

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**MILWAUKEE & SOUTHEAST WISCONSIN
REGIONAL COUNCIL OF CARPENTERS, Complainant,**

vs.

C.I.S. INC., Respondent.

Case 1
No. 62369
Ce-2230

Decision No. 30634-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Attorney Yingtao Ho**, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Milwaukee and Southeast Wisconsin Regional Council of Carpenters.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Milwaukee & Southeast Wisconsin Regional Council of Carpenters filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission on May 9, 2003, alleging that C.I.S., Inc. had violated Sec. 111.06(1)(f), Stats., by refusing to comply with the binding decision of a Board of Arbitration.

The Commission assigned Dennis P. McGilligan, an examiner on its staff, to hear the case. A hearing was convened in Burlington, Wisconsin, on July 10, 2003. Complainant filed a brief on July 18, 2003, whereupon the record was closed.

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Now, having considered the evidence, the arguments of the parties, the applicable provisions of the statute, and the record as a whole, the Examiner makes the following

FINDINGS OF FACT

1. Milwaukee & Southeast Wisconsin Regional Council of Carpenters (hereinafter referred to as the “Union” or the “Complainant”) is a labor organization maintaining its principal offices at N25 W23055 Paul Road, Suite 1, Pewaukee, Wisconsin 53072-0790. Thomas R. Doleschy is a Business Representative for the Union.

2. C. I. S. Inc. (hereinafter referred to as the “Company” or the “Respondent”) is, at all times pertinent to the complaint, an employer engaged in the business of insulation and drywall work, with its principal offices at W930 Bluff Drive, Burlington, Wisconsin 53105. Herbert E. Mueller is the Company’s President.

3. C. I. S. Inc. is a signatory to the collective bargaining agreement between the Complainant and the Allied Construction Employers Association, Inc. (ACEA). By becoming a signatory, the terms of the agreement became binding upon C. I. S. Inc. Under Article XIX of the agreement, all disputes or disagreements should be submitted for decision to a Board of Arbitration. An arbitration award made pursuant to the arbitration procedure is final and binding.

4. In the process of working on a project called Mehran’s Boardwalk Bistro on February 13, 2003, C. I. S. Inc. violated the subcontracting provision of the agreement by using non-signatory contractors within the agreement’s jurisdiction. On February 17, 2003, the Complainant filed a grievance against C. I. S. Inc., and notified it of the fact in a certified letter. By letter dated February 25, 2003, Complainant provided a notice of hearing to C. I. S. Inc. An arbitration hearing pursuant to Article XIX was held on March 13, 2003. At the hearing, the Complainant presented its evidence and argument to the Board of Arbitration, while C. I. S. Inc. failed to appear. On the same day, the Arbitration Board issued its decision and found C. I. S. Inc. guilty. The Arbitration Board directed C. I. S. Inc. to pay \$966.16.

5. By letter dated March 20, 2003, Complainant notified C. I. S. Inc. of the decision of the Board of Arbitration. In the letter, Complainant asked C. I. S. Inc. “to cut a check” in the amount of \$966.16 and send it to the Milwaukee Carpenters Vacation Fund, by April 4, 2003.

6. To date, C. I. S. Inc. has refused to comply with the award and to pay this money to the Fund.

7. There is no evidence in the record that C. I. S. Inc. has at any time moved to vacate or overturn the award.

8. Notice of Hearing on the Complaint was mailed to C. I. S. Inc. on June 9, 2003. On June 5, 10 and 30, the Examiner attempted to contact C. I. S. Inc. by telephone to confirm the hearing date of July 10, 2003, but without success. On July 10, 2003, the Examiner once again attempted to contact C. I. S. Inc. by telephone to appear at the hearing, but without success. C. I. S. Inc. did not appear at hearing or communicate with the Examiner in any manner regarding this dispute.

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

CONCLUSIONS OF LAW

1. The Respondent, C. I. S. Inc., is an employer within the meaning of Section 111.02(7), Wisconsin Employment Peace Act ("WEPA").

2. The Complainant, Milwaukee & Southeast Wisconsin Regional Council of Carpenters, is a labor organization, and is a "representative" of employees within the meaning of Sec. 111.02(11), WEPA.

3. By the acts described in Findings of Fact Nos. 3-7, *supra*, Respondent failed and refused to comply with the award of the Board of Arbitration pertaining to the issue of violating the subcontracting provisions of the parties' collective bargaining agreement, and therefore, Respondent has committed unfair labor practices within the meaning of Sec. 111.06(1)(f) and (g), WEPA.

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

ORDER

It is hereby ordered:

1. That the Respondent C.I.S., Inc., its officers and agents, shall immediately:
 - a) Cease and desist from refusing to comply with the award of the Board of Arbitration on March 13, 2003; and

- b) Take the following affirmative action which the Examiner finds will effectuate the purposes of the Wisconsin Employment Peace Act:
1. Immediately pay to the Complainant the sum of Nine Hundred Sixty-Six Dollars and Sixteen Cents (\$966.16) (104 hours x \$9.29 per hour) as per the award of the Board, plus interest on that amount at the rate of twelve percent (12%) per year from the date of Complainant's letter reflecting the award (March 20, 2003) to the date on which the money is paid.
 2. Immediately pay the Complainant's attorney fees in the amount of \$500, reflecting 5 hours work at \$100 per hour.
 3. Notify all of the employees of Respondent represented by Complainant by posting in conspicuous places where the employees are employed, copies of the Notice attached hereto and marked "Appendix A". That Notice shall be signed by Respondent's President and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered with other material.
 4. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to the steps it has taken to comply with this Order.

Dated at Madison, Wisconsin, this 14th day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES OF C.I.S., INC.
REPRESENTED BY MILWAUKEE AND SOUTHEAST WISCONSIN
REGIONAL COUNCIL OF CARPENTERS

Pursuant to an order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify the above employees that:

WE WILL immediately comply with the award of the Board of Arbitration issued March 13, 2003 by immediately paying the monies owing under said award, plus interest, to the Milwaukee and Southeast Wisconsin Regional Council of Carpenters. WE WILL also immediately pay Complainant's attorney fees in the amount of \$500.00.

By
Herbert E. Mueller, President
C.I.S., Inc.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

C.I.S., INC.

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The complaint filed in this matter alleges a violation of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act, based upon the Respondent's refusal and failure to comply with the decision of the Board of Arbitration.

The record is undisputed that the Respondent has failed to comply with the March 13, 2003 decision of the Board of Arbitration. Therefore, the Examiner concludes that the Respondent has violated the applicable sections of WEPA.

The Examiner also concludes that the Respondent's failure to present any defense at the March 13, 2003 Board of Arbitration hearing; the Respondent's failure to comply with the award issued by the Board of Arbitration; and the Respondent's total failure to appear and offer a defense in the instant proceeding to its previous actions in this matter is "frivolous" and satisfies the "extraordinary bad faith" test used by the Wisconsin Employment Relations Commission in public and private sector cases. GRUNAU COMPANY, INC., DECISION NO. 27123-A (Shaw, 5/92). Accordingly, attorney's fees in the amount of \$500.00 are awarded as requested by the Complainant for five (5) hours of work at \$100.00 per hour.

Interest is also awarded on the monies ordered paid under the award of the Arbitration Board at the rate of 12% per year. *Id.*

The Examiner finds no basis for granting the Complainant's request that the Respondent be ordered to pay the filing fee and the cost of the transcript.

Based on all of the foregoing, and the entire record, the Examiner finds that the allegations of unfair labor practices by the Complainant have merit, and the Examiner has ordered the appropriate relief.

Dated at Madison, Wisconsin, this 14th day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner

DPM/gjc

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