

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CARPENTERS' DISTRICT COUNCIL OF MILWAUKEE COUNTY AND VICINITY,	:	
	:	
Complainant,	:	Case II
	:	No. 30887 Ce-1964
vs.	:	Decision No. 20286-B
	:	
MORGAN-WIGHTMAN SUPPLY COMPANY,	:	
	:	
Respondent.	:	

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller and Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Milwaukee, WI 53202, by Mr. Timothy G. Costello, appearing on behalf of the Complainant.
 Krukowski & Associates, S.C., Attorneys at Law, 811 East Wisconsin Avenue, Milwaukee, WI 53202, by Mr. Kevin J. Kinney, appearing on behalf of the Respondent.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Examiner Lionel L. Crowley having, on May 12, 1983, issued his Findings of Fact, Conclusion of Law and Order in the above-captioned matter, wherein he concluded that Respondent had not committed unfair labor practices within the meaning of Sec. 111.06(1)(d) of the Wisconsin Employment Peace Act (WEPA); and the Complainant having, on May 31, 1983, filed a petition for review and brief with the Commission of said decision pursuant to Sec. 111.07(5), Stats.; and the Respondent having, on June 3, 1983, filed a statement and brief in opposition to the Complainant's petition for review; and the Commission having reviewed the record in this matter including the petition for review, the statement in opposition thereto and the briefs filed by both parties, and being satisfied that Examiner's decision should be affirmed;

NOW, THEREFORE, it is

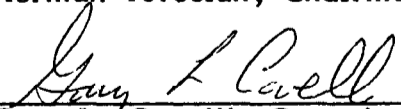
ORDERED 1/

That the Examiner's Findings of Fact, Conclusion of Law and Order in the instant matter be, and the same hereby are, affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
 Herman Torosian, Chairman

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 Gary L. Covelli, Commissioner

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 Marshall L. Gratz, Commissioner

Footnote One appears on Page Two

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.

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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

BACKGROUND

The complaint alleged in essence that the Respondent refused to sign a collective bargaining agreement to which it had agreed, thereby violating Sec. 111.06(1)(d) of WEPA, and sought that the Respondent be ordered to sign and abide by that agreement.

The Respondent is one of some thirty millwork companies in the Milwaukee area which are unionized, and over a period of years it has been signatory to multi-employer agreements with the Complainant. At times, the Respondent has been a member of a formal Association of twelve such companies which actively engaged in the bargaining; in the round of negotiations concerned here, however, it is undisputed that the Respondent was not a member of the Association. After several bargaining meetings, the Complainant rejected a proposal by the employer's Association on July 12, 1982. On the following day, the Complainant struck various employers in the area, but not including the Respondent.

The Complainant subsequently met with and signed an agreement with four of the twelve original Association team members. Complainant has also met individually with some or all of the other eight members, but has reached no agreement with any of them. Some ten employers who were not members of the Association have signed the four-member contract, which is known, after the name of one of the four, as the Pietsch Agreement.

The complaint alleges that the Respondent, at the time of the strike's commencement, told the Union that if it was not struck, it would sign the multi-employer agreement when one was reached, and that the Respondent therefore has violated Sec. 111.06(1)(d) of WEPA by refusing to sign the Pietsch Agreement. Respondent denied that it had agreed to sign any agreement.

THE EXAMINER'S DECISION

In his decision, the Examiner found that on July 12, 1982, the Complainant's business representative called the Respondent, among other companies, and read the Union's proposal to the Respondent's manager, Thomas Schmidt; that Schmidt told the business representative that he did not think the proposal was too bad, but would like a copy of it; and that on the following day Schmidt informed the Union by telephone that the Respondent would go along with the settlement to be reached by the Association. The Examiner found that the Pietsch Agreement had not been signed by eight out of the twelve members of the Association and that the Respondent has refused to sign that agreement. The Examiner concluded that the Pietsch Agreement was not the agreement of the Association because there was no evidence that the eight non-signing Association members had agreed to be bound by the Pietsch Agreement, and the Examiner concluded, therefore, that the Pietsch Agreement was not the Association agreement which the Respondent had agreed to sign. The Examiner therefore concluded that the Respondent's refusal to sign the Pietsch Agreement did not violate Sec. 111.06(1)(d) of WEPA, and he dismissed the complaint.

THE PETITION FOR REVIEW

The Complainant's petition for review argues that the Examiner's Findings of Fact which stated that the Respondent had agreed to sign the Association agreement, that the Pietsch Agreement was not the Association agreement and that Respondent had not agreed to sign the Pietsch Agreement were materially wrong and that the evidence did not support such findings. The Complainant also objected to the associated Conclusion of Law, for the same reasons.

Respondent's opposition to the petition argues that the Findings of Fact and Conclusion of Law objected to by the Complainants are particularly within the discretion of the Hearing Examiner because both rest on credibility determinations which could only be accorded their proper weight by the Hearing Examiner taking testimony.

Neither party submitted fresh arguments; both referred the Commission to the applicable portions of the original briefs filed with the Examiner.

DISCUSSION

We note that in the credibility determination necessary in this matter, the Examiner credited Complainant's Business Agent over Respondent's manager with respect to whether the Respondent had agreed orally to sign the Association agreement. That credibility determination, however, is attacked neither by the Complainant nor by the Respondent. The parties' arguments now focus on the question of whether the Pietsch Agreement should be found to be the Association agreement.

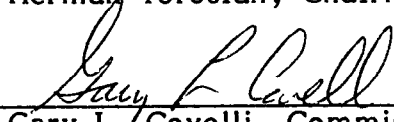
We agree with the Examiner that the Pietsch agreement is not the Association agreement which the Respondent would be obligated to sign on the basis of its July 13, 1982 oral promise to do so. In essence, we agree also with the Examiner's rationale for this conclusion, which need not be repeated here. We note in particular, however, the glaring fact that Complainant does not claim herein that it has taken any action either before us or the National Labor Relations Board to compel the eight non-signing Association members to sign the Pietsch Agreement. This, together with the fact the Complainant has engaged in bargaining with some or all of those companies, is further proof that the Pietsch Agreement does not amount to the industry-wide agreement which the Complainant argues it is, despite the fact that ten other non-members of the Association have signed that agreement. In the absence of a showing that the eight Association members were obligated to sign the Pietsch Agreement, the conclusion is unavoidable that that contract could not be the Association agreement as such and therefore could not be the agreement which the Respondent had agreed to sign.

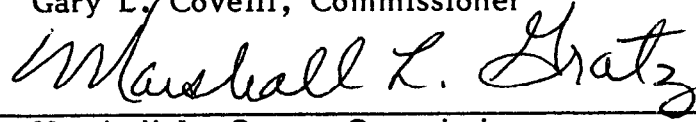
Dated at Madison, Wisconsin this 7th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner