STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE AND SOUTHERN WISCONSIN DISTRICT COUNCIL OF CARPENTERS, Complainant, vs. DICK SCHUMACHER TILE CO., INC., Respondent.	Case 1 No. 51489 Ce-2160 Decision No. 28261-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Matthew Robbins, appearing on behalf of the Union.

Mr. Dick Schumacher, President, Dick Schumacher Tile Co., Inc., appearing on behalf of the Company.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee and Southern Wisconsin District Council of Carpenters filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission on September 2, 1994, in which it alleged that Dick Schumacher Tile Co., Inc. had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act. The Commission appointed Raleigh Jones to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5) of the Wisconsin Statutes. A hearing was held on February 23, 1995, at Appleton, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. The parties did not file briefs. Having considered the evidence and arguments of the parties, the Examiner now makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Milwaukee and Southern Wisconsin District Council of Carpenters, hereinafter referred to as the Union or Complainant, is a labor organization with its principal offices at 3020 West Vliet Street, Milwaukee, Wisconsin 53208-2491. James Judziewicz is the Business Representative for that Union who handles the work state-wide of Tile Finishers Local 47. Prior to

being a Business Representative for the Carpenters Union, Judziewicz was the Business

Representative for Tile Finishers Local 47 when it was an affiliate of the Tile, Marble and Terrazzo Finishers and Granite Cutters International Union. The Tile Finishers International Union merged with the Carpenters Union in 1988.

2. Dick Schumacher Tile Co., Inc., hereinafter referred to as the Company or Respondent, is an employer which, until several years ago, maintained its offices at Rural Route 5, Box 333, Appleton, Wisconsin 54915. The Company is currently located at N1775 County Road N, Appleton, Wisconsin 54915. The Company is in the business of installing ceramic tile. Dick Schumacher is the owner and President of the Company which he operates as a sole proprietorship. In addition to being President of the Company, Schumacher is a tile setter by trade.

3. In the ceramic tile installation business, a tile setter and a tile finisher traditionally work together. A tile setter cuts and lays out the tile. A tile finisher assists the tile setter by distributing all materials on the job site, mixing mortars and ingredients, grouting the tile and cleaning the tile after it is laid.

4. The record indicates that on some installation jobs, Schumacher worked by himself doing both the tile setting and tile finishing work. On other jobs, Schumacher did the tile setting work and employed a tile finisher(s). The identity of the tile finisher(s) employed by Schumacher is not contained in the record. On still other jobs, Schumacher employed another tile setter, Randy Baril. Tile finishers are represented by the Tile Finishers Union, which as previously noted, is now affiliated with the Carpenters Union. Represented tile setters are within the jurisdiction of another union, namely the Tile Setters Union, which in turn is part of the Bricklayers Union. Baril is a member of the Tile Setters Union. Schumacher is not a member of either the Tile Setters or Tile Finishers Union.

5. On August 7, 1989, Schumacher signed a voluntary recognition agreement with the Union. By signing that document, the Company recognized the Union as the exclusive bargaining agent for its tile finishers. That same date, Schumacher also signed the 1988-91 Area I labor agreement between the Tile, Marble, Terrazzo Finishers and the Madison Area Ceramic Tile Contractors Association. Schumacher was represented by Attorney Steven Frassetto when he signed these documents. The labor agreement just referenced contains, among its provisions, the following:

> THIS AGREEMENT made and entered into this 1st day of June, 1988, by and between **THE MADISON AREA CERAMIC TILE CONTRACTORS ASSOCIATION** and the **TILE, MARBLE, TERRAZZO FINISHERS AND SHOPWORKERS UNION LOCAL NO. 47,** all of the Counties of the State of Wisconsin, with the exception of Milwaukee, Waukesha, Washington, Ozaukee, Racine, Kenosha, Walworth, Sheboygan,

Fond du Lac, Dodge, Jefferson, Rock and Green, Wisconsin.

. . .

ARTICLE II

UNION RECOGNITION

Section 1. The Employer recognizes the Union as the exclusive collective bargaining agent for the employees covered by this Agreement.

. . .

ARTICLE V

WAGES

. . .

Section 4. Hiring and Layoff.

(a) The Employer shall call the Business Representative whenever employees are needed. The Business Representative will inform the Employer of the names of the local full scale Finishers on the out-of-work list and will supply the number of local employees requested. If no local full scale Finishers are available, the Employer may request that the Business Representative supply a local Finisher Trainee. If the Business Representative is unable to supply a local Finisher Trainee, the Employer shall have the prerogative to hire the needed personnel until completion of the project, subject to Article III.

. . .

ARTICLE VI

SUBCONTRACTING

Section 1. The Employer agrees that, when subletting or contracting out work covered by this Agreement which is to be performed within the geographical coverage of this Agreement and at the site of the

construction, alteration, painting or repair of a building, structure or other work, he will sublet or contract out such work only to a subcontractor who has signed or is covered by a written labor agreement entered into with the Union which labor agreement shall provide for economic benefits not less, and contain other terms and conditions not more favorable to an Employer, than those established by this Agreement.

Section 2. (a) The Employer further agrees that he will give written notice to all subcontractors that such subcontractors are required to pay their employees the wages and fringe benefits provided for in this Agreement.

(b) The Employer agrees not to enter into any individual Agreement which permits his employees to perform their work on any basis of pay other than an hourly rate which shall not be less that (sic) the rate specified in this Agreement. It is further agreed that all forms of compensation related to employee productivity, such as bonus systems, quota systems, piecework systems, lumping labor systems and other incentive type arrangements will not be used.

. . .

ARTICLE XIII

SPECIAL WORK RULES

. . .

Section 6. The Employer agrees the following ratio will be maintained on a shop-wide annual basis:

Number of Tile Finishers/Minimum 3/	Number of Tile Setters 2/ 3/
1	1
1	2
2	3
3	4
etc.	etc.

2/ Includes like workmen, apprentices, etc.

3/ Employer has the latitude to deviate from said ratio by up to a maximum of 500 hours per contract year (June through May).

. . .

ARTICLE XVII

DURATION OF AGREEMENT

This Agreement shall be binding upon the parties, their successors and assigns, and shall continue in full force and effect until May 31, 1991, and from year to year thereafter, unless terminated by written notice (by certified mail) given by either party to the other not less than ninety (90) days prior to said expiration date, or any anniversary thereto. In the event the party notifies the other party it is opening the agreement for renegotiation all of the terms of the agreement shall continue on from day to day after its initial term, or anniversary thereof, until either party gives written notice to the other of its termination. Since it is the intention of the parties to settle and determine, for the term of this Agreement, all matters constituting the proper subjects of collective bargaining between them, it is expressly agreed there shall be no reopening of this Agreement for any matter pertaining to rates of pay, wages, hours of work, or other terms and conditions of employment, or otherwise, during the term of this Agreement, with the exception of Article V, Section 5; Article VII, Section 4; Article VIII, Section 3; and the implementation of a Vacation Fund, for which this Agreement may be reopened.

6. Prior to the termination date referenced in Article XVII of the collective bargaining agreement (May 31, 1991), neither the Union nor the Company contacted the other regarding extending or terminating the 1988-91 labor agreement. There was no verbal or written contract between the parties concerning same. Thus, neither side took any action whatsoever to extend or terminate the 1988-91 labor agreement. Specifically, neither side gave the other written notice that it wished to extend the 1988-91 labor agreement. Conversely, neither side gave the other written notice that it wished to terminate the 1988-91 labor agreement. Additionally, the Union never offered Schumacher a successor labor agreement to sign, and Schumacher never signed a successor labor agreement to that referenced in Finding of Fact 5.

7. Schumacher and Judziewicz had no contact with each other for several years. During this period Judziewicz believed based on what he heard via the grapevine that Schumacher had gone out of business due to financial difficulties. In late 1993, though, Judziewicz learned from a union member that Schumacher Tile was in business and was working on a project in Stevens Point. Upon learning this, Judziewicz sent Schumacher the following letter dated December 21, 1993, seeking information:

> This letter serves as the Union's request that the company provide us with the following information.
>
> 1.) Complete payroll records, including Tax Forms 941, W-2, W-3 and 1099, and Wisconsin Unemployment Compensation Quarterly Contribution/Wage Report Form UC-101A.
>
> 2.) Time cards of all employees.
>
> a) Denote classification of each employee.
>
> 3.) All contracts the company entered into with others to perform hard tile, marble, or terrazzo work.
>
> a) History of any subcontracting of work from your company to other parties.
>
> 4.) Complete list of jobs done by the company, including the address for each job.
>
> 5.) Billing and receipt records for all contracted work.
>
> The requested information is needed to ascertain contract compliance, especially with respect to Article XIII, Section 13.6,. (sic) The information requested is for the time period June 1, 1992 through December 31, 1993.
>
> Ample notice is being given so that you can have this information available for us on January 7, 1993. (sic)
>
> Please advise if this date is acceptable. If not we ask that you give us some alternative dates.

> This letter is being sent to you by certified and normal mail to assure deliverance.

On January 7, 1994, Schumacher sent Judziewicz the following letter:

> In regard to your letter on December 21, 1993. There will be nobody here until after the weekend of January 28. Someone will contact you at this time.

Other than this letter, Schumacher did not respond to Judziewicz's letter of December 21, 1993. Thus, Schumacher never sent the requested information to Judziewicz.

8. In March, 1994, the Union filed an unfair labor practice charge against the Company with the National Labor Relations Board (NLRB). Therein, the Union contended that the Company had failed to provide the requested information to the Union. After investigating the charge, the NLRB Regional Director declined to assert the NLRB's jurisdiction over the complaint. The Board's basis for not asserting jurisdiction was that their investigation established that the Company had just one employe. The Board does not assert jurisdiction over single employe bargaining units.

9. In September, 1994, the Union filed an unfair labor practice charge against the Company with the Wisconsin Employment Relations Commission (WERC). Therein, the Union contended that the Company had failed to provide the requested information to the Union.

10. The information sought in Judziewicz's letter of December 21, 1993, is reasonably necessary for the Union to have in order for it to carry out its obligations as the exclusive collective bargaining agent under the labor agreement noted in Finding of Fact 5.

Based on the foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. Since neither the Union nor the Company gave written notice to the other that it wished to terminate the 1988-91 collective bargaining agreement, said agreement continued by its very terms "from year to year thereafter" until it is "terminated by written notice."

2. The information sought by the Union in Judziewicz's letter of December 21, 1993, is reasonably necessary for the Union to have in order for it to carry out its obligations as the exclusive bargaining agent under the collective bargaining agreement noted in Finding of Fact 5. The Company's refusal to supply the requested information constitutes a violation of

Sec. 111.06(1)(d), Stats.

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER 1/

To remedy its violation of Sec. 111.06(1)(d), Stats., Schumacher Tile Co., Inc., its officers and agents, shall immediately:

1. Cease and desist from refusing to supply Milwaukee and Southern Wisconsin District Council of Carpenters with information reasonably necessary for the Union to have in order for it to carry out its obligations as the exclusive collective bargaining agent under the collective bargaining agreement between the Company and the Union.

2. Take the following affirmative action which the Examiner finds will effectuate the purposes and policies of the Wisconsin Employment Peace Act:

1/ 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

---

1/ See footnote on Page 8.

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

(a) Timely supply the Union with the following information for the period of time between June 1, 1992 through December 31, 1993, which the Examiner finds is reasonably necessary for the Union to have in order to carry out its obligations as the exclusive collective bargaining agent for the Company's tile finisher(s):

1. Complete payroll records, including tax forms 941, W-2, W-3 and 1099, and Wisconsin Unemployment Compensation Quarterly Contribution/Wage Report Form UC-101A.

2. Time cards for all employes.

3. All contracts the Company entered into with others to perform hard tile, marble or terrazzo work; and any subcontracting work to other parties.

4. Complete list of jobs done by the Company, including the address for each job.

5. Billing and receipt records for all contracted work.

(b) If any information is not available, the Company shall specifically state the information is not available and shall specifically state why the information is not available.

(c) Notify the Wisconsin Employment Relations Commission within twenty (20) days of this Order what steps the Company has taken to comply with the Order.

Dated at Madison, Wisconsin, this 19th day of April, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

DICK SCHUMACHER TILE CO., INC.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THE PARTIES' POSITIONS

The Union argues that the Company violated Sec. 111.06(1)(d) of WEPA when it refused to provide the requested information to the Union. The Union notes at the outset that it requested certain information from the Company after it learned that the Company was still in business, and that the Company refused to provide same. According to the Union, the requested information was necessary and relevant to the Union's obligation to administer and enforce the labor agreement (specifically the wage and benefit provisions, the subcontracting provision and the hiring hall provision). The Union asserts that it has a legal right to request, and the Company has a legal obligation to provide, the requested information. With regard to the Company's defense that no labor agreement exists between the parties, the Union submits that the signed agreement contains a fairly standard termination provision which provides that termination has to be in writing by certified letter. It asserts that there is no evidence that either side terminated the 1988-91 labor agreement. The Union contends that as a result, the contract continued from year to year thereafter. As a remedy for the Company's alleged statutory violation, the Union asks that the Company be ordered to provide the Union with the documents and information requested in the Union's letter of December 21, 1993.

The Company contends that it does not have to provide any of the requested information to the Union. The Company's defense is premised entirely on its position that the 1988-91 agreement, which it admits signing in 1989, has long since expired. According to the Company, that agreement expired in 1991 and was not extended. The Company submits that since the 1988-91 agreement was not extended, it is not obligated to provide the requested information to the Union. It therefore asks that the complaint be dismissed.

DISCUSSION

The complaint alleges a Company violation of Sec. 111.06(1)(d), Stats., regarding the Company's refusal to submit the information requested in Judziewicz's letter of December 21, 1993. The Company has refused to provide the requested information.

It is noted at the outset that the WERC has jurisdiction in this matter because of the following circumstances. The Union originally filed an unfair labor practice charge against the Company with the NLRB. After investigating the charge, the NLRB declined to assert jurisdiction

over the complaint because their investigation established that the Company had just

one employe. The NLRB does not assert jurisdiction over single employe bargaining units. The WERC does assert jurisdiction though over bargaining units composed of one employe. 2/

The existence of a duty on the part of the Company to supply relevant information to the Union is not in dispute. In NLRB vs. Truitt Manufacturing Company, 3/ the U.S. Supreme Court held that employers have an obligation to furnish relevant information to union representatives during contract negotiations. The Supreme Court extended this duty to supply information to labor-management relations during the term of a collective bargaining agreement in NLRB v. Acme Industrial Company. 4/ This duty to supply information during the term of an agreement became part of the WERC's case law in Boynton Cab Company. 5/ An employer's duty to furnish information is imposed because without such information the union would be unable to perform its statutory duties as bargaining agent. Thus, information must be furnished to the union for purposes of representing employes in negotiations and also for policing the administration of an existing contract. The standard defining the duty to supply information was stated in Memorial Hospital Association to extend to information "reasonably necessary for the . . . Union to have . . . in order to carry out its obligations as the (exclusive bargaining) representative." 6/ Given this case law, the existence of a violation of Sec. 111.06(1)(d), Stats., turns on whether the requested information was reasonably necessary, and if so, on whether the Company has a defense for its refusal to supply the information.

Attention is focused first on whether the requested information was reasonably necessary for the Union to have. My discussion begins with a review of the following context. The record indicates that Schumacher and Judziewicz had no contact with each other for several years in the early 1990's. During that time, Judziewicz thought that Schumacher Tile had gone out of business. Judziewicz learned otherwise in late 1993 when a union member told him that the Company was working on a project in Stevens Point. Schumacher himself said it this way at the hearing: "before this, they (the Union) didn't know I existed anymore." 7/ After Judziewicz learned that Schumacher

---

2/ See Straus Printing and Publishing Company, Dec. No. 17736 (WERC, 4/80) and WERC v. Atlantic Richfield Co., 52 Wis.2d 126 (1971). See also Morgan-Wightman Supply Company, Dec. No. 21048 (WERC, 10/83).

3/ 351 US 149, 38 LRRM 2042 (1956).

4/ 385 US 432, 64 LRRM 2069 (1967).

5/ Dec. No. 5001 (WERC, 11/58).

6/ Dec. No. 10010-A, 10011-A (Fleischli, 8/71) at 27; aff'd in relevant part, Dec. No. 10010-B, 1011-B (WERC, 11/71).

7/ Transcript, p. 31.

Tile was still in existence, he became concerned about the Company's compliance with certain provisions of the contract, namely the wage and benefit provisions, the subcontracting provision and the hiring hall provision. Given the length of time that had elapsed since their last contact with each other, Judziewicz's concern about the Company's compliance with the agreement was understandable. The information sought by the Union in Judziewicz's letter of December 21, 1993, will verify whether the Company is or is not in compliance with the contractual provisions just noted. Against this background then, it is held that the requested information is reasonably necessary for the Union to have to fulfill its role as the bargaining representative required to enforce the collective bargaining agreement. Accordingly, the Company has to supply the requested information unless it has a defense for its refusal to supply same.

The Company's only defense for refusing to supply the requested information is that it believes the agreement which it signed with the Union in 1989 expired years ago. To support this premise, the Company notes that the cover page of that contract indicates that it covers the time frame between "1988 - 1991." Additionally, it notes that Article XVII (the Duration Clause) provides that the contract continues "in full force and effect until May 31, 1991 . . .," The Company therefore asserts that its contractual relationship with the Union ended in 1991. Were it not for what follows next in that same sentence of the Duration Clause, the Examiner would agree. However, that sentence goes on to provide: "and from year to year thereafter, unless terminated by written notice (by certified mail) given by either party to the other not less than ninety (90) days prior to said expiration date, or any anniversary thereto." The part just cited means that while the contract had a nominal ending date of May 31, 1991, that date was not fixed in stone because the contract continued from "year to year thereafter" unless terminated in writing. If that did not happen (i.e. if the contract was not terminated in writing), the contract continued. Here, neither the Union nor the Company ever gave written notice to the other side that it wished to terminate the 1988-91 agreement. As a result, that agreement continued by its very terms "from year to year thereafter" and remains in force until it is "terminated by written notice (by certified mail)" by either party. Given the continuation of the agreement, it is held that the Company does not have a valid defense for refusing to supply the requested information to the Union.

In summary then, it is held that the information sought by the Union is reasonably necessary for the Union to have to fulfill its role as the bargaining representative required to enforce the collective bargaining agreement; that the Company does not have a valid defense for refusing to supply same to the Union since the parties' 1988-91 agreement continues because it was never terminated in writing; and that the Company's refusal to provide the requested information constitutes a violation of its statutory duty to bargain in good faith, in violation of Sec. 111.06(1)(d), Stats.

With regard to the remedy, it is noted that the Union seeks information from June 1, 1992 through December 31, 1993. The order entered above grants that request. The Company never specifically objected to the type of information requested or to the time period covered by the request. On balance, both the type of information and the time period involved are not improper

and the Union's request has been incorporated into the Order entered above.

Usually compliance notices are ordered posted when a statutory violation is found. Such notices are typically posted to remedy the chilling effect on bargaining unit members of improper employer acts. On the facts of this case, the Examiner finds that such notice posting would serve no useful purpose. As a result, the Examiner has not included such a notice in his Order.

Dated at Madison, Wisconsin, this 19th day of April, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner