STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL NO. 199, Complainant,	:	Case LII No. 13815 Ce-1304 Decision No. 9694-A
vs.	:	
BORDEN, INC., Respondent.	:	

Appearances:

Mr. Leonard Chojnacki, Attorney at Law, appearing on behalf of the Complainant.

Mr. Fred A. Hayes, Jr., Labor Relations Representative, Borden, Inc., appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter and the Commission having appointed John T. Coughlin, a member of the Commission's staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act and hearing on said complaint having been held at LaCrosse, Wisconsin, on August 25, 1970, before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Teamsters, Chauffeurs, Warehousemen & Helpers Local No. 199, hereinafter referred to as the Complainant, is a labor organization having its principal office at 423 King Street, LaCrosse, Wisconsin.

2. That Borden Inc., hereinafter referred to as the Respondent, is a corporation with offices located at 1303 South 7th Street, LaCrosse, Wisconsin.

3. That at all times material the Respondent and Complainant have been parties to a collective bargaining agreement which runs from October 16, 1968 to October 15, 1971, and that said agreement contains the following relevant provisions:

"ARTICLE III. - ARBITRATION

For the purposes of handling grievances, the Union shall appoint two stewards, one to represent the inside workers, and one to represent the outside workers.

All grievances shall be reduced to writing by the steward, signed by the aggrieved employee, and presented to management within ten (10) days of the occurrence of the grievance.

Grievances, disputes and misunderstandings involving the application or interpretation of this Agreement, which cannot be settled within five (5) days, may be arbitrated at the request of either party before a person designated by the Wisconsin Employment Relations Commission. The decision of the arbitrator shall be final and binding on both parties."

4. That in April of 1967, Respondent closed down its bottling plant at LaCrosse; that at this time Respondent did grant severance pay to certain of its employes.

5. That in April of 1969, Respondent laid off Robert Cuellar, Willard Mitley, Stanley Borchert, Robert Gullickson and George Bedessem; that Respondent did not offer severance pay to the aforementioned individuals.

6. That on December 30, 1969, Complainant Union requested Respondent to grant the aforementioned employes severance pay allegedly due them because of the discontinuance of some plant operations.

7. That on January 12, 1970 Respondent notified Complainant of its refusal to grant the above named individuals severance pay.

8. That on January 15, 1970, Complainant requested the Wisconsin Employment Relations Commission to appoint an arbitrator to decide whether the above named employes should receive severance pay; that in May of 1970, Respondent refused to proceed to arbitration concerning the aforesaid issue and that said Respondent continues to refuse to proceed to arbitration concerning that issue.

Upon the basis of the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSIONS OF LAW

1. That the dispute between the Teamsters, Chauffeurs, Warehousemen & Helpers Local No. 199 and Borden Inc., concerning the granting of severance pay to Stanley Borchert, Willard Mitley, and Robert Cuellar, is not a claim which on its face is covered by the terms of the collective bargaining agreement between the aforesaid parties and that consequently said claim is not arbitrable.

2. That Respondent, Borden Inc., by its refusal to proceed to arbitration concerning Complainant's demand that it grant severance pay to the aforesaid individuals, which demand is not arbitrable on its face, has not violated and is not violating the terms of its collective bargaining agreement with Complainant Union and therefore, Respondent has not committed an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

Upon the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes the following

ORDER

That the Complaint filed in this matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 31st day of March, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By John T. Coughlin
John T. Coughlin, Examiner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL NO. 199, Complainant, vs. BORDEN, INC., Respondent.	Case LII No. 13815 Ce-1304 Decision No. 9694-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint in the instant matter was filed on May 21, 1970. After the close of the hearing and the issuance of the transcript, Respondent filed a post hearing brief. The brief was received on October 15, 1970.

Pleadings

Complainant alleges that Respondent committed an unfair labor practice by refusing to proceed to arbitration over the question of whether Respondent should have granted severance pay to Stanley Borchert, Willard Mitley, and Robert Cuellar. 1/ Respondent in its answer stated that it refused to proceed to arbitration because the issue of severance pay is not arbitrable.

Union's Position

The Union contends that although severance pay is not covered in the collective bargaining agreement Respondent established a Company policy requiring severance pay when it granted severance pay to six employes in conjunction with the 1967 closing of the bottling plant. Therefore, according to the Union rationale, this policy establishes severance pay as an arbitrable issue even though the contract is completely silent on that subject.

Respondent's Position

Respondent states that it granted severance pay in 1967 upon the advice of its counsel in order to comply with federal law. Respondent correctly points out that the contract that existed in 1967 did not contain any reference to severance pay. It further notes that the current contract also does not contain any provision relating to

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1/ In the original complaint the Union included the names of Robert Gullickson and George Bedessem as parties aggrieved. However, at the hearing the Union, on their own motion, deleted the names of Gullickson and Bedessem from the complaint. Section 111.06(1)(f) of the Wisconsin Statutes provides that it is an unfair labor practice for an employer, "To violate the terms of a collective bargaining agreement. . ."

severance pay. Respondent argues that the fact that it granted severance pay on one occasion in no way establishes a binding past practice. Finally, Respondent avers that severance pay was granted in 1967 in conjunction with a plant shutdown, whereas the lay off that occurred in 1969 was the result of a change in operations.

Discussion

The threshold issue before the Examiner in the instant case is whether the issue of severance pay is arbitrable on its face. It is well settled that a grievance is arbitrable ". . .unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." 2/

A careful examination of the language found in the arbitration clause quoted above reveals that only, "Grievances, disputes and misunderstandings involving the application or interpretation of this Agreement. . . may be arbitrated. . ." (emphasis supplied) Therefore, any issue in order to be even arguably arbitrable on its face must involve the application or interpretation of the collective bargaining agreement. At no point in the proceeding did the Union contend that severance pay was in any way connected with any terms or provisions found in the collective bargaining agreement. The Union's only argument is that the contract was somehow modified by Respondent's past practice of paying severance on one occasion. However, even assuming arguendo that a single event constitutes a past practice (which is contrary to established authority), there is no ambiguous term or any term at all for this alleged past practice to modify or clarify. Consequently, inasmuch as the arbitration clause states in unmistakenly pellucid terms that disputes involving the application and interpretation of the agreement are arbitrable, those disputes that do not at least arguably fall under the penumbra of such an agreement are certainly not arbitrable. Therefore, based upon the above, the complaint filed in the matter is without merit.

Dated at Madison, Wisconsin, this 31st day of March, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSI

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