STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALICE L. ABEL, Complainant, vs. BUILDING & CONSTRUCTION TRADES COUNCIL, Respondent.	Case I No. 14164 Ce-1323 Decision No. 10000-A

Appearances:
Miss Alice L. Abel, Complainant, appearing on her own behalf.
Mr. Paul Mullins, Business Representative, appearing on behalf of Building & Construction Trades Council.

FINDINGS OF FACT, CONCLUSION 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 authorized John T. Coughlin, a member of the Commission's staff, to act as an 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 a hearing on such complaint having been held at Manitowoc, Wisconsin, on December 10, 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, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Alice L. Abel, referred to hereinafter as the Complainant, is an individual residing at 1012 Columbus Street, Manitowoc, Wisconsin.

2. That Building & Construction Trades Council, hereinafter referred to as Respondent, is the Employer of Complainant and has its principal office located at 1000A Washington Street, Manitowoc, Wisconsin.

3. That at all time material herein the Respondent has recognized Local No. 619 of the Teamsters, Chauffeurs, Warehousemen and Helpers of America, referred to hereinafter as the Union, as the exclusive bargaining representative of certain of its employes; that in said relationship, the Union and Respondent at all times material herein, have been parties to a collective bargaining agreement covering the wages, hours and conditions of employment of such employes; that said agreement contains the following language which provides for binding arbitration of grievances that are not resolved in that procedure:

"ARTICLE VII
DISMISSALS

Section 1. No employees, having seniority, shall be dismissed without just cause and without a minimum of two weeks' notice in advance, or two weeks' pay in lieu of such advance notice.

Should any employee feel that he has been dismissed without just cause, such employee may appeal his dismissal to the Union, who shall investigate the circumstances of the dismissal. If the Union deems necessary, such dismissal may be submitted to arbitration.

Section 2. Any employee wishing to terminate his employment shall give a minimum of two weeks' notice to waive his rights to termination pay or any vacation pay due. The Employer may waive requirement of such notice if mutually agreed.

ARTICLE VIII
ARBITRATION

Section 1. Any disagreement over the application or interpretation of the terms and conditions of this agreement shall be settled by negotiations between the Employer and the Union.

Section 2. If a settlement of such disagreement cannot be amicably reached, it shall be referred to a Board of Arbitration, such Board to be composed of one representative of the Union and one representative of the Employer together with a third disinterested party to be selected by the other two members.

Section 3. A decision of the majority shall be final and binding on both parties. Any expense of the third party shall be equally borne by the Union and the Employer."

4. That at all times material herein, the Complainant was an employe of Respondent and a member of the collective bargaining unit covered by the aforementioned collective bargaining agreement; that Respondent on June 16, 1970, notified Complainant that she was to be terminated on June 19, 1970.

5. That a grievance was filed pursuant to the aforesaid contractual grievance procedure complaining of said termination and said grievance was processed by the Union through the initial step of the grievance procedure but not to arbitration even though Respondent continued to deny said grievance.

6. That Complainant in conjunction with her termination grieved to the Union that she had not received from Respondent the amount of vacation and severance pay that she felt she deserved; that the Union did act upon her grievance and secured from Respondent the grieved for vacation and severance pay.

7. That there is no evidence that the Union in processing Complainant's grievance concerning her termination has acted in an arbitrary or discriminatory manner or in bad faith.

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

CONCLUSION OF LAW

That because the Union did not violate its duty to fairly represent Complainant, Alice Abel, by refusing to process said Complainant's grievance to the final step of the dispute procedure and because of the total absence of conduct by the Union which was arbitrary, discriminatory or in bad faith regarding said Complainant, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining whether Respondent breached its collective bargaining agreement with said Union thereby violating Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

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

ORDER

IT IS ORDERED that the Complaint of unfair labor practices filed in the instant 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

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint in the instant matter was filed on October 29, 1970. After the close of hearing and the issuance of the transcript, the parties were given an opportunity to file post hearing argument. Such argument was received from the Complainant on February 4, 1971.

THE PLEADINGS

In essence, Complainant is alleging that Respondent violated its collective bargaining agreement it has with the Union by discharging her without just cause. Such a violation, if proven, would in turn be violative of Section 111.06(1)(f) of the Wisconsin Employment Peace Act which provides that it is an unfair labor practice for an employer, "To violate the terms of a collective bargaining agreement. . ." 1/ In order for Complainant Abel to sustain the charge against her employer based upon an alleged violation of a collective bargaining agreement containing a grievance procedure and final and binding arbitration, she must first prove by a clear and satisfactory preponderance of the evidence that the Union's conduct toward her was arbitrary, discriminatory or in bad faith. 2/ Only after she has proved the aforementioned will the Commission look to see if the Employer has violated the terms of a collective bargaining agreement. 3/

1/ It should be noted that Article XI of the contract between Respondent and the Union states that, "This Agreement shall become effective on May 1, 1969 and should remain in full force and effect without change until April 30, 1970, and from year to year thereafter unless sixty (60) days written notice by either party is given to the other party of its desire to change or terminate the Agreement." However, the only evidence relating to the contract that was produced during the course of the hearing was that the Union sent Respondent a timely notice opening the contract, but no other action was taken. Therefore, because of the broad nature of the language in the contract quoted above relating to the extension of the contract and the fact that neither party alleged that the contract was not extended, the Examiner is persuaded that the contract continued in existence during the relevant time period in this matter.

2/ Vaca v. Sipes, 386 U.S. 171 (1967), 64 LRRM 2639; American Motors Corp., Dec. No. 8385, 2/68; Moxness Products, Inc., Dec. No. 8399-A.

3/ America Motors Corp., Ibid.

STATEMENT OF FACTS

On September 10, 1970 Complainant wrote a letter to the Union outlining the reasons behind her contention that she had been improperly terminated. In addition, Complainant in this same letter stated that, ". . . I wish to submit my grievances and herewith ask that they be submitted to (the) National Labor Relations Board." On September 15, 1970, the Union's Secretary-Treasurer, Claude Marek, responded to Complainant's request by stating that, "Your request to have this office file charges with the Board would seem to me to work as a disservice to you inasmuch as the allegations in your letter tend to incriminate this writer directly and this organization indirectly. To comply with your request would certainly place me in a precarious position whereby I would now institute action and would later be required to defend myself and this organization against such action." Later on in this letter Marek stated that he thought that Complainant's charges were without foundation but that his office would ". . . cooperate in any way possible with the Board agent who will be appointed by the Regional Director upon receipt of your complaint." In addition, Marek enclosed the proper forms that Complainant would need in order to file a charge with the NLRB. Finally, it should be noted that in conjunction with her discharge Complainant Abel grieved to her Union that she was not receiving the full amount of vacation and severance pay that she felt was due and owing her. Triggered by this request, the Union did in fact secure from Respondent the monies which Complainant had requested.

DISCUSSION

Article VII, Section 1 of the collective bargaining agreement states that an employe can appeal an unjust dismissal and that, "If the Union deems necessary, such dismissal may be submitted to arbitration." (emphasis supplied) Thus, by the terms of the agreement there is no absolute right to have a grievance taken to arbitration. Furthermore, the United States Supreme Court in Ford Motor Co. v. Huffman 345 U.S. 330 (1953) aptly described at page 338 the latitude afforded bargaining representatives in representing employes when it said:

> "The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. . ."

In the instant case it was eminently fair and reasonable for the Union to have refused to file a charge with the National Labor Relations Board thereby avoiding the possibility that it would have been both a party plaintiff and a party defendant in a case before the aforesaid agency. Furthermore, as noted previously, the Union demonstrated its general good faith toward Complainant by successfully processing a grievance concerning her vacation and severance pay. Thus, in view of the foregoing and the record as a whole, it is concluded that Complainant has failed to demonstrate by a preponderance of the evidence that her grievance was not processed through the final step of the contractually provided for grievance procedure due to arbitrary, discriminatory or bad faith conduct by the Union or that said Union has in

any way failed to fairly represent Complainant. Therefore, neither the merits of the grievance nor the allegation that Respondent violated Section 111.06(1)(f) of the Wisconsin Employment Peace Act can be reached in this case.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By John T. Coughlin
John T. Coughlin, Examiner