

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RONALD KOPP, BUSINESS MANAGER,  
FOX RIVER VALLEY DISTRICT  
COUNCIL OF CARPENTERS,

Complainant,

vs.

DAN WERGIN SONS, INC.,

Respondent.  
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Case I  
No. 28978 Ce-1940  
Decision No. 19303-B

ORDER AMENDING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Examiner Douglas V. Knudson having, on May 18, 1982, issued Findings of Fact, Conclusions of Law and Order, together with a memorandum accompanying same, in the above entitled matter, wherein he concluded that Dan Wergin Sons, Inc. has committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act, by failing to pay certain sums of monies to benefit funds on behalf of three employees, as required in a collective bargaining agreement between said Employer and Fox River Valley District Council of Carpenters; and the latter Labor Organization having timely filed a petition requesting the Wisconsin Employment Relations Commission to review the Examiner's decision, contending that the Examiner erred in certain respects, primarily as to the conclusion that the collective bargaining agreement involved did not apply to all the employees of said Employer; and counsel for the parties having filed briefs and arguments in support of, and in opposition to the petition for review; and the Commission, having reviewed the entire record, the decision of the Examiner, the petition for review and the briefs and arguments of counsel, being fully advised in the premises, makes and issues the following

AMENDED FINDINGS OF FACT

1. That the Fox River Valley District Council of the Wisconsin State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as Complainant, is a labor organization with its offices located at 2828 North Ballard Road, Appleton, Wisconsin; and that Ronald Kopp is Complainant's business manager and James Moore is a business representative for Complainant.

2. That Dan Wergin Sons, Inc., hereinafter referred to as Respondent, is an employer engaged in the business of carpet installation, painting and similar types of work, and, at all times material herein, had its office at 1801 Marshall Street, Manitowoc, Wisconsin.

3. That on or about January 13, 1981, Respondent entered into a contract with Soulek Interiors to lay carpet and vinyl floor coverings at certain residential construction sites in Green Bay, Wisconsin.

4. That on or about March 1, 1981, Dennis Grabowski, Glen Sauer and Jeffery Salutz, individuals employed by Respondent, commenced work on the Green Bay project, pursuant to Respondent's contract with Soulek Interiors, laying carpeting and vinyl flooring.

5. That Respondent prior to March, 1981, had no contractual relationship with Complainant.

6. That on or about March 10, 1981, James Moore, advised a representative of Respondent, Dennis Wergin, that the Green Bay project was a union site and that Respondent had to sign a contract with Complainant if its employees were to continue working on the project; that on March 19, 1981, Dennis Wergin, on behalf of Respondent, signed the 1979-1981 Statewide Residential Working Agreement,

herein agreement, negotiated by the Greater Wisconsin Carpenters Bargaining Unit, on behalf of the Local Unions and District Councils of the Wisconsin State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, and, by the Wisconsin Chapter, The Associated General Contractors of America, Inc., on behalf of the signatory builders; that on the same date, Moore advised Dennis Wergin that Respondent's three employees working in Green Bay had to sign up as members with Complainant; and, that the agreement signed by Respondent contained the following provisions:

#### ARTICLE I - COVERAGE

This Agreement covers residential construction and is effective throughout the State of Wisconsin, except the excluded zones as set forth in Exhibit A., Page 32. (Zones 3 and 13)

Residential construction is herein defined as all work in connection with: construction, alteration or repair of all residential units such as single dwellings, duplexes, row houses, town houses and apartments and related buildings. For the purpose of this Agreement, residential construction does not include those housing units constructed of reinforced concrete and/or steel framed units normally referred to as "High Rise," which are normally in excess of three stories in height.

The employers recognize the Union as the sole and exclusive bargaining agent for all carpenters and apprentices for all carpenter work as defined in the various commercial agreements and are automatically bound by the provisions therein when performing commercial work within the "Normal Construction Labor Market" of each of these agreements. Upon request the Union shall furnish a copy of these agreements to the employer. This provision shall remain in effect only for the term of this Agreement.

. . .

#### ARTICLE III - RECOGNITION

The EMPLOYER recognized the UNION as the sole and exclusive bargaining representative for all carpenters and carpenter apprentices on work covered by this Agreement. Further, the EMPLOYER recognizes the traditional Trade Jurisdiction of the United Brotherhood and agrees to assign such work to members of the unit.

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#### ARTICLE VIII HEALTH AND WELFARE FUND

SECTION 8.1. During the life of this Agreement, each employer covered thereby shall pay the sum per hour for each hour worked by all employees covered by the Agreement, specified under Exhibit A Wage Rates Welfare Fund, to the trustees of the Wisconsin State Carpenters Welfare Fund. These payments shall be made not later than the 15th day of each month following the month of which payment is being made as specified in Article XII for distribution. . . .

#### ARTICLE IX PENSION FUND

SECTION 9.1. Each employer covered by this Agreement shall pay to the Trustees of the Wisconsin State Carpenters Pension Fund for each hour worked by all employees covered by this Agreement the sum per hour specified under Exhibit A Wage

Rates Pension Fund. These payments shall be made not later than the 15th day of each month following the month for which payment is made as specified in Article XII for distribution.

. . .

#### ARTICLE X VACATION FUND

SECTION 10.1. During the life of this Agreement, each employer covered thereby shall deduct the sum per hour for each hour worked by all employees covered by this Agreement, specified under Exhibit A Wage Rates Vacation Fund. These deductions shall be remitted not later than the 15th day of each month following the month for which payment is being made as specified in Article XII for distribution.

. . .

#### ARTICLE XI APPRENTICESHIP & TRAINING FUND

SECTION 11.1. During the life of this Agreement, each employer covered by this Agreement shall pay the sum per hour for each hour worked by all employees covered by this Agreement, specified under Exhibit A Wage Rates Apprenticeship and Journeyman Training Fund. These payments shall be made not later than the 15th day of each month following the month for which payment is being made as specified in Article XII for distribution.

. . .

#### ARTICLE XII CENTRAL DEPOSITORY

SECTION 12.1. During the life of this Agreement, each employer covered by this Agreement shall pay the sum due each fund as specified under Article VIII - Health and Welfare Fund, Article IX - Pension Fund, Article X - Vacation Fund, Article XI - Apprenticeship and Training Fund, and all deductions made pursuant to Article XIII (Dues Check-Off) of this Agreement, not later than the 15th day of each month following the month for which payment is being made to Central Depository, P.O. Box 282, Eau Claire, Wisconsin 54701, for distribution.

. . .

#### ARTICLE XIV - DELINQUENCY PROVISION AND BONDING

SECTION 14.1. In the event an Employer becomes delinquent in the payment of the sum required to be paid to the several trust funds, as provided in Article VIII, IX, X and XI of this agreement, then such Employer shall become obligated for all claims that may arise during the period of delinquency. In addition, in the event the trustees of any of the several trust funds have not established a schedule of liquidated damages to be paid in the event of delinquency in making required payments, then an Employer who has become delinquent in making such payments shall become liable for the payment of liquidated damages in the amount equal to ten per cent (10%) of the payments which are overdue and thus delinquent and, further, shall become liable for the payment of additional liquidated damages in an amount equal to five per cent (5%) of the overdue payments for each day that such Employer remains delinquent after the expiration of thirty (30) days following the 15th day of each month after the month for which payment is required to be made.

SECTION 14.2. In the event legal or administrative action becomes necessary to recover the sums due the several Trust Funds, the delinquent Employer shall be required to pay all court costs, service fees, court reporter fees and actual attorney's fees.

. . .

#### ARTICLE XXVI - DURATION

SECTION 26.1. This agreement shall be binding upon the parties, their successors and assigns, and shall become effective as of July 1, 1979 and shall continue in full force and effect until June 30, 1981, and from year to year thereafter unless terminated by written notice given by either part to the other not less than ninety (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 July 1, 1982, open this agreement for negotiating a change in hourly wage rates for the one year period subsequent to that anniversary date.

7. That on or about April 13, 1981 Moore met with Respondent's three employees, who were working on the Green Bay project, and obtained signed union membership cards from them; that on or about April 15, 1981, said three employees ceased working on the Green Bay project for Respondent because of Respondent's loss of its contract with Soulek Interiors; that said three employees have performed no work for Respondent since April 15, 1981; and, that during the time period of March 19, 1981 through April 14, 1981, Dennis Grabowski and Glen Sauer each worked 201 hours, while Jeff Salutz worked 182.5 hours installing carpeting and vinyl flooring.

8. That during the months of March through September, 1981, Respondent employed employees, other than those noted in Finding of Fact 7, as painters, performing interior and exterior residential painting in the Manitowoc area; and that said employee painters did not, at any time material herein, become members of the Complainant, nor did the Respondent apply any term of the aforesaid collective bargaining agreement to said employees.

9. That the following tabulation reflects the number of hours worked by all the employees of the Respondent, including the hours worked by Donald Wergin, an officer of the Respondent, and a brother of Dennis Wergin, who signed the collective bargaining agreement on behalf of the Respondent, from March through September, 1981:

<u>Employee</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
Grabowski, D.	82.5	118.5	-	-	-	-	-
Lemke, T.	-	-	-	76.0	187.5	89.5	38.5
Salutz, J.	64.0	118.5	-	-	-	-	-
Sauer, G.	82.5	118.5	-	-	-	-	-
Schroeder, J.	-	-	-	-	185.5	-	-
Swetnik, C.	-	-	-	-	42.5	35.0	-
Swetnik, M.	38.5	170.5	168.0	164.5	174.0	119.0	35.5
Wergin, Donald	80.0	200.0	160.0	160.0	200.0	160.0	160.0

10. That, upon learning that the Respondent was not making any payments to the Central Depository for distribution to the various funds, as required in the collective bargaining agreement between the parties, on behalf of the employees in the collective bargaining unit covered by said agreement, an auditor employed by the Respondent, conducted an audit of the Respondent's payroll records on August 18 and September 18, 1981, and determined that all employees of the Respondent worked the number of hours reflected in the tabulation set forth above, from March 1 through September 18, 1981; and that on October 21, 1981 said auditor sent a letter to the Respondent, wherein the Respondent was advised that:

- a. The total amount due and owing the funds, by the Respondent total \$6,576.52, of which \$945.75 represented liquidated damages,

- b. Payment in full was expected to be made within fourteen days from October 21, 1981, and
- c. If litigation expenses were incurred in collecting said amount, the Respondent was obligated to pay same, as required in the collective bargaining agreement.

11. That upon the receipt of October 21 letter, Donald Wergin, on behalf of the Respondent attempted to call said auditor to inquire as to the matter, especially to determine the reasons for the amount claimed due and owing to the funds; that apparently the auditor was not in; that Wergin left a message describing the nature of his inquiry; and that on November 4, 1981 the auditor, by letter, advised the Respondent that the amount was arrived at for the following reasons:

Your firm signed the Residential Agreement with the Carpenters effective March 19, 1981.

The fringe benefit articles in that agreement call for fringe benefit payments to the funds on all hours worked by all employees.

Hours were also billed on your behalf on the basis of 40 hours per week. You are, in fact, an employee of the firm, working with the tools of the trade and therefore you are considered a "covered" employee.

12. That during a further exchange of correspondence, on December 8, 1981, the Respondent, among other things advised the auditor that it was willing to pay into the funds, sums, including the contractual penalty, due and owing said funds, for the hours worked by the three employees who installed carpets and flooring at the Green Bay project during March and April, 1981; and that, however, the Complainant did not accept such offer, and on December 16, 1981 the Complainant filed the complaint initiating the instant proceeding.

13. That at all times material herein, only three employees of the Respondent, namely Dennis Grabowski, Glen Sauer and Jeff Salutz, were employed in the collective bargaining unit covered by the terms of the collective bargaining agreement existing between the Complainant and the Respondent; and that none of the remaining employees of the Respondent, nor any of its officers performed work falling within the scope of said collective bargaining unit and/or agreement.

14. That the Respondent has violated the collective bargaining agreement between it and the Complainant by failing to pay to sums due and owing the various funds, pursuant to said agreement, for the number of hours worked by employees Dennis Grabowski, Glen Sauer and Jeff Salutz, in installing carpeting and vinyl flooring at building sites in Green Bay, Wisconsin, during March and April, 1981; and that, however, Respondent has not violated said agreement with respect to any other of its employees or officers.

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

#### AMENDED CONCLUSIONS OF LAW

1. That Respondent Dan Wergin Sons, Inc., its officers and agents, by failing to make payments, as required in the agreement between Dan Wergin Sons, Inc. and Fox River Valley District Council of Carpenters, executed in March, 1981 due and owing the Wisconsin State Carpenters Welfare Fund, the Wisconsin State Carpenters Pension Fund, the Greater Wisconsin Carpenters Bargaining Unit Vacation Fund, and the greater Wisconsin Carpenters Bargaining Unit and the Southern Wisconsin Carpenters Apprenticeship and Journeymen Training Funds in the sum of \$996.59 plus 1 1/2% interest per month for the period of October 21, 1981 to December 8, 1981, on behalf of Dennis Grabowski, Glen Sauer and Jeff Salutz, for the hours worked by them during March and April, 1981, in the laying of carpeting and vinyl flooring at residential building sites in Green Bay, Wisconsin, committed unfair labor practices within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

2. That Respondent Dan Wergin Sons, Inc., its officers and agents, by failing to make payments to the funds set forth above on behalf of any of its

working officers and employees other than Dennis Grabowski, Glen Sauer and Jeff Salutz, at any time after the effective date of the aforementioned collective bargaining agreement has not committed any unfair labor practices within the meaning of Sec. 111.06(1)(f), or any other provision, of the Wisconsin Employment Peace Act.

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

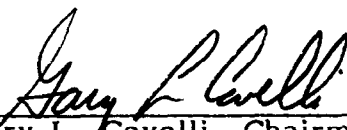
AMENDED ORDER 1/

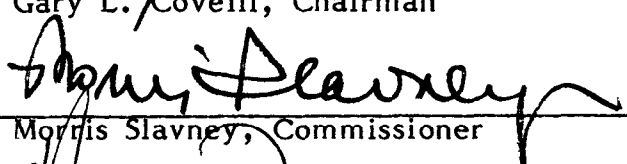
IT IS ORDERED that Dan Wergin Sons, Inc., its officials and agents, shall immediately:

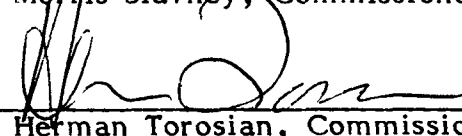
1. Make a payment totaling \$996.59 plus 1 1/2% interest per month for the period of October 21, 1981 to December 8, 1981, to the Central Depository, P.O. Box 282, Eau Claire, WI 54701 for distribution to the funds specified in Conclusion of Law No. 1 above.
2. Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order as to what action it has taken to comply herewith.

Given under our hands and seal at the City of  
Madison, Wisconsin this 17th day of November, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.  
(Continued on Page Seven)

1/ (Continued)

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING ORDER AMENDING EXAMINER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint initiating the instant proceeding, the Complainant contended that the Respondent violated the terms of a collective bargaining agreement existing between them by failing to make contributions on behalf of its employees to various funds, as required in said agreement, and in that regard the Complainant requested that the Respondent be ordered to make such payments, as well as the interest and other costs, as also set forth in the agreement between the parties.

The Respondent, in its answer, set forth various defenses, contending that the agreement was obtained as a result of "false and misleading representations;" that the scope and application of the provisions thereof had in part been waived; that "some or all of the employees" were not covered by the agreement; and that in any event it had no liability under the agreement.

THE EXAMINER'S DECISION

Following hearing in the matter, and consideration of the briefs of the parties, the Examiner issued his decision on May 18, 1981, wherein he materially concluded that there did exist an agreement between the parties as of March 19, 1981; that said agreement covered only the three employees laying carpeting and vinyl flooring; that the agreement expired on July 1, 1981; that no new agreement existed between the parties; that the Respondent failed to make payments to the funds involved, but that the sums due in that regard were for contributions which should have been made for only the three employees involved in such carpeting and vinyl laying work at Green Bay since remaining employees of the Respondent performed painting work, which was not covered by the agreement between the parties. The Examiner ordered the Respondent to make the payments on behalf of the three employees, in addition to the penalty for the delay in making timely payments. The Examiner declined to order the Respondent to pay additional penalties and costs incurred in seeking payments under the agreement, since the Respondent had, prior to the filing of the complaint herein, offered to make payments for said three employees.

THE PETITION FOR REVIEW

Following the receipt of the Examiner's decision, the Complainant obtained new counsel, who timely filed a petition requesting the Commission to review the decision of the Examiner, and in that regard, to reverse various findings and conclusions made by the Examiner, and to order the Respondent to make payments to the various funds on behalf of all employees who were employed beginning in March, 1981 through at least September, 1981, and possibly beyond.

In the brief filed in support of the petition for review, Complainant contended that the Examiner erred in concluding that (a) the agreement only applied to the Green Bay employees during the period from March 19 through April 14, 1981; (b) that the agreement expired on June 30, 1981; (c) that painting work was not covered by the agreement; and (d) that the Complainant waived its right to additional penalties by failing to accept the offer of payment submitted by the Respondent in December, 1981 on behalf of the employees who worked on the Green Bay project.

It should be noted that prior to the filing of the petition for review by the Complainant, the Respondent, by its counsel, on June 2, 1982 forwarded a check, in the amount found to be due and owing by the Examiner, to Complainant's counsel, with the condition that if no petition for review were filed, such check should be presented for payment, but that, should such petition for review be filed, the check should be returned without cashing same.

DISCUSSION

The Examiner, in his Findings of Fact, included the provisions of the agreement material to the disposition of the issues involved, namely the Coverage



and Recognition provisions (Articles I and III). In Findings of Facts 4, 7, and 8, the Examiner set forth the three named employees who performed the carpet and vinyl laying at the Green Bay site, the number of hours worked by them in performing such work, and the other employees, from March through September, 1981 who were performing painting work in the Manitowoc area. The Examiner also concluded that the latter employees were never solicited to become members of the Complainant; that the Respondent had not been advised by the Complainant that the "Manitowoc" employees were covered by the agreement, and that painting was not the type of work falling within the jurisdiction of the Union.

The Complainant argues that the agreement covered residential construction and was in effect throughout the State of Wisconsin. It contends that the Examiner's inference that the agreement was a "members only contract" is also in error, since nothing in the record supports that inference, and further, that limiting the application of the funds involved to only "members" would be violative of the federal labor law. The Complainant also claims that there is no record evidence to support the conclusion that the agreement only covered the Green Bay area.

The contractual recognition provision (Article III) describes the employees covered by the agreement as ". . . all carpenters and carpenter apprentices on work covered by this Agreement. Further, the Employer recognizes the traditional Trade Jurisdiction of the United Brotherhood and agrees to assign such work to members of the unit."

In the Memorandum accompanying his decision the Examiner set forth the portions of the "Commercial Agreement" executed by the Union with commercial, rather than residential, contractors which agreement had been attached to and made part of the original complaint (apparently in error), and which set forth, in detail, the "trade autonomy" and the "claim of Jurisdiction" of the Complainant over numerous "divisions and subdivisions of the trade." Nowhere in said provisions is a claim made over the jurisdiction of "painting" of any type. Thus, the Commission's conclusion that the agreement herein applied only to Grabowski, Sauer, and Salutz and the hours of work performed by them in March and April, 1981, is not based on a "members only" agreement theory or on where the work was performed, but simply on the basis that said three employees, during said period of time, were the only employees who performed work covered by the Carpenter's collective bargaining agreement. Had the record established that any employee of the Respondent performed painting work in Green Bay, we would have found the agreement not applicable to that work.

Since the only work performed by employees of the Respondent covered by the agreement was during March and April, 1981, it is not necessary to make any finding as to when the agreement executed by the Respondent expired as there is no claim by the Respondent that the agreement was not in effect during said months.

While the Examiner, in his Findings of Fact, set forth in detail the circumstances leading up to the execution of the agreement by the agent of the Respondent, and the fact that the Complainant did not seek membership among all the employees of the Respondent, it is our view that said facts are not material to the disposition of the complaint. Nor is the allegation of the Respondent to the effect that its agent was induced into signing the agreement as a result of alleged misrepresentations by the Complainant's agent. It is apparent that the Respondent recognized the fact that other contractors on the Green Bay site were "union," and that, by executing the agreement, problems which might interfere with the completion of the project in the time contemplated could be avoided. The Respondent, while having employees working on the site, had whatever benefit it deemed to be to its advantage, in being party to a "union" agreement.

Lastly, Complainant claims the Examiner erred in computing the amounts due and owing by the Respondent to the fringe benefit accounts. The amount due by the Respondent to the fringe benefit accounts, according to the Complainant, is computed in Complainant's Exhibit 4 to which, it is argued, one must add penalties, interest due and collection costs.


We disagree. First, as discussed above, only three employees, Grabowski, Sauer, and Salutz, were employed in the collective bargaining unit covered by the collective bargaining agreement at all times material herein. Thus Respondent was only liable for the three employees' share of the \$6,576.52 claimed to be due and owing by the Complainant on October 21, 1981. Using the figures, calculations,

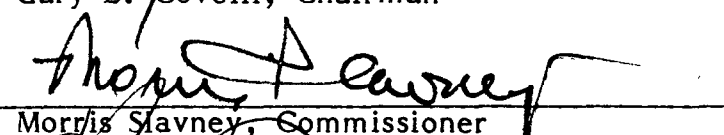
and work sheets 2/ relied upon by Complainant in making its claim, it is readily apparent that Respondent's delinquency in pension, welfare, vacation and education benefits on behalf of Grabowski, Sauer and Salutz,--together with liquidated damages of 10%--amounted to \$996.59. 3/ Also, in the October 21, 1981 auditor's report, Respondent was advised that payment was required in 14 days and that 1 1/2% interest per month would be assessed on the unpaid balance. Additionally, Respondent was advised that if payment was not made, all collection costs would be borne by the Respondent.

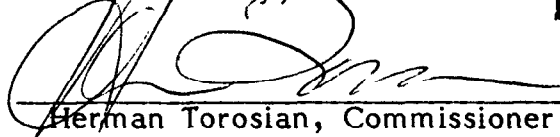
By correspondence received by Complainant on December 8, 1981, Respondent advised Complainant that it was willing to pay into the benefit funds what was due and owing on behalf of Grabowski, Sauer, and Salutz. Complainant did not accept the offer and on December 16, 1981, filed the instant complaint. Under such circumstances where Respondent offered to pay what he was contractually obligated to pay, Complainant is not entitled to attorney fees or collection costs as requested. However, pursuant to the October 21 billing, Respondent is responsible for the payment of 1 1/2% interest per month on the unpaid balance of \$996.59 from October 21, 1981, until December 8, 1981, when Respondent's offer to pay was received by Complainant.

Dated at Madison, Wisconsin this 17th day of November, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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2/ Complainant's Exhibits 3 and 4.

3/ The Examiner calculated said amount to be \$997.59. In reviewing Complainant Exhibit 4, said \$1 difference is attributed to an error in computation.