

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

complaint with the Commission wherein it restated its allegations in more detail; and a hearing having been held in Madison, Wisconsin, on September 7, 1983, before the Examiner; and the Examiner having considered the evidence and being advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. That Central Wisconsin District Council of Carpenters, hereinafter referred to as the Complainant, is a labor organization having its offices at 1602 South Park Street, Madison, Wisconsin 53713; and that at all times material herein, Marshall Kuhnly has been Complainant's Business Manager.

2. That Great Lakes Construction Corporation, hereinafter referred to as the Respondent, is an employer formerly having its offices located at 2210 South Beltline Court, Madison, Wisconsin 53713; and that at all times material herein, Ron Bunbury has acted as an agent of, and on behalf of, the Respondent.

3. That on March 26, 1980, Ron Bunbury, acting on behalf of the Respondent, and Marshall Kuhnly, acting on behalf of the Complainant, signed the following provision at pages 47-48 in the "Working Agreement" negotiated between the Greater Wisconsin Carpenters Bargaining Unit and Wisconsin Chapter, the Associated General Contractors of America, Inc.:

#### AGREEMENT

This Agreement made this 1st Day of May, 1979, by and between the Greater Wisconsin Carpenters Bargaining Unit of the U.B. of C. and J. of A. and Wisconsin Chapter, The Associated General Contractors of America, Inc., an employer of Carpenters, members of said Greater Wisconsin Carpenters Bargaining Unit, and

WHEREAS: Those persons, firms or corporations which separately adopt and become signatory to this agreement, herein individually called the "contractor" or "Employer" and has received a copy and is familiar with the provisions of a collective bargaining agreement as entered into for the period May 1, 1979 through April 30, 1982 by the Wisconsin Chapter, The Associated General Contractors of America, Inc. and the Greater Wisconsin Carpenters Bargaining Unit and shall be binding upon the parties, their successors and assigns, and shall become effective as of May 1, 1979 and shall continue in full force and effect through April 30, 1982, and from year to year thereafter, unless terminated by written notice given by either party to the other not less than ninety (90) days prior to such expiration date, or anniversary date thereof, and

WHEREAS: The undersigned Employer wishes to employ carpenters affiliated with said Greater Wisconsin Carpenters Bargaining Unit.

THEREFORE: This undersigned Employer hereby subscribes to and agrees to be bound by the provisions, articles, terms and conditions of the said collective bargaining agreement and accepts all of it the same as if it were herein contained and further agrees that he will furnish the Greater Wisconsin Carpenters Bargaining Unit with certificates of coverage with Workmans Industrial Accident Insurance and will voluntarily elect to become subject to coverage under the Wisconsin Unemployment Compensation Act and make contributions accordingly.

He further agrees to accept as an obligation for and on behalf of this firm, to oversee the payment of established rate of wages and payment of contributions to the Greater Wisconsin Carpenters Vacation Fund and The Wisconsin State Carpenters Health and Welfare Fund and The Wisconsin State Carpenters Pension Fund and The Greater Wisconsin Carpenters Apprenticeship & Training Fund as is provided by the above described collective bargaining agreement, and accepts the

trust agreements and trustees of said Trust Funds. The undersigned Employer further agrees that he will remain in compliance with the provisions hereof and as they may be amended or extended until the date of expiration of the aforementioned collective bargaining agreement and thereafter until such time as this Agreement is cancelled or suspended by another agreement.

Ronald Bunbury /s/  
EMPLOYER'S REPRESENTATIVE SIGNATURE

Great Lakes Const.  
EMPLOYER'S NAME

2210 S. Beltline Ct.  
EMPLOYER'S STREET ADDRESS

Madison Wis. 53711  
CITY STATE ZIP CODE

UNEMPLOYMENT COMPENSATION NO.

WORKMEN'S COMPENSATION NO.

251-5781  
TELEPHONE

GREATER WISCONSIN CARPENTERS  
BARGAINING UNIT

Marshall Kuhnly C.W.D.C.  
BUSINESS REPRESENTATIVE AREA

3/26/80  
DATE

4. That through the actions of its agent, Ron Bunbury, Respondent became signatory to a collective bargaining agreement covering the wages, hours and conditions of employment of employes in the Greater Wisconsin Carpenters Bargaining Unit which is comprised of local unions and district councils, including Central Wisconsin District Council of Carpenters, that are affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and that by the actions of its agent on March 26, 1980, Respondent became bound by the terms and conditions of said collective bargaining agreement.

5. That at all times material herein, said collective bargaining agreement, in part, contained the following provisions:

ARTICLE VI

WAGE RATES

Section 6.1 Hourly Wage Rates The minimum hourly wage rates (plus fringe benefit fund contributions) shall be as follows:

SCHEDULE OF WAGE RATES AND FRINGES FOR 1979, 1980 and 1981

Area	Year	...	*Deducted Vacation	H&W	Pension	Ed. & Appr.	...
Madison and Eau Claire							

. . .

Carpenter            5/1/80            --.70            .60            .80            .05

. . .

\* The vacation fund is included in wages as this is tax deductible. Health and Welfare, Pension and Education and Apprenticeship Funds are fringe benefits, thus they are not tax deductible.

. . .

## ARTICLE VII

### HEALTH & WELFARE FUND

Section 7.1 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 Article VI 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 for which payment is being made to the central depository as specified in Article XI for distribution to Health and Welfare Fund.

. . .

Section 7.3 The parties to this Agreement, and all employers covered thereby, agree to be bound by all of the terms of the Trust Agreement governing the establishment, administration and operation of the Wisconsin State Carpenters Welfare Fund, as amended from time to time, and, further, agrees to be bound by all of the actions, rules and regulations heretofore and hereafter adopted by the trustees in accordance with the trust agreement. The parties to this Agreement and all employers covered thereby, hereby accept as trustees, the trustees appointed under and in accordance with such trust agreement, and all succeeding trustees as shall have been or will be appointed under and in accordance with such trust agreement. The Employers and the Union hereby ratify all of the actions already taken or to be taken by such trustee within the scope of their authority.

Section 7.4 The trustees are hereby authorized to establish a schedule of liquidated damages to be assessed against, and to be paid by, any employer who fails to make timely payments to the Wisconsin State Carpenters Welfare Fund in accordance with Section 7.1

## ARTICLE VIII

### PENSION FUND

Section 8.1 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 Article VI Wage Rate-Pension Fund. These payments shall be made not later than the 15th day of each month following the month for which payment is being made to the central depository as specified in Article XI for distribution to Pension Fund.

Section 8.2 The parties to this Agreement, and all employers covered thereby, agree to be bound by all of the terms of the Trust Agreement governing the establishment, administration and operation of the Wisconsin State Carpenters Pension Funds, as amended from time to time, and, further, agree to be bound by all of the actions, rules and regulations heretofore and hereafter adopted by the trustees in accordance

with the trust agreement. The parties to this Agreement and all employers covered thereby, hereby accept as trustees, the trustees appointed under and in accordance with such trust agreement, and all succeeding trustees as shall have been or will be appointed under and in accordance with such trust agreement. The Employers and the Union hereby ratify all of the actions already taken or to be taken by such trustee within the scope of their authority.

Section 8.3 The trustees are hereby authorized to establish a schedule of liquidated damages to be assessed against, and to be paid by, any employer who fails to make timely payments to the Wisconsin State Carpenters Pension Fund in accordance with Section 8.1.

## ARTICLE IX

### VACATION FUND

Section 9.1 During the life of this Agreement, each employer covered thereby shall deduct the sum per hour, specified under Article VI Wage Rates-Vacation Fund, for each hour worked by all employees covered by this Agreement to the trustees of the Greater Wisconsin Carpenters Bargaining Unit Vacation Fund. These deductions shall be remitted to the central depository as specified in Article XI for distribution to Vacation Fund not later than the 15th day of each month following the month for which payment is being made.

Section 9.2 The Greater Wisconsin Carpenters Bargaining Unit Vacation Fund is a trust fund created for the purpose of providing vacation pay benefits, as may be determined by the trustees, for the benefit of employees on whose behalf payments have been made to the fund. The trustees shall adopt rules and regulations governing the eligibility of employees as the trustees may deem appropriate, as long as such terms and provisions are not inconsistent with any of the terms and provisions of the collective bargaining agreements existing between the parties.

Section 9.3 The parties to this agreement, and all employers covered thereby, agree to be bound by all of the terms of the trust agreement governing the establishment, administration and operation of the Greater Wisconsin Carpenters Bargaining Unit Vacation Fund, as amended from time to time, and, further, agree to be bound by all of the actions, rules and regulations heretofore and hereafter adopted by the trustees in accordance with the trust agreement. The parties to this Agreement and all employers covered thereby, hereby accept as trustees, the trustees appointed under and in accordance with such trust agreement, and all succeeding trustees as shall have been or will be appointed under and in accordance with such trust agreement. The employers and the Union hereby ratify all of the actions already taken or to be taken by such trustees within the scope of this authority.

Section 9.4 The trustees are hereby authorized to establish a schedule of liquidated damages to be assessed against, and to be paid by, any employer who fails to make timely payments to the Greater Wisconsin Carpenters Bargaining Unit Vacation Fund in accordance with Section 9.1.

. . .

## ARTICLE X

### APPRENTICESHIP & TRAINING FUND

Section 10.1 During the life of this Agreement, each employer covered by this Agreement shall pay the sum of five

cents (5¢) for each hour worked by all employees covered by this Agreement to the Greater Wisconsin Carpenters Bargaining Unit Apprenticeship and Journeyman Training Fund. 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 to the central depository as specified in Article XI for distribution to Apprenticeship and Training Fund.

. . .

Section 10.3 The "Contractor" or "Employer" and the "Unions" covered by this Agreement agree to be bound by all of the terms of the trust agreement creating the Greater Wisconsin Carpenters Bargaining Unit Apprenticeship and Journeyman Training Fund and by all of the actions and rules of the trustees administering such training fund in accordance with the trust agreement and regulations of the trustees, provided that such trust agreement, actions, regulations and rules shall not be inconsistent with this Agreement. Each employer covered by this Agreement hereby accepts as trustees the trustees appointed under and in accordance with such trust agreement and all succeeding trustees will be appointed under and in accordance with the trust agreement. Such employer hereby ratifies all actions already taken or to be taken by such trustees within the scope of their authority.

Section 10.4 The trustees are hereby authorized to establish a schedule of liquidated damages to be assessed against, and to be paid by, any employer who fails to make timely payments to the Greater Wisconsin Carpenters Bargaining Unit Apprenticeship and Journeyman Training Fund in accordance with Section 10.1.

. . .

## ARTICLE XI

### CENTRAL DEPOSITORY

Section 11.1 During the life of this Agreement, each employer covered by this Agreement shall pay the sum due each fund as specified under Article VII--Health and Welfare Fund, Article VIII--Pension Fund, and Article IX--Vacation Fund, Article X--Apprenticeship & Training Fund, and all deductions made pursuant to Article II, Section 2.3 (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 XII

### DELINQUENCY PROVISION AND BONDING

Section 12.1 In the event an Employer becomes delinquent in the payment of the sums required to be paid to the several trust funds, as provided in Article VII, VIII, IX, and X 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 percent (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 percent (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 12.2 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.

. . .

Section 12.6 If during the life of this Agreement any Employer becomes delinquent in the payment of required contributions for a particular contribution month (as provided in Section 11.1 and Section 12.1) to any or all of the Trust Funds referred to in Section 11.1, and such Employer has been notified in writing of such delinquency, then such Employer shall (in addition to paying the full amount due) be required to post with the office of the Fund Administrator, or with the Central Depository, a cash or surety bond in accordance with the requirements of Section 12.3 and the exemptions provided under Sections 12.4 and 12.5 shall no longer be applicable to such Employer.

6. That one Kent Bontly was employed by the Respondent as a carpenter in the Madison, Wisconsin, area and worked for Respondent in that capacity thirty-five (35) hours during July, 1980, forty-one (41) hours during September, 1980, one-hundred twenty-eight (128) hours during October, 1980, fifty-nine and one-half (59-1/2) hours during November, 1980 and thirty-one and one-half (31-1/2) hours during December, 1980; that Bontly performed such work within the jurisdiction of the Complainant and such work was covered by the terms of the collective bargaining agreement to which Respondent and Complainant were signatory; and that pursuant to the provisions of said agreement Respondent was required to pay the following amounts on a per hour basis to the respective trust funds for said hours:

Wisconsin State Carpenters' Welfare Fund	-- 60¢ per hour
Wisconsin State Carpenters' Pension Fund	-- 80¢ per hour
Greater Wisconsin Carpenters' Bargaining Unit Vacation Fund	-- 70¢ per hour
Greater Wisconsin Education Fund	-- 5¢ per hour

7. That Respondent failed or refused to remit certain payments to the trust funds as required by the terms of the collective bargaining agreement to which Respondent and Complainant were signatory; and that Complainant eventually became aware of Respondent's failure to make the required payments and on May 6, 1981, Kuhnly sent the following letter to Bunbury:

May 6, 1981

Mr. Ron Bunbury, President  
Great Lakes Construction Corp.  
2210 South Beltline Court  
Madison, WI 53713

Dear Mr. Bunbury:

This is to officially inform you that your firm, Great Lakes Construction Corporation is in violation of the working agreement between the Greater Wisconsin Carpenters Bargaining Unit, of which Local #314 is affiliated, and your company.

The specific violations involve:

Article VII.	Health & Welfare
Article VIII.	Pension
Article IX.	Vacation Fund
Article X.	Apprenticeship & Training

Please further be advised of the terms of Article XII.

In accordance with Article IV. of the working agreement, you are requested to contact this office within forty-eight (48) hours upon receipt of this letter to dispose of this grievance.

Failure to comply within the prescribed time, will leave Carpenters Local #314 no alternative but to file for violation of Wisconsin State Statutes Chapter 111.06(1)(f).

Yours truly,

Marshall Kuhnly  
Business Manager

MK/sr opeiu 39 afl-cio

CERTIFIED MAIL RECEIPT NUMBER 9872527

CC: Cline Cagel, Audit Supervisor

8. That Complainant did not receive any response to its letter of May 6, 1981 from Bunbury or any other representative of the Respondent; that on June 9, 1981, an auditor from the Combined Crafts Statewide Audit Program conducted an audit of Respondent's payroll records for the period of June 1, 1980 through May 31, 1981; that the audit of June 9, 1981, revealed that Respondent had failed to make the required payments to the trust funds for the work performed by Bontly for the Respondent; that the collective bargaining agreement to which Complainant and Respondent were signatory authorized the trustees of the various funds to establish a schedule of liquidated damages to be assessed against an employer that failed to make timely payments to the funds; that the trustees of the various funds set a schedule of liquidated damages at the rate of ten percent (10%); and that, including the ten percent (10%) liquidated damages assessment, Respondent owed the trust funds the following amounts for the hours worked by Bontly:

Wisconsin State Carpenters' Welfare Fund	\$194.70
Wisconsin State Carpenters' Pension Fund	\$259.60
Greater Wisconsin Education Fund	\$ 16.21

9. That on June 24, 1981, the Combined Crafts Statewide Audit Program sent the following billing letter to Bunbury indicating the amounts owed to the funds, along with the remittance report forms on Bontly's hours:

June 24, 1981

Ron Bunbury, President  
Great Lakes Construction Corp.  
131 West Wilson, Suite 900  
Madison, Wisconsin

RE: Field Auditor's Examination  
Period of Audit: June 1, 1980 through May 31, 1981

Dear Mr. Bunbury:

The Field Auditor examined payroll records of your firm recently to determine if contributions were consistently correct within the provisions of the Trust Agreement governing the various Funds in behalf of Carpenters performing work within the jurisdiction of such Funds.

The audit, including a review of the payroll records, answers to questions presented by the auditor and records of contributions paid to the Funds, indicates a deficiency between hours worked and hours reported to the Funds. The total amount found due and owing to the Funds is \$470.51, of which \$42.75 represents Liquidated Damages.



We are enclosing for your file, copies of the remittance report forms prepared for you by the audit staff. Kindly remit separate checks payable to the Funds for the indicated amounts:

Wisconsin State Carpenters' Welfare Fund	\$194.70
Wisconsin State Carpenter's Pension Fund	\$259.60
Greater Wisconsin Education Fund	\$ 16.21

Payment in full to the Funds is required within fourteen (14) days from the date of this letter.

Please be advised the Trust Agreement of the Wisconsin State Carpenter's Welfare and Pension Funds now provides that reasonable attorney fees incurred by the Trustees in collection of employer payments, in addition to liquidated damages, shall be paid by employers in addition to the contribution payment. In the event payment is not made and the Trustees must take appropriate legal action to enforce collection, all reasonable attorney fees and costs shall be borne by your firm. The Trustees urge you to make the payment specified above within the allocated time to save you additional expense. For your convenience, and for control purposes, please use the enclosed self-addressed envelope for your remittance.

Very truly yours,

Cline D. Cagle  
Audit Supervisor

CDC/hl  
Enc.

cc: Mr. Tom Bennett, Administrative Manager  
Carpenter Local #314 - Madison

10. That on August 11, 1981, Complainant filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission wherein it alleged that Respondent had failed to make the payments required by Articles VII, VIII, IX, X and XI of the parties' collective bargaining agreement for the hours worked for Respondent by Kent Bontly during the months of July, September, October, November and December of 1980, in violation of Section 111.06(1)(f), Wis. Stats.; and that on July 25, 1983, Complainants filed an amended complaint with the Commission alleging the same violations set forth in the original complaint, but in greater detail.

11. That Respondent has failed to make the payments to the Wisconsin State Carpenters' Welfare Fund, Wisconsin State Carpenters' Pension Fund and the Greater Wisconsin Education Fund for the hours of work performed for Respondent by Bontly during the months of July, September, October, November and December of 1980, as required by the terms of the collective bargaining agreement to which Respondent and Complainant were signatory; and that by failing to make said required payments, Respondent violated Articles VII, VIII, X and XI of said collective bargaining agreement.

12. That there is no evidence in the record as to whether Respondent failed to make the payments to the Vacation Fund in violation of Article IX of the aforesaid agreement.

Based upon the above Findings of Fact, the Examiner makes the following

#### CONCLUSIONS OF LAW

1. That there is not sufficient evidence in the record to find that Respondent, Great Lakes Construction Company, failed or refused to make the payments to the Vacation Fund as required by Article IX of the parties' agreement for those hours worked for Respondent by Bontly, and therefore, there is no finding in that regard that Respondent violated Section 111.06(1)(f) of the Wisconsin Statutes.

2. That the Respondent, Great Lakes Construction Corporation, failed or refused to pay to the appropriate trust funds those amounts required by Articles VI, VII, VIII, X and XI of the parties' collective bargaining agreement for those hours worked by the employee, Bontly, for the Respondent during the months of July, September, October, November and December of 1980, and thereby, committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Statutes.

On the basis of the above Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that as to the allegation that Respondent violated Article IX, Vacation Fund, of the parties' collective bargaining agreement, the complaint be, and the same hereby is, dismissed.

IT IS FURTHER ORDERED that the Respondent, Great Lakes Construction Corporation, its officers and agents, shall immediately:

1. Cease and desist from refusing to comply with the terms of the parties' collective bargaining agreement, specifically including Articles VI, VII, VIII, X, XI and XII of that agreement.
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 VI, VII, VIII, X, XI and XII, including the liquidated damages provided for in Article XII, 2/ based upon the hours worked for Respondent by Kent Bontly during the months of July, September, October, November and December of 1980.
  - b. Immediately pay to Complainant, or the appropriate funds, interest at the rate of 12% per year 3/ on the monetary amounts due and owing under paragraph 2.a. of this Order from the dates the amounts were due and owing under the applicable articles in the aforesaid collective bargaining agreement.
  - c. Immediately pay to the Complainant the cost of filing the instant complaint with the Commission, service fees and court reporter fees, if any; and further to immediately pay to the Complainant the cost of actual attorney fees incurred in this action, as provided in Article XII, Section 12.2 of the aforesaid collective bargaining agreement.


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- 2/ As indicated in Finding of Fact 8, the trustees for the funds set the liquidated damages at 10% of the original amount owed for each month.
  - 3/ The rate set forth and in effect in Section 814.04(4), Wis. Stats., at the time the complaint was filed on August 11, 1981, as well as at the time the amended complaint was filed on July 25, 1983.

- d. 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. 4/

Dated at Madison, Wisconsin this 25th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
David E. Shaw, Examiner

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- 4/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER

The complaint in this case was originally filed on August 11, 1981 and was then held in abeyance pending settlement discussions. In April of 1982 the Commission was advised by Complainant's counsel that the Respondent had filed a petition for bankruptcy in October of 1981, and that accordingly an automatic stay on any collection action had been entered by the Bankruptcy Court. It was requested that the Commission put the matter on inactive status.

In June of 1983 counsel for Complainant advised the Commission that Respondent's petition for bankruptcy had been dismissed and asked that the Commission proceed to schedule a hearing on the complaint. An amended complaint describing the alleged violations in greater detail was filed with the Commission on July 25, 1983. As noted in footnote 1 of this decision, several attempts were made to notify Respondent's agent, Ron Bunbury, of these proceedings, all such attempts were unsuccessful.

The complaint and amended complaint allege that Respondent failed to make the payments to the various trust funds for the hours worked by Respondent's employees who fell within Complainant's jurisdiction as required by Articles VII, VIII, IX, X and XI of the parties' collective bargaining agreement.

The un rebutted evidence presented by Complainant establishes that Respondent became signatory to the collective bargaining agreement through the actions of its agent and officer, Ron Bunbury, on March 26, 1980, in signing the agreement on behalf of the Respondent. The evidence further establishes that one Kent Bontly worked for Respondent as a carpenter, within the Complainant's geographic jurisdiction, during the months of July, September, October, November and December of 1980.

The un rebutted testimony of Complainant's Business Manager, Marshall Kuhnly, and the auditor, Joe Mavis, establishes that Respondent failed to make the payments to the Welfare Fund, Pension Fund and Education Fund, as required by Articles VII, VIII, X and XI of the parties' collective bargaining agreement, for those hours worked for Respondent by Bontly. Beyond the allegation in Kuhnly's letter of May 6, 1981 to Bunbury, there is no evidence in the record as to whether Respondent did or did not make the payments to the Vacation Fund for Bontly as required by Article IX of the agreement. The billing letter sent to Respondent by the audit program on June 24, 1981 was based on an audit of Respondent for the period of June 1, 1980 through May 31, 1981 and listed deficiencies for only the Welfare, Pension and Education funds. Similarly, the remittance report forms, prepared by the auditor, Mavis, and attached to the billing letter, only indicate those three funds and line-out the space for "Vacation Payments". On that basis, no violation has been found as to Article IX.

Article XI, Central Depository, provides that payments to the various trust funds are to be made "not later than the 15th day of each month following the month for which payment is being made . . ." Article XII, Delinquency Provision and Bonding, Section 12.1, expressly provides that when an employer is delinquent in its contributions to the trust funds, in addition to being obligated for claims arising during the period in which it is delinquent, if the trustees of the various funds have not set a schedule of liquidated damages, then the employer is liable for liquidated damages in amounts equal to 10% of the overdue payments, plus an additional 5% if payments are not made within thirty (30) days of the date due. The testimony of Mavis established that the trustees had set a schedule of liquidated damages in the amount of 10% of the amount due. Therefore, as indicated in the billing letter of June 24, 1981, the amounts due were limited to the actual amounts plus 10% as liquidated damages.

Interest has also been awarded in this case pursuant to the Commission's decision in Wilmot Union High School District (18820-B) 12/83. In discussing two recent court decisions regarding the ordering of interest by an administrative agency, 5/ the Commission stated:

In both Anderson v. LIRC and Madison Teachers v. WERC, the Courts held inter alia, that the administrative agency involved had erred by not ordering interest as regards a period including the time from the beginning of the back pay period to the date of the initial decision holding that the back pay involved was due and owing. Each Court held that the agency involved had improperly failed to apply the general rule in Wisconsin that pre-judgment interest is available as a matter of law on fixed and determinable claims or where there is a reasonable certain standard of measuring damages. 13/ In each case the Court treated employment-related back pay as sufficiently determinable under the Wisconsin rule standards, above, to entitle the affected complainant to interest from the respective date of each instance of loss of a monetary benefit due to the respondent's statutory violation. 14/ Each Court thereby applied interest not only to the period after a decision was issued to the effect that back pay was due and owing in the circumstances, but also to the period of time before any such decision had been issued. (At pages 8-9)

The Commission went on to conclude that:

. . . the interest rate to be applied to monetary awards under Sec. 111.07(4), Stats., is the single and uniform rate provided for in Sec. 814.04(4), Stats., in effect when the complaint was filed with the agency. 6/

In this case the claims are "fixed and determinable" and hence, Complainant is entitled to pre-judgment interest, as well as post-decision interest, on its claims from the dates they became due and owing. The rate in effect in Section 814.04(4), Wis. Stats., both when the complaint was originally filed and when it was amended, was "12% per year". Accordingly, interest at the rate of 12% per year is ordered.

Regarding the award of costs and attorney's fees, Article XII, Section 12.2, expressly provides that if it is necessary to take legal or administrative action to recover the amounts due, "the delinquent Employer shall be required to pay all court costs, service fees, court reporter fees and actual attorney's fees." In Madison Metropolitan School District (16471-D) 5/81, 7/ the Commission reaffirmed its policy as to the award of attorney's fees, stating:

Pursuant to that policy no attorney's fees nor costs will be granted, unless the parties have agreed otherwise, or unless the Commission is required to do so by specific statutory language. The only exception shall be in cases where the Commission finds that an employee has, or employees have, been denied fair representation under the circumstances previously discussed herein. 8/

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5/ Judy Lynn Anderson v. State of Wisconsin, Labor and Industry Review Commission, 111 Wis. 2d 245 (1983); Madison Teachers Incorporated, et al. v. WERC, et al., \_\_\_\_ Wis. 2d \_\_\_\_ (Ct. App. IV, No. 82-579, 10/25/83).

6/ Wilmot, at page 10.

7/ Affirmed in relevant part, Madison Teachers Incorporated, supra, 11.5.

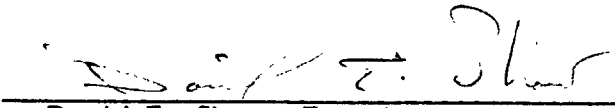
8/ At page 10.

Here the parties have contractually agreed that the delinquent employer is liable for the Complainant's costs and actual attorney's fees incurred in recovering the delinquent amounts. Accordingly, costs and attorney's fees actually incurred by Complainant in this action have been ordered paid to Complainant by Respondent.

Dated at Madison, Wisconsin this 25th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
David E. Shaw, Examiner