

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

: CARPENTERS DISTRICT COUNCIL OF :
: MILWAUKEE COUNTY & VICINITY, :
: :
: Complainant, :
: :
: vs. : Case I
: : No. 27563 Ce-1905
: : Decision No. 18498-B
: TOMPA WOODWORK, INC., :
: :
: Respondent. :
: :

ORDER REVISING EXAMINER'S FINDINGS OF FACT,
REVERSING EXAMINER'S CONCLUSIONS OF LAW,
AND REVERSING (IN PART) EXAMINER'S ORDER

Examiner Peter G. Davis having, on July 24, 1981, issued Findings of Fact, Conclusions of Law and Order, together with a Memorandum accompanying same in the above-entitled matter, wherein the Examiner concluded that Tompa Woodwork, Inc., was not an employer within the meaning of the Wisconsin Employment Peace Act, and therefore that the Wisconsin Employment Relations Commission lacked jurisdiction to determine whether said Respondent had committed any unfair labor practices within the meaning of Secs. 111.06(1)(a), (d) or (f) of the Wisconsin Employment Peace Act, and further, wherein said Examiner dismissed the complaint initiating the instant proceeding; and Carpenters District Council of Milwaukee County and Vicinity, the Complainant herein, having, on August 11, 1981, timely filed a petition requesting the Wisconsin Employment Relations Commission to review the decision issued by the Examiner herein; and Counsel for the parties having filed briefs in support of, and in opposition to said petition for review; and the Commission, having reviewed the record herein, the decision of the Examiner, the petition for review, and the briefs filed by Counsel for the parties, and being satisfied that the Examiner's Findings of Fact should be revised, that the Examiner's Conclusions of Law should be reversed, that his Order should be affirmed in part and reversed in part, makes and issues the following

REVISED FINDINGS OF FACT

1. That Carpenters District Council of Milwaukee County and Vicinity, hereinafter referred to as the Union, is a labor organization, and has its offices at 3020 West Vliet Street, Milwaukee, Wisconsin.
2. That Tompa Woodwork, Inc., hereinafter referred to as Tompa, Inc., is a Wisconsin corporation, having its business address at 8430 West Kaul Avenue, Milwaukee, Wisconsin, and that Joseph Tompa is its President and principal stockholder.
3. That for the past number of years the Union and various millwork contractors, having their places of business in the Counties of Milwaukee, Ozaukee, Waukesha and Washington, all in the State of Wisconsin, were and are members of a Millwork Association; that the Union and the Association were and are parties to consecutive collective bargaining agreements, covering the wages, hours and working conditions of carpenters in the employ of the individual employer members of said Association; and that in the spring of 1980, although not a member of the Association, one Martin Prem, who then employed Joseph Tompa, a member of the Union, previously executed and became a party to the then existing 1978-1980 Millwork Agreement between the Union and the Association, which agreement, by its terms, expired on May 31, 1980.

4. That said 1978-1980 Millwork Agreement contained, among its provisions, those relating to payments to be made by employers, who were parties thereto, on behalf of employes in their employ, to the Milwaukee Carpenters' District Council Vacation Plan, to the Milwaukee Carpenters' District Council Welfare Plan, and to the Building Trades United Pension Trust Fund - Milwaukee and Vicinity, such payments at fixed rates per hours worked by said employes; and that said Millwork Agreement also contained the following provision in Article X, relating to the Welfare Plan:

Section 6. The Employer agrees that if any officer of a corporation or any other person having a financial or proprietary interest in the business continues to perform work coming under the jurisdiction of this Agreement during the life of this Agreement, and such officer(s) or person(s) desires to participate in the Milwaukee Carpenters' District Council Welfare Fund, then the Employer will pay the hourly contribution for all such persons on the basis of the number of hours worked under the jurisdiction of this Agreement but not less than one hundred fifty (150) hours per month for the duration of this agreement.

5. That prior to May 31, 1980 Prem determined to cease doing business, and as a result Tompa was terminated from Prem's employment sometime in April, 1980; that after Prem terminated his business, and after June 1, 1980, Tompa decided to enter the millwork business, and rented Prem's shop for that purpose; that Tompa was interested in maintaining the insurance, welfare and pension benefit plans applicable when he was an employe covered by the Millwork Agreement, and in that regard he visited the offices of the Union and inquired with respect thereto, where he had a conversation with John J. Scioli, the Union's Business Representative, who advised Tompa that Tompa had to employ at least one employe to be deemed an employer in order to be a party to the Millwork Agreement, and so as to be covered by such plans; and that during said meeting Tompa advised Scioli that he intended to employ Prem.

6. That, at the time of the aforementioned meeting between Tompa and Scioli, while the Union and the Millwork Association had reached an accord on their 1980-1982 collective bargaining agreement, said agreement had not as yet been printed; that, as a result such new agreement was not available for Tompa to execute; that instead Tompa executed a copy of the 1978-1980 agreement, indicating the signature date to be July 1, 1980; that at the time Scioli submitted to Tompa a copy of a letter, dated July 10, 1980, addressed to "All Millwork Employers", setting forth the negotiated changes which would appear in the 1980-1982 Millwork Agreement; that said letter specifically set forth the following:

. . . please pay all Welfare Fund and Pension Fund contributions at the final rates provided under the 1978-1980 Millwork Agreement, namely One Dollar and ten cents (\$1.10) per hour to the Milwaukee Carpenters' District Council Welfare Fund and One Dollar (\$1.00) per hour to the Building Trades United Pension Trust Fund for hours for which wages or compensation is payable on or after June 1, 1980.

Please hold in escrow the twenty-five cents (25¢) per hour increased Welfare contribution and the fifteen cents (15¢) per hour increased Pension Fund contribution provided for under the 1980-1982 Millwork Agreement. The Milwaukee Carpenters' District Council will notify you at a later date how to

labor agreements covering employees in the trade, for the duration of such labor agreements, and, further, agree to be bound by the applicable trust agreements.

8. That on the dates indicated Tompa executed and remitted to the Union Monthly Remittance Reports, indicating payments made by Tompa for the three funds noted on behalf of persons identified as "employees" as follows:

<u>Date Executed</u>	<u>Employees Listed</u>	<u>Month Employed</u>	<u>Total Hours Worked During Month</u>	<u>Amounts of Checks to Funds</u>		
				<u>Welfare</u>	<u>Vacation</u>	<u>Pension</u>
8/12/80	Prem, M.	7/80	152			
	Tompa, J.	7/80	152	\$ 334.40	\$ 79.04	\$ 304.00
9/11/80	Prem, M.	8/80	160			
	Tompa, J.	8/80	200	\$ 396.00	\$ 93.60	\$ 360.00
10/12/80	Prem, M.	9/80	152			
	Tompa, J.	9/80	152	\$ 410.40	\$ 79.04	\$ 349.60

9. That the above reports and checks were received by the Union on August 14, September 16, and October 14, 1980 respectively, and that on October 6, 1980 the Union received such a report and a check in the sum of \$166.00, as retroactive payments to the welfare fund for the months of July and August, 1980; and that at no time after October 14, 1980 has Tompa submitted either monthly reports or checks payable to any of the three funds involved.

10. That in November, 1980 Scioli, in perusing a Milwaukee newspaper noted that Tompa was advertising to employ a carpenter; that thereupon Scioli phoned Tompa with regard thereto and reminded the latter that he had not been making payments to any of the three funds; that in reply Tompa indicated that he had not hired any employes and that he did not desire to remain "union", and that he would not execute the copy of the 1980-1982 Millwork Agreement which had been sent to him by the Union; and that on February 26, 1981 the Union filed the complaint herein, alleging that Tompa, by failing and refusing to execute the 1980-1982 agreement, committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act.

11. That the Union has failed to establish that Tompa employed anyone after October, 1980, or that Tompa, in fact, worked as a carpenter at any time after October, 1980.

Upon the basis of the above and foregoing Revised Findings of Fact, the Commission makes and issues the following:

REVERSED CONCLUSIONS OF LAW

1. That at least from July 1, 1980 through September 30, 1980 Tompa Woodwork, Inc. was an employer within the meaning of Sec. 111.02(2) of the Wisconsin Employment Peace Act, and as such Tompa Woodwork, Inc. entered into, and became a party to the 1980-1982 Millwork Agreement existing between the Carpenters District Council of Milwaukee County and Vicinity and various millwork contractors having their places of business in Milwaukee, Ozaukee, Waukesha and Washington Counties, Wisconsin.

2. That, by failing and refusing to execute the 1980-1982 Millwork Agreement existing between it and Milwaukee District Council of Carpenters and Vicinity, Tompa Woodwork, Inc., by its officer and agent, Joseph Tompa, has committed, and is committing, an unfair labor practice within the meaning of Sec. 111.06(1)(d) of the Wisconsin Employment Peace Act.

3. That, inasmuch as in the instant proceeding Carpenters District Council of Milwaukee County and Vicinity has failed to establish that Tompa Woodwork, Inc. employed any employes after October 1, 1980, or that Joseph Tompa, as president, performed any work within the jurisdiction of said Labor Organization, following the latter date, said Labor Organization has failed to establish that Tompa Woodwork, Inc. violated any provision of said 1980-1982 collective bargaining agreement within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Revised Findings of Fact and Reversed Conclusions of Law, the Commission makes and issues the following

REVERSED (IN PART) ORDER

IT IS HEREBY ORDERED

1. That Tompa Woodwork, Inc., its offers and agents, shall immediately:
 - a. Cease and desist from failing and refusing to execute the 1980-1982 Millwork Agreement existing between it and Carpenters District Council of Milwaukee County and Vicinity.
 - b. Take the following affirmative action which the Commission finds will effectuate the policies of the Wisconsin Employment Peace Act:
 - (1) Execute the 1980-1982 Millwork Agreement between it and Carpenters District Council of Milwaukee County and Vicinity, and thereupon forward said executed copy to said Labor Organization.
 - (2) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.
2. That the allegations in the complaint filed herein alleging that Tompa Woodwork, Inc. has violated, and continues to violate the 1980-1982 Millwork Agreement in existence between it and Carpenters District Council of Milwaukee County and Vicinity be, and the same hereby are, dismissed.

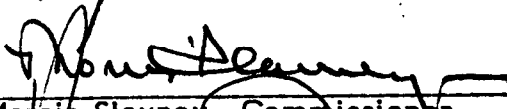
Given under our hands and seal at the City of Madison, Wisconsin this 19th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

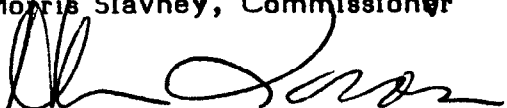
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER REVISING EXAMINER'S FINDINGS OF FACT,
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The Union in its complaint alleged that Tompa committed unfair labor practices in violation of Sec. 111.06(1)(a), (d) and (f) of WEPA by failing to execute an agreement previously agreed upon, and failing to apply its terms to employes. Tompa did not file an answer, although at the time his Counsel did inquire from the Examiner whether it was necessary to do so. Said Counsel was sent a copy of the Commission's rules. The facts dispositive of the issues herein are set forth in the Findings and we see no reason to repeat them in this memorandum.

The Examiner's Decision

The Examiner dismissed the complaint on the basis that Tompa was not an employer within the meaning of Sec. 111.02(2) of WEPA since at no time did he employ any employes, and that, therefore, the Commission lacked jurisdiction to determine the allegations in the complaint. The Examiner did not discuss the impact of the claim that Tompa employed Prem, other than indicating that it probably was for the purpose of obtaining the benefits of the health, welfare and pension plans for Tompa himself. While there was no specific finding made by the Examiner, the payments made to the funds indicated that Tompa worked as a carpenter himself and that he was a "union" member.

The Petition for Review

The Union filed its petition seeking review of the Examiner's decision, contending that the Examiner erred in finding that Tompa had no employes, and the Union requested that the Commission remand the matter for further proceedings. Tompa's Counsel agrees with the Examiner on the issue of employes, and would have the Commission affirm his decision.

Discussion

We disagreed with the Examiner's conclusion that Prem was not an employe of Tompa, and therefore that Tompa was not an employer within the meaning of the Wisconsin Employment Peace Act. According to Tompa's own testimony, Prem was hired with the intent and expectation that he would be actively working for Tompa. However, and again according to Tompa, two days after his hire on July 1, 1980, Prem, due to his wife's illness, went on a paid vacation. Further, Tompa August and September, 1980. Even though Prem performed no actual work, Tompa

However, the Union failed to establish that any provision of the latter agreement was violated by Tompa with respect to employees, if any, in the employ of Tompa since October 1, 1980, and therefore we have dismissed that portion of the complaint alleging a violation thereof.

Dated at Madison, Wisconsin this 19th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner