

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 10298-A

4. That the aforementioned collective bargaining agreement contains the following pertinent contract provisions:

"ARTICLE 6 -- GRIEVANCE AND  
ARBITRATION PROCEDURE

The Union shall furnish the Company with the names of individuals serving as Shop Stewards and the Company shall recognize the right of such individuals to present grievances in accordance with the procedure outlined in this Article.

1. A grievance shall first be presented verbally, by the employee to his immediate foreman. The employee shall present his grievance within two (2) working days after the occurrence of the incident. The employee may confer with his Steward or have the Steward present, if he desires.  
The foreman shall give a verbal answer to the grievance within two (2) working days after the grievance is brought to his attention.
2. Grievances not satisfactorily settled in Step 1 will be reduced to writing with the assistance of the Department Steward within three (3) working days after receiving the verbal answer and will be presented to the employee's foreman. The foreman will be responsible to meet with the Superintendent of Industrial Relations, the employee and his Department Steward and a written answer will be given within three (3) working days after receipt of the written grievance.
3. If the grievance is not settled in Step 2, a copy of the written grievance will be given to the Superintendent of Production and the Superintendent of Industrial Relations within two (2) working days after receiving the written answer from the foreman. The Superintendent involved will be responsible to meet with the foreman, the employee, the Department Steward and the Chief Steward to settle the grievance within two (2) working days after receiving it. A written answer will be given by the Superintendent within two (2) working days after such a meeting.
4. A grievance not settled in Step 3 will be submitted to the Plant Manager within two (2) working days after the answer is given in Step 3. The Plant Manager will be responsible to call a meeting of the Union Committee and the Management Committee to resolve the grievance within two (2) working days after the receipt of such grievance. A written answer from Management will be given within five (5) working days after such a meeting.

5. If a grievance is not settled in Step 4, a meeting will be requested between an Ozite Corporate Office Representative, the Plant Manager, a representative of the Union and Union Committee. Such a meeting will be scheduled within fifteen (15) calendar days and a written answer from Management will be given within five (5) working days after such a meeting. (The time limitations provided in Steps 1 through 5 will remain in effect unless a reasonable extension is requested by either party.)
  - a. In case of discharge, layoff or disciplinary action, the grievance procedure will start as Step 2.
6. In the event that the dispute concerns compliance with the Agreement, and has not been satisfactorily settled in the foregoing steps of the grievance procedure, then either party may, within twenty (20) calendar days after the date of the written answer in Step 5, submit the dispute to arbitration, subject to and in accordance with, the following provisions of this section.
  - a. The grieving party shall notify the other party of its intention to apply for arbitration and request an assignment of a panel of five (5) impartial arbitrators from the Federal Mediation and Conciliation Service.

. . . ."

5. That on the morning of September 4, 1970, Rose Schicker and Rosemarie Lewko refused to work claiming that it was "too hot" and that Respondent disciplined the aforementioned individuals by imposing a 3-day disciplinary lay-off from September 9 to September 11, 1970.

6. That on September 9, 1970, Schicker and Lewko filed a grievance requesting that Respondent lift the suspension and reimburse them for time lost during the period of their suspension.

7. That on September 11, 1970, R. K. Natrop, Superintendent of Industrial Relations, met with the Union's Chief Steward, Joseph Robinson, and Department Steward Herman Anthony to discuss the Schicker-Lewko grievance; that at this meeting the Respondent and the Union through its representatives did settle and dispose of the aforementioned grievance; that Respondent did comply with Article 6 of the collective bargaining agreement even though the employees (grievants) were not present at the aforesaid meeting as specified in Paragraph 2 of Article 6; that the aforementioned meeting was initiated by the Union's representatives and there was no demand by said representatives that the grievants be present and that the grievants were not at work on September 11, 1970 but were observing the third day of their 3-day disciplinary lay-off.

8. That on September 15, 1970, Natrop by letter notified the grievants, Union President, Matt Leitenberger, and Union repre-

sentatives Robinson and Anthony that it was denying the above-described grievance.

9. That on September 21, 1970 Natrop met with Chief Steward Robinson and Robinson stated that the grievants admitted that they were "out of line" but that they were requesting that notation of Respondent's disciplinary action be removed from their personnel records; that Respondent refused said request and that there was no discussion at the above-mentioned meeting about proceeding further with the grievance at issue.

10. That on December 16, 1970, T. D. Groft, General Plant Manager, by letter, advised Fred Wagner (believing Wagner was still the Union's Business Representative) that the Schicker-Lewko grievance had been settled at a September 11, 1970 meeting between Natrop, Grievance Steward Robinson and Department Steward Anthony and that an attempt to resurrect the grievance violated the grievance procedure found in the collective bargaining agreement.

11. That on December 24, 1970, the then incumbent Union President, Matt Leitenberger, and the incoming Union President, Herman Anthony, advised General Plant Manager Groft that as of October 31, 1970 Wagner had been dismissed as Business Representative for Local Union No. 143 and that the Upholsterers' International Union had been advised of their action regarding Wagner.

12. That on December 28, 1970, Wagner wrote a letter to Groft wherein he advised Respondent of his intention to arbitrate the Schicker-Lewko grievance; that the above-mentioned letter also contained a request to the Federal Mediation and Conciliation Service for arbitration and that said request was to be signed by Groft (it was not signed by him) and that Wagner signed both the letter and arbitration request claiming to be a representative of the Union but that in fact he did not represent the Union at that time.

13. That on January 4, 1971, Groft wrote Wagner advising him that the grievance in question had been settled by Respondent and the Local Union Committee and that he (Groft) had been advised by letter dated December 24, 1970 (see Finding of Fact No. 11) that the Executive Board of the Local Union had not renewed his (Wagner's) contract to represent it and therefore Respondent would not accept Wagner's personal request for arbitration of a grievance that had been previously settled.

14. That on January 7, 1971, a letter was sent to the Federal Mediation and Conciliation Service requesting arbitration of the grievance in question and that said letter was signed "Fred Wagner, Business Agent, U.I.U., (Upholsterers' International Union), Local 143," but that Wagner did not represent the Local Union at that time.

15. That on January 15, 1971, Attorney Laurence E. Gooding, Jr., as Counsel for Respondent, wrote the Federal Mediation and Conciliation Service advising the aforementioned agency that Respondent's position was that the grievance was settled with the Local Union Committee and not subject to arbitration and that there appeared to be some conflict as to whether the Committee of the Local Union or Wagner was representing the employees.

16. That on March 29, 1971, Respondent received notice that Wagner had been appointed Chief Deputy Administrator of Local Union No. 143 by the Upholsterers' International Union; that prior to March 29, 1971, the only information that Respondent had in its possession concerning Wagner's status was from Local Union No. 143

indicating that Wagner's contract with it had not been renewed.

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

CONCLUSIONS OF LAW

1. That the grievance filed by Rose Schicker and Rosemarie Lewko concerning their 3-day disciplinary lay-off was settled at the September 11, 1970 meeting between Respondent's Superintendent of Industrial Relations, Watrop, and Chief Union Steward Robinson and Department Steward Anthony and, therefore, there being no grievance in existence due to the aforementioned settlement, there is nothing to arbitrate.

2. That Respondent by its refusal to proceed to arbitration concerning Complainant's demand that the Schicker-Lewko grievance is arbitrable, which grievance had been properly settled and disposed of, 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 basis of 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 19th day of November, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By John T. Coughlin  
John T. Coughlin, Examiner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

Case I  
No. 14621 Ce-1356  
Decision No. 10298-A

No. 10298-A

The Respondent points out that the status of Wagner certainly was in question in December of 1970. Respondent stresses the fact that the Local Union on December 24, 1970 notified it that Wagner had been dismissed from his duties as the Union's Business Representative. 1/ Therefore, Respondent argues that no one authorized by the Union requested arbitration.

#### DISCUSSION:

While the Examiner is most sympathetic to a labor policy that fosters arbitration as an alternative to industrial strife, such a policy cannot be applied blindly or indiscriminately. In the instant case it is clear that the grievance was settled at a meeting held on September 11, 1970. This meeting was instigated by the Union's Chief Steward, Joseph Robinson, and its Department Steward, Herman Anthony. The Union argues that the fruits of this meeting are moot and sterile because of the language found in Paragraph 2, of Article 6, which states inter alia ". . . The foreman will be responsible to meet with the Superintendent of Industrial Relations, the employee and his Department Steward. . ." (Emphasis supplied) Therefore, the Union contends that since the employees in question, Schicker and Lewko, were not present, the settlement arrived at is not binding. However, the record reveals that neither of the aforementioned employees were even in the plant on September 11, 1970 because they were observing the third day of their 3-day disciplinary lay-off. There is no evidence that the Union made any sort of demand that the grievants be personally present or that Respondent unilaterally refused to allow their presence. Indeed, if the presence of the grievants was of such magnitude, why did not Schicker and/or Lewko or the Union protest their absence or at least continue to press the grievance? Instead, no action of any sort was taken until approximately December 16, 1970 when Wagner, in a manner not demonstrated at the hearing, reactivated the subject of the Schicker-Lewko grievance. However, it was not until December 28, 1970 that Wagner requested arbitration.

Even assuming arguendo that somehow the grievance was not settled at the September 11, 1970 meeting, Wagner did not have the authority to resurrect the grievance in December of 1970. On December 24, 1970, the Local Union by its incumbent President, Leitenberger, and its incoming President, Anthony, informed Respondent that Wagner no longer represented it in any regard. In fact, Wagner testified that prior to March 31, 1971, when Respondent received notice that the Upholsterers' International Union had put Local Union 143 under administratorship, the only information possessed by Respondent was that his (Wagner's) contract to repre-

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1/ General Plant Manager Groft testified at page 17 of the transcript that he had been advised orally of Wagner's dismissal prior to his receipt of the December 24, 1970 letter. However, the precise date of the aforementioned oral communication was not established at the hearing.

sent the Union had not been renewed. 2/ Consequently, when Wagner requested arbitration on December 28, 1970, he represented neither the grievants nor the Union. Therefore, Respondent could properly ignore said request considering it to be a request by Wagner acting as an individual without Union approval vis a vis an officially sanctioned request by the Union.

Dated at Madison, Wisconsin, this 19th day of November, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By John T. Coughlin  
John T. Coughlin, Examiner

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2/ As noted previously, Wagner was appointed Chief Deputy Administrator of Local Union No. 143.