

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| UNITED FOOD AND COMMERCIAL WORKERS                 | : |                      |
| LOCAL #1444 chartered by UNITED FOOD               | : |                      |
| AND COMMERCIAL WORKERS INTERNATIONAL               | : |                      |
| UNION, AFL-CIO, CLC,                               | : | Case II              |
|  | : | No. 27471 Ce-1903    |
| Complainant,                                       | : | Decision No. 18452-A |
|  | : |                      |
| v.   | : |                      |
|  | : |                      |
| CANAAN DAY CARE CENTER <sup>1</sup> / <sub>1</sub> | : |                      |
|  | : |                      |
| Respondent.  | : |                      |
|  | : |                      |

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Appearances:

Ms. Arletta Kettner, Organizing Director, United Food & Commercial Workers Local #1444, 4850 West Fond du Lac Avenue, Milwaukee, Wisconsin 53216, for the Complainant.

No appearances were made by or on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

United Food and Commercial Workers Local #1444, AFL-CIO, CLC filed a complaint on February 6, 1981 with the Wisconsin Employment Relations Commission alleging that Canaan Day Care Center and the Reverend H. Matthew Beechum had committed unfair labor practices within the meaning of Section 111.06 of the Wisconsin Employment Peace Act. The Commission appointed Stuart S. Mukamal as Examiner to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Employment Peace Act. Hearing on said complaint was held before the Examiner in Milwaukee, Wisconsin on March 16, 1981 during which the parties were afforded full opportunity to present evidence and argument. An appearance for the Complainant was made at said hearing, while no such appearance was made for the Respondent. The Examiner, having considered the record in its entirety, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. United Food and Commercial Workers Local 1444 chartered by United Food and Commercial Workers International Union, AFL-CIO,CLC (hereinafter referred to as the "Complainant") is a labor organization with offices at 4850 West Fond du Lac Avenue, Milwaukee, Wisconsin 53216.

1/ This action was commenced by the Complainant against both the Canaan Day Care Center and the Reverend H. Matthew Beechum, Administrator of the Canaan Day Care Center. However, given that the actions forming the basis of this complaint were committed by the Canaan Day Care Center and/or Reverend Beechum in his business (rather than in his individual) capacity, and given that no monetary damages are sought from either Respondent, I find that the Canaan Day Care Center is the real party-Respondent in interest in this proceeding toward which any remedy that may be ordered should be directed. The caption and all subsequent references to the Respondent reflect this finding.

2. Canaan Day Care Center (hereinafter referred to as the "Respondent" 2/) is, upon information and belief, a church-affiliated day care center having its offices at 2964 North 11th Street, Milwaukee, Wisconsin 53206. Upon information and belief, the Reverend H. Matthew Beechum has served as Administrator of the Respondent at all times material hereto.

3. The Complainant was certified by the Commission on December 8, 1980 as the exclusive collective bargaining representative for a bargaining unit consisting of all full-time and regular part-time teachers, teacher aides, bus drivers, dietary, housekeeping and maintenance employees in the employ of the Respondent excluding the Administrator, the Director, the Administrative Secretary and all other supervisory, confidential and managerial employees in Case I, No. 26593, E-2988. Said certification of the Complainant was issued by the Commission in accordance with the results of a secret mail ballot election conducted under its auspices among all eligible employees within said bargaining unit.

4. Following the certification of the Complainant as the exclusive collective bargaining representative of the bargaining unit described in Finding of Fact Number 3 hereinabove, Ms. Arletta Kettner, the Complainant's Organizing Director, attempted on approximately four occasions prior to January 28, 1981 to contact the Reverend Beechum by telephone in order to request arrangements for the commencement of collective bargaining negotiations between the parties hereto. On each of said occasions, Ms. Kettner left messages for the Reverend Beechum requesting that he return the telephone call. Neither the Reverend Beechum nor any agent or representative of the Respondent returned said telephone call at any time, or otherwise contacted the Complainant.

5. On January 28, 1981, Ms. Kettner telephoned and successfully reached the Reverend Beechum. During the course of said conversation, Ms. Kettner requested that a meeting between the parties be scheduled for the purpose of commencing collective bargaining negotiations. The Reverend Beechum responded that he would refuse to bargain with the Complainant on any and all matters relating to the wages, hours and working conditions for employees within the bargaining unit described in Finding of Fact Number 3 hereinabove. The Reverend Beechum further stated during said conversation that his employees "were getting everything that he was going to give them" and indicated that he would order the Respondent to cease operations if it were required to bargain with the Complainant.

6. Following said telephone conversation, Ms. Kettner mailed a letter to the Reverend Beechum, which stated as follows:

January 28, 1981

Reverend H. Matthew Beechum  
Canaan Day Care Center  
2964 North 11th Street  
Milwaukee, WI 53206

Dear Sir:

As per our phone conversation of January 28, 1981, you once again conveyed your unwillingness to bargain with this Union. Your refusal to negotiate terms and conditions, wages, hours and working conditions is in direct

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2/ See fn. 1, supra.

defiance of the law.

You stated on the phone to me on 1/28/81 as you have many times in the past, that if you are compelled to bargain with this Union you will close up the day care center and cease operations as a business.

Your continued lack of response to our request leaves us no other choice but to attempt to resolve this issue through the use of governmental agencies.

Sincerely,

Arletta Kettner, Organizing Director

7. The Complainant filed the complaint instituting these proceedings within a few days following the transmittal of the letter set forth, no response thereto having been made by any agent or representative of the Respondent.

8. The Commission, by its Order dated February 13, 1981, designated Stuart S. Mukamal as Examiner to conduct a hearing on all issues raised by the complaint filed in this matter. The Examiner thereupon set hearing in the matter for March 16, 1981 at 10:00 A.M. and provided notice to the parties of the date, time and place of such hearing in a timely fashion by certified mail, return receipt requested. The Reverend Beechum personally received said notice of hearing on February 18, 1981 and personally signed a return receipt therefor on that date.

9. The Complainant, by Ms. Kettner, appeared on the date and at the time and place specified on the notice of hearing in this matter. The Respondent failed to appear for said hearing. The Examiner thereupon telephoned the Respondent's place of business and was advised by one of the Respondent's employees that the Reverend Beechum was out of the office and was not likely to return that day. Said employee further noted that the Reverend Beechum had marked on his calendar the date, time and place of the scheduled hearing in this matter. The Examiner thereupon informed said employee that an agent or representative of the Respondent would be required to appear at the hearing within one-half hour. Upon the Respondent's failure to make an appearance within the time thereby specified, the Examiner conducted the hearing in the absence of any agent or representative of the Respondent.

10. The evidence adduced at said hearing and more particularly set forth in Findings of Fact Numbers 4, 5 and 6 hereinabove, indicate that the Respondent has continuously failed and refused to meet and confer with the Complainant for the purpose of negotiating a collective bargaining agreement with regard to wages, hours and working conditions affecting those employees within the bargaining unit described in Finding of Fact Number 3 hereinabove. The record further indicates that the Respondent has resisted all efforts on the part of the Complainant to commence collective bargaining negotiations and has threatened closure of its facility in response to the Complainant's demands with respect to the commencement of negotiations.

11. The evidence and argument presented by the Complainant in this matter is uncontroverted in light of the Respondent's failure to appear at the hearing held in this matter or to present any answer to or defense with respect to the allegations of the complaint filed herein.

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

CONCLUSION OF LAW

1. The Respondent has violated and is continuing to violate Sections 111.06(1)(a) and 111.06(1)(d) of the Wisconsin Employment Peace Act by refusing to bargain with the Complainant as the lawfully recognized exclusive collective bargaining representative of those of its employees set forth in Finding of Fact Number 3 hereinabove on all matters relating to the wages, hours and other terms and conditions of employment of said employees, and by thereby interfering with and restraining the exercise of the rights of said employees as set forth by Section 111.04 of the Wisconsin Employment Peace Act. The Respondent has thereby committed unfair labor practices pursuant to said Act.

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

ORDER

IT IS ORDERED that the Respondent, Canaan Day Care Center, and its representatives and agents shall:

1. Immediately cease and desist from failing and/or refusing to bargain in good faith with the Complainant, United Food and Commercial Workers Local #1444, with respect to wages, hours and other terms and conditions of employment of all of these employees in its employ within the bargaining unit represented by said Complainant as described hereinabove in Finding of Fact Number 3 and thereby interfering with the rights of said employees as set forth by Section 111.04 of the Wisconsin Employment Peace Act.

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

- a. Immediately commence negotiations in good faith with the Complainant, United Food and Commercial Workers Local #1444 for the purpose of concluding a collective bargaining agreement with respect to wages, hours and other terms and conditions of employment of all of those employees in its employ within the bargaining unit represented by said Complainant as described hereinabove in Finding of Fact Number 3.
- b. Notify all employees by posting in conspicuous places in all of its offices where its employees are employed copies of the notice hereto and marked "Appendix A". That notice shall be signed by the Reverend H. Matthew Beechum as Administrator of the Respondent, shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. All reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.
- c. 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 Milwaukee, Wisconsin this 20th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Stuart S. Mukamal*

Stuart S. Mukamal, 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:

1. WE WILL upon request bargain collectively in good faith with United Food and Commercial Workers Union Local #1444, chartered by United Food and Commercial Workers International Union AFL-CIO, CLC as the exclusive collective bargaining representative of all employees employed in the collective bargaining unit consisting of all full-time and regular part-time teachers, teacher aides, bus drivers, dietary, housekeeping and maintenance employees, excluding the Administrator, the Director, the Administrative Secretary and all other supervisory, confidential and managerial employees, with respect to wages, hours and other terms and conditions of employment.
2. WE WILL NOT interfere with our employees' exercise of their rights guaranteed under Section 111.04 of the Wisconsin Statutes which consists of the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and the right to refrain from any or all of such activities, by failing and/or refusing to bargain in good faith with the lawfully recognized collective bargaining representative of those of our employees employed in the collective bargaining unit described in paragraph 1 of this Notice.

CANAAN DAY CARE CENTER

By

The Reverend H. Matthew Beechum  
Administrator

Dated this 20th day of April, 1981.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY 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

The complaint filed herein alleged that the Respondent, Canaan Day Care Center, and its Administrator, the Reverend H. Matthew Beechum had refused to meet with the Complainant as the exclusive collective bargaining representative of certain of its employees 1/ for the purpose of collective bargaining with regard to their wages, hours and other terms and conditions of employment. As originally filed, the complaint alleged a violation of Section 111.06(1)(d) of the Wisconsin Employment Peace Act. The Complainant additionally alleged during the course of the hearing in this matter that the Respondent's conduct violated Section 111.06 (1)(a) of the Act.

The entire record of this matter consists of evidence and argument presented by the Complainant, as follows. The Complainant was certified on December 8, 1980 as the exclusive collective bargaining representative of a bargaining unit consisting of certain of the Respondent's employees (as set forth in Finding of Fact Number 3 hereinabove) in accordance with a mail secret ballot representation election conducted by the Wisconsin Employment Relations Commission. 2/ The Complainant's Organizing Director, Ms. Arletta Kettner, thereafter on several occasions attempted to contact the Reverend Beechum by telephone in order to request a meeting for the commencement of collective bargaining. Such attempts were unsuccessful. Neither the Reverend Beechum nor any other agent or representative of the Respondent returned Ms. Kettner's telephone calls or made any other form of contact with the Complainant. On January 28, 1981, Ms. Kettner successfully contacted the Reverend Beechum by telephone, and made a request for a meeting in order to commence collective bargaining. According to the record, the Reverend Beechum refused to accede to such request, and indicated that his employees "were getting everything that he was going to give them". He further indicated that he would rather close the Respondent's facility and cease all operations than be compelled to bargain with the Complainant. The Complainant confirmed this conversation by letter dated January 28, 1981, the text of which is set forth in Finding of Fact Number 6 hereinabove, and thereupon filed the complaint instituting this proceeding.

The Respondent failed to appear at the hearing scheduled in this matter although it had both actual and record notice of the date, time and place of such hearing. Notices of hearing via certified mail, return receipt requested were mailed by the Examiner to the parties on February 17, 1981. The Reverend Beechum received said Notice on February 18, 1981, as indicated by a return receipt personally signed by him and returned to the Examiner. The hearing in this matter was scheduled for March 16, 1981 at 10:00 A.M. The Complainant's representative, Ms. Kettner, appeared at the hearing while the Respondent failed to appear. At 10:00 A.M., the Examiner telephoned the Respondent's offices and spoke with Ms. Gloria Wilson, one of the Respondent's employees. Ms. Wilson advised the Examiner that the Reverend Beechum had marked the date, time and place of the hearing on his calendar, but that he was not at his office and was not likely to return that day. The Examiner thereupon informed Ms. Wilson that the Reverend Beechum or another representative of the Respondent would be given until 10:40 A.M. to appear, and that the hearing would proceed in the absence of a representative of the

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1/ The description of the applicable collective bargaining unit to which this proceeding relates is set forth in Finding of Fact Number 3 hereinabove.

2/ Case I No. 26593 E-2988, Decision No. 18190.

Respondent in the event of the failure of the Respondent to make an appearance by that time. As of 10:45 A.M., no representative of the Respondent appeared and the Examiner conducted the hearing ex parte without a representative of the Respondent being present.

On the basis of the foregoing and in view of the Respondent's willful failure to appear at the hearing scheduled in this matter after having received both actual and record notice of same, it is the Examiner's conclusion that the Respondent received ample due process throughout these proceedings, and that the hearing in this matter was properly conducted in its absence. <sup>3/</sup> Furthermore, the Respondent's failure to appear or to otherwise state its position with respect to the allegations raised by the complaint indicates that all of the Complainant's allegations and argument must be taken to be uncontroverted and thus must be regarded as fully credible.

The record clearly reveals that the Respondent has continually refused to bargain or otherwise deal with the Complainant in any way and that it has made no attempt to explain or justify its position either to the Complainant or to the Examiner. Furthermore, the Respondent has indicated its intent to cease operations rather than to bargain with the Complainant as required by law. Clearly, by its course of conduct the Respondent has willfully and persistently violated its obligations under the law, and its actions indicated its firm intention to continue in this manner. By refusing to bargain with the Complainant regarding wages, hours and other terms and conditions of employment for employees within the applicable collective bargaining unit, the Respondent has committed and continues to commit unfair labor practices under Section 111.06(1)(d) of the Wisconsin Employment Peace Act. By its refusal to bargain with the Complainant, the Respondent has also directly and substantially interfered with and restrained those employees in the exercise of their rights as set forth by Section 111.04 of the Act, including: the right to self-organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Respondent has thereby also committed, and continues to commit, unfair labor practices under Section 111.06(1)(a) of the Act.

The Examiner has determined that an Order requiring the Respondent to bargain collectively with the Complainant immediately upon the Complainant's request is an appropriate remedy for the correction of the unfair labor practices committed by the Respondent. This duty to bargain includes, without limitation by reason of enumeration herein, the duty to negotiate with Complainant in good faith concerning all matters respecting wages, hours and other terms and conditions of employment affecting those employees within the applicable collective bargaining unit. The duty to bargain also includes the obligation to refrain from implementing unilateral changes in the wages, hours and other terms and conditions of employment of said employees until such changes have been bargained with the Complainant in good faith. The Order issued herein also requires the Respondent to post a Notice to all of its employees setting forth its obligation to collectively bargain with the Complainant in good faith, and its obligation to refrain from interference with the exercise by its employees of their rights as set forth by Section 111.04

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3/ See e.g. Edward Ryan Inc. (12390-A, B) 5/74 aff'd. Milwaukee Co. Cir. Ct. 7/75; Kohlberg Threatres (12147-A, B) 3/74; United Contractors (10253-A, B) 1/74 aff'd. Waukesha Co. Cir. Ct.

of the Wisconsin Employment Peace Act. The Order also requires the Respondent to notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date hereof as to the steps which have been taken in order to comply therewith. In view of the Respondent's conduct, the Examiner determines that said Order is fully proper and necessary in order to effectuate the purposes of the Wisconsin Employment Peace Act.

Dated at Milwaukee, Wisconsin this 20th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stuart S. Mukamal  
Stuart S. Mukamal, Examiner