which Complainant contends in an attempt to find a violation. 10/

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8/ It appears from the record that Complainant and the Madison Local may be participants in some of the same fringe benefit funds, but not in others, and that the rate of contribution by the employer may vary according to the local labor agreements. It also appears that the Milwaukee area has its own fringe benefit funds which are separate from those funds in which Complainant participates.

9/ Section 111.07(3), Wisconsin Statutes.

10/ Pearce L. Roberts, et al (3978) 5/55. Also, it is not clear from the record whether Complainant's auditors ever requested those records from the Respondent that would have enabled them to determine where the work had been performed so that they could have accurately completed their audit. Complainant must realize that if it did not possess the information it felt was necessary to prove its case, it had the ability, pursuant to Section 111.07(2)(b), Wis. Stats., to subpoena whatever relevant records Respondent might possess. No such subpoena was requested by Complainant.

Respondent has admitted, however, that Wald, Onsrud and Blomstrom performed "carpenter" work for Respondent at the Milton High School within Complainant's jurisdiction sometime during the period of August through December of 1980. Respondent also admitted that it did not make any payments to Complainant's fringe benefit funds for that work.

On the basis of Respondent's admissions as to Wald, Onsrud and Blomstrom, the Examiner concludes that those men did perform "carpenter" work for Respondent within Complainant's jurisdiction sometime during the period beginning August 1, 1980 through December 31, 1980, and further, that Respondent failed to make the proper payments to the welfare, pension, apprenticeship and training and vacation funds in violation of Complainant's 1979-1983 collective bargaining agreement.

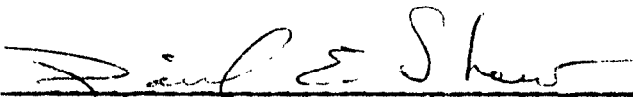
Complainant has made no showing that Scott Schultz or Michael Sroka performed "carpenter" work for Respondent within Complainant's jurisdiction so as to be covered by that agreement. Therefore, the Examiner cannot conclude that Respondent violated Complainant's collective bargaining agreement by not making the payments to the fringe benefit funds for those individuals.

Complainant also alleges that Respondent failed or refused to pay the working assessment to Complainant for those hours worked by Wald, Onsrud, Blomstrom, Schultz and Sroka, in violation of Articles IV and V of Complainant's collective bargaining agreement. Article V, working assessment, provides that upon written authorization by an employee the employer shall deduct the working assessment from the employee's wages and remit same to the Complainant.

It is clear from the language of Article V that an employer is not required to deduct and pay the working assessment to Complainant unless the employer first receives written authorization to do so from the employee. Complainant has not provided any evidence that the individuals in question submitted written authorization to Respondent to deduct the working assessment. Therefore, the Examiner concludes that Respondent did not violate Article V by failing to deduct and remit the working assessment for the hours worked by those individuals within Complainant's jurisdiction. Since it has already been concluded that Schultz and Sroka were not covered by Complainant's agreement there can be no violation as to those individuals.

Dated at Madison, Wisconsin this 7th day of August, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
David E. Shaw, Examiner