

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139,

Complainant,

vs.

PROELL PLUMBING CO., INC.,

Respondent.

Case 1

No. 54213 Ce-2174

Decision No. 28887-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, by Mr. John J. Brennan, on behalf of International Union of Operating Engineers, Local 139.

Mr. Gregory J. Proell, 10343 West Fond du Lac Drive, Milwaukee, Wisconsin 53224, on behalf of Proell Plumbing Company, Inc.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On June 20, 1996, International Union of Operating Engineers, Local 139, filed the instant complaint of unfair labor practices with the Wisconsin Employment Relations Commission wherein it alleged that Proell Plumbing Company, Inc. had refused to abide by its collective bargaining agreement with Complainant, had refused to furnish information requested by Complainant and necessary in order to administer the collective bargaining agreement in violation of Secs. 111.06(1)(a),(d) and (f) of the Wisconsin Employment Peace Act. Thereafter, the parties attempted to resolve the dispute, but were unsuccessful. The Commission then appointed David E. Shaw, a member of its staff, to act as Examiner and make and issue findings of fact, conclusions of law and order in the matter. A hearing was held before the Examiner on December 11, 1996, in Milwaukee, Wisconsin. A stenographic transcript was made of the hearing and was received on January 2, 1997. The parties made oral argument at the end of the hearing in lieu of post-hearing briefs. Having considered the evidence and the arguments of the parties, the Examiner now makes and issues the following Findings of Fact, Conclusions of Law and Order.

No. 28887-A

FINDINGS OF FACT

1. International Union of Operating Engineers, Local 139, hereinafter the Union, is a labor organization with its principal offices located at N27 W23233 Roundy Drive, Pewaukee, Wisconsin. At all times material herein, Dale Miller has been employed as a Business Agent for the Union and since September of 1995 has been the Business Manager for the Union.

2. Proell Plumbing Company, Inc., hereinafter the Company, is an employer with its offices located at 10343 West Fond du Lac Drive, Milwaukee, Wisconsin. At all times material herein, Gregory Proell has been the owner and Vice-President of the Company.

3. At all times material herein, the Company has been party to the Area I Sewer, Water & Tunnel Master Agreement between the Union and the Wisconsin Underground Contractors Association, Inc. Said Agreement sets forth the wages and benefits, hours and conditions of employment of employees represented by the Union and includes a work jurisdiction provision that requires employers to assign any equipment within the described jurisdiction to bargaining unit employees.

4. On February 7, 1994, as a result of a meeting between Miller and Gregory Proell regarding pending unresolved grievances, the Company, by its Vice-President, Gregory Proell, entered into the following Memorandum of Agreement:

MEMORANDUM OF AGREEMENT

This Area I Sewer, Water and Tunnel Master Agreement ("Master Agreement") is made and entered into by and between Proell Plumbing Co., Inc. its successors, legal representatives and/or assigns, hereinafter referred to as the "Contractor", First Party, and Local No. 139 International Union of Operating Engineers, AFL-CIO, hereinafter referred to as the "Union", Second Party.

THIS AGREEMENT is made in consideration of the mutual promises of the First and Second Parties and the parties do hereby agree as follows:

1) The Contractor recognizes the Union as the sole and exclusive bargaining representative for and on behalf of the employees of the Contractor within the territorial and occupational jurisdiction of the Union, as specified in this Agreement. The term "employees" as used in the contract, includes all persons who perform the work of operating engineers as journeymen, apprentices

and trainees who are the process of learning to operate the power equipment by assisting the journeymen and apprentices during any portion of their workday.

The undersigned Contractor hereby acknowledges that it has been presented with proof in the form of signed authorization cards in a sufficient number to show that the Union represents a majority of its employees in the bargaining unit covered by this contract. Therefore, based upon that showing, the Contractor recognizes the Union as the exclusive bargaining agent for all of the employees in the bargaining unit covered by this contract as provided for in Section 9(a) of the National Labor Relations Act. This recognition applies and extends to all present and future jobsites of the Contractor covered by this Agreement.

2) The parties do hereby adopt the Master Agreement dated June 1, 1993 entered into by and between the Wisconsin Underground Contractors Association, Inc. and the Union and the parties do hereby mutually agree to be bound by the terms and conditions of that Master Agreement and the Agreement and Declaration of Trust of the following funds: 1) Central Pension Fund of the International Union of Operating Engineers and Participating Employers; 2) Operating Engineers Local 139 Health Benefit Fund; 3) Wisconsin Operating Engineers Skill Improvement and Apprenticeship Fund; 4) Vacation Fund; 5) Administrative Dues; 6) Joint Labor-Management Work Preservation Fund; 7) Contract Administration Fund; and all amendments heretofore or hereafter made hereto, as though the same were fully incorporated herein.

3) This Agreement and the adoption of the Master Agreement and Declarations of Trust referred to in paragraph 2 above, shall be effective as of June 1, 1993, and remain in effect up to and including the expiration date of the Master Agreement adopted herein. This Memorandum of Agreement shall continue in effect thereafter and the parties agree to adopt any Master Agreement entered into between the Union and the Wisconsin Underground Association, Inc. its successors, legal representatives and assigns, subsequent to the expiration date of the Master Agreement herein adopted unless notice of termination or amendment is given in the manner provided herein.

4) In the event of an area strike over negotiations of the

Master Agreement it will not be considered a violation of this Agreement for the Contractor to stop work or for the Union to stop the work for the duration of the strike.

5) Either party desiring to amend or terminate this Memorandum of Agreement must notify the other in writing not more than one hundred twenty (120) days but not less than ninety (90) days prior to the expiration of the Master Agreement adopted herein.

The parties agree that they will honor all of the collective bargaining obligations established herein for the term of this agreement and will enter into good faith negotiations for a successor agreement at the appropriate time.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement the 7 day of Feb., 1994.

LOCAL NO. 139, INTERNATIONAL UNION CONTRACTOR:
OPERATING ENGINEERS, AFL-CIO:

Dale Miller /s/
(Union Representative)

Proell Plumbing Co., Inc.
(Name of Contractor)

Business Representative
(Title)

10343 West Fond du Lac Avenue
Milwaukee, WI 53224
(Address)

(414) 353-8616
(Telephone Number)

Greg Proell Greg Proell /s/
(Contractor Representative)

Also on February 7, 1994, Greg Proell, on behalf of the Company, entered into the following Addendum Agreement with the Union:

ADDENDUM TO THE AREA I SEWER, WATER & TUNNEL
MASTER AGREEMENT

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL NO. 139 (hereinafter "Union") and PROELL

PLUMBING CO., INC. (hereinafter "Employer") are executing this addendum with respect to the Area I Sewer, Water & Tunnel Master Agreement (hereinafter "Master Agreement") entered into and effective June 1, 1993, it being understood that the agreements and understandings herein contained shall have the same effect as if contained in the Master Agreement. It is also understood and agreed that this Memorandum of Understanding will remain in effect subsequent to the expiration of the current Master Agreement, and will run concurrently with any renewed or successor Master Agreement henceforth adopted by the parties, unless expressly revoked in a manner consistent with that outlined in the Master Agreement itself. In the event a successor Master Agreement is henceforth adopted by the parties to this agreement, the language contained therein pertaining to revocation will be controlling.

IT IS UNDERSTOOD AND AGREED by and between the Union and the Employer that:

1. Except as modified herein, the terms and conditions contained in the Master Agreement shall apply in their entirety to all work performed by the Employer.
2. The only modification to the above will be in regard to the below described work:
 - a) Sewer, water and storm sewer laterals installed only between the property line and the building and only on work performed on one and two family buildings.
3. The wage rates paid bargaining unit employes for the work referenced above in Paragraph #2 will be eighty-five per cent (85%) of the applicable classification rate found in Article X, Section 10.1 of the Master Agreement.
4. When the Employer performs the type of work described above in Paragraph #2, it shall make every effort to notify the Union that this work is contemplated and will fall under the lower wage rate. In addition, the Employer shall notify any and all affected employes prior to commencing such work

that such work will be compensated at the lower wage rate.

Dated this 7 day of February, 1994.

FOR THE EMPLOYER:

FOR THE UNION:

PROELL PLUMBING CO., INC.

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL NO. 139

Gregory J. Proell /s/

Dale Miller /s/

V. President
TITLE

B.A.
TITLE

5. At the meeting on February 7, 1994, the Company and the Union also entered into the following settlement agreement regarding the pending grievances:

MEMORANDUM OF UNDERSTANDING

IT IS UNDERSTOOD AND AGREED by and between INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 139 ("Union") and PROELL PLUMBING CO., INC. ("Employer") that the grievances filed by the Union against the Employer dated January 21, 1993 and March 8, 1993 shall be resolved with prejudice under the following terms:

1. An aggregate payment of \$4,000 (exact wage/fringe benefit allocation to be determined) shall be paid to TRUMAN CLASEN in settlement of the above-referenced grievances; and
2. The above-referenced payment shall be made in full by no later than March 15, 1994.

Dated this 7th day of February, 1994.

FOR THE EMPLOYER:

FOR THE UNION:

PROELL PLUMBING CO., INC.

INTERNATIONAL UNION OF
OPERATING ENGINEERS,

LOCAL NO. 139

Gregory J. Proell /s/

Dale Miller /s/

V. President
TITLE

B.A.
TITLE

6. The Company, due to financial problems resulting from not being paid for a number of jobs on which it had performed work, was unable to comply with the Memorandum of Understanding regarding the grievances. On April 12, 1994, Miller sent Proell the following letter:

April 12, 1994

Greg Proell
Proell Plumbing Co., Inc.
10343 W. Fond du Lac Avenue
Milwaukee, WI 53224

Dear Mr. Proell:

I am writing in regard to your telephone message left on April 7, 1994. Apparently, you stated that you have not been able to collect monies owed you. However, our agreement of February 7, 1994 stated that the settlement monies of \$4,000.00 consisting of wages and fringe benefits for Truman Clausen would be paid in full by March 15, 1994.

The breakdown of these monies is as follows:

\$2,900.56	Wages
\$ 617.46	Pension
\$ 421.68	Health
\$ 30.12	Skill
\$ 15.06	Joint Labor Management
\$ 15.06	Contract Administration Fund

In addition, the settlement provided for an Initiation Fee of \$557.12 to you to become an owner operator which was to be paid by March 18, 1994.

In conclusion, I think we have been going out of our way to get this matter cleared up. We are about out of options to get this matter handled. If we do not have this taken care of by April 29, 1994, we must proceed to arbitration. Please contact me so that we may select an arbitrator to hear this case. Thank you for your

attention to this matter.

Sincerely,

Dale A. Miller /s/
Dale A. Miller
Business Representative

The Company did not make the payment by April 29, 1994.

7. As part of the agreement reached to resolve the grievances, the parties agreed that Gregory Proell would become an "owner/operator" whereby he was to pay an initiation fee to become a member of the Union and to thereafter pay his membership dues to the Union and that he alone would perform work for the Company that is within the Union's jurisdiction. From March 1, 1995 the Union did not receive any payments from the Company in that regard, until the summer of 1996 when the Company, through Gary Proell, paid Proell's back dues and his dues through September of 1996.

8. By letter of June 21, 1995, the Union's then-legal counsel notified the Company that it was demanding that the Company provide certain records and threatened legal action if it did not receive the monies owed by the Company pursuant to the February 7, 1994 Memorandum of Understanding:

June 21, 1995

RRR-CERTIFIED
Return Receipt # P 155 513 376

Greg Proell
Proell Plumbing Co., Inc.
10343 W. Fond du Lac Avenue
Milwaukee, WI 53224

**Re: 2/7/94 Settlement Agreement Between
Proell Plumbing Co., Inc. and IUOE
Local No. 139**

Dear Mr. Proell:

I am writing regarding the above-referenced settlement agreement. On February 7, 1994, you executed a settlement agreement which provided in part for a payment of \$4,000.00. Despite numerous attempted contacts by Union representatives (approximately fifteen to twenty in all) you have not paid any of

these monies, monies which by the terms of the agreement should have been paid in full by **March 15, 1994**. Copies of the pertinent settlement agreement/contract are enclosed for your review.

Moreover, the settlement also provided for yourself to become an owner-operator member of the Union and for no one other than yourself to perform bargaining unit work under the terms and conditions of the Area I Sewer, Water & Tunnel Master Agreement to which the parties are signatory. In order for the Union to satisfy itself that this provision is being complied with, I am requesting that your company provide the undersigned with payroll records and timecards for all employees working on all jobs performed by the Employer since February 7, 1994 to date. Please also furnish a detailed breakdown of the work performed by each employee. I am requesting that this information be furnished no later than June 29, 1995.

In conclusion, if the \$4,000.00 settlement payment is not received in full by **June 29, 1995**, I will have no other option but to immediately institute legal proceedings in state court and/or with the National Labor Relations Board. If you have any questions or comments, you can contact me at (414) 896-0139.

Sincerely,

Warren Kaston /s/
Warren Kaston
Legal Counsel

9. Due to the Company's financial problems, Proell had difficulty in obtaining the records the Union had requested from the Company's accountant. When the Company was able to pay its accountant for past services and obtain its records, Proell attempted to contact the Union's legal counsel, John Brennan, to arrange for the Union to review them, but was unsuccessful. Ultimately, the Company has not produced the requested records. Said records are necessary and relevant to the Union's ability to police its labor agreement with the Company.

10. Due to its continuing financial problems, the Company has not paid the monies it was to have paid in full by March 15, 1994 under the February 7, 1994, Memorandum of Understanding, and has not proceeded to grievance arbitration on the grievances that were to have been resolved by said Memorandum of Understanding.

11. The February 7, 1994 Memorandum of Understanding between the Company and the Union constitutes a settlement agreement separate from the Memorandum of Agreement signed that same date by Proell and by which the Company agreed to be bound by the Area I Sewer, Water & Tunnel Master Agreement.

12. The Company has not notified the Union that it desires to terminate the Memorandum of Agreement whereby it is bound by the Area I Sewer, Water & Tunnel Master Agreement, and remains bound by the current 1996-1998 Area I Sewer, Water & Tunnel Master Agreement which expires May 31, 1998.

13. The complaint filed by the Union in this matter was filed with the Commission on June 20, 1996.

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

CONCLUSIONS OF LAW

1. The complaint filed in this matter by Complainant International Union of Operating Engineers Local Union No. 139 is untimely under Sec. 111.07(14), Stats., as to the allegations that Respondent Proell Plumbing Co., Inc. failed or refused to comply with the February 7, 1994 Memorandum of Understanding by failing to pay the monies owed under that Memorandum and failed or refused to abide by the terms of the parties' labor agreement as to anytime prior to the one-year period prior to June 20, 1996, and therefore the Commission is precluded from exercising its jurisdiction as to those allegations.

2. Respondent Proell Plumbing Co. Inc., was bound by the parties' June 1, 1993 - May 31, 1996 labor agreement and remains bound by the parties' June 1, 1996 - May 31, 1998 labor agreement. To the extent Respondent Proell Plumbing Co., Inc. has failed to make the payments to Complainant required under the parties' labor agreement to keep Gary Proell current as an owner/operator, Respondent Proell Plumbing Co., Inc., its officers and agents, has committed unfair labor practices within the meaning of Sec. 111.06(1)(f), Stats.

3. Respondent Proell Plumbing Co., Inc., its officers and agents, by failing to provide the information to Complainant requested in its letter of June 21, 1995, has committed an unfair labor practice within the meaning of Sec. 111.06(1)(d), Stats.

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

ORDER 1/

1. The complaint filed in this matter is dismissed as to the allegations of unfair labor

practices based upon Respondent Proell Plumbing Co., Inc.'s failure to comply with the February 7, 1994, Memorandum of Understanding set forth in Finding of Fact 5 and its failure to abide by the terms of the parties' labor agreement at any time prior to the one-year period prior to June 20, 1996.

2. Respondent Proell Plumbing Co., Inc., its officers and agents, shall immediately:
 - a. Cease and desist from failing/refusing to comply with the terms of the parties' labor agreement.
 - b. Cease and desist from failing/refusing to provide to Complainant the information requested in the June 21, 1995 letter from Complainant's legal counsel.

(Footnote 1/ appears on page 12.)

- c. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Wisconsin Employment Peace Act:
 - (1) To the extent it has not already done so, abide by the terms of its labor agreement with Complainant, including making the payments required under that agreement to keep Gary Proell current as an "owner/operator", plus interest on such payments still owed and not paid, at the rate of twelve percent (12%) per annum from the date the payments were due and owing to the date said payments are made to Complainant.
 - (2) Furnish Complainant with the information requested in the June 21, 1995, letter from Complainant's legal counsel.
 - (3) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of this Order as to the action Respondent has taken to comply with this Order.

Dated at Madison, Wisconsin, this 21st day of March, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

(Footnote 1/ appears on the next page.)

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 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).
PROELL PLUMBING CO., INC.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The parties waived post-hearing briefs in this matter and made closing argument in support of their respective positions.

In its closing argument, the Union noted that it has alleged that the Company has refused to follow, and has repudiated, its labor agreement with the Union, including the attached addendum to that labor agreement regarding payment due former employees; that the Company has failed to make the payment due to the Union in order to keep Gary Proell current as an owner/operator; and that the Company has not provided the information to the Union which it had requested and which is necessary in order for the Union to determine whether the Company has committed additional violations of the labor agreement. The Union asserts that it has given the Company breaks by agreeing to an amount of money under the Memorandum of Understanding that was less than what the Company actually owed, by agreeing to permit the Company to pay less than the full wage rate under the labor agreement for certain work, and by waiting since February of 1994 for the \$4,000.00 the Company owes under the Memorandum of Understanding. The Union notes that while the Company's witness offered reasons as to why the Company could not meet its obligations, the violations were established and admitted.

The Company offered in closing that it is trying to pay everyone it owes as best as it is able, but that it is barely able to make the payments on the claims that the State and Federal governments have levied against it for back taxes.

DISCUSSION

It is first noted that neither the Union, nor the Company, raised or addressed the matter of the application of Sec. 111.07(14), Stats., to the Commission's jurisdiction in this case; nevertheless, the Examiner has raised the issue sua sponte. It has been held that courts have only those powers conferred on them by statutes and the State's constitution and that, "Courts are required by law to observe the limits of their powers and to inquire into their jurisdiction over an action, even if neither party raises the question." State ex. rel. Teaching Assistants v. University of Wisconsin-Madison, 96 Wis. 2d 492, 494-95 (Ct. App. 1980). 2/ Similarly, it is well-established law in this state that an administrative agency has only those powers that are expressly conferred or necessarily implied from the statutory provisions under which it operates and that such statutes are to be strictly construed to preclude the exercise of power that has not been expressly granted. Browne v. Milwaukee Board of School Directors, 83 Wis. 2d 316 (1978).

Section 111.07(14), Stats., provides that:

(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

The Commission has long held that the above statutory provision expressly limits the Commission's jurisdiction. In Retail Store Employees Union Local 444, Dec. No. 8409-C (WERC, 6/68), the Commission held:

While the Wisconsin Employment Relations Commission has concurrent jurisdiction with State and Federal Courts with respect to proceedings involving alleged violations of collective bargaining agreements and while the statutes of limitation governing such actions before State and Federal Courts do extend beyond the one year period provided in Section 111.07(14), the Commission's jurisdiction to determine whether an unfair labor practice has been committed in the alleged violation of the collective bargaining agreement is specifically limited by Section 111.07(14) and can be only applied to those actions which occur within one year from the date of filing of unfair labor practice complaint. (At pp. 8-9). 3/

2/ Citing, Brickley v. Neuling, 256 Wis. 334, 337, 41 N.W. 2d 284 (1950); Harrigan v. Gilchrist, 121 Wis. 127, 224, 99 N.W. 909 (1904). See also, Sipl v. Sentry Indemnity Co., 146 Wis. 2d 459, 463 (Ct. App. 1988).

3/ See also, Reimer Sausage Co., Dec. No. 10965-A (Schurke, 9/72), aff'd, by operation of law, Dec. No. 10965-B.

In its decision in that case the Commission also responded to the argument that renewed demands toll the limitation set forth in Sec. 111.07(14), Stats.:

Nor do we consider that renewed demands made within the year preceding the filing of the complaint tolls the effect of such statutory provision.

...

To permit the statute of limitations to commence at the last refusal to proceed to arbitration would extend to infinity the period of time in which to file a complaint. Such a conclusion is not consistent with the intent of the statutory provision involved. (At p. 8).

The Union has alleged that the Company repudiated its labor agreement with the Union in March of 1995, and failed to abide by its terms, including failing to comply with the February 7, 1994, Memorandum of Understanding. Unlike the case in Lorentzen Tile Company, 4/ however, there is no evidence that any representative of the Company continued to indicate in an ongoing fashion to the Union that it was going to make the payment under the February 7, 1994, Memorandum of Understanding. The evidence instead appears to indicate that the Company simply ignored the Union's April 12, 1994 letter and that the Union then waited another fourteen months before sending its next demand letter of June 21, 1995. While the Union refers to the Memorandum of Understanding as an "addendum" to the labor agreement, the evidence indicates that it is a separate grievance settlement and it does not somehow continue in force as long as the Company is bound by the labor agreement. Unlike the "Addendum to the Area I Sewer, Water and Tunnel Master Agreement" the parties drafted and signed that same date, the Memorandum of Understanding is not titled or referenced as an "addendum" to the labor agreement. Also, neither of the Union's letters to the Company regarding the Company's failure to comply refer to the document as an "addendum" and the June 21, 1995 letter specifically refers to it as a "settlement agreement".

The Examiner has concluded that the Commission's holding in Retail Store Employees Union applies in this case. The Company's failure to comply with the grievance settlement agreement, i.e., the February 7, 1994, Memorandum of Understanding, occurred upon its failure to pay the \$4,000.00 by March 15, 1994 and, at the latest, it had to be apparent when the Company failed to pay by the Union's second deadline of April 29, 1994, set forth in the Union's April 12, 1994, demand letter. The time limitation set forth in Sec. 111.07(14), Stats., began to run when the Union did not receive the payment when it was due and its subsequent demand letters of April 12, 1994, and June 21, 1995 did not toll that limitation. As the instant complaint was filed with the Commission on June 20, 1996, the allegations in that complaint that the Company committed an

4/ Dec. No. 9630 (WERC, 5/70).

unfair labor practice by its failure to comply with the February 7, 1994 Memorandum of Understanding or to make payments under the labor agreement, where such failure occurred beyond the one year period prior to June 20, 1996, have been dismissed on the basis that the Commission lacks jurisdiction to decide the allegations.

With regard to the allegations that the Company has violated the labor agreements by failing to make payments under those agreements which were due within the one year period preceding the filing of the instant complaint, the Company's witness, its Vice-President, admitted he had been behind in making the payments due under the labor agreements for an owner-operator. Therefore, a violation of Sec. 111.06(1)(f), Stats., has been found in that regard and a remedy ordered.

The Union has also alleged that the Company has refused or failed to provide the information the Union requested and that it needs in order to determine whether the Company committed any other violations of the labor agreement. It is well-established law that as part of its statutory duty to bargain in good faith, an employer is required to provide information at the union's request, and within a reasonable time of that request, where the information sought is relevant and necessary to the union's ability to carry out its statutory obligations as the exclusive collective bargaining representative, 5/ including information necessary to police an existing collective bargaining agreement. 6/ Although the Company's Vice-President testified that he was able at one point to obtain the requested records from the Company's accountant and attempted unsuccessfully to contact the Union's legal counsel in that regard, he also conceded that the Company has yet to provide the information. While the Examiner understands the Company has financial problems that make it difficult to obtain the records, the Company is nevertheless required to make a diligent effort to provide the information in a reasonably prompt manner, and failure to do so may be held to be unlawful. 7/ Based upon the Company's acknowledged failure to provide the requested

5/ NLRB v. Truitt Manufacturing Co., 351 U.S. 149, 38 LRRM 2042 (1956).

6/ NLRB v. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1967); Boynton Cab Company, Dec. No. 5001 (WERC, 11/58); Memorial Hospital Assoc., Dec. No. 10010-A, 10011-A (Fleischli, 8/71), aff'd in rel. part, Dec. No. 10010-B, 10011-B (WERC, 11/71).

7/ Congreso de Uniones Industriales de P.R. v. NLRB, 966 F.2d 36, 140 LRRM 2739 (CA 1, 1992); House of the Good Samaritan, 319 NLRB No. 62, 151 LRRM 1375 (1995).

information, the Examiner has found a violation of Sec. 111.06(1)(d), Stats., and the Company has been ordered to provide the information requested by the Union.

Finally, the Examiner would note that he has not ordered as part of the remedy in this case that a compliance notice be posted. The purpose of requiring the posting of such a notice is to remedy the chilling effect of the employer's improper actions on the members of the bargaining unit. As it appears from the record that at the time of hearing the only member in the Company's employ was its Vice-President, Gary Proell, an owner/operator, the posting of such a notice would serve no useful purpose. 8/

Dated at Madison, Wisconsin, this 21st day of March, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

8/ See Hebe Tile Company, Dec. No. 23512-A (McLaughlin, 5/87), aff'd by operation of law, Dec. No. 23512-B (WERC, 6/87).